CHAPTER IV

RESEARCH FINDINGS AND DISCUSSIONS

A. Research Findings

1. Illegal Fishing Phenomenon At Natuna Sea – Riau Islands Province

a. Fishery potential and problems in Natuna district

Indonesia as an archipelagic state, faced lot of problems due to the Illegal Unreported Unregulated (IUU) fishing did by local fishermen, either foreign fishermen. One of special region in Indonesia with a large number of illegal fisheries is Riau Islands Province.

The geographical position of the Riau Islands Province stretches from the Malacca Strait to the sea (Natuna District) of South China and directly borders with Vietnam, Malaysia, Cambodia and Singapore as a world trade center making Riau Islands Province has a strategic role in world trade traffic. Riau Islands Province has an area of 251,810 km2. Where 96% of them are the sea and 4% of the land in the series by 2,408 islands with the coastline along the 2,367.6 km. Center of activity in the province of Riau Islands can be reached from Singapore with the distance of approximately 1-2 hours trip by means of transportation sea. Riau Islands Province consists of 5 (five) districts and 2 (two) cities, including

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Bintan district, Karimun district, Lingga district, Natuna district, Anambas Islands district, Tanjungpinang City, and Batam City.[43]

The potential of marine fish resources in the South China Sea (WPP711) estimated at 1,057,050 tons/year. It is estimated that the marine waters of the Riau Islands have the potential of fish resources of 860,650.11 tons / year including large pelagic fishes of 53.802.34 tons / year, small pelagic fishes of 506,025.30 tons / year, demersal fish of 272,594.16 tons / year, reef fish of 17,562.29 tons / year, others (squid, shrimp, lobster) totaling 10 666.02 tons / year. Meanwhile, with the approach of survey results MV. SEAFDEC 2006 research result estimated total fish resources potency in marine waters of Riau Islands of 689.345.17 ton / year consist of big pelagic fish 16,48329 ton / year, small pelagis fish 14630934 ton / year, demersal fish amount 491.653,06 ton / year, Crustaceans (Shrimps, Crabs, Lobsters, Mantis) totaling 4402.70 tons / year, Molluscs (Cuttlefish, Cuttlefish, Octopus) totaling 30,496.77 tons / year. Potential of capture fishery in Riau Province is the largest in Natuna waters with level the new utilization reaches 4-6% of the total potential of Natuna Regency at 504,212.85 tons / year (58.59% of the total Riau Islands Province), followed by Bintan Regency, Anambas Islands District and Lingga Regency.[44]

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[43] https://barenlitbangkepri.com/potensi-kepri/ - downloaded in 24th June 2018.
[44] *Ibid.*

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Eventhough the potential of Riau Islands fishery is estimated highly, in fact, by the year of 2009 until 2014, the number of sea fishery result in Riau Islands was not more than 250.000 tons/year. This means not even half of total potential of fisheries production successfully achieved.

Produksi Perikanan Tangkap Menurut Provinsi dan Subsektor (ton), 2009-2014

Provinsi	Perikanan Laut					
	2009	2010	2011	2012	2013	2014
Aceh	138,942	126,701	143,681	148,765	153,692	157,944
Sumatera Utara	358,664	341,323	463,201	510,552	508,359	484,313
Sumatera Barat	191,345	192,658	196,511	197,460	211,004	214,734
Riau	75,520	77,102	90,503	95,609	93,279	107,305
Jambi	44,120	44,524	44,700	46,894	47,713	48,031
Sumatera Selatan	39,735	40,877	43,800	44,092	44,764	48,186
Bengkulu	44,209	44,241	39,860	44,561	50,918	60,705
Lampung	164,552	143,813	154,484	144,485	163,107	157,968
Kepulauan Bangka Belitung	153,222	159,421	192,474	202,565	199,243	203,285
Kepulauan Riau	225,469	196,633	157,506	147,310	140,597	139,331

Sumber : Direktorat Jenderal Perikanan Tangkap

Table 4.1. Fisheries Production 2009-2014
Sources: Indonesia Statistics Centre

Some causes of this small number of fisheries production, are lack of fishing boats and fishing gear owned by local fishermen. These local fishermen usually used a traditional fishing gear which could not produce the same amount of fish that collected from a modern fishing gear that owned by private domestic sector fishermen or foreign fishermen.

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Figures 4.1. Local Fishermen Vessel in Natuna Sea
Sources: Indonesia-Ocean Statistic Centre

Natuna district is the northernmost archipelago in the Karimata strait. To the north, Natuna bordered by Vietnam and Cambodia, in the south Natuna bordered by South Sumatra and Jambi, in the west by Singapore, Malaysia, Riau province and in the east, with East Malaysia and West Kalimantan. Natuna is located exactly on international shipping lines Hong Kong , China, Japan, South Korea and Taiwan.

Natuna sea, as one of three waters area with large number of IUU despite of Arafuru Sea and Northen Sulawesi Sea, has suffered for loss of potential fisheries by the huge and IUU vessels from domestic and foreigners. The high volume and value of production national fisheries are not increased the value of Non-Tax State Revenue (*PNBP*) supplied from fish resources and non-fish resources. Where the total target of fisheries

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PNBP set in the budget of the State expenditures (APBN) from 2009- 2014 never exceed more than Rp 300 billion. The realization of non-tax revenues from capture fisheries tends to stagnate since 2009 of Rp 150 billion.

