

CHAPTER I

INTRODUCTION

A. Background

Indonesia is well known as the largest archipelagic country in the world. With abundant of natural potential and wealth from God. This gift has a meaning and a very important function in unifying Indonesia from Sabang to Merauke in a unity of ideology, security, defense, and prosperity in a space of the Republic of Indonesia . “This is evident from the territory of Indonesia that consists of approximately 17,508 islands and coastal line of 81,290 km. The area of the territorial waters is 5.8 million km squares of Exclusive Economy Zone. Aside from that, Republic of Indonesia / *Negara Kesatuan Republik Indonesia* (NKRI) well as land borders with three countris.”¹

Indonesia is a country that has the longest coastline in the world because two-thirds of Indonesia is in the form of the sea. A distinctive character of NKRI other than being an archipelago is also being a country that is located between two continents, namely the Continent of Asia and Continental of Australia and flanked by two oceans, namely the Indian Ocean and Pacific Ocean which is the most dynamic and strategic area in terms of economic and political. “Because of this geographical location,

¹ Arief Ussama, “Review in Judicial Sector of the Territorial Waters of Indonesian”, *Jurnal Keadilan*, Vol.3, No.3 year 2003-2004, page 44.

Indonesia has considerable advantages and great influence in the field of marine. Aside from that, Indonesia is also located under the *Geostationary Satellite Orbit/GSO* of 12.8% of earth GSO. With such distinctive characters, the Indonesian nation is expected to have similar perspectives in the efforts to manage the territory, whether the land territory, territorial waters and air territory.”² In view of Indonesia’s position, therefore Indonesia constitutes an archipelago of strategic importance viewed from geostrategic or geopolitics. Being located between continents that connect developed countries, with such a strategic position provides Indonesia with a lot opportunities in economic lane, and we all know that a number of strategic straits of world are located within the territory of NKRI namely Malacca Strait, Sunda Strait, Makassar Strait and Ombai Wetar Strait. This maritime strategic position places Indonesia's territorial waters in a very important position to the efficiency of distribution of goods and services necessary to support the growth of national economy. “As a country whose territorial waters are vaster than its land, Indonesia has potential maritime resources that are abundant and valuable to the sustainable national development. However, such condition may also trigger parties from outside Indonesia to utilize Indonesia's marine time resources in an illegal manner. Keeping in mind that Indonesia is the world's largest maritime

² Purnomo Mirhad, *Geopolitik dan Geostrategi Indonesia*, Bandung, 1973

country, its maritime resources need to be guarded and managed continuously for the welfare and prosperity of the people of Indonesia".³

“Sea is a common heritage for every mankind in the world, every country has the right to exploit their marine resources for it interests.”⁴ In addition to its comparative advantages due to its geographical location, the potential of natural resources in the Indonesian marine areas both biologically and non-biologically has enormous benefits for people who lived in coastal areas. So it is not surprising that the strategic position provides Indonesia with opportunities as an economic lane. Which is why marine resources take such an important role in Indonesia's growth of national economy. The Minister of Maritime Affairs called this potential as the sleeping giant and it is not significantly yet to improve the live of fishermen.

Potential fisheries reached 6.4 million tons / year, consisting of 4.07 million tons are in the island waters and 2.1 million tons are in the Exclusive Economic Zone area. Yet only 20 percent of it is utilized. There are several issues which serves as hurdles to the full utilization of the advantages. One of the example of issues that attracts attention in these couple years and is still occurring within the territorial waters of Indonesia

³ Conveyed by Ambassador of France for Indonesia, Bertrand Lortbolary, in his speech when engaging in a cooperation with the Ministry of Marine and fisheries in the form of Seaconn (*Southeast Asia Centerfor Ocean Research and Monitoring*) Station with JNOESO (*Infrastructure Developmentfor Space Oceanography*) project credit facility between Indonesia and France, in Jakarta, on 18 June 2012

