

REPUBLIC OF TURKEY

ANKARA UNIVERSITY

**GRADUATE SCHOOL OF SOCIAL SCIENCES DEPARTMENT OF
MARITIME TRANSPORTATION LAW AND POLITICS**

**THE NECESSITY OF INDONESIA'S MEASURES TOWARDS VESSEL
SINKING AND BURNING POLICY IN COMBATING IUU FISHING IN
INDONESIA EXCLUSIVE ECONOMIC ZONE**

LLM with Thesis Programme Conducted in English in the Sea and Maritime Law

Zulfiani Ayu Astutik

Ankara, 23 May 2023

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I state that all the information in my master's thesis titled “THE NECESSITY OF INDONESIA’S MEASURES TOWARDS VESSEL SINKING AND BURNING POLICY IN COMBATING IUU FISHING IN INDONESIA EXCLUSIVE ECONOMIC ZONE” (23 May 2023, Ankara), which I prepared under the supervision of Prof. Dr. Ademuni-Odeke, was collected and presented in accordance with academic rules and ethical behaviour principles, I fully indicated the information I received from other sources in the text and in the bibliography, I declare that I have acted in accordance with the ethical rules, and I will accept any legal consequences in case the contrary arises.

Date: 23/05/2023

Zulfiani Ayu Astutik

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ABBREVIATIONS

AIS	: Automatic Identification System
ALKI	: Indonesian Archipelagic Sealine
ASEAN	: Association of Southeast Asian Nations
BAKORKAMLA	: Maritime Security Coordinating Board
CCAMLR	: Commission for the Conservation of Antarctic Marine Living Resources
CCRF	: Conduct for Responsible Fisheries
CRS	: Coastal Radio Station
EEZ	: Exclusive Economic Zone
EU	: European Union
FAO	: Food and Agriculture Organization(s)
FFV	: Foreign Fishing Vessel
FOC	: Flag of Convenience
FV	: Fishing Vessel
GIS	: Geographic Information Systems
GPS	: Global Positioning System
IDR	: Indonesian Rupiahs
IEEZ	: Indonesia's Exclusive Economic Zone
IFCR	: Indonesian Fish Consumption Rate
IFV	: Indonesian Fishing Vessel
IPOA-IUUF	: International Plan of Action which aims to Deter, Prevent and Eliminate Illegal Unreported and Unregulated Fishing
IUUF	: Illegal, Unreported and Unregulated Fishing
ITLOS	: International Tribunal on the Law of the Sea
KRI	: Kapal Perang Republik Indonesia (Warships of the Republic of Indonesia)
MCS	: Monitoring, Control and Surveillance
MFA	: Ministry of Foreign Affairs
MMAF	: Minister of Marine Affairs and Fisheries
MSY	: Maximum Sustainable Yield

NM	: Nautical Miles
NPOA	: National Plan of Action
POKWASMAS	: Community Monitoring Group
PSA	: Port State Agreement
RFMOs	: Regional Fisheries Management Organization
ROI	: Return on Investment
SCS	: South China Sea
SIPI	: Surat Izin Penangkapan Ikan (Fishing Permit)
SISWASMAS	: Community-Based Marine Resources and Fisheries Monitoring System
SKK MIGAS	: Special Task Force for Upstream Oil and Gas Business Activities
TNC	: Transnational Organized Crimes
TNI AL	: Tentara Nasional Indonesia Angkatan Laut (Indonesian Navy)
UN	: United Nations
UNCLOS	: United Nations Convention on the Law of the Sea
USA	: United States of Amerika
USD	: United States Dollar
VMS	: Vessel Monitoring System
WALHI	: Indonesian Environmental Forum
WFP	: World Food Programmed of the FAO

INTRODUCTION

Indonesia is a republic with a unitary government.¹ They are a unitary state that was formed as a direct result of the geological characteristics of Indonesia, which include islands that stretch from Sabang to Merauke as well as a huge sea region. As a direct consequence of this, marine biodiversity is extremely rich and diverse. Indonesians, particularly those who dwell on the coast, get their source of life and their livelihood from the vast array of wildlife and plants that can be found in the waters of Indonesia.² The vast majority of individuals who live on the coast are totally reliant on the sea in order to carry out their typical daily routines.³

Indonesia is also one of Asia's and the world's largest archipelago countries.⁴ It is placed in a cross location in the heart of world commerce routes, which gives it a very crucial position among the countries of the globe. Additionally, it is situated between two oceans and two continents, making it very accessible. The sea, with the wealth of resources it possesses, has been a vital contributor to the growth of Indonesia and the realization of the welfare of its people.⁵

There is an abundance of aquatic resources in Indonesia, such as seaweed, coral reefs, fish, and other marine life. In Indonesia, fish is a lucrative marine resource that has become an important component of the country's economy. The strategic location of Indonesia not only has a favourable influence, but it also enhances the chance for numerous sorts of marine crimes such as ship hijacking, piracy, and possibly even a deficit of safety and control in natural resource extraction. These crimes can have a negative impact on the economy of Indonesia. It is possible for the administration to encourage third parties, especially parties from other countries, to make illegal use of the

¹ Article 1 of the 1945 Constitution of the Republic of Indonesia, https://en.mkri.id/download/constitution/constitution_1_1625426222_4c1e13f466840d7ed721.pdf (01.05.2022).

² M. Bailey & U.R. Sumaila, 2015, "Destructive Fishing and Fisheries Enforcement in Eastern Indonesia", *Marine Ecology Progress Series* Vol. 530, p. 200.

³ Mochtar Kusumaatmadja, 1976, *Pengantar Hukum Internasional*, Bina Cipta, Bandung, p. 56.

⁴ Marhaeni Ria Siombo, 2010, *Hukum Perikanan Nasional dan Internasional*, Gramedia Pustaka Utama, Jakarta, p. 43.

⁵ A.L. Connelly, 2016, *Indonesia in the South China Sea: Going it Alone*, Lowy Institute for International Policy, Sydney, p. 4.

resource. This can take the shape of illegal mining, illegal logging, and illegal fishing, all of which can result in harm to the general population.⁶

According to the Indonesian Forum for the Environment, the Indonesian archipelago is made up of roughly 17,499 major and small islands with a shoreline of around 95,181 km².⁷

Figure 1.1
Indonesian Sea Area



Source: The 2020-2024 National Medium-Term Development Plan by the Ministry of National Development Planning.

The arrows in the image to the right depict the Indonesian Archipelagic Sea Lanes (ALKI), which, according to the international law of the sea, are designated as the channel for the fulfilment of Archipelagic Sea Lanes Passage Rights. Both the purple line, which denotes the Exclusive Economic Zone (EEZ) of Indonesian waters, and the black line, which denotes the territorial marine of Indonesian waters out to a distance of 12 miles, are shown below.⁸

⁶ Deliana Ayu Saraswati & Joko Setiyono, 2017, “Yurisdiksi Kriminal Negara Dalam Peneggelaman Kapal Pelaku Tindak Pidana Illegal Fishing di Perairan Indonesia”, *Law Reform* Vol 13 (2), p. 187.

⁷ M. F. Akbar, 2019, “Koherensi Pengaturan Illegal, Unreported and Unregulated Fishing di Indonesia”, *Jurnal Rechtsvinding*, Jakarta, p. 7.