Especially in Natuna, another problem that causing the low number of fishery production in this district is also because they are still constrained by the absence of cold storage to store the fish.[45] Nevertheless, the Ministry of Marine Affairs and Fisheries (MMAF) is building Sentra Marine and Fisheries Integrated (*SKPT*) in Lampa Strait. The place will become the fisheries center of Natuna Regency will be available cold storage with capacity reaches 3000 tons/day. Cold storage, also has received assurances of power supply support. *PT Perusahaan Listrik Negara (PLN)* has built Diesel Power Plant (*PLTD*) in Lampa Strait, Natuna with capacity 5 megawatt (MW).

Although, currently PLN has also provided a 1 MW power plant with a position close to cold storage. Because although not yet inaugurated, cold storage had been used. If *SKPT* is officially in operation it is estimated that it needs electricity supply around 3-6 MW. With the addition of 5 MW in Lampa Strait *PLTD*, then the electricity needs can be fulfilled.

However, the matter that need a huge attention from Indonesia government to Indonesia sea territorial, especially the Natuna sea fisheries

[45] https://finance.detik.com/berita-ekonomi-bisnis/d-3692146/3-tahun-illegal-fishing-diberantas-potensi-ikan-di-natuna-melejit , downloaded June 24th 2018.

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production matters is Illegal Fishing. Generally, there are some categories for illegal fishing such as fishing without license, fishing with false license, fishing of prohibited fishing gear, and fishing of prohibited species. In Natuna sea, most of the illegal fisheremen come from the neighborhood countries that catching fish in Indonesia Exclusive economic Zone without license and using a prohibited fishing gear such as trawl which could destroy the ecosystem of corals and kill small fish. Minister of Fisheries and Marine Affairs of the Republic of Indonesia Susi Pudjiastuti revealed, illegal fishing practices that occurred in the last 10 years in Indonesian waters has caused the state to lose Rp3.000 trillion.

b. Case Study Before 2014

1. (MV. Chyag Tai 1 and MV. Chyag Tai 2 – 1991)

In Monday, June 1st 1991, on south China Sea inside of Indonesia Exclusive economic zone, 2 fishing vessels entered the EEZ of Indonesia (05-16-00 North latitude/ 107-31-00 East Longitude) which are MV. Chyag Tai 1 and MV. Chyag Tai 2 with Taiwan flagged, suspected to catch fish illegally through this area.[46]

Both ships got caught by Indonesia Navy's Jet BRONCO patrol around the EEZ territorial and found the evidences such as

a) fishing nets that being used was in wet condition
b) Fulfilled cold storage with ±15 tons of fish in MV Chyag Tai 1

[46] Huku Laut Indonesia-P. Joko Subagyo, S.H-2005-pg. 82

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c) Fulfilled cold storage with ±12 tons of fish in MV Chyag Tai 2

Their activities not did not have a letter of permission from the Government of the Republic of Indonesia to catch fish in the EEZ of Indonesia. Transported by KRINALA-363 by Indonesia Navy, the defendants and their ships have driven to the naval port of Tanjunguban, Riau Islands to get investigated.

With the tribunal that held in Tanjungpinang district court, district attorney declared the defendant guilty for committing a criminal offence in Indonesia EEZ as regulated in article 17 of the Government Regulation No. 15 of the year 1984, juncto article 16 point 1 and 2 Law Act No. 5 year 1983 concerning Exclusive Economic Zone, juncto Article 30 of Law Act No. 9 year 1985 concerning Fishery.

However, the district court decided that the defendants are innocent and the indictment the District Attorney annulled by law and revoke the confiscation against evidence in the form of:

a) Both Ships MV. Chyag Tai 1 and MV. Chyag Tai 2 and all supplies
b) Auction Fund from the fish auction worth Rp. 8.924.000,-
c) US$ 1500 cash.

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District attorney then applied the cassation to the Supreme Court. Supreme Court of Indonesia then declared in contrary. Court stated that the defendants lawfully proven guilty of committing a crime: doing the exploitation of natural resources in this catch fish in Indonesia's EEZ without permission.

The courts punish the defendants to pay fines worth Rp.55.000.000,- and the cost of litigation in the district court valued at Rp. 5000,- and Rp. 2500,- worth in the Supreme Court. Both ships repossessed and auctioned off. The IUU fishing activities in EEZ territorial could not sentenced to jail.

2. Ranai Court of Fishery Verdict No: 04/PID.PRKN/2012/PN.Rni.

Defendant HO XUAN MINH as Nahkoda km. BTH 98168 TS flagged Vietnam on Wednesday 4th January 2012 around 08.30 WIB or at least in January 2012, located in the waters of economic Indonesia EEZ in South China Sea at the position 10 ° 46 ' 05 "N-105 ° 57 ' 00" E or at least in the waters of Indonesia's National Jurisdiction. Which is still in the area of Fisheries Law in the District Court the Ranai authorities investigate and prosecute the matter, deliberately in the area of management of Fisheries of the Republic of Indonesia of doing business in the field of fisheries

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catching, cultivation, transportation, management, and marketing of fish that do not have a Licence The Fishing Effort (SIUP).

