CHAPTER III
RESEARCH METHODOLOGY

A. Type of Research

Based on the Oxford Dictionary, research means the systematic investigation into and study of materials and sources in order to establish facts and reach new conclusions. According to Soerjono Soekanto, research is a scientific activity based on analysis and it was a construction that is done with systematically, methodologically and consistently.

Readers need to understand what is discussed in a legal research. And the object of a legal research is legal problem. A fact that happened in society and it is not in a harmony with the law, that is legal problem. “And legal research is conducted in order to produce an argumentation, a theory, or a legal concept as a prescription in solving a legal problem.”32 There is a type of legal research as follows, normative legal research and socio-legal research. “A normative legal research is usually known as a study of documents, utilizes a qualitative method in analyzing data, and using secondary data as the source, such as regulation, court decisions, books, legal theories, and doctrines.”33 “And socio-legal research considers facts and laws as social phenomenon with a structural approach and generally

32 Soerjono Soekanto and Sri Mamuji, Metode Penelitian Normatif, (Jakarta: Rajawali, 1995), pg.35
33 C.F.G. Sunaryati Hartono, Penelitian Hukum di Indonesia Pada Akhir Abad ke-20, cet.1, (Bandung:Alumni, 1994), pg.140
quantitative legal research with primary source of data which is obtained directly from the first source.”

“Researcher uses the normative legal research in this research to analyze the data because the normative legal research has the interpretation of hermeneutic character, which is defined as the process of changing from something that unknown to be known and understand.”

Furthermore, the normative legal research is conceptual as it appears on the rules and regulation in society and it also studies the law as norm. There are seven types of normative research, namely:

1. Positive Law Inventory Research

This research identifies positive law by using critical-analytical and logical-systematical approaches.

2. Legal Principles Research

This research selects articles containing the rule of law, clarifies and analyzes the articles based on the legal principles, then reconstructs them.

3. Clinical Law Research

This research is to discover what are the juristically for a case in-concerto by collecting positive law in-abstracto. This type of research

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34 Ibid., pg.140
35 Ibid, pg.142
36 Abdulkadir Muhammad, Hukum dan Penelitian Hukum, first edition, (Bandung: PT. Citra Aditya Bakti, 2004), pg.52
uses the legal norms as a major premise, and the facts of the case are used as a minor premise.

4. Legal Research on Regulation Structures

The first step of this research is to collect all regulations as an object of the research. Secondly, to clarify the object based on the chronology of the regulation. Thirdly, to analyze the basic understanding of a legal system and the last step is to construct the research based on the basic understanding of the legal system.

5. Legal Research on the Synchronization of Regulation

Synchronization of the regulation can be reviewed vertically or horizontally. If the synchronization of the regulation is reviewed vertically, it means the regulation will be examined based on its hierarchy. If the synchronization of regulation is reviewed horizontally, it means that the research aims to find the strengths and weaknesses of the regulation. In this regard, researchers may give recommendations for possible amendments to the regulations.

6. Legal History Research

The research intends to explain the development of the areas of law. This type of research aims to reveal the legal facts of the past in relation to the facts of the present law.

7. Comparative Law Research

The research aims to compare the legal system or regulation between one state and another state.
Based on the seven types of normative research above, the researcher adopts clinical law research, because this type of research aims to compare the UNCLOS, Indonesia Law Acts, and Memorandums (das sollen) with the implementation of it in the Illegal Fishing that happened in Natuna Sea (das sein). The implementation of the regulation is about the “Taking Down” the Illegal Fishing Vessels that Indonesia has been practiced since 2015 when the regulations concerning this dispute out and published.

B. Type of Data

A normative research is also called as a doctrinal method. The normative legal research method or qualitative legal research is usually known as a study of documents, which use secondary data as its source, such as court decision, doctrines, regulations, legal theory or official documents, book, reports, and journals.

In this research, the researcher uses the secondary data, which consists of primary, secondary, and tertiary legal materials. The secondary data of this research is comprised of:

1. Primary Legal Materials are an authoritative legal material which comprised of legislation, official records, or minutes in

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38 Amiruddin, *Pengantar Metode Penelitian Hukum*, (Jakarta: Raja Grafindo Press, 2004), pg 118
the making of laws and regulations. Here are following legal material that researcher used:

a. UNCLOS 1982
b. Law Of The Republic Indonesia Number 45 Year 2009 Concerning Amendment To Law Number 31 Year 2004 Concerning Fisheries
c. Law of The Republik Indonesia Number 5 year 1983 Concerning Exclusive Economic Zone
d. Law of The Republic of Indonesia Number 43 year 2008 Concerning State Territorial of Indonesia
e. President Of The Republic Of Indonesia Decree Number 115 Year 2015 Regarding Of The Task Force Illegal Fishing Combating
f. 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

2. Secondary Legal Materials are legal material that help to explains the existing primary legal materials which also can help researcher to do more analysis and have deeper understanding towards it, secondary legal materials consist of journals, books, reports, and internet-based sources.

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39 Peter Mahmud Marzuki, Penelitian Hukum, (Jakarta: Kencana, 2005), page 141
3. Tertiary Legal Materials are material that provide the explanations of the primary and secondary legal materials, such as Black’s Law dictionary, English dictionary, Wikipedia, Encyclopedia.

C. Data Collection Technique

Since this research is a normative legal research, and every data that are used by researcher is secondary data. So consequently the researcher relies mostly in the use of library research method. The library research method means that researcher collect all data from the regulations, journals, books, website, dictionary, about Indonesia’s Fishing Regulation and UNCLOS.

D. Data Analysis Method

There are two types of data analysis, such as qualitative and quantitative methods. Qualitative research is a method of inquiry employed in many different academic disciplines, traditionally in the social sciences, but also in market research and further contexts. This method is a subjective form of research relying on the analysis of controlled observation of the researcher. Qualitative research often attempts to answer a question rather than to test a hypothesis. These methods aim to answer questions about the ‘what’, ‘how’ or ‘why’ of a

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phenomenon rather than ‘how many’ or ‘how much’, which are answered by quantitative methods. Instead of devising “test conditions”, qualitative researchers examine on-going social processes, study records or artifacts that shape or are engaged in or affected by the processes being studied.42

In this research, the researcher uses the qualitative method which is not numerical, that can be found from tapes or written materials such as regulations, books, journal, etc in purpose to analyze enacted of international law to the act of Illegal Fishing in Natuna Sea.

The steps to analyze data are conducted based on the following procedure:

1. Data Collection
   
   Gathering the data and documents relating to the definition of Law of the Sea with its purpose and history, the definition of Illegal Fishing, the act of Illegal Fishing in Natuna Sea, the role of UNCLOS, the efforts of Indonesia’s government against Illegal Fishing in Natuna Sea, and national-international instruments relevant to the issue of Illegal Fishing.

2. Data Classification
   
   Classifying all of the collected data. In this regard, the substances of acts of Illegal Fishing in Natuna Sea are classified into the arguments, explanations of expert, and the Legal bases.

The international legal instruments and conventions are classified based on the legal binding and non legal binding.

3. Conclusion

All data that is obtained within research will be gathered and concluded to answer the research questions. The method in drawing a conclusion on AIRAC (Answers, issues, Rules, Analysis, and Conclusion).