⁴ Japanton Sitohang, *Perbatasan wilayah laut Indonesia di Laut China Selatan : Kepentingan Indonesia di Perairan Natuna*, Lembaga Ilmu Pengetahuan Indonesia, Pusat Penelitian Politik, 2008, page 27-28.

is illegal fishing by foreign fishermen. The frequent discoveries of activities, such as several boats didn't hold the permit document for harvest activities in Indonesia's sea. "It is important for us to know that illegal fishing practices also cause other losses, which are damages to marine ecosystems and economy of the state. The Indonesian Oceanography Research Center (LIPI) discloses data, where only 5.3% of Indonesia's coral reefs are in a very good condition, while 27.18% are classified in good condition, 37.25% in sufficient condition, and 30, 45% are in bad condition."⁵ Damage to coral reefs is largely due to illegal fishing practices that use toxic materials and fishing gear. This cause a serious problem, because coral reefs are home to fishes, coral damage means damage to the life of the fish itself. Of course it affects approximately 2.2 million fishermen across Indonesia, which can certainly lose their livelihood. It can be seen that the practice of illegal fishing, which the international community has classified as transnational and organized crime, will certainly create a series of problems if these adverse conditions are not be solved soon. This practice of Illegal fishing constitutes a violation of the law, and also disturbing the stability of security at seas and it also brings impact on potential conflicts between Indonesia and other contries.

One of the Indonesia's sea teritorial that has been targeted by foreign fisher is Natuna Sea (*Laut Natuna*). "Natuna Sea is an extensive

⁵ Laut Indonesia dalam Krisis.
<https://www.greenpeace.org/seasia/id/PageFiles/533771/Laut%20Indonesia%20dalam%20Krisis.pdf>
 df downloaded on 10 October 2017

shallow sea located around Natuna Islands extended south to Lingga and Tambelan Archipelago in Riau Islands province.”⁶ “Natuna is one of the district in Riau Islands. It is the northernmost island in the Karimata Strait. To the north, Natuna is bordered by Vietnam and Cambodia, to the south by South Sumatra and Jambi, to the west by Singapore, Malaysia, Riau and to the East by East Malaysia and West Kalimantan. Natuna’s area reached 141.901.20 km² include of 138,666.0 km² waters (oceans) and 3,235.20 km² of land. This illustrates that Natuna’s territory mostly is sea. Natuna also became one of the main income for Indonesia with their Oil and Gas resources. Based on a study report from the Ministry of Energy and Mineral Resources (ESDM), Natuna's oil reserves reached 308.30 million barrels each year.”⁷

Around the year of 2016, Indonesia’s news was filled with the tense issue between the Government of Indonesia and the Government of other countries such as The Republic of China, Vietnam, Filipina, Malaysia and Thailand. The cause is none other than the “sink the vessel” policy by the Indonesia’s Maritime Affairs and Fisheries Minister Susi Pudjiastuti under President of Indonesia Joko Widodo. “In Jokowi’s view, Indonesia can no longer tolerate a situation where over 5,000 ships operate illegally in its waters every day, making a mockery out of Indonesian sovereignty and resulting in annual losses of over \$20 billion. Over the past month or so, his administration has sunk vessels from Vietnam,

⁶ Natuna Sea. https://en.wikipedia.org/wiki/Natuna_Sea downloaded on 10 October 2017

⁷ Sekilas Natuna. <http://www.natunakab.go.id/sekilas-natuna.html> downloaded on 10 October 2017

Thailand, the Philippines and Malaysia, seized dozens more and even suggested that the approach could be extended to include larger nations like China. While the practice of sinking vessels itself is not new, it has been conducted in a much more high-profile and expansive manner under the Jokowi's administration than it has in the past.”⁸

Nearly Natuna District, Illegal fishing mostly took place in the Indonesia Exclusive Economic Zone.⁹ Navy Commander of Ranai-Natuna, Colonel(Retired) Tony Herdijanto said, there is a reason for foreign fishermen to be determined to dredge fish in the ZEEI. They mostly in the habit of using trawl nets and damaging the coral reefs. Indonesia Exclusive Economic Zone has its own border.