The Act of the defendant as set forth and threatened criminal in article 93 para (2) jo. Article 27 paragraph (2) jo. Article 102 of the ACT 31-year 2004 Number RI about Fisheries jo. Article 76B UU RI 2009 Year 45 Number of changes to the ACT 31-year 2004 Number RI about fishing.

The judges of Ranai district court declared :

1) Declare the defendant Mr. HO XUAN MINH, with identity as aforesaid is proven legally and convincingly guilty of committing criminal acts "to operate Foreign-flagged fishing vessel Conducting Fisheries in economic zones Indonesia does not have an exclusive Licence (SIUP) Fishing Effort;
2) Drop the criminal against the defendant Mr. HO XUAN MINH with the criminal fine of Rp. 1.5 billion (one billion five hundred million rupiah) and if the defendant is not able to pay then it must undergo criminal confinement for 3 (three) months;
3) the Stated evidence in the form of: cash amounting to Rp. 16.335.000 (sixteen million three hundred and thirty five thousand rupiah) the results of the auction of 1 (one) unit of km. BTH 98168 TS with amenities. Taken for the country.

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4) Condemn the defendant to pay fees amounting to Rp. 5,000 (five thousand rupiah).

c. Case Study of Taking Down Vessel Action After 2014

1) Ranai Court of Fishery Verdict No. 1/Pid.Sus-PRK/2018/PN. Ran

Fishery Court of Ranai District Court held a tribunal due to IUU fishing activities in Natuna Sea that conducted by Vietnamese named Tran Huynh Nguyen as defendant.

The chronology of arrested action of this ship named KG-91526- TS on Friday 17 November 2017, KP. PAUS 01 are carrying out patrols on the border, around 7 a.m. to 08.30 PM KP. PAUS 01 at coordinates 04°01 ' 572 "north Latitude – 104°54 ' 072" East Longitude detects a point on the radar are allegedly foreign fish boat that was fishing activities at coordinates 04°03'921" North latitude –104°52'342" East longitude in the Natuna Sea territorial waters/EEZ of Indonesia. Then KP. PAUS 01 pursuit and termination in position 04 º 08 "048" north Latitude – 04 º 51 ' 164 " East Longitude on the fish. After examination of the known ship named KG 9526 TS in by the defendant as captain TRAN HUYNH NGUYEN.

District attorney that sued the defendant stated that he violates the provision of article 93 point (2) Jo article 27 point (2) of

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Act No. 45 of the year 2009 about changes to the laws of the Law Number 31 of year 2004 concerning Fisheries. Moreover, Juncto Article 102 of the Act Number 31-year 2004 about Fisheries and the law of the Republic of Indonesia number 8 Year 1981 Book about the Criminal Law Act and other legislation apply related in this matter with evidences that will be written below under the judgement.

The judges of Ranai district court declared :

1) Declare the defendants TRAN HUYNH NGUYEN above have been proven legally and convincingly, guilty of committing criminal acts "to operate foreign-flagged fishing vessel, do fishing in the area of management of Fisheries Indonesia exclusive economic zone in the region of Indonesia (ZEEI) that does not have a Licence Fishing (SIPI) "as in the Alternative Claim is considered public prosecutor
2) Dropping to the defendant TRAN HUYNH NGUYEN, therefore with the criminal fine of Rp RP 500.000.000,-(five hundred million rupiah) with provisions in the unpaid fines replaced with criminal confinement for 5 (five) months;
3) establish so that evidence in the form of:
   a. 1 (one) unit of the ship KM. KG-91526-TS;
   b. 1 (one) unit of Four;

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c. 1 (one) unit of Compass Express;

d. 1 (one) unit of GPS Navigator HUAHANG GP-35;

e. 1 (one) unit of Radio ICOM IC-M710 SSB;

f. 1 (one) unit of Radio SUPER STAR SEA EAGLE 6900;

g. 1 (one) bundle of documents;

h. CA. 1 kg (approximately one kilogram) fish mix results stage destruction of evidence of the fish;

i. 1 (one) Unit of Pair Trawling capture tool;

j. Taken away to be destroyed

k. one (1) flag of Malaysia;

l. Returned to the Government of Malaysia through the defendant TRAN HUYN NGUYEN;

4) Charge to the defendant to pay the costs of litigating a number of Rp 5000.00 (five thousand rupiah).

On 29 October 2017, Minister of Maritime Affairs and Fisheries Susi Pudjiastuti and the Anti-Illegal Fishing Task Force (Task Force 115) sank another 17 foreign vessels alleged to have been operating illegally in Indonesian waters. Seven ships were sunk in Tarempa waters, and ten others sunk in Natuna waters. Susi led the sinking ceremony on the Orca Fishing Supervisory Ship in Lampa Bay, Natuna regency.

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One of the most succesful of the taking down illegal vessel was the Silver Sea 2, a Thai-Flagged giant vessel weighing 2,285 gross tonnages (GT). Maritime Affairs and Fisheries Minister Susi Pudjiastuti plans to display foreign-flagged vessels arrested by Indonesian authorities for fishing violations in the country's waters as a clear evidence of rampant illegal fishing practices in Indonesia. With hope that it will open the eyes of Indonesia people who still againts this "sink down" policy and in additional to educate people on the importance of joint efforts to combat illegal fishing.

2. Indonesia Political Management Against Illegal Fishing

Before 2014-2015 political moments that created by current Minister of Marine Affairs and Fisheries Susi Pudjiastuti, Indonesia has the regulations to protect the sea territorial of Indonesia from illegal fishing. The regulations such as the ratification of UNCLOS 1982 in Law Act No. 17 year 1985 on Ratification of United Nations Convention on Indonesia Law Of the Sea, Law Act No. 45 year 2009 amending Law Act of 31 year 2004 concerning Fishery, Law act No. 5 year 1983 concerning Exclusive Economic Zone, and other regulations as follows.

IUU Fishing activities conducted by foreign flagged fishery ship Indonesia flagged breaking the law that have been set. According to the law, foreign ships need to be registered officially in Indonesia or foreign

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fisheries industry that had been registered in Indonesia, hence the foreign ship was allowed to operate in the territorial waters of Indonesia. But foreign-flagged ships acquired Indonesia that do not fit the permit ownership still belongs to the foreigners and they have been doing Interfaith charge movers ship (trans-shipment) sea border Indonesia and neighboring countries. Moreover, some of these foreign ships found the two pull one vessel trawling (pair trawling), resulting in all the contents of the seas uplifted and damaging marine life and clearly violate the law in force.

By that time, Government created some policies separately between one institution with another institution. Whereas, that is a rightfully have to made with one shared rules, with coordination between every institutions in charges such as implemented the Ministry of marine and fisheries, The Navy, Police, Fishery Courts, Indonesia Maritime Security Agency and Indonesia Coast Guards (KPLP).

The election of Joko Widodo as president of Indonesia in July 2014 catalyzed a series of important changes in Indonesia's maritime and fisheries management policies. The president had begun to articulate a new strategic doctrine positing Indonesia as a maritime axis spanning the Western Pacific Ocean and the Eastern Indian Ocean even before the election. Widodo's vision for a maritime Indonesia focused on an expanded naval and coast guard presence to secure freedom of navigation

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and the protection of marine natural resources, and buttressed by an ambitious program to upgrade ports and shipping infrastructure to enhance economic and political integration. President Joko Widodo then appointed over Susi Pudjiastuti as the Minister of Marine Affairs and Fishery(MMAF).

The appointment of Susi Pudjiastuti in November 2014 as Minister of MMAF was a headline item for the country's fisheries sector. Minister Pudjiastuti, a former businesswoman, quickly emerged as one of the most well known and popular ministers in Joko Widodo's administration. At the same time, she has made no shortage of critics who oppose her major reforms.

Minister Pudjiastuti has made combatting illegal fishing by foreign owned and operated vessels her top priority. The administration's sinking of more than 150 illegal foreign flagged vessels has received widespread media coverage. Though the minister's efforts have made illegal fishing an inherently riskier activity in Indonesia, the actual extent of progress from the efforts is difficult to estimate. President Widodo assigned Minister Pudjiastuti as head of the newly established Presidential Anti illegal Fishing Taskforce.

In addition to combatting IUU, Minister Pudjiastuti has sought to reform the capture fishing licensing system. At the start of her term, she imposed a one year moratorium on new licenses for foreign built vessels

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and ordered a review of over 1,000 vessel and company licenses. Coupled with a circular that prohibited the issuance of new licenses to vessels over 150 GT, this has meant that Indonesia will not operate as many large fishing vessels in the near to medium term. Some have interpreted Minister Pudjiastuti's actions as consistently damaging to the Industrial fishing sector and contradictory to her calls for expanding investment into the fisheries sector. The regulation of small scale fisheries (vessels under 5 GT), which make up 95% of Indonesia's fishing fleet, is considered a politically sensitive and complex pursuit given the decentralized government structure and remoteness of numerous fishing communities. Provinces oversee nearshore waters out to 12 nautical miles (nm); and the national government oversees from 12-200 nm. Jurisdictional overlap over nearshore fisheries and marine resources can occur, often between subnational governments and MMAF.

In September 2015, Minister Susi Pudjiastuti released the MMAF Strategic Plan 2015-2019 in the form of a Ministerial Decree, which makes it a legally binding document to which the MMAF must adhere. The Strategic Plan will help shape the MMAF's policy direction and priorities during the next five years.

The Strategic Plan seeks to provide policy guidance to tackle: IUU fishing, unresolved maritime territorial disputes; lack of clear zoning regulations and low productivity in the aquaculture sector; low

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competitiveness and quality of fisheries products; tariff and lack of market access; and lack of access to capital and financing.

The plan includes sustainability as one of the three pillars: Sovereignty, Sustainability, and Prosperity. However, it is framed as a loosely-defined goal with no clear definitions or binding indicators to measure progress on fisheries sustainability. Few details are provided on how the MMAF will actually seek to address sustainability challenges. The plan does not appear to outline a strategy for achieving the twin goals of increased production and fisheries sustainability.

The MMAF budget nearly doubled in 2015 (from 2014 levels) to US$784.8 million. With these expanded resources, Minister Pudjiastuti has spearheaded a turned down on IUU fishing by foreign vessels and a ban on transhipment of fish at sea, seizing 157 illegal foreign vessels and sinking more than 150 illegal foreign-flagged vessels. The ministry established an IUU task force, imposed a moratorium on operations by foreign-owned and/or foreign manufactured fishing vessels, and carried out an audit of 1,132 foreign-owned or foreign-built vessels, and took new steps to support mandatory vessel monitoring systems (VMS) for Indonesian waters.

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Figure 4.2. First Turned Down the IUU Vietnamesse vessels Action by the Navy in Natuna Sea 2014
Source : http://www.bbc.com/indonesia/berita_indonesia/2014/12/141205_indonesia_kapal_asing

To Implement the law act of Fishery No. 35 year 2009, Minister Pudjiastuti executed the article 73 of UNCLOS 1982, article 69 of Law act of fishery. Minister of Marine Affairs and Fisheries of the Republic of Indonesia Regulation No. 37/Permen-KP/2017 about Standard Operating Procedure Law Enforcement Task Force on Illegal Fishing by create SATGAS-115 that Formalized by Presidential Decree No. 115/2015. The Task Force was created to investigate IUU fishing, develop policy recommendations, carry out fisheries license reform, monitor and support enforcement operations, and strengthen coordination among enforcement agencies by developing tracking systems. Enforcement agencies engaged in anti-IUU fishing operations include the Indonesian Navy, the Indonesian

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Maritime Security Board, or Coast Guard (*BAKAMLA*), the National Water Police(*POLAIR*) and the Maritime Council. By the September 2015 until the october of 2017, at least 317 IUU vessels has been blowed up.

Belongs to following regulation, the procedure of this action would be started right after the arrest of the defendant, followed by an investigation by Navy. After the investigation done, it is continued by examination by the District Attorney and entering the trial as well. By the Court verdict, the evidences of IUU fishing could be destroyed under Indonesian Law.

Figure 4.3. IUU Vessels turned down by the MMAF of Indonesia
Source: https://finance.detik.com/berita-ekonomi-bisnis/d-3806846/penenggelaman-kapal-diatur-undang-undang

By these regulations and action before, Indonesia found the way to reduce the IUU Fishing from domestic fishermen either the foreign

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fishermen. Surely the turned down and blow up the vessel action could be executed after the Fishery Court verdict come out and proven that the criminals of IUU fishing is violate Indonesia law.

3. National and International Reactions through the Policy

Various reactions in national and international forum react through this courageous policy by Minister Pudjiastuti and President Joko Widodo. How does Indonesia became the first offender state over the world who firmly execute the '*Tenggelamkan*' policy to settle the IUU fishing in Indonesia. The word 'Tenggelamkan' somehow become a trend in Indonesia public and media.

Figure 4.4. Minister of MMAF of Indonesia, Susi Pudjiastuti controlling the SATGAS-115
Source : https://www.bing.com/images/

Minister Pudjiastuti's tough stance on illegal fishing is to be lauded. She is Indonesia's first Fisheries Minister to tackle the problem head-on

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with admirable consistency and perseverance. Her choice to blow up and sink caught vessels back in 2015 succeeded in showing the world Indonesia's resolve in combating what amounts to piracy on our own seas.[47] Although the International law do not prohibited this action, criticism and negative feedback cannot be avoid among the people even this policy has a strong legal basis in Law Act of Fishery, President Decree, and MMAF Decree.

Firstly, Associated with Susi policy in the context of combating illegal fishing in particular, need to be underlined as a positive impact. There are six the main policy that gives enough color for the sector development marine and fisheries. First, it opens the data of all fishing boats on the internet so that all can be accessed by everyone, whether the fishing boat has an official letter or not.

Second, unloading transshipment activities, which are banned, are closely monitored. Third, the activities of handling illegal fishing more directed to prevention efforts and policies that make the offender a deterrent. Among others, with, catch and burn, in cooperation with the security forces at sea.

Fourth, for fishing vessels that do not install vessel monitoring system (VMS) monitor within 1x24 hours, it will be dealt with

[47] http://jakartaglobe.id/opinion/johannes-nugroho-sinking-ships-not-good-indonesia/ - downloaded June 26th 2018

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immediately. Fifthly, the CTF also made a drowning effort in accordance with Law 45 of paragraph 69. And, sixthly, all of this refers to FAO code of conduct for responsible and sustainable fisheries.

The government in this case the CTF has also issued a Regulation of the Minister of Marine Affairs and Fisheries (MenKP) Number 56 Year 2014 on Temporary Suspension (Moratorium) of Capture Fishery Business License as an effort to control illegal fishing by foreign ex-ship in Indonesian waters.

After the issuance of the regulation, the government is now ready to conduct an analysis and evaluation (Anev) or a fishery vessel compliance audit that the construction is done overseas or foreign ships with capacity above 30 GT.

Anev was conducted to curb fishing licenses by foreign ex-ship during the moratorium period applied, ie 3 November 2014 to April 30, 2015. Such licenses include the Cultivation License (SIUP) and Fishing Permit (SIPI) or Fishing Vessel License (SIKPI).

Anev is conducted not only for fishing vessels but also types of foreign foreign fishing vessels. This compliance audit, for example, has been carried out on 187 fishing vessel owners and 1,132 foreign exports. This kind of compliance audit is necessary because one of the most prevalent IUU Fishing modes is fishing vessels and then the catch is transported out of the Fisheries Management Area of the Republic of

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Indonesia (WPP NRI). In addition to the catch of fish taken to other countries, the ships are also known to exchange flags when crossing the border region. The vessels examined include vessels operating at WPP NRI according to SIPI / SIKPI issued by the CTF and valid at least until 3 November 2014.