⁸ Nunung Mahmudah, 2015, “*Illegal Fishing*”, *Pertanggungjawaban Pidana Korporasi di Wilayah Perairan Indonesia*, Sinar Grafika, Jakarta, p. 90.

According to Law Number 6 of 1996⁹ Article 6 Paragraph 2 on Indonesian Waters states that:

"The territorial waters of Indonesia are all waters surrounding, between, and connecting the islands or parts of islands that belong to the land of the Republic of Indonesia and are subject to its sovereignty"¹⁰

The extent of Indonesia's territorial waters is 5.8 million square kilometres, made up of territorial seas that cover 0.3 million square kilometres, archipelagic waters that cover 2.95 million square kilometres, and exclusive economic zone waters that cover 2.55 million square kilometres. These waters have a very large and diverse potential for fishing. The fact that water occupies approximately 70 percent of Indonesia's territory highlights the fact that the nation is classified as a maritime country.

The potential of the nation's non-biological and biological resources represents an economic opportunity that can serve as a basis for the country's continued expansion in the years to come. There are a number of potential fishing zones for Indonesia, including the Malacca Sea, the Arafura Sea, the Java Sea, the Banda Sea, the Timor Sea, and the waters bordering Papua and Maluku. Illegal Fishing, Unreported Fishing, and Unregulated Fishing, or IUUF for short, is a practice that is common in Indonesia despite the enormous amount of marine goods that are produced there. IUUF is an acronym that stands for Illegal Fishing, Unreported Fishing, and Unregulated Fishing.¹¹

Indonesia, the world's second-largest supplier of seafood, claims that illegal, unreported, and unregulated fishing (IUUF) causes significant economic and environmental damage. According to a study that was cited by Indonesia's Presidential Task Force to Prevent and Combat Illegal Fishing, the nation suffered losses totalling up to 9 billion Indonesia Rupiah (IDR), which is approximately 632,000 USD, during the years 2013 and 2014. According to the assertions of Indonesia's Minister of Marine Affairs and Fisheries, the country's losses have already exceeded 2,000 trillion rupiah, which is approximately 140

⁹ Law No. 6 of 1996 Concerning Indonesia Waters, <https://faolex.fao.org/docs/pdf/ins6757.pdf> (19.12.2022).

¹⁰ *Ibid*, Article 6 Para. 2 of Law No. 6 of 1996.

¹¹ I Wayan Parthiana, 2014, *Hukum Laut Internasional dan Hukum Laut Indonesia*, Yrama Widya, Bandung, p. 56.

billion USD. As a result, the only purpose that an estimate of losses serves is to demonstrate that IUUF fishing poses a significant threat to Indonesia's fisheries.¹²

Due to the high number of instances of illegal, unreported, and unregulated (IUU) fishing that occur within Indonesia's Exclusive Economic Zone (IEEZ), the Indonesian government is obligated to take "special measure" to prevent and fight IUU fishing within the IEEZ. Sinking and/or burning fishing vessels that have adequate criminal evidence taking place in Indonesia's territorial seas is one of the actions that the Indonesian government takes. This action is led by the Ministry of Maritime Affairs and Fisheries (MMAF), which is part of the Indonesian government. The application of fines by sinking and/or burning are state efforts to combat IUU fishing activities. This action taken by the Indonesian government will give the perpetrators the effect of a deterrent, as well as preventing infractions in border areas or outside boundaries that can harm and undermine national sovereignty.¹³

Article 69 of Law No. 45 of 2009 regarding Fisheries was the legal justification for carrying out the action of sinking or burning foreign vessels.¹⁴ This legislation enables the Indonesian authorities to take "special measure" in the form of burning or sinking an international fishing vessel if there is adequate preliminary indication to support the decision. On the other hand, Article 76 A of the same statute permits the destruction of a vessel that has been identified as the object of a fisheries crime, provided that the court has given its previous sanction.¹⁵

Recent occurrences in Indonesia in which vessels have been sunk or burned may not only give rise to the possibility of invoking Article 69 or Article 76 A of the Fisheries Law, but also the possibility of invoking a higher standard by resorting to a final and binding court judgement. This decision, notwithstanding the praise that has been directed toward the Ministry of Marine Affairs and Fisheries (MMAF), should not be construed as an

¹² CNBC Indonesia, 2018, "Susi Akui RI Pernah Rugi Rp. 2000 T Akibat Illegal Fishing", <https://www.cnbcindonesia.com/news/20180626075822-4-20458/susi-akui-ri-pernah-rugi-rp-2000-t-akibat-illegal-fishing> (25.04.2023).

¹³ Amry Mangihut Tua, 2019, "The Drowning Policy the Foreign Fishing Vessels of Illegal Fishing by Indonesia Government in International Law Perspective", *Legal Standing: Jurnal Ilmu Hukum* Vol 3 (2), p. 45.

¹⁴ Law No. 45 of 2009, Article 69, <https://faolex.fao.org/docs/pdf/ins97600.pdf> (24.05.2023).

¹⁵ Djoko Tribawono, 2013, *Hukum Perikanan Indonesia*, PT Citra Aditya Bakti, Bandung, p. 34.

executive order; rather, it is the outcome of a court verdict that was rendered by a tribunal that was both independent and impartial.¹⁶

As a party to the United Nations Convention on the Law of the Sea, 1982 (UNCLOS), Indonesia is bound to its provisions without reservation. Article 73 (1) of UNCLOS states that:

“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.”¹⁷

Even though UNCLOS Art. 73 (1) does not make any reference to burning or sinking or destruction of vessels, Indonesia is not the only state applying this measure aimed at preventing and deterring illegal activities at sea. Despite the absence of a uniformly recognized standard, Australia¹⁸, the United States¹⁹ and Malaysia²⁰ and are a few other states implementing ship sinking or destruction as part of its enforcement measures, particularly for fishing violations in the EEZ.

Although a great number of academics have looked into UNCLOS Article 73 (1), particularly the legality of vessel confiscation, less consideration has been given to the implications that the decision of the International Tribunal on the Law of the Sea (ITLOS) on the case of the *M/V Virginia G* has for the interpretation and application of UNCLOS Article 73 (1). In its decision in the *M/V Virginia G* case, the Tribunal went into great detail about what constitutes essential enforcement measures under UNCLOS Article 73

¹⁶ Ranai High Prosecutor's Court, 2016, “The Decision of the Ranai High Prosecutor's Court, (Indonesia vs Nguyen Tuan Vu)”, <https://putusan3.mahkamahagung.go.id/direktori/putusan/5eb18676a353e1eed64ff9e4e5e65d67.html> (12.01.2023).

¹⁷ Article 73 (1) of UNCLOS.

¹⁸ Brian Wilson, 2016, “Human Rights and Maritime Law Enforcement”, *Stanford Journal of International Law*, California, p. 309.

¹⁹ *Ibid*, p. 312.

²⁰ Nadirah H. Rodzi, 2018, “Malaysia Turns Up the Heat, Sets Foreign Boats Ablaze for Illegal Fishing”, <https://www.straitstimes.com/asia/se-asia/malaysia-turns-up-the-heat-sets-foreign-boats-ablaze-for-illegal-fishing> (25.04.2023).