Figure 1.1 Indonesia EEZ(Blue Line)

Source : <https://www.bbc.com/indonesia/indonesia-40605643>

⁸ Explaining Indonesia's 'Sink The Vessels' Policy Under Jokowi.

<https://thediplomat.com/2015/01/explaining-indonesias-sink-the-vessels-policy-under-jokowi/> downloaded on 10 October 2017

⁹ <http://batamnews.co.id/berita-23578-illegal-fishing-kembali-menggila-di-laut-natuna.html> - downloaded on September 4th, 2018

Protection of fish resources international cannot be separated from the various international instrument that are used by Indonesia. Natuna is an Exclusive Economic Zone area under UNCLOS and International Law. UNCLOS is the last conference of the UN Sea of Law Conference III. Indonesia itself has ratified UNCLOS with Law No.17 Year 1985.

In addition, those illegal vessels that entered into the territorial waters of Indonesia without the permission of Indonesia which this act clearly violates the Law of ZEE No.5 year 1983, especially in article 7. “In this article explains that anyone who performs activities in the territorial waters of Indonesia must get approval from the government Indonesia.”¹⁰ And According to Article 69, Paragraph 4 of Law No. 45/2009 on Fisheries, Indonesian authorities are allowed to burn or sink foreign fishing vessels conducting illegal fishing within the Indonesian fishing management area subject to the sufficient preliminary evidence. That law amended Law No. 31/2004 on Fisheries which stipulated that the Indonesian fishing management area consists of Indonesian waters (internal waters and territorial sea) as well as the exclusive economic zone (EEZ) of Indonesia. Therefore, it is quite clear that the actions taken by Indonesian authorities in blowing up or sinking foreign fishing vessels is in accordance with Indonesian domestic law.

As above, we knew that for illegal fishing brings a lots of damage and disadvantages for Indonesia especially in the Natuna Sea. Every

¹⁰ United Nations Convention on The Law of the Sea, UNCLOS 1982, Art.7

illegal vessels that practice illegal fishing activities in Indonesia's sea without permit will be claimed as illegal fishing, and it is no wonder that

Indonesia will take a very serious action which is to sink down those ships.

But there's a point that is still in questioning about; how exactly do Indonesia claim a ship as a illegal fishing vessel? And the "sink the ship"

policy that has been applied into action by Indonesia represented in the International Law context?

Therefore, the title of this research is **"International Law Approaches to The Case of Illegal Fishing by Foreign Ships in Natuna Sea"**.

B. Research Question

The researcher has identified some core problems based on the background research above. The research questions are as follows:

1. Why does foreign ships that practice fishing activities in Natuna Sea is claimed as illegal fishing by the Government of Indonesia?
2. Is the action of taking down illegal fishing vessel done by the government of Indonesia in accordance to the context of Indonesia Law?
3. Is the action of taking down illegal fishing vessel done by the government of Indonesia in accordance to the context of UNCLOS?

C. Research Objectives and Benefits

Research Objectives:

The purposes of this research are:

1. To know and analyze the reason why foreign vessels that do fishing activities in Natuna Sea was claimed as illegal fishing by the Government of Indonesia
2. To know and analyze the taking down action that had been done by Indonesia to the illegal fishing ships is justified or not according to National Law context.
3. To know and analyze the taking down action that had been done by Indonesia to the illegal fishing ships is justified or not according to International Law of Sea context.

Research Benefits:

The benefits of this research are:

1. To the readers in understanding whether the status of foreign fishing vessels that is conducting fishing activities in Natuna Sea.
2. To the readers in understanding the efforts taken by Indonesia's Government in the context of National Law.
3. To the readers in understanding the efforts taken by Indonesia's Government in the context of International Law of Sea.