

CHAPTER II

LITERATURE REVIEW

In this chapter consists of three types of frameworks, namely Conceptual

Framework, Legal Framework and Theoretical Framework.

A. Conceptual Framework

The Conceptual framework that used by the researcher are:

1. General Reviews of International Law of the Sea

a. The definition of International Law of the Sea

The ocean is home to many living creatures below its surface and prime source of nourishment for the life. Protecting these underwater cultural heritage is a must Therefore every States have their own regulation and law. And in International disputes, there's Law of The Sea. "Law of the Sea is a body of international law that concerns the principles and rules by which public entities, especially states, interact in maritime mattersincluding navigational rights, sea mineral rights, and coastal waters jurisdiction. It is the public law counterpart to admiralty law, which concerns private maritime intercourse.¹¹

"The law of the sea comprises the rules governing the use of the sea, including its resources and environment. The law of the sea is one of the principal subjects of international law and is a mixture of

¹¹James Harrison,*Making the Law of the Sea: A Study in the Development of International Law*. 2011,page 1.

treaty and established or emerging customary law. The law of the sea covers rights, freedoms and obligations in areas such as shipping, territorial seas and waters and the high seas, fishing, wrecks and cultural heritage, protection of the marine environment and dispute settlement.^{12”}

Therefore, we can conclude that Law of the Sea is a treaties and have international agreement by which states maintain the order, productivity and the peaceful relations on the sea.

b. The History of International Law of the Sea

The International Law of the Sea is one of the most important areas of contemporary international law, it is not only the ‘constitution of the ocean’, the 1982 United Nations Convention on the Law of the

Sea, but it is an ever-growing body of additional treaties, frameworks and state practice for the governance and management of the world’s ocean. Whilst the law of the sea had its initial origins in

determining the status and control of ocean space, the contemporary law extends well beyond issues of coastal state sovereignty and jurisdiction, to address the interest of the international community in the

deep seabed, high seas, fish stocks, the regulation of marine scientific research, military uses of the oceans, and marine environmental

¹² Public International Law: Law of The Sea.
<http://unimelb.libguides.com/internationallaw/lawofthesea> accessed on 15 October 2017

protection. This means the law of the sea has become more detailed over time, expanding and deepening in many content.

The International Law of the Sea has growth across several stages, ranging from the early theoretical debates between scholars over the status of the oceans, to the dominance of the freedom of the seas doctrine, to the gradual codification of the law throughout the twentieth century. Here's the stages of the development of the Law of the sea :

1) Historical Development

The history of the International Law of the Sea up

until the mid-twentieth century was dominated by European practice. Europeans developed sophisticated maritime technology allowing exploration of the furthest reaches

through their naval technology. Accordingly, whilst Roman law provided that the sea was free and common to all, there are two concepts namely: a. *Res Communis*, that the sea belongs to

every individual in the world, and cannot be taken or owned by each state in the world; b. *Res Nullius*, that the sea does not

own by anybody or any states, therefore it can be taken and owned by each state. These two concepts became the birth of international sea law and it can't be separated from the history

of the growth of international maritime law. These two doctrines began to grow and develop by the Roman Empire.

The Romans take an absolute control of the whole of the central ocean and because of this claims, thus raises a situation in which the central ocean becomes a free ocean from the pirate interference, and so all people can securely to use the middle seas. The Romans used the doctrine of the *res communis omnium*, which views the use of the sea are free and open to every people, and everyone got the freedom to fish.

2) The Grotian View of the Oceans

Into this realm of conflicting state practice, some views of the publicists entered and bring a theoretical construct to the debate over the oceans. One of the earliest, and ultimately significant, contributions was made by the Dutch scholar Hugo Grotius with his work *Mare Liberum* in 1608. In Chapter V Grotius do the same observes about how under the law of nations the sea has at various times been referred to as the property of no one (*res nullius*), a common possession (*res communis*) and public property (*res publica*).

3) The Freedom of the Sea and Territorial Sea Claims

The freedom of the seas doctrine is a principle put forth in the seventeenth century, is about limiting jurisdiction and national rights over the oceans and nations's coastline.

Freedom of the seas was a reminder that the seas was belonged to no one and proclaim to be free. This situation prevailed into

the twentieth century, but by the mid-century there was an urge by some states to extend national claims over ocean resources.

Concerning over the threat of pollution and waste from the oil tankers and ships carrying hazardous cargoes that could plied sea routes across the globe. Illegal fishing, pollution spreading, and a tangle of sea's claims, adding the growing tension between coastal nations' rights to the resources and the increased presence of maritime powers- all of these were threatening to the sea, transform the peaceful and beautiful oceans into a arena of war and conflict.

4) 1930 Hague Conference

In 1930, the League of Nation convened the Hague Codification Conference, and was attended by 44 states. The

principal point of the contention was the regime of the territorial sea, especially its breadth and relationship with an adjacent contiguous zone. However, the meeting was unable to reach any agreement on the law of the sea and no treaty was made.