For her policies, Minister Susi Pudjiastuti got the World Wide Fund for Nature (WWF) International Leaders for a Living Planet Awards. These days, local fishermen have felt the positive impact, although various improvements are still being pursued. But, the people of Indonesia now can buy fish with good quality with low price. Currently buyers of fish from neighboring countries have come directly to buy our fish. Fish supply could be added.

Along with these reactions from international organizations, the "Taking Down" IUU fishing vessels by Indonesia MMAF surely got acknowledged by international community since the convention do not prohibited this policy. Furthermore, the release of the following regulation such as president decree and MMAF regulation in Indonesia must been considered known by all community of society. This policy issues has been spread by the social media and news. Evenmore, in Minister Susi Pudjiastuti meeting with France President, she was showing off the result

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of this policy and receive a compliment from France President, Francois Hollande.[48]

Negative feedback, No less than Vice President Jusuf Kalla, Coordinating Maritime Affairs Minister Luhut Pandjaitan ─ Susi's own immediate superior ─ and Finance Minister Sri Mulyani have spoken in favor of alternative ways of dealing with impounded vessels.

Vice President Kalla told the press that there had been diplomatic pressure from countries affected by the seize-and-sink policy to the effect that Indonesia resort to other punitive means, such as by auctioning off impounded ships. Luhut, on the other hand, spoke for their confiscation as state property, to be put at the disposal of local fishermen.

Sri Mulyani followed through Luhut's idea, though she noted that under the current legal framework, court proceedings will be needed before declaring them to be state property. "President (Joko Widodo's) concern in the matter is how these vessels could be of maximum benefit to the people,"she reasoned.

That three senior cabinet members have voiced their disapproval of Susi's policy on sinking illegal fishing vessels is noteworthy. Does it mean a change of policy is around the corner? Sri Mulyani's invocation of the president is especially interesting, given that during a recent meeting

[48] https://www.cnnindonesia.com/nasional/20170329205237-20-203554/susi-pamer-kebijakan-penenggelaman-kapal-ke-presiden-perancis .- Downloaded in Tuesday, September 4th 2018

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with fishermen protesting Susi's all-out ban on *cantrang* (a local version of seine), President Jokowi decided to rule out Susi and revoked the ban.[49]

B. Discussions

1. Illegal Fisherman Classification Based According to Indonesia Law

The Code of Conduct for Responsible Fisheries has create some definitions for illegal fishing that simplified as the fishing activities by foreign vessels in water under jurisdiction of a state without legal permission, then also an activity by flagged vessels as a parties of Regional Fisheries Management Organization (RMFO), yet, operate in contravention of the conservation management.

As the subject, doing it without license either with fake license, with prohibited fishing gear or fishing the prohibited species is categorized as lawful act that could be punished. As regulated in UNCLOS, Article 19 point 2, has explained that a foreign ship should consider the prejudicial to the peace, good order or security of the coastal state. In this regulation, ship of the foreign fishermen has a responsibility to do so.

Indonesia has rules and sovereignty, a territorial jurisdiction is under the government of Indonesia if there were any activities in Indonesia maritime boundaries begin from the territorial sea, contiguous

[49] *ibid*

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zone, exclusive economic zone and the seabed boundaries. As told in part V of UNCLOS 1982 about exclusive economic zone, coastal state has rights and jurisdiction to exploring, exploiting, conserving, and managing the natural resources. Law act No. 5 year 1983 concerning Exclusive Economic Zone emphasize this part in article 4 and 27 point 2 as well.

Even more, especially in article 62 point 4(a) UNCLOS, coastal state has a right to licensing the foreign fishermen and the equipment that have different nationality flags.

Indonesia as a state that ratified UNCLOS shall applied this convention and so does in combating the Illegal fishing, Indonesia government has made the Indonesia Law Act No. 45 year 2009 amending Law Act of 31 year 2004 concerning Fishery. This law act has stated in article 10 point 1(c) that for the benefit of international cooperation, the government of Indonesia 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. It means that for every suspected illegal vessels which get caught by Indonesia navy or coast guard, will be reported to their flag state before processed by Indonesian Law.

Moreover, belongs to Article 27 point 2, foreign fishermen need SIPI to catch the fish Indonesia EEZ. Fake the SIUP, SIPI and SIKPI has prohibited in Indonesia. If foreign fishermen would like to have the permit

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to sail and catch fish in Indonesia EEZ, as told in article 30 that 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.

If these foreign fishermen did not do as well as been regulated in Indonesia, their fishing activities in Indonesia EEZ will be illegal. As exemplified in research findings, in Natuna sea, most of the IUU fishing cases was did by Asia countries citizen, such as Taiwanese, Vietnamese, and Malaysian.

Belong to the researches, in first case, under Indonesia Law and UNCLOS 1982, the defendants did not have a permission under Indonesia law to enter and harvesting the fish in Indonesia EEZ, it violate Indonesian regulation on EEZ, in that time, the law in fishery was not firm enough like currently. By that time, Government regulation was the only regulation to support the Law of EEZ. Yet, the activities that did by the taiwanese defendants was wrong and need to be punished. Supreme court has done the right thing to protect Indonesian Territorial as our sovereignty.

The second case that happened in first quarter of 2012, was more clearly than before, because Indonesia already has the law of fishery, and the regulation about SIUP(fishing effort license) has told clearly by this time. The defendant who is vietamese entered the territorial of Indonesian

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EEZ without permission and without the fishing license which make his action classified as IUU fishing. In this time, Indonesia also have the fishery court that located in some archipelagic region in Indonesia. When this illegal fishing happened in Natuna EEZ, Ranai district court in fishery specialization has applied the right law to firmly punishing the defendants with fines and the auction of ship. Based from some sources, these ships that auctioned from the illegal fisher would bought by the same owner again from the flag countries and again, will be used to do the IUU fishing again.

These issues make Indonesia government make a new policy in the era of Joko Widodo presidential. Run by the new Minister of Maritime and Fishery and crews under the ministry, New action as known as "*Tenggelamkan*" or "Taking down" has applied to those foreign ships that did not have permission and license. As written in third case, is one of hundred cases after three years since the new "Taking Down" policy run by the government. The ship that used by the illegal fisher was auctioned and burned down on the ocean far from coastal area.

2. Indonesian Government Act Regulation and Firm action of taking down illegal fishing vessel

It has been decades for Indonesia battling the IUU fishing in its exclusive economic zone. Law act by law act has been amended to

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improve the protection the EEZ area from illegal fishing. However, the rate of illegal fishing in Indonesia not getting lower until 2014. Validation of Fishery Court has been done since 2004. Yet, this court and its law still not giving a deterrent effect to IUU fishing subject.

Kapal Yang Ditangkap	Tahun	Kapal Perikanan Indonesia (KII)	Kapal Perikanan Asing (KIA)	Jumlah	Jumlah Kapal Pengawas
	2010	24	159	183	24
	2011	30	76	106	25
	2012	42	70	112	26
	2013	24	44	68	26
	2014	23	16	39	27
	2015 - (12 Maret)	23	13	36	27
	Jumlah	166	378	544	

(Tabel hasil operasi kapal pengawas, Sumber : Ditjen PSDKP KKP, 2015)

Table 4.2. SATGAS 115 data of sea surveillance
Source : PSDKP Ministry of Marine and Fisheries

In every occasion, the Minister of Marine Affairs and Fisheries, Susi Pudjiastuti, often expressed that our country has been much harmed by the practice of IUU fishing. She said the loss estimation reached Rp 300 trillion per year. To implement the Law Act of fishery, Minister Pudjiastuti with the President Decree Number 115 Year 2015 about Units of Illegal Fishing Eradication Task Force, create the SATGAS-115.

SATGAS 115 as stated in the article 2 of the Decree, has a duty to develop and execute the operation of law enforcement efforts in the eradication of illegal fishing in the territorial sea of Indonesia's jurisdiction effectively and efficiently by optimizing the utilization of personnel and equipment operations. Including ships, aircraft, and other technologies

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that are owned by the Ministry of marine and fisheries, Indonesia National Army Navy, State police of the Republic of Indonesia, the Attorney General's Office of the Republic of Indonesia, Sea Security Agency, a unit of the Special Work Managing business activities Upstream Oil and Gas, PT Pertamina, and other related institutions.

The establishment of SATGAS-115 furthermore has its standard operational procedure regulated in MMAF decree No.37/Men.KP/2015. According to the theory of state sovereignty, this was confirmed as the ultimate power that lied with the leader of Republic Indonesia. It is a duty of government of Indonesia to protect its natural resources including fisheries. In this MMAF decree, SATGAS-115 is in charge of carrying out the investigation, investigation, handling evidence, prosecution, remedy and the execution of the exhibits of the ship.

Furthermore, because of SATGAS-115 that created by President as Executive sovereign in Indonesia, These procedures of taking down the IUU vessels need to followed the steps of litigation process in Indonesia. The reason behind this long process is caused by, Legal basis of the SATGAS-115 in the President Decree not only consist of Ministry of Marine and Fisheries(MMAF) under Minister Susi Pudjiastuti. It consists another personnel of security council and law enforcer. This situation made the MMAF of Indonesia could not attempt the Prompt Release approach to simplified the law process.

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Even the action and policy was potentially risks in accordance of Indonesia international relations, this action could gain the Indonesia potential number of fisheries. Indonesian people could enjoy the cheaper price of fresh sea-food due to the ease of sea-food source. This moment could gain Indonesia people trust on government locally or general.

As follows a news media of Indonesia has given information after 2 years the "turned down" policy has out, This phenomenon is shown data from International Trade Centre (ITW). Thailand's seafood exports figures were already far slump. In the last two years, the total export of the country plummeted US $1.3 billion, or about 20 percent, to $5.4 billion from US $6.7 billion in 2013.

The Philippines seafood export rate was more severe. Export vanish up to 30 per cent, so that this country should lose more than US $347 million. In fact, the Philippine exports had soared in the year 2013. Otherwise, in Indonesia, according to the data of the Ministry of marine, national fisheries production originates from the capture fisheries or aquaculture in quarter III 2015 reached 14.8 million tons, up 4.3 percent compared to the same period in the previous year.[50]

It means the action has worked. IUU fishing by the foreigners in Indonesia partly decrease and the production of local fishermen has

[50] https://www.bareksa.com/id/text/2016/04/20/menteri-susi-gencar-perangi-illegal-fishing-ekspor-thailand-anjlok-13-milia/13159/news - downloaded June 30th 2018

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increased. This phenomenon is getting better every year although some parties did not support the turning down the IUU fishing vessels or the IUU fishing vessels blown up action by reason of destroying the sea environment and flex indonesia's international relations with other countries.

There are still those who appreciate the Indonesian Government deeds such as WWF, fishermen communities, and academia. This action also supported by the theory of jurisdiction with territorial principle and security principle. Indonesia, a legal state, with laws, protect its territory and secure its natural resources from irresponsible people that come from another part of the world.

From the cases that been discussed before, there are some differentiation between every verdicts. In first case, the district court free the perpetrator of illegal fishing with reason prosecution was not suitable. And second case, There is an increasing of law enforcement after the Law act of Fishery been changed, but the vessels were seized by Indonesia government to be auctioned. This moment could be utilize by the previous owner to get back the vessels. As seen in the third case, we could see a firm action that been applied to the evidence such a vessels and fishing equipment get destroyed to give deterrent effect to the defendants who are currently face the tribunal or who plan to do illegal fishing.

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From the writer views, even though this new policy causing Indonesia's profits in terms of foreign investment in the early year of rule enforcement, the new policy that run by the Indonesia government bring a lot more advantages to local fishermen. Especially to the traditional fishermen that have their business ruined because the foreign fishermen with advanced technology vessels catches lot of fish and seafood while left them a little amount of it.

As told in research findings, the amount of fishery potential has up to 300 billion per year since the IUU fishing vessels take a step back from Indonesia EEZ. The coordination between the regulation and the action make a lot of differences even the local fishermen still attempted to harvest more. Yet, the local fishermen feel easier to catch the fish than before.

Along with the jurisdiction theory, with criminal principle in territorial principle, it is Indonesia government rights to applied its own law and regulation to protect and prevent the criminal action in its territory. To support this view, researcher and reader should not only see it from the regulation that has applied, to protect our territory, government need to upgrade its security and action just like this policy.

This “Taking Down” policy could be a good example to other archipelagic states around the world, especially in developing countries. Every states that brave enough to apply this kind of risky policy also need

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to be appreciated in case their ability to protect its territory not only created the theories by theories, but also by practical that could rise a reticent act from the other states and government.

3. UNCLOS 1982 regulation due to the taking down illegal fishing vessel act done by the government of Indonesia

In accordance to regulate the IUU fishing, UNCLOS 1982 has mentioned in article 19 that

> *"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."*

This means that UNCLOS admit the sovereignty of every coastal state and its jurisdiction principle. As UNCLOS 1982 has also given the right to coastal state to implement their own law in Article 73, Indonesia could enforce its law as long as the government do as said as in article 73 point 2,3 and 4 which stated:

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

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3. *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."*

Indonesia as ASEAN community has agreed to combating the Illegal fishing. One of the documents is an important reference to IUU Fishing cooperation in ASEAN has successfully attempted to Indonesia is the APSC Blueprint 2025 under the action plan b. 6.2. vii, which reads:

"*Expand ASEAN maritime cooperation to effectively combat transnational crimes such as maritime terrorism, smuggling of goods, people and weapons, drug trafficking, trafficking in persons, piracy, hijacking, armed robbery against ships, as well as to address transboundary challenges including oil spill incidents and illegal, unreported, and unregulated fishing, through concrete and practical activities, while maintaining the respective reporting lines."*

These laws and plan has shown that United Nations put effort to support Indonesia and every coastal state against IUU fishing activities. There is no threat to the country that perform strict measures and applying the law to eradicate illegal fishing. So, other countries should not suppress the country doing decisive action to eradicate illegal fishing. Although they do not apply the same action. Other countries have no right to suppress the country's economy, which enforce the law properly for the sake of creating eternal peace in the marine and fisheries.

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The international law of the sea that regulated in UNCLOS 1982 generally not prohibited this action. As seen, international law completely surrenders to each country to enforce laws that can protect its country. International law highly respects legal theories regarding the sovereignty and principles of the coastal state in protecting its territory. According to this reaction from international law, It shown that International law un-directly support, warrant and justify this "Taking Down" the IUU fishing vessels act and what other community should do, is support this policy of Indonesia Government.

ASEAN local community also agreed to combating the IUU fihsing in ASEAN territory. As all of ASEAN Countries has agreed with UNCLOS 1982, by Accession either by ratification, except Cambodia that only signed the convention but have not ratified or accessioning the convention yet. It defines that what Indonesia Government do represented by the MMAF was right and as seen from the data and research before, It can be concluded that this Indonesian rule can reduce criminal levels in the sea so that the name of the country of origin rather than the perpetrators of illegal fishing can be rehabilitated. With UNCLOS 1982, and ASEAN community agreement that combating the IUU fishing, means that the theory of law sovereignty has applied in the global community and could settle the problem in creating the alignment rules.

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Indonesia, who adheres to democratic idealism, which could been categorized as theory of people's sovereignty does not provide the government to create a proper national law along with international law.

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