(1).²¹ Despite the fact that the case addresses the legality of vessel seizure, it may provide assistance in assessing whether the act of burning or sinking foreign vessels is a required enforcement measure to confirm compliance with a coastal state's fisheries laws and regulations in the EEZ.

This thesis will demonstrate the necessity of Indonesia's efforts towards vessel sinking and burning policy in combatting IUU fishing in IEEZ. IUU fishing refers to fishing practices that are considered illegal under international law. According to Article 73 (1) of the United Nations Convention on the Law of the Sea, the practice that Indonesia uses of sinking or burning vessels that engage in illegal fishing within Indonesia's exclusive economic zone is regarded to be essential.

A) SUBJECT MATTER, AIMS, OBJECTIVES AND QUESTIONS

◆ Subject Matter

Four topics will be discussed in this thesis:

First, an overview of the current state of IUU fishing in Indonesia;

Secondly, examination of the meaning of term “necessary” within Art. 73 (1) of UNCLOS by employing rules on treaty interpretation;

Thirdly, Illegal, Unreported and Unregulated Fishing (IUUF) and its impact on Indonesia; and

Finally, detailed discussions on whether Indonesia’s measures towards vessel sinking policy is necessary and in compliance with Art. 73 para 1 of UNCLOS.

◆ Aims and Objectives

²¹ The *M/V Virginia G* (No.19) (Panama v. Guinea-Bissau), 2014, “Case No. 19, Judgement of April 14 2014”, https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.19/judgment_published/C19_judgment_1_40414.pdf (25.04.2023).

The thesis's aims and objectives is to examine the legality and necessity of Indonesia's measures towards vessel sinking and burning policy in combating IUU fishing in IEEZ, and to provide answers to the concerns raised below.

◆ Questions:

The questions this thesis intends to ask are:

- a. What are the effects of IUU fishing on Indonesia?
- b. What are the domestic and international legal bases of vessel sinking policy in Indonesia?
- c. Are Indonesia's measures of vessel sinking and burning policy necessary and commensurate for combating IUU fishing in IEEZ?

B) SCOPE AND STRUCTURE

Illegal, unreported and unregulated fishing, which occur frequently in Indonesian territorial seas, has caused the Indonesian government to act and find answers to these damaging actions. The act of sinking or burning the offending ship is one of the solutions chosen by the Indonesian government.

The scope of the thesis includes the following topics:

The first, is a definition of illegal, unreported, and unregulated fishing, as well as marine security and the exclusive economic zone (EEZ). The legal basis for ship sinking and burning under domestic and international law, as well as IUU fishing, marine security, and EEZ, will all be explained normatively in advance as the foundation for the writing framework.

The second, is the Indonesian authority's action in countering IUU fishing in IEEZ, because the methods used by the Indonesian government, such as the drowning, burning, shooting, and bombing of foreign fishing vessels (FFV) that breach Indonesian sovereignty, are contentious. The Indonesian government's efforts, called "shock

therapy”, are only transitory²² and must be done in accordance with international law in the long run.

The third, is the significance of international law and Indonesian law in relation to the practice of burning and sinking foreign ships suspected of engaging in illegal, unreported and unregulated fishing in Indonesia.

Finally, is the examination of whether Indonesia’s measures on vessel sinking and burning policy are necessary commensurate for combating illegal, unreported and unregulated fishing in Indonesia exclusive economic zone.

C) APPROACH AND METHODOLOGY

This thesis employs a normative legal research method by using secondary data and normative methodologies²³ mixed with a case and statute approach. The statute approach is carried out by identifying some conventions relevant to the problems, whereas the case approach is carried out by studying relevant cases.²⁴ The author gathered the information from library sources by reading and analysing primary and secondary sources (such as textbooks, legal dictionaries, journal articles, legal encyclopaedias, and case digests).²⁵

In this thesis, data was gathered through library research. Data is obtained using this method by reading and attempting to draw conclusions from connected materials such as books, conventions, and scientific journals, and others connected to the primary issue as the object of this thesis.²⁶

²² T. N. Alagesh, 2017, “Foreign Fisherman’s Dirty Tactics, Not Strange”, <https://www.nst.com.my/news/nation/2017/11/301383/foreign-fishermans-dirty-tactics-not-strange> (09.10.2022).

²³ Laura Cahillane & Jennifer Schweppe, 2016, *Legal Research Methods: Principles and Practicalities*, Claurus Press, Ireland, p. 24.

²⁴ Peter Mahmud Marzuki, 2011, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, p. 25.

²⁵ Mike McConville & Wing Hong Chui, 2012, *Research Methods for Law*, Edinburgh University Press, Edinburgh, p. 48.

²⁶ Shanon Hanson, 2003, *Legal Method and Reasoning 2nd Edition*, Cavendish Publishing, London, p. 495.

I. AN OVERVIEW OF THE CURRENT STATE OF IUU FISHING IN INDONESIA

A) BACKGROUND OF EMERGENCE TO COMBATING IUU FISHING IN INDONESIA

Developing countries like Indonesia, must strengthen their marine and fisheries sectors.²⁷

This is due to a variability of factors, containing:

To begin, Indonesia possesses a plethora of maritime resources, both in terms of the quantity available and the variety of those resources. Second, when it comes to marine and fisheries industries, Indonesia has a substantial competitive edge, as is proven by the country's raw resources and production.

Third, the marine and fisheries industries are highly intertwined with a variety of other businesses. Fourth, the resources that are used in the marine and fisheries industries are always renewable, which means that they will be around for the foreseeable future if they are handled in an effective and strategic manner. Fifth, investments in the marine and fisheries industries have a reasonably high return on investment (ROI) and also absorb a lot of human resources. Sixth, although having its inputs paid for in Indonesian rupiah, the local resource-based fishing business generates output in international currencies.²⁸

The large amount of fish resources that Indonesia possesses, which are around 6.4 million tons per year, is a contributing factor to the high number of instances of illegal fishing that occur within Indonesian territorial seas. According to the findings of a study on marine economic prospects, the persistent presence of illegal fishing inside Indonesia's regional seas poses a threat to the availability of fish in locally produced markets, as well as to the safety and availability of protein and food in Indonesia.²⁹ The safety of Indonesian fishermen, particularly conventional fishermen working within Indonesia's

²⁷ Bagus BT Saragih, 2015, "When the Fish Row Turns Diplomatic", <https://www.thejakartapost.com/news/2015/01/25/when-fish-row-turns-diplomatic.html> (25.06.2022).

²⁸ Carl-Christian Schmidt, 2005, "Economic Drivers Illegal, Unreported and Unregulated (IUU) Fishing", *The International Journal of Marine and Coastal Law* Vol. 20 (3), p. 489.

²⁹ Gohar A. Petrossian, 2018, "Preventing Illegal, Unreported and Unregulated (IUU) Fishing: A Situational Approach", *Biological Conservation Journal*, p. 9.

territorial seawaters, has been put in jeopardy as a result of fishing practices that are illegal, unreported, and unregulated.