5) Work of the International Law Commission

"On 1 November 1967, Malta's Ambassador to the United Nations, Arvid Pardo, asked the nations of the world to look around them and open their eyes to a looming conflict that could devastate the oceans, the lifeline of man's very

survival. In a speech to the United Nations General Assembly, he spoke of the super-Power rivalry that was spreading to the oceans, of the pollution that was poisoning the seas, of the conflicting legal claims and their implications for a stable order and of the rich potential that lay on the seabed.

Pardo ended with a call for "an effective international regime over the seabed and the ocean floor beyond a clearly defined national jurisdiction". "It is the only alternative by which we can hope to avoid the escalating tension that will be inevitable if the present situation is allowed to continue", he said.

Pardo's urging came at a time when many recognized the need for updating the freedom-of-the-seas doctrine to take into account the technological changes that had altered man's relationship to the oceans. It set in motion a process that spanned 15 years and saw the creation of the United Nations Seabed Committee, the signing of a treaty banning nuclear weapons on the seabed, the adoption of the declaration by the General Assembly that all resources of the seabed beyond the limits of national jurisdiction are the common heritage of mankind and the convening of the Stockholm Conference on the Human Environment. What started as an exercise to regulate the seabed turned into a global diplomatic effort to

regulate and write rules for all ocean areas, all uses of the seas and all of its resources.”¹³

And with the creation of the International Law Commission (ILC) by the United Nation, a body charged with progressive development of international law and work on treaty-making in the law of the sea. Indeed, first session in 1949 the ILC agreed that the ‘Regime of the High Seas’ would be given priority. Throughout the 1950s the ILC’s gave considerable attention to the law of the sea and their work had profound impact upon the development of the international law of the sea in the twentieth century. With the work of ILC, the opportunity presented itself for a United Nations diplomatic conference on the law of the sea at Geneva.

6) The First United Nations Conference on the Law of the Sea and Geneva Conventions

The First United Nations Conference on the Law of the Sea (UNCLOS I), held in Geneva from 24 February to 27 April 1958, resulted in the conclusion of four conventions. These were the Convention on the Territorial Sea and Contiguous Zone, entry into force- applied since 10 September 1964, the Convention on the Continental Shelf, entry into

¹³ Times Malta. <https://www.timesofmalta.com/articles/view/20090510/education/supporting-malatas-initiatives-on-international-law.256352> downloaded on 15 October 2017

force-applied since 10 June 1964, the Convention on the High Seas, entry into force-applied since 30 September 1962, the

Convention on Fishing and Conservation of Living Resources of the High Seas, entry into force-applied since 20 March 1966.

And in addition, an Optional Protocol of Signature concerning the Compulsory Settlement of Disputes arising out

the Law of the Sea Conventions was also agreed, and there were nine resolutions addressing a range of miscellaneous matters such as the Resolution on Nuclear tests on the high

seas, the Resolution on Pollution of the High Seas by Radio Active Materials, the Resolution on International fishery conservation conventions, the Resolution on Co-operation in conservation measures, the Resolution on Human Killing of marine life, the Resolution on special situations relating to

coastal fisheries, the Resolution on the regime of history waters, the Resolution on convening a second UNCLOS and the Resolution on tribute to the international

86 states attended the Geneva Conference, making it one of the largest post-war international law-making conferences. Although UNCLOS I was considered a success, it left open the important issues of breadth of territorial waters.

7) The Second United Nations Conference on the Law of the Sea and Geneva Conventions

A Second United Nations Conference on the Law of the Sea (UNCLOS II) was convened in Geneva two years after the UNCLOS I. However, this Geneva conference did not result any new agreements but rather to focus on only two issues : the breadth of the territorial sea and fishery limits. The conference was split between two groups, those favouring a six nm territorial sea and those supporting a 12 nm territorial sea. UNCLOS II was dominated by concerns with respect to security, fisheries, and associated economic problems. The conference was a failure and made no contribution to the development of the law of the sea, although it did highlight the importance of the law of the sea such as the limits of maritime zones.

8) The Third United Nations Conference on the Law of the Sea and Geneva Conventions

UNCLOS III was convened in New York, 1973. with more than 160 nations participating, the conference lasted until 1982. The convention introduced a number of provision. The most significant issues covered were setting limits, navigation, archipelagic status and transit regimes, exclusive economic zone

(EEZs), continental shelf jurisdiction, deep seabed mining, the exploitation regime, protection of the marine environment, scientific research, and settlement of disputes.

Second attempt be held in 22 – 24 September 1982 in New York. In this session, the Final Draft been agreed and Jamaica would be the next place where the next conference will be held. Last meeting had been held in Montego Bay, Jamaica since 6-10 December 1982. This convention finally agreed and signed by 117 nations and 2 other organizations. This convention was opened for participants until 19 December 1984 for Ratification or Accession.

This convention had been enforced since 16 November 1994 after Guyana ratified it as the 60th nations.

157 nations already became the members of this convention. 22 nations has signed on this convention and have not ratified it yet. And 17 nations have not signed this convention yet.¹⁴

Besides the UNCLOS III, This convention also created some enclosures, which are: Highly Migratory Species, Commission on the Limits of the Continental Shelf, Commission on the Limits of Prospecting, Exploration and Exploitation, Statute of Enterprise, Conciliation, Statute of the International

¹⁴ https://en.wikipedia.org/wiki/United_Nations_Convention_on_the_Law_of_the_Sea, downloaded 15 November 2017.

Tribunal for the Law of The Sea, Arbitration, Special Arbitration, Participation by International Organizations.

c. Purposes of International Law of the Sea

Purposes of the UNCLOS as the law of the sea is established in the preamble of UNCLOS 1982 which stated:

- 1) *Prompted* by the desire to settle, in a spirit of mutual understanding and cooperation, all issues relating to the law of the sea and aware of the historic significance of this Convention as an important contribution to the maintenance of peace, justice and progress for all peoples of the world;
- 2) *Noting* that developments since the United Nations Conferences on the Law of the Sea held at Geneva in 1958 and 1960 have accentuated the need for a new and generally acceptable Convention on the law of the sea;
- 3) *Conscious* that the problems of ocean space are closely interrelated and need to be considered as a whole;
- 4) *Recognizing* the desirability of establishing through this Convention, with due regard for the sovereignty of all States, a legal order for the seas and oceans which will facilitate international communication, and will promote the peaceful uses of the seas and oceans, the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment;

- 5) *Bearing in mind* that the achievement of these goals will contribute to the realization of a just and equitable international economic order which takes into account the interests and needs of mankind as a whole and, in particular, the special interests and needs of developing countries, whether coastal or land-locked;
- 6) *Desiring* by this Convention to develop the principles embodied in resolution 2749 XXV) of 17 December 1970 in which the General Assembly of the United Nations solemnly declared *inter alia* that the area of the seabed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, as well as its resources, are the common heritage of mankind, the exploration and exploitation of which shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States;
- 7) *Believing* that the codification and progressive development of the law of the sea achieved in this Convention will contribute to the strengthening of peace, security, cooperation and friendly relations among all nations in conformity with the principles of justice and equal rights and will promote the economic and social advancement of all peoples of the world, in accordance with the Purposes and Principles of the United Nations as set forth in the Charter;

- 8) *Affirming* that matters not regulated by this Convention continue to be governed by the rules and principles of general international law.¹⁵

2. Maritime Boundaries

The United Nations Conventions on the law of the sea which was adopted on 29 April 1958 and 10 December 1982 respectively, were recognized as universal legal document on the seas. The Convention contain provision on the recognition of maritime boundaries such as:

a. Internal Waters

According to UNCLOS, “Internal waters include waters on the landward side of the baseline of a nation's territorial waters, except in archipelagic states”¹⁶. It includes waterways such as rivers and canals, and water within smallbays. In inland waters, sovereignty of the state is equal to that which it exercises on the mainland. The coastal state is free to make laws relating to its internal waters, regulate any use, and use any resource. In the absence of agreements to the contrary, foreign vessels have no right of passage within internal waters, and this lack of right to innocent passage is the key difference between internal waters and territorial waters.¹⁷ The coastal state activities full sovereignty over its internal waters, and foreign ships while enter into this water, is fully

¹⁵ Peambule of UNCLOS 1982.

¹⁶ UNCLOS Part II, Art 8

¹⁷ UNCLOS, Part II, Art 2

observe by the laws and regulations of the state as its land territory but with one exception: the crew of the ship is subject to the law of the flag

State. Based on UNCLOS Art 8, The coastal State can intervene in ship affairs when the master of the vessel requires intervention of the local authorities, when there is danger to the peace and security of the coastal State, or to enforce customs rules.

b. Baseline

“A boundary line that determines where a State’s maritime sovereignty and jurisdiction begins and ends. In fact, baselines determine all areas of maritime jurisdiction. They create a demarcation

between areas where a State has no rights and those where a State does enjoy rights. We should now note that the default baseline under UNCLOS is the normal baseline. According to Article 5 of UNCLOS, a

normal baseline is drawn at the low-water line, as stated in official charts. Perhaps the easiest way to think of a normal baseline is as an “outline” of a State’s coast. Waters on the landward side of a baseline are considered a State’s internal waters, treated much in the way that land would be treated. However, in some situations, it is either impractical or uneconomical to draw a normal baseline. In such cases, straight baselines are used in lieu of normal baselines.”¹⁸

c. Territorial Sea

¹⁸ Baseline. <http://marinegyaan.com/what-is-a-baseline/> accessed on 15 October 2017

The Territorial Sea is an area extending from internal waters to the seaward side. The coastal state can enjoys its sovereignty over the area subject to the right of the ships of other states to engage in innocent passage. “Every state has the rights to establish the breadth of its territorial sea up to the limit not exceeding 12 nautical miles, measured from baseline determined in accordance with the convention, and the outer limit of the territorial sea is the line every point of which is at the distance from the nearest point of the baseline equal to the breadth of the territorial sea.”¹⁹

d. Contiguous Zone

Based on article 33 point 2 UNCLOS 1982, the breadth of contiguous zone not more than 24 nautical miles measured from baselines determined. And on article 33 point 1 of UNCLOS 1982 which stated:

“In a zone contiguous to its territorial sea, described as the contiguous zone, the coastal State may exercise the control necessary to:

- (a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea;*
- (b) punish infringement of the above laws and regulations committed within its territory or territorial sea.”*

¹⁹ UNCLOS Art 3

Which means a coastal state has its rights in a contiguous zone to defend its interests by stopping foreign ship supposed to be an offender in order to search, inspect or punish the offenders against its laws and regulation.

e. Continental Shelf

The Article 76 point 1 on UNCLOS 1982 stated:

"continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance."

Based on article 76 point 4, the coastal state will take the baseline by: *"For the purposes of this Convention, the coastal State shall establish the outer edge of the continental margin wherever the margin extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by either:*

- (i) a line delineated in accordance with paragraph 7 by reference to the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 per cent of the shortest distance from such point to the foot of the continental slope; or*

(ii) a line delineated in accordance with paragraph 7 by reference to fixed points not more than 60 nautical miles from the foot of the continental slope."

Moreover, In article 76 point 5, stated: "*The fixed points comprising the line of the outer limits of the continental shelf on the seabed, drawn in accordance with paragraph 4 (a)(i) and (ii), either shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured or shall not exceed 100 nautical miles from the 2,500 meter isobath(depth line). Which is a line connecting the depth of 2,500 meter.*"

Under the UNCLOS 1982, the coastal state has the sovereign rights over the continental shelf in the exploration and exploitation of its natural resources. The coastal state has exclusive rights in the sense that the other states may not explore or exploit in the continental shelf unless there is agreement with the coastal state.

f. Exclusive Economic Zone

Exclusive Economic Zone is the most important pillars of the UNCLOS. . In UNCLOS 1982 article 55, EEZ is: "*The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention.*"

“The coastal state has sovereign rights for the purpose of exploring and exploiting, conserving and managing the living resources of the exclusive economic zone.”²⁰ Moreover, the coastal state has exclusive right to construct and to authorize and regulate the construction, operation and use of artificial islands, installation and structures; and has jurisdiction over such artificial islands, installation and structures.

The Breadth of EEZ could not be more than 200 nautical miles measured from based line determined. It was explained in article 57 of UNCLOS 1982: “*The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.*”

g. High Sea

“The terms international waters or trans-boundary waters apply where any of the following types of bodies of water (or their drainage basins) transcend international boundaries: oceans, large marine ecosystems, enclosed or semi-enclosed regional seas and estuaries, rivers, lakes, groundwater systems (aquifers), and wetlands.”²¹

High Seas are seawater that beyond the limit of the national jurisdiction and excluded from the state sovereignty. The territorial sea, contiguous zone, exclusive economic zone, and archipelagic water

²⁰ UNCLOS art 56

²¹ International Waters. https://en.wikipedia.org/wiki/International_waters accessed on 17 November 2017

are not included in High Sea, but High Seas is open to all states, any states takes part for maintaining the peaceful and have the duty to conserve and manage the living resources in the zone, also prevent the international crimes at the High Seas.

In accordance with article 87 of the 1982 United Nations Convention, the freedom of the high seas consists of: (1) freedom of navigation; (2) freedom of overflight; (3) freedom to lay submarine cables and pipelines; (4) freedom to construct artificial islands and other installations permitted under international law; (5) freedom of fishing; and (6) freedom of scientific research.

For all merchant and naval vessels have the right to sail ships flying their flag in the high sea. But in doing any activities, every state shall take measures which conform with generally accepted international regulations and practice, to ensure the international order or safety at sea. And based on article 95 and 96 of UNCLOS 1982 The warships and commercial ship that operated by a nations or non-commercial in high seas, also has a full immunity, these regulations are.

3. General Reviews of Illegal Fishing

a. The definition of Illegal Fishing

“Illegal fishing refers to fishing activities conducted by foreign vessels without permission in waters under the jurisdiction of another state, or which contravene its fisheries law and regulations in some

other manner.”²² This action takes place when foreign vessels or foreign harvesters operate in violation of the laws of a fishery in a sea territorial of another country. This harvest activity was carried out by fishermen with irresponsible attitude and contradict with the Code of Conduct for Responsible Fisheries and becoming a part of malpractice activities to the fishery resources and generally detrimental to the marine resources. Some of the fishers do not have the legal fishing permit and they fake up the fishing licence, and some them catch fish by the species and sizes that are prohibited by law. Eventhough this activity provide a great benefits for fishermen but this action give an adverse impact for aquatic ecosystems because the use of fishing gear such as bombing, poisoning, and the use of trawlers in coral areas could bring damages to the ecosystems.

“In New Oxford: English-English Dictionary Second Edition 2009, illegal means not allowed by the law and fishing means catching fish as a job, sport or hobby.”

“In The Contemporary English Indonesian Dictionary, “illegal” means unauthorized, prohibited or contrary to law. “Fish” means fish or fish fillets and “fishing” means fishing as a livelihood or where to fish. Based on the understanding that literally can be said that “illegal

²² Fisheries. <http://worldoceanreview.com/en/wor-2/fisheries/illegal-fishing/> accessed on 15 October 2017

fishing" means fishing by language or fishing activities conducted illegally."²³

"Illegal Fishing refers to the definition issued by the International Plan of Action (IPOA) 2001 initiated by the Food Agriculture Organization (FAO) in the context of implementing the Code of Conduct for Responsible Fisheries (CCRF). Definition of Illegal Fishing is described as follows":²⁴

- 1) "Activities conducted by national foreign vessels in water under the jurisdiction of a state, without permission of that state, or in contravention of its laws and regulation;"
- 2) "Activities conducted by vessels flying the flag of states that are parties to a relevant Regional Fisheries Management Organization (RFMO) but operate in contravention of the conservation and management measure adopted by the organization and by which states are bound or relevant provisions of the applicable International Law;"
- 3) "Activities in violation of national laws or international obligations, including those undertaken by cooperating states to a relevant Regional Fisheries Management Organization (RMFO)."

²³ Peter Salim, 2003, The Contemporary English Indonesian Dictionary, Modern English Press, Jakarta, h. 65

²⁴ International Plan of Action-IUU. [Http://www.fao.org/docrep/005/Y3536E/y3536e04.htm](http://www.fao.org/docrep/005/Y3536E/y3536e04.htm) accessed on 15 October 2017

Therefore, in the sense of a more simple definition, Illegal Fishing can be interpreted as an against law activities.

b. The Cause and Effects of Illegal Fishing

“Illegal Fishing almost takes almost everywhere in the world. -

This activity is a well-organized fishery crime, starting from national to international level. Nowdays, illegal fishing action has changed the way of their operation compared to the way it operates in the mid-1990s.

Illegal Fishing action has become a highly sophisticated form of transnational organized crime, with features including the modern control ship movements and modern equipment, including tanks for refueling.”²⁵

“Illegal fishing is an economic crime driven by a growing world demand for fish and other seafood, and the globalization of the market. Some fishers skirt the law in pursuit of higher catch, taking advantage of patchy regulation of the commercial fishing industry and poor enforcement regimes at sea. Illegal fishing historically has been a low-risk, high-return activity. That is, the chances of being caught are relatively low as are the costs of fines and prosecution, particularly when compared to the huge profits that can be made by selling the fish.

²⁵ Anonim, 2003, "Illegal Fishing in the Southern Ocean: The Problem, Practices and Perpetrators" Australian Antarctic Magazine 5 Winter, page 16.

The risks are worth taking because the rewards are huge and the chances of being caught, small.”²⁶

“According to Gianni and Simpson, one of the difficulties to find for the accurate data and information is the fact that the act of Illegal Fishing is managed and run by complex business networks that deliberately hide the actual reality that occurs.”²⁷ In general, the action of Illegal Fishing that occurred in Indonesia is:²⁸

- 1) Fishing without license;
- 2) Fishing with false license;
- 3) Fishing prohibited fishing gear;
- 4) Fishing of prohibited species.

“Illegal fishing, according to NOAA Fisheries, also “poses a direct threat to food security and socio-economic stability in many parts of the world.” Here are some of these threats.”²⁹

- 1) Illegal Fishing is Harmful to the Seafood Industry

²⁶ Illegal, Unreported and Unregulated Fishing. <http://www.pewtrusts.org/en/research-and-analysis/analysis/2013/02/25/illegal-unreported-and-unregulated-fishing-frequently-asked-questions> accessed on 15 October 2017

²⁷ Gianni.M dan W. Simpson, 2005, *The Changing Nature of High Sea Fishing. How Flag of Convenience Provide Cover for Illegal, Unreported and Unregulated Fishing*. WWF dan Departement of Agriculture, Fisheries and Forestry, Australian Government, page 84.

²⁸ The Effects of Illegal Fishing on Our Environment and Economy.
<https://www.entitymag.com/effects-illegal-fishing-environment-economy/> downloaded on 17 October 2017

²⁹ *Ibid*

“According to NOAA Fisheries, companies that engage in IUU fishing often cut corners and lower their operating costs by avoiding overhead costs such as licenses. Companies cheat by illegally catching fish, spending less money than the companies who abide by the law. As a result, anything illegally obtained provides unfair competition. Illegal fishers, as Pew Trustswrites, “fish without the constraints accepted by legal fishers, often falsify documentation and effectively ‘launder’ their ill-gotten catch.”

2) Illegal Fishing Affects the Global Economy

“Although it is difficult to accurately quantify the full economic impacts of IUU fishing, experts for Pew Trusts report that illegal and unreported fishing costs the global economy around \$23 billion a year. Additionally, IUU fishing steals from smaller-scale fishers by taking the fish in near-shore waters and undermining the ecosystem on which the fish depend.”

3) Illegal Fishing Threatens Marine Ecosystems

“Because illegal fishing is a key driver of overfishing, IUU fishing threatens various marine ecosystems, including the Coastal East Africa, the Coral Triangle, the

Gulf of California, the Mesoamerican Reef and the Galápagos. Various organizations are, for example, trying to improve the methods of catching tuna. According to World Wildlife, tuna is an integral part to the ecosystem because it is a large part of millions of marine animals' diets; overfishing something as vital as tuna can cause a serious imbalance and threaten sharks, seabirds and sea turtles."

4) Illegal Fishing Can Lead to other Crimes

"According to Pew Trusts, illegal fishing "compromises transnational security because many illegal fishers engage in other illicit activity." According to the United Nations

Office on Drugs and Crime, illegal fishing sometimes "involve human rights abuses." For instance, some vessel owners use crew as "bonded labor" and force people to work in dangerous conditions for long periods at a time.

These workers have few rights and little reward for their hard work. Additionally, illegal fishing also leads to tax evasion, money laundering and trafficking of drugs, arms and sometimes people."

B. Legal Framework

The Legal framework that used by the researcher are:

1. UNCLOS 1892

a. Part II-Limits of the Territorial Sea

1. Article 19 Point 1 and 2(i)

1. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with this Convention and with other rules of international law.

2. Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State if in the territorial sea it engages in any of the following activities:

(i) any fishing activities;

b. Part V-Economic Exclusive Zone

1. Article 55

The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention.

2. Article 56

1. In the exclusive economic zone, the coastal State has:

(a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;

(b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:

(i) the establishment and use of artificial islands, installations and structures;

(ii) marine scientific research;

(iii) the protection and preservation of the marine environment;

(c) other rights and duties provided for in this Convention.

2. In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.

3. The rights set out in this article with respect to the seabed and subsoil shall be exercised in accordance with Part VI."

3. Article 58 Point 3

In exercising their rights and performing their duties under this Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part.

4. Article 62 Point 4(a)

*Nationals of other States fishing in the exclusive economic zone shall comply with the conservation measures and with the other terms and conditions established in the laws and regulations of the coastal State. These laws and regulations shall be consistent with this Convention and may relate, *inter alia*, to the following:*

(a) licensing of fishermen, fishing vessels and equipment, including payment of fees and other forms of remuneration, which, in the case of developing coastal States, may consist of adequate compensation in the field of financing, equipment and technology relating to the fishing industry;

5. Article 73

1. The coastal State may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention.

2. Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security.

3. Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment.

4. In cases of arrest or detention of foreign vessels the coastal State shall promptly notify the flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed.

2. Law Of The Republic Indonesia Number 45 Year 2009 Concerning

Amendment To Law Number 31 Year 2004 Concerning Fisheries

a. Article 5

(1) *The fishery management area of the Republic of Indonesia for fishing and / or fish cultivation includes:*

a. Indonesian waters;

b. ZEEI; and

c. rivers, lakes, reservoirs, swamps, and other potable water pools as well as potential fish farming areas in the territory of the Republic of Indonesia.

b. Article 10

For the benefit of international cooperation, the Government :

a) May periodically publish matters relating to the conservation and management of fish resources.

b) in cooperation with neighboring countries or with other countries in the context of conservation and management of fish resources in open seas, closed seas, or semi-closed and enclosed areas.

c) notify and submit any relevant evidence to the flag state of origin of the vessel suspected of engaging in activities that may pose obstacles in the conservation and management of fish resources.

c. Article 16

(1) Everyone is prohibited from entering, issuing, distributing, and / or maintaining fish harmful to the community, fish cultivation, fish resources, and / or the environment of fish resources into and / or outside the territory of fisheries management of the Republic of Indonesia.

d. Article 25

(1) Fisheries shall be carried out in the fisheries business system, including preproduction, production, processing and marketing.

e. Article 27 Point 2

Everyone who own and / or operate a foreign-flagged fishing vessels used for fishing in EZZ shall have SIPI

f. Article 30

- (1) *The granting of a fishing business permit to a foreign person and / or legal entity operating in ZEEI must be preceded by a fishery agreement, access arrangement or other arrangement between the Government of the Republic of Indonesia and the flag state government of the ship.*
- (2) *A fishery agreement made between the Government of the Republic of Indonesia and the flag-state government referred to in paragraph (1) shall state the obligation of the flag-state government to be responsible for the compliance of the person or legal entity of the flag state of the vessel to comply with the fishery agreement.*
- (3) *The Government shall stipulate the regulation concerning granting of a fishery business permit to foreign person and / or legal entity operating in ZEEI, fishery agreement, access arrangement, or other arrangement between Government of Republic of Indonesia and flag state government of vessel.*

g. Article 31

- 1) *Any fishing vessel used to catch fish in the fishery management territory of the Republic of Indonesia shall be equipped with SIPI.*
- 2) *Every fishing vessel used to transport fish in the fishery management territory of the Republic of Indonesia shall be equipped with SIKPI.*

h. Article 66A

- 1) *The fishery supervisor as referred to in Article 66 shall be a civil servant working in the field of fishery appointed by the minister or appointed official.*
- 2) *The fishery supervisor as referred to in paragraph (1) may be educated to become a Fisheries Civil Fisheries Investigator.*
- 3) *The fishery supervisor as referred to in paragraph (2) may be designated as functional officer of fishery supervisor.*

i. Article 66(C)

- (1) In performing the duties as referred to in Article 66, the fishery supervisor is authorized:
- a. entering and inspecting the location of fishery business activities;
 - b. check the completeness and validity of fishery business documents; (...).
 - i. stop, inspect, carry, hold and arrest vessels and / or persons suspected or suspected of committing a fishery crime in the territorial fishery management territory of the Republic of Indonesia until the transfer of such vessels and / or persons at the port where the case may be further processed by investigator.

j. Article 69 Point 4

In carrying out the functions referred to in point (1) the investigator and / or fisheries supervisor can perform specific actions such as burning and / or sinking of foreign-flagged fishing vessels based on sufficient preliminary evidence.

k. Article 71

- 1) With this Law a fishery court is established which is authorized to examine, hear, and decide offenses in the field of fisheries.
- 2) The fishery court as referred to in paragraph (1) shall be a special court within the general court of justice.

3. Law of The Republik Indonesia Number 5 year 1983 Concerning Exclusive Economic Zone

a. Article 4

Other rights under international law is the right of the Republic of Indonesia to implement the rule of law and a hot pursuit against foreign vessels who violates the provisions of Indonesian legislation concerning the exclusive economic zone. Other obligations under international law is the obligation of the Republic of Indonesia to respect the rights of other countries, such as freedom of shipping and aviation (freedom of navigation and overflight) and freedom of

installation of cables and pipes beneath the sea (freedom of the laying of submarine cables and pipelines).

4. Law of The Republic of Indonesia Number 43 year 2008 Concerning

State Territorial of Indonesia

a. Article 8

- 1) Indonesian jurisdiction borders Australia, the Philippines, India, Malaysia, Papua New Guinea, Palau, Thailand, Timor Leste and Vietnam.
- 2) Jurisdictional Territories as referred to in paragraph (1) including their coordinate points are determined based on bilateral and / or trilateral agreements.
- 3) In the event that the Jurisdiction Area does not border with other countries, Indonesia shall determine its Jurisdictional Limit unilaterally based on the provisions of laws and international law.

5. President Of The Republic Of Indonesia Decree Number 115 Year

2015 Regarding Of The Task Force Illegal Fishing Combating

a. Article 1 point (1)

To support efforts to improve law enforcement on violations and crimes in the field of fishery, especially illegal fishing in an integrated Illegal Fishing Task Force (Illegal Fishing), which further in this Presidential Regulation called the Task Force.

b. Article 2 (1)

The taskforce shall develop and enforce law enforcement operations in an effort to combat illegal fishing in the territorial sea of Indonesian jurisdiction effectively and efficiently by optimizing the utilization of personnel and equipment of operations. Including ships, aircraft and other technologies owned by the Ministry Marine Affairs and Fisheries, the Indonesian National Army Navy, the Indonesian National Police, the Attorney General's Office of the Republic of Indonesia, the Maritime Security Agency, the Special Unit for Upstream Oil and Gas Business Activities, PT Pertamina and other related institutions.

c. Article 3 point a and b

In performing its duties, the Task Force is authorized:

- Determine the target of law enforcement operation in order to eradicate illegal fishing;*
- Coordinate in the collection of data and information required as law enforcement efforts, with related institutions including but not limited to the Ministry of Marine Affairs and Fisheries, Ministry of Finance, Ministry of Foreign Affairs, Ministry of Transportation, Indonesian National Armed Forces Navy, Indonesian National Police, General Attorney Republic of Indonesia, Maritime Security Agency, Center for Financial Transaction Reporting and Analysis, State Intelligence Agency*

6. Regulation of the Minister of Marine and Fisheries of the Republic of Indonesia Number 37 / Permen-KP / 2017 About Standard Operating Procedure in Law Enforcement of The Task Force on Illegal Fishing

a. Article 2

Standard Operating Procedure Law Enforcement Task Force Fishing Illegally (Illegal Fishing) is a reference for members of the Task Force on Fishing Illegally (Illegal Fishing) in carrying out the operation and enforcement of laws against crimes in the field of fisheries in accordance with national law and international law.

b. General Explanation-Part III-Investigation On Land, Sea And Air

In Regional Operations, Section C Investigation in Sea (Point 19)

To implement the provisions of Article 69 paragraph (4) of Law No. 45 of 2009 on the Amendment of Act No. 31 of 2004 on Fisheries, which is a special action form burning and / or drowning of a foreign-flagged fishing vessel with sufficient starting evidence base after completing:

a. Subjective and / or objective requirements, namely:

1) Subjective Requirements, the ship performs malicious maneuvers and / or the Skipper / ABK conducts violent acts of violence; and / or

2) Objective requirements consist of:

a) Cumulative requirements:

i. Foreign flagged ships with all foreign crew;

ii. TKP (Locus delicti) is in the Management Area Fisheries of the Republic of Indonesia (WPPNRI);

- iii. Do not have any documents from the government Republic of Indonesia; and
 - iv. Implemented with the principle of prudence and by command of the leader.
- b) Alternative terms, namely:
- i. Old ships are supported by letter facts and / or have no high economic value; and
 - ii. The ship does not allow to be taken to the base / port / service in charge of fisheries, with the following considerations: Ships are easily damaged or harmful, the cost of withdrawing the vessel is too high, fishing vessels carrying goods containing infectious diseases or toxic and hazardous substances.
- b. Prior to the act of burning and / or sinking the vessel, action may be taken:
- 1) To save as much as possible the entire crew of fishing vessels;
 - 2) To inventory all equipments and equipments available on fishing vessel by mentioning the complete and detailed condition;
 - 3) Document visuals well using camera and / or video audio recorder;
 - 4) Fish that is captured and / or drowned by a fishing vessel is set aside for the purpose of proof;
 - 5) Creating Minutes of Combustion and / or Drowning of Fishery Ship to be included in the seafarers' news by the concerned authorities.

C. Theoretical Framework

The Theoretical framework that used by the researcher are:

1. Theory of Sovereignty

Sovereignty is the full right and power of a governing body over itself, without any interference from outside sources or bodies. In political theory, legal theory of sovereignty, in modern time was first propounded by Jean Bodin (1530-1596) in his famous book Six Books of a Commonwealth. He looked at the essence of sovereignty has 4 (four) basic properties as follows : Origin, it means that the power does not come from any other higher power. Permanent, means that

power persists throughout the standing state, even if the holder of sovereignty has changed. Single (round), means that power is the only supreme authority in a state that is not surrendered or distributed to other bodies, Unlimited (absolute), means a power is not limited by other powers. If there is another power that limits it, surely the highest power it has will disappear.

Basically, the government has the power of the force that applies to the Internal Sovereignty and External Sovereignty. Internal Sovereignty is the supreme authority that the state government has to perform its functions. This means that the state government has the authority, obeyed and respected the people. The state government is able to overcome all kinds of problems that happened in the state. And External Sovereignty namely the ability of a state government to maintain the territorial integrity and unity of its territory and the unity of its people for being respected by other countries, and this sovereignty was demonstrated by the ability of the government to overcome the problems that come from abroad. There are several sorts of sovereign theory:

a. Theory of State Sovereignty

According to this theory the existence of the state is the nature of nature, as well as the ultimate power lies with the leaders of the state. The application of the law of binding is

due to the will of a state which by nature possesses absolute power.

b. Theory of People's Sovereignty

According to this theory the state has the power of its people which is not from the God or the King. This theory is a reaction of the theory of God sovereignty and the theory of King sovereignty. This theory sees the highest sovereignty in the hands of the people and was used for the benefit and welfare of the people (democracy).

c. Theory of Law Sovereignty

According to this theory, the government obtains its power based on law, which is sovereign law. Law is the highest authority in the state. The people or the government must be subject to the rule of law.

2. Theory of Jurisdiction

“Definition of Jurisdiction is a reflection of the basic principle of state sovereignty, the sovereignty of the state will not be recognized if the country does not have jurisdiction.”³⁰ Jurisdiction refers to the ability of a country both to make and to enforce its laws. It is generally considered that there are two basic types of jurisdiction: prescriptive jurisdiction and enforcement jurisdiction. “Prescriptive

³⁰ Mirza Satria Buana, Hukum Internasional Teori dan Praktek, Bandung : Penerbit Nusamedia, 2007, pg.56.

jurisdiction is the power to regulate people and situations regardless of their location. Enforcement jurisdiction on the other hand is the ability of a country to legally arrest, try, convict and gaol an individual for a breach of its laws.”³¹

In relation to the basic principle of state sovereignty, a sovereign state shall exercise its jurisdiction within the territory of that State. With the right, power and the jurisdiction a state can face the problems in more detail and clearly way so it can achieve the main purpose of the country. Therefore, it can be concluded that only sovereign states can have jurisdiction under international law.

Public international law makes no restrictions on international civil cases. But it focus more on the jurisdiction of courts relating to international criminal cases. As far as criminal matters are concerned, there are several jurisdictional principles known in international law that can be used by a States to claim that they have judicial jurisdiction. Therefore, the principles are :

a) The Territorial Principle

Both subjectively and objectively (territorial expanded), specifying that the applicable state jurisdiction over the person, actions, and objects in the territory and outside its territory or abroad. all sovereign independent states, that the state must have

³¹ D Rothwell, et al (eds), International Law: Cases and Materials with Australian Perspectives, 2011, pg. 294.

jurisdiction over all persons and things within its territorial boundaries and in all civil and criminal matters arising within these territorial boundaries

b) The Nationality Principle

Both active nationality and passive nationality, stipulates that the state has jurisdiction over its citizens within its territory and the state has the obligation of its citizens abroad;

c) The protective or Security Principle

Nearly all states assume jurisdiction over aliens for acts done abroad which affect the security of the state, a concept which takes in a variety of political offenses, but is not necessarily confined to political acts.

d) The Universality Principle

This principle allowing jurisdiction over acts of non-nationals where the circumstances, including the nature of the crime, justify the repression of some types of crime as a matter of international public policy.