Illegal, unreported and unregulated fishing is a problem that has been around for a while now, and the instances of it are growing every day, both in terms of the quality and quantity of the fish taken, as well as the degree to which these violations are becoming more planned and methodical. Careless parties are responsible for the destruction, including foreign ships and fishermen who engage in illegal, unreported and unregulated fishing practices such as the use of anaesthetics, bombing fish with explosives (fish bombs), toxic substances, duplicating or falsifying fishing licenses, trawling with known fishing gear, and other methods that fall under the classification of fish theft, particularly in Indonesian waters.³⁰

The following are some of the consequences of unlawful fishing crimes:

- **Affecting the Longevity of Marine Fish**

According to the chairman of the MMAF Research and Development Department, 85 percent of the world's fisheries has already been fished to its maximum capacity. He went on to say that if assertive measures are not implemented, the fisheries of the Republic of Indonesia will be put in jeopardy. Thousands of foreign vessels have unlawfully exploited Indonesian fisheries by forging fishing licenses and committing other forms of illicit fishing. Every year, between 7,000 and 10,000 foreign ships are estimated to steal fish from Indonesian waters.³¹

- **Economic Harm to the State**

According to the World Food Programme (WFP) of the United Nations Food and Agricultural Organization (FAO), Indonesia suffers financial losses of Rp. 30 trillion per year as a result of illicit fishing.³² Losses to the state could approach

³⁰ Siti Munawaroh, 2019, "Penerapan Sanksi Peneggelaman Kapal Asing Pelaku Illegal Fishing oleh Pemerintah Indonesia (Perspektif Hukum Internasional)", *Mimbar Yustitia* Vol 3 (1), p. 35.

³¹ Firmansyah Abdul, 2016, "Pencurian Ikan Oleh Kapal Asing di Wilayah Teritorial Indonesia Dalam Perspektif Hukum Positif di Indonesia", *Lex Et Societatis* Vol. 3 (2), p. 23.

³² Food and Agriculture Organization of the United Nations, 2017, "FAO Director-General Meeting with Indonesia's Minister for Marine Affairs and Fisheries",

US\$20 billion every year, which is equivalent to around IDR 300 trillion. This would bring the total losses to the state from illegal, unreported and unregulated fishing over the past ten years to IDR 3,000 trillion.

These losses are the result of an excessive number of unlicensed foreign fishing vessels operating in Indonesian waters. Ships from a number of different nations, including the Philippines, Vietnam, China, Malaysia, and Thailand, are participating in the race. Although there are more than 1,000 foreign vessels that have been granted official certification, there are probably three to five times as many vessels operating illegally. The typical annual haul for each vessel is between 600 and 800 tons.³³

- **Social Concerns**

Due to the frequency with which it takes place in waters belonging to Indonesia, the practice known as Illegal, Unreported, and Unregulated Fishing (IUUF) is a major reason for worry in Indonesia. The fishing industry is one of the most significant contributors to the region's ability to maintain its food supply. Economic motivations are frequently claimed to justify excessive searching of fishery resources, which has resulted in a large loss in Southeast Asia's fish populations.

This loss has been produced as a direct result of the overfishing that has taken place. As a direct consequence of this issue, the lives of more than one hundred million individuals will be put in jeopardy. Because of this, there have been disagreements between local fishermen, owners of fishing trawlers, and traditional fishermen from a number of states. Indonesian traditional fishermen have been forced to engage in IUU fishing activities in Australian waters as a result of the decline in fish populations in Indonesian seawaters caused by illegal dragger fishing. This has increased animosity between the two countries. Workers in the fishing sector and

https://www.fao.org/indonesia/news/en/?page=38&ipp=5&tx_dynalist_pi1%5bpar%5d=YToxOntzOjE6IkwiO3M6MToiNyI7fQ==,%20 (09.09.2021).

³³ Sea Shepherd Global, 2017, "The Last Toothfish Poacher Viking, arrested in Indonesia", <https://www.iuuwatch.eu/2016/02/the-last-toothfish-poacher-viking-arrested-in-indonesia/>, (10.10.2021).

workers in related industries, notably those employed in companies that prepare fish, are immediately impacted.³⁴

- **Environmental Detriment**

Because of the widespread use of fishing equipment that does not conform to sea standards and conditions, irreparable damage has been inflicted upon marine life and the ecology of the sea, which has resulted in the disruption of marine ecosystems. There has been extensive arbitrary and exploitative fishing activity in the Arafuru seas for about three years, which has led to the unprecedented depletion of fish stocks in those areas.³⁵

- **Illegal fishing, a Violation of Indonesian Sovereignty**

All illegal fishermen from the aforementioned countries are in violation of Indonesian sovereignty in the vast majority of cases involving illegal, unreported and unregulated fishing in Indonesia. The fishing resources of Indonesia have been plundered by fishermen from other countries who have illegally entered Indonesian waters. It is imperative that the laws of Indonesia be obeyed at all times in order to protect Indonesia's national sovereignty and prevent other nations from trespassing on its territory in order to take its resources. This is an example of a sort of illegal, unreported and unregulated activity that takes place on the waterways of Indonesia.³⁶

In light of the fact that the state is making significant losses as a result of illegal, unreported and unregulated fishing, it is absolutely necessary to fight IUU fishing within Indonesia's territorial waters. In this circumstance, the involvement of the authorities is essential since they are at the forefront of administering rules at sea and prosecuting illegal fishermen with deterrent punishments. This makes the authorities' participation extremely important.

³⁴ A. T. Charles, 2001, *Sustainable Fishery System, Fish and Aquatic Resources Series*, Blackwell Science, Oxford, p. 96.

³⁵ R. Martin, 2016, *Illegal Fishing in Southeast Asia*, European Union, European Parliament, p. 21.

³⁶ Dewi R. and C.P.F. Luhulima, 2008, *Problems of the Indonesian Sea Border Area in the South China Sea*, LIPI Press, Jakarta, p. 58.

B) DEFINITIONS OF ILLEGAL, UNREPORTED AND UNREGULATED FISHING, THE EEZ AND MARITIME SECURITY

1- Illegal, Unreported and Unregulated Fishing

The Food and Agriculture Organization of the United Nations (FAO) began implementing the International Plan of Action to Deter, Prevent, and Eliminate Illegal, Unreported, and Unregulated Fishing (IPOA-IUU) in the year 2012. The current situation of IUUF, which puts the management and conservation of natural assets that are already present in jeopardy, was the impetus for making this assumption.

This emphasizes the duty that both the state flying the flag and coastal states have to comply with the objectives of UNCLOS. As a direct consequence of this, the FAO has consented to the development of a global action plan that will include measures to prevent, discourage, and eradicate IUUF. Illegal, unreported, and unregulated fishing are the three types of fishing that fall under the purview of the IPOA-IUU's management. The following provides an explanation of each category:

- i. Illegal fishing indicates the following doings:³⁷
 - ◆ The presence of national or foreign vessels in the territorial waters of a state without that state's authorization, as well as the violation of that state's laws and regulations;
 - ◆ Carried out by vessels carrying the flag of states that are party to an applicable regional management organization, but which operate in breach of the conservation and management measures adopted by that organization and by which the states are bound; or
 - ◆ In violation of national laws or international responsibilities, including those that have been undertaken by cooperating countries to a relevant Regional Fisheries Management Organization (RFMO).

³⁷ FAO Fisheries, 2001, "The Food and Agriculture Organization, International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing", adopted in Rome 2001, <https://www.fao.org/3/y1224e/Y1224E.pdf> (04.09.2022).

ii. Unregulated fishing signifies fishing undertakings:³⁸

- ◆ In the area of application of a relevant RFMO, fishing activities that are carried out by vessels without nationality, or by those flying the flag of a State that is not a party to that organization, or by a fishing entity, in a manner that is inconsistent with or violates that organization's conservation and management measures; or
- ◆ Under international law, fishing activities are prohibited in regions where there are no conservation or management measures in place because they are incompatible with the state's responsibility to conserve living marine resources.

iii. Unregulated fishing indicates fishing undertakings:³⁹

- ◆ In the area of application of a relevant RFMO, activities that are carried out by vessels without nationality, or by those flying the flag of a State that is not a party to that organization, or by a fishing entity, in a manner that is inconsistent with or violates that organization's conservation and management measures; or
- ◆ In regions where there are neither conservation nor management measures in place, and if fishing operations are carried out in a manner that is inconsistent with the state's responsibilities under international law for the conservation of live marine resources.

To cover a wide range of IUU fishing practices, three types of activities are categorized.⁴⁰ The activities that are referred to as "illegal fishing" are those that violate both national and international regulations. On the other hand, "unreported" refers to fishing activities that have not been stated or overstated by federal law or regional fisheries administration, and "unregulated" refers to behaviours that are carried out in a zone that is outside the

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ Victor Alencar Mayer Freitosa Ventusa, 2015, "Tacking Illegal, Unregulated and Unreported Fishing: The ITLOS Advisory Opinion on Flag State Responsibility for IUU Fishing and the Principle of Due Diligence", *Revista de Direito Internacional Brazilian Journal of International Law* 12 No. 1, Brazil, p. 50-67.

scope of any RFMO or in violation of management principles and universal conservation. Both of these terms contrast with "reported" fishing activities.⁴¹

The laws of Indonesia do not provide a precise description of what IUUF means. The Law No. 45 of 2009 on Amendment of the Law No. 31 of 2004 on Fishery does not include any new information regarding what constitutes IUUF fishing.⁴² On the other hand, IUUF can be understood in a terminological sense as fishing that disregards the regulations that are currently in place. The arrests were carried out in violation of the law, and there was no notice of them. Cases of illegal, unreported, and unregulated fishing in Indonesia include fishing with false licenses, fishing with gear that isn't allowed, and fishing for fish that aren't allowed or aren't in accordance with the permit. In addition, fishing for species that aren't allowed in Indonesia is a form of IUU fishing.⁴³

Regarding the practice of IUUF in territorial waters, foreign parties' involvement in fish theft can be divided into two categories:

First, semi-legal act, namely fish theft carried out by foreign vessels using legal fishing permits owned by local entrepreneurs and ships flying regional or foreign flags. This activity is still classified as IUUF because, in addition to catching fish in waters where they have no legal right to be, criminal fishing actors send their catch directly away without first landing fish in a permitted zone. This tactic is commonly practiced by Flags of Convenience (FOC).⁴⁴

Second, there is an entirely illegal, unreported and unregulated act, which is the process of fishing by foreign vessels and fishermen using their flags to gather fish in a country's jurisdiction. On the other hand, IUUF is accomplished by fishermen, local

⁴¹ Matthew Gianni and Walt Simpson, 2017, "The Changing Nature of High Seas Fishing", <https://wwfint.awsassets.panda.org/downloads/iiumr.pdf> (09.08.2022).

⁴² Law No. 45 of 2009, *supra* note 14.

⁴³ Dean Adam, 2019, "Legal Enforcement on Illegal Fishing by Foreign Vessels Within Indonesia's Exclusive Economic Zone", LL.B Thesis, *Repository Universitas Muhammadiyah Yogyakarta*, Yogyakarta, p. 12.

⁴⁴ Mary Ann Palma, M. Tsamenyi and W.R. Edeson, 2010, *Promoting Sustainable Fisheries: The International Legal and Policy Framework to Combat Illegal, Unreported and Unregulated Fishing*, Martinus Nijhoff Publishers, Leiden, p. 378.

businesspersons, and foreign parties.⁴⁵ IUUF by fishermen can be divided into two classifications: Indonesian-flagged fishing vessels and former foreign fishing vessels (FFVs) that do not have a license and Indonesian-fishing vessels (IFV) that fish without a permit.⁴⁶

2- Exclusive Economic Zone (EEZ)

According to Article 55 of the UN Convention on the Law of the Sea (UNCLOS), an exclusive economic zone (EEZ) is a marine area that is outside of and head-to-head with a state's territorial sea and is subject to the special legal system established in Chapter V of the UNCLOS.⁴⁷ Within the Exclusive Economic Zone, Article 56 addresses the rights, jurisdiction, and duties of the coastal state. In paragraph I, sovereign rights and jurisdictional rights are compared and contrasted with one another.

In its EEZ, the coastal State has the following sovereign rights:

“Sovereign rights to exploit and discover, manage and preserve the natural supplies, whether living or non-living, of the waters adjacent to the sea-bed and the sea-bed and its sub-oil, as well as other activities for commercial exploitation and examination, such as the manufacture of energy from water, currents, and winds.”⁴⁸

Jurisdiction in accordance with the relevant provisions of this Convention concerning:

“The construction and use of artificial islands, installations, and structures; Marine scientific research; Marine environmental protection and preservation; Other rights and obligations conferred by this Convention.”⁴⁹

⁴⁵ Pramod Ganapathiraju, Tony J. Pitcher, John Pearce and David Agnew, 2008, Sources of Information Supporting Estimates of Unreported Fisheries Catches (IUU) for 59 Countries and the High Seas, *Fisheries Centre Research Reports* Vol. 16 (4), University of British Columbia, p. 89.

⁴⁶ *Ibid.*

⁴⁷ David John Harris, 2020, *Cases and Materials on International Law 9th Edition*, Sweet & Maxwell, London, p. 381.

⁴⁸ Article 56 Para. 1 (a) of UNCLOS.

⁴⁹ Article 56 Para. 2 of UNCLOS.

Article 57 places a restriction on the size of the economic zone, stating that its breadth cannot exceed 200 nautical miles (NM) from the baseline from which the territorial water is steady. Because of the proximity of other states, no nation can extend its exclusive economic zone to a distance of 200 nautical miles in any direction. If every coastline state in the world decides to assert sovereignty over an allowed EEZ, then every coastal state on the earth will be required to negotiate at least one boundary with at least one state adjacent to it.⁵⁰

There are no regions in semi-enclosed seas, such as the Mediterranean, Persian Gulf, Caribbean, Baltic Sea, and South China Sea (SCS), where any bordering form can claim a complete 200-nautical-mile zone. These seas include the South China Sea (SCS).⁵¹ Article 58 of the UNCLOS outlines the regulations that govern the rights of coastal states.

3- Maritime Security

Maritime security is a broad concept since it covers a diverse set of stakeholders and problems on a local, national, international, and private scale. The term "Maritime Security" differs from "Marine Safety" in that it refers to actions that involve both law enforcement and military defence, with the government serving as the primary actor in this context. Although the prevention and management of damage or injury to the marine environment is what marine safety is defined as, the most important things are ship security, freight management, proper navigation, and safe passage for passengers.⁵²

Although the government is the primary actor in maritime security, the authority to interfere as a representative of state sovereignty differs greatly from country to country. Despite the fact that the government is the primary actor in maritime security.⁵³ Elements of maritime security include sovereignty (the political uniqueness and territoriality of a nation), the safety of sea lines of communication, the security defence against maritime

⁵⁰ Matz-Luck & Johannes Fuchs, *Marine Living Resources*, Oxford University Press, England, p. 67.

⁵¹ *Ibid*, p. 83.

⁵² Jens T. Theilen, 2013, "What's in a Name? The Illegality or Illegal, Unreported and Unregulated Fishing", *The International Journal of Marine and Coastal Law* Vol 28 (3), Alethia University, p. 540.

⁵³ Paul D. Williams & Matt McDonald, 2018, *Security Studies: An Introduction 3rd Edition*, Routledge, New York, p. 89.

crimes, access to resources at sea and on the seabed, environmental protection, and the reassurance of all seafarers and fisherman.⁵⁴

When it comes to national security, maritime security is an essential component for nations that have lengthy shorelines and marine boundaries to protect. Given that the majority of economic activity in the countries indicated above depends considerably on the ocean, any threat to the marine security container has a significant influence on the economy of the country.⁵⁵

One of the growing threats to maritime security is the widespread extinction of fish populations around the world. As a consequence of this, it should come as no surprise that illicit fishing is a big problem in marine safety, particularly in edge areas, where the amount, which is increasing, is occurring more frequently.⁵⁶

Along with interstate maritime operations and present power dynamics, the fight against illegal fishing has grown into an issue that affects both the entire country and the entire world. This is owing to the fact that illegal fishing has a wide range of effects on humanity, including posing a threat to social security and weakening the economics of fishery-dependent groups, which is one of the components of marine safety. In addition, illegal fishing has the potential to cause environmental damage.⁵⁷

⁵⁴ *Ibid*, p. 421.

⁵⁵ Cedreic Ryngaert, 2015, *Jurisdiction in International Law 2nd Edition*, Oxford University Press, Oxford, p. 269.

⁵⁶ Carolin Liss, 2013, "New Actors and the State: Addressing Maritime Security Threats in Southeast Asia", *Contemporary Southeast Asia* Vol 35 (2), Yusof Ishak Institute, p. 149.

⁵⁷ Ioannis Chapsos & James A. Malcolm, 2017, "Maritime Security in Indonesia: Towards a Comprehensive Agenda?", *Journal of Marine Policy* Vol. 76, p. 180.

C) LEGAL BASIS OF VESSEL SINKING OR BURNING POLICY IN INDONESIA

1- International Law

a) General Provisions of Law No. 17 of 1985 Relating to Ratification of the 1982 United Nations Convention on the Law of the Sea

Indonesia joined the UNCLOS with the passage of Act No. 17/1985. This indicates that Indonesia recognizes that the articles of UNCLOS have become law in Indonesia and that these articles are now part of Indonesian law. As a consequence of this, Indonesia ought to consult UNCLOS in order to obtain some legal direction concerning the sea and its territorial waters.

The United Nations Convention on the Law of the Sea (UNCLOS) establishes two seas of maritime territories: the territorial water under maritime regions and the sovereignty over which states have power. This authority includes the ability to apply laws to those who violate IUUF fishing regulations. Territorial waters and inland waters, often referred to as archipelagic waters and territorial waters, respectively, are bodies of water ruled by a country with a coastline or an archipelago.⁵⁸ One of the general provisions stipulates that:

“Even though foreign ships and aircraft enjoy the right of passage through archipelagic sea lanes and flight routes, their use in fields other than shipping and aviation may not reduce the sovereignty of the archipelagic state over the water and the air space above it, the seabed and the land beneath it, and the source of wealth therein.”⁵⁹

To be considered a breach of this regulation, it is necessary to fulfil a number of prerequisites established by regulation No. 17/1985. It is imperative that the sovereignty of the archipelagic state over the air space and water above it, the ground beneath it and the seabed, as well as the resources contained therein, not be diminished in any

⁵⁸ Richard G. Hildreth, 1991, “Managing Ocean Resources: New Zealand and Australia”, *International Journal of Estuarine and Coastal Law* Vol. 6 (2), p. 95.

⁵⁹ Article 53 Para. 1 of UNCLOS.

way.⁶⁰ According to UNCLOS, coastal governments' rights and jurisdictions in the EEZ include:

“Exploration and exploitation of marine resources (biological and non-biological); Making and implementing regulations governing the discovery and use of maritime resources; constructing artificial islands and other permanent structures; conducting marine scientific study; and protecting the marine environment.”⁶¹

While the rights and duties of other States in EEZ includes:

“Respecting the rights and responsibilities of other countries on EEZ territory; Determining the maximum allowable catch for biological resources, in this case, fisheries; and, if a coastal state is unable to harvest the entire allowable catch, granting other countries access to surplus allowable catch through prior agreements for optimizing the utilization of marine resources, primarily fisheries.”⁶²

The coastal state is obligated to respect the rights and responsibilities of its neighbouring countries within the EEZ whenever it exercises the sovereign rights and responsibilities that are theirs. Article 58 of the UNCLOS outlines both the rights and responsibilities of other countries inside their own EEZs as follows:

“All countries, whether coastal or not, are subject to the provisions relevant to this Convention in the Exclusive Economic Zone, including freight and aviation freedoms, as well as the space to lay down the submarine cables and pipes mentioned in Article 87 and the use of the sea in connection with the operation of ships, aircraft, submarine cables, and pipelines, and accordance with other provisions of this Convention and states shall take into account the rights and duties of the coastal State in exercising their rights to fulfil their obligations under this Convention in the EEZ and shall abide by the laws and regulations established by the State under the provisions of this Convention and the rules of international

⁶⁰ Zoe Scanlon, 2017, “Taking Action against Fishing Vessels without Nationality: Have Recent International Development Clarified the Law?”, *The International Journal of Marine and Coastal Law* Vol. 32 (1), p. 89.

⁶¹ Article 56 Para. 1 of UNCLOS.

⁶² Article 58 Para. 3 of UNCLOS.

law unless the provisions of this Convention are inconsistent with the provisions of this Convention.”⁶³

Even if foreign ships are allowed to pass through the EEZ, the coastal government still has considerable discretion under UNCLOS to adopt legislation limiting the freedom of international shipping.

b) UN Convention on the Law of the Sea Articles 2, 27 Paragraph (2), and 73

The UN Convention on the Law of the Sea does not regulate IUUF, although it does deal with the implementation of general regulations in a state's territorial waters and EEZ.

Article 2 of UNCLOS stated that:

“The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea;”⁶⁴

“This sovereignty extends to the air space over the territorial sea as well as its bed and subsoil;”⁶⁵

“The sovereignty over the territorial sea is exercised subject to this Convention and to other rules of International Law.”⁶⁶

In accordance with the preceding Article 2, a violation of coastal state legislation within a state's territorial sea or inland waterways constitutes a violation of Article 2 of UNCLOS.

Article 27 para. 2 of UNCLOS provides that:

⁶³ Article 58 Para. 1 of UNCLOS.

⁶⁴ Article 2 Para. 1 of UNCLOS.

⁶⁵ Article 2 Para. 2 of UNCLOS.

⁶⁶ Article 2 Para. 3 of UNCLOS.

“The above provisions do not affect the right of the coastal State to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving internal waters.”⁶⁷

According to Article 27, the coastal state has the authority to take any action it deems necessary for a foreign ship that is transiting its territorial waters if the ship has engaged in any illegal activity. In Indonesia, breaching the law by engaging in unlawful activities, including illegal, unreported and unregulated fishing, is a criminal offense. As a result, it satisfies the prerequisite of paragraph 1 of Article 27 of the UNCLOS.

As a consequence of this, the government in Indonesia should be able to pass law that prohibits the use of vessels for illegal, unreported and unregulated fishing, including the sinking and burning of boats. According to paragraph 1 of Article 73 of the UNCLOS:

“The coastal State may, in the exercise of its sovereignty 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.”⁶⁸

According to paragraph 1 of Article 73, the coastal state has the authority to take action is necessary for the ship if the ship does not comply with its legislation for the conservation of fishing resources.

The meaning of the term "necessary" will be further upon in a subsequent section of the thesis. In spite of this, the boat and its crew need to be freed as soon as possible in exchange for a reasonable bail being given to the coastal country. According to the requirements of Article 73 of the UN Convention on the Law of the Sea from 1982, it

⁶⁷ Article 27 Para. 2 of UNCLOS.

⁶⁸ Article 73 Para. 1 of UNCLOS.

was stressed that Indonesia's strategy of sinking and burning ships is legitimate and does not contradict international law.⁶⁹

c) International Plan of Action to Prevent, Deter and Eliminate IUUF 2001

The International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing (IPOA-IUUF 2001) is the principal instrument for combat IUUF. It lays out the responsibilities that each of the coastal, port, and flag nations and the RFMO are expected to fulfil. It is, without a doubt, a motivating factor for states to make the necessary efforts to execute IUUF deterrence, removal, and anticipation.

In addition, IPOA-IUUF 2001 acknowledges that it is the primary responsibility of flag States to regulate vessels flying their flag effectively and to forbid those vessels from engaging in fishing practices that are prohibited by IPOA-IUUF 2001. This prohibition extends to the residents of those flag States.⁷⁰

The IPOA-IUU Fishing 2001 does not have particularly stringent regulations regarding the sinking and burning of ships. However, according to paragraph 8 of Chapter III of the IPOA-IUU Fishing 2001 stipulates:

“The objective of the IPOA is to prevent, deter and eliminate IUU fishing by providing all States with comprehensive, effective and transparent measures by which to act, including through appropriate regional fisheries management organizations established in accordance with international law.”⁷¹

The objective of the IPOA is to "prevent, obstruct, and eliminate IUU Fishing by mobilizing the entire country to take a comprehensive, practical, and specific action," which may include taking action through appropriate regional fisheries management

⁶⁹ Muhammad Insan Tarigan, 2018, “Implementation of Countermeasures Effort of Illegal Fishing in Indonesia (Case Study on Sinking the FV Viking Vessel)”, *Journal of Indonesian Legal Study UNNES*, Semarang, p. 149.

⁷⁰ Mike Beke & Roland Blomeyer, 2014, “Illegal, Unreported and Unregulated Fishing: Sanctions in the EU”, *Directorate General for Internal Policies; Policies Department B: Structural and Cohesion Policies*, European Parliaments’ Committee on Fisheries, p. 33.

⁷¹ Chapter III Art. 8 of International Plan of Action to Deter Illegal, Unreported and Unregulated Fishing 2001, https://www.wto.org/english/tratop_e/rulesneg_e/fish_e/2001_ipoa_iuu.pdf (22.05.2023)

organizations that have been established by international law. This is stated as the purpose of the IPOA.

In accordance with this rule, the sinking and burning of vessels by Indonesia are still relevant to the IPOA-IUU Fishing 2001, provided that the sinking does not breach UNCLOS 1982. Even under Chapter IV verse (21), the IPOA-IUU Fishing 2001 stipulates:

“States should ensure that sanctions for IUU fishing by vessels and, to the greatest extent possible, nationals under its jurisdiction are of sufficient severity to effectively prevent, deter and eliminate IUU fishing and to deprive offenders of the benefits accruing from such fishing. This may include the adoption of a civil sanction regime based on an administrative penalty scheme. States should ensure the consistent and transparent application of sanctions.”⁷²

Requires the state must ensure that IUU Fishing is sanctioned by the most comprehensive feasible method. This is because the state with control over IUU Fishing is seen as more successful in preventing, counteracting, and eliminating the practice. This indicates that IPOA-IUU Fishing allows governments to apply sanctions on boats that engage in IUU fishing.⁷³

d) Code of Conduct for Responsible Fisheries

The Code of Conduct for Responsible Fisheries (CCRF) is a legal document that is not legally binding that contains principles and worldwide behaviour rules for the purpose of safeguarding natural living resources.⁷⁴ The Comprehensive Conservation and Management Act of 1995 (CCRF) contains no direct reference to foreign vessels that are involved in illegal, unreported, or unregulated fishing.

The regulation creates a structure that may be utilized by member countries to both regulate and improve their fishing industries. In addition, it renders flag countries

⁷² *Ibid.*, Chapter IV Art. 21 of IPOA-IUU.

⁷³ Muhammad Insan Tarigan, *supra* note 54.

⁷⁴ Melba B. Reantaso, 2005, “FAO’s Code of Conduct for Responsible Fisheries and Technical Guidelines on Aquaculture”, *FAO Aquaculture Newsletter* No. 41, Sri Langka, p. 23.

accountable for fishing vessels operating in waters that are not under their authority. The fulfilment of this task is contingent on the issuance of a certificate or license that grants permission to fishing vessels bearing their identity. In order to ensure that the CCRF is effective, the Member States are required to provide FAO with status reports on a biannual basis.⁷⁵

The reports submitted by member states will be used to evaluate each state's compliance with responsible fishing behaviour, with the goal of preventing IUU claims.⁷⁶ Given the CCRF's charitable character and the adoption methodology employed in applying the CCRF values to its domestic legislation, CCRF application is subject to sincerity and the government's ability to embrace the CCRF's overall values concerning to International Plan of Action to Prevent, Deter and Eliminate Fishing countermeasures.⁷⁷

Furthermore, CCRF Chapter 7, Section 1, Art. 7 states that:

“States should establish, within their respective competences and capacities. effective mechanisms for fisheries monitoring, surveillance, control and enforcement to ensure compliance with their conservation and management measures, as well as those adopted by subregional or regional organizations or arrangements.”⁷⁸

It is possible that these articles could serve as a framework for Indonesia to pass ship sinking and burning legislation in response to irresponsible illegal, unreported and unregulated fishing. They have the potential to undermine efforts being made on a global scale to maintain healthy fish populations at sea.⁷⁹

⁷⁵ Retno Ningsih, Sri Dwi, S. Supanto and Emmy Latifah, 2018, “Corporation as the Actors of Fisheries Crime in Indonesia”, *Jurnal Dinamika Hukum* Vol. 18 (2), Faculty of Law Universitas Jenderal Sudirman, p. 210.

⁷⁶ Joko Susanto and Ali Masyar, 2020, “Law Enforcement on Fisheries Crime After the Enactment of Law Number 45 of 2009: A Normative Analysis”, *Journal of Law and Legal Reform* Vol. 1, p. 115.

⁷⁷ Kriangsak Kittichaisaree, 2010, “A Code of Conduct for Human and Regional Security Around the South China Sea”, *Ocean Development & International Law* Vol 32 (2), p. 139.

⁷⁸ Code of Conduct for Responsible Fisheries, Article 7.1.7, <https://www.fao.org/3/v9878e/v9878e.pdf> (25.05.2023).

⁷⁹ Mutiara Hikmah, 2013, “Illegal Fishing in Indonesia from the National and the International Law Perspective”, *Indonesian Journal of International Law* Vol. 11 (1), p. 26.

e) Port State Agreement (PSA)

The Illegal, Unreported, and Unregulated Fishing Act (IUU) was the impetus behind the formation of the Port State Agreement, which was designed to ensure that flag states are the primary bearers of duty. According to international law, countries that fly the flag are obligated to take all necessary actions within their sphere of jurisdiction. The application of deals at a port State, which has been decided to be the most well-organized strategy for combating IUUF, is included in the implementation of authority inside the PSA.⁸⁰

In accordance with the PSA, each state that manages a port has the authority to conduct inspections on board any vessel that requests entry into that state's port. Ensuring that the PSA's minimum requirements are met during the tests is essential. Generally speaking, the assessments have to be applied to ships not flying their flag, but there are a few exemptions.

The findings of the inspection are relayed to the nation that flies the ship's flag as well as to any other relevant parties, such as the nations that fall under the ship's sphere of influence and in which IUUF activities were carried out, the nation from which the captain hails, the relevant FAO, RFMO, and any other relevant universal administrations.⁸¹

Suppose the state managing the examination discovers evidence of IUU on a vessel.⁸² In that case, it notifies the state that is flying the flag as well as any other relevant parties. It prevents the vessel from entering its harbour for the purposes of anchoring, transshipment, packing, and handling fish, in addition to prohibiting any other activities that are relevant and in violation of the PSA.⁸³

Article 20 concerning Role of Flag States, stipulates:

⁸⁰ Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, https://www.wto.org/english/tratop_e/rulesneg_e/fish_e/2009_psmas.pdf (23.05.2023)

⁸¹ Article 15 of the Port State Agreement.

⁸² Article 18 Para. 1 (a) of the Port State Agreement.

⁸³ Article 18 Para. 1 (b) of the Port State Agreement.

“Each Party shall require the vessels entitled to fly its flag to cooperate with the port State in inspections carried out pursuant to this Agreement.”⁸⁴

“When a Party has clear grounds to believe that a vessel entitled to fly its flag has engaged in IUU fishing or fishing related activities in support of such fishing and is seeking entry to or is in the port of another State, it shall, as appropriate, request that State to inspect the vessel or to take other measures consistent with this Agreement.”⁸⁵

“Each Party shall encourage vessels entitled to fly its flag to land, transship, package and process fish, and use other port services, in ports of States that are acting in accordance with, or in a manner consistent with this Agreement. Parties are encouraged to develop, including through regional fisheries management organizations and FAO, fair, transparent and non-discriminatory procedures for identifying any State that may not be acting in accordance with, or in a manner consistent with, this Agreement.”⁸⁶

“Where, following port State inspection, a flag State Party receives an inspection report indicating that there are clear grounds to believe that a vessel entitled to fly its flag.”⁸⁷

According to the PSA, the state that is displayed on the flag is critical. Every vessel that flies its flag is required to comply with the state's regulations. When it has evidence that one of its vessels has been involved in IUU fishing, it is obligatory for the company to alert the state of the port where the boat is attempting to enter and request that the ship be inspected. The PSA went into force on May 6, 2016, and thirty days later, the 25th mechanism was put into place in accordance with Article 29. On June 23, 2016, it was officially approved by 46 countries, one of which was Indonesia.⁸⁸

⁸⁴ Article 20 Para. 1 of Port State Agreement.

⁸⁵ Article 20 Para. 2 of Port State Agreement.

⁸⁶ Article 20 Para. 3 of Port State Agreement.

⁸⁷ Article 20 Para. 4 of Port State Agreement.

⁸⁸ Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.

2- Domestic Law

a) *Law No. 45 of 2009 of Fisheries Art. 69*

- Para. 1 stipulates:

“Fisheries surveillance vessel functions to perform surveillance and law enforcement in fisheries sectors within the fisheries management area of the Republic of Indonesia.”⁸⁹

- Para. 2 stipulates:

“Fisheries surveillance vessel as referred to in section (1) may be equipped with firearms.”⁹⁰

- Para. 3 stipulates:⁹¹

“Fisheries surveillance vessel may halt, inspect, bring, and detain any vessel suspiciously or allegedly committing any violation in the fisheries management area of the republic of Indonesia to the nearest port for further processing.”

- Para. 4 stipulates:⁹²

“The investigator and/or fisheries inspector may, in performing function as referred to in section (1), take any special act in terms of burning and/or sinking of fishery vessel flying foreign flag based on adequate preliminary evidence.”

Indonesian seas include the country's territorial sea and archipelagic and inland waters.⁹³ According to the Indonesian archipelagic waters, the Indonesian territorial sea is defined as a sea lane width of 12 NM measured from the baseline of an Indonesian island. This

⁸⁹ Law No. 45 of 2009 Art. 69 Para. 1, *supra* note 14.

⁹⁰ *Ibid*, Para. 2

⁹¹ *Ibid*. Para. 3.

⁹² *Ibid*, Para. 4.

⁹³ Art. 2 of Law No. 5 Year 1983 on Indonesia's Exclusive Economic Zone, <https://faolex.fao.org/docs/pdf/ins1641.pdf> (03.09.2022).

sea lane width encompasses all waters on the inside of an island's strait, regardless of depth or distance from the shore.

According to paragraph 1 of Article 69, the authority to take a particular action, such as sinking or burning a vessel, rests with a supervisory vessel. The purpose of a supervisory vessel is to exercise supervision and law enforcement in the field of fishing within the territory under the jurisdiction of the Republic of Indonesia's fisheries management. If there is adequate preliminary evidence, which means that the initial evidence to suspect a criminal offense in the field of fisheries by a foreign-flagged fishing vessel, then specific actions like sinking and burning foreign ships may be carried out.⁹⁴

This implies that the initial evidence to suspect a criminal offense in the field of fisheries by a foreign-flagged fishing vessel⁹⁵, for example, five foreign fishing vessels originating from Vietnam and Malaysia respectively that carried out IUUF in the waters of the Riau Archipelago were sunk. The drowning was carried out around Abang Island based on the decision with permanent legal force.

The five ships that were sunk included KG 94094 TS and the convict Ngo Van Dung based on the decision of the Tanjungpinang District Court Fisheries Court No. 27/Pid.Sus-PRK/2020/PN.TPG September 02, 2020; KG f90746 TS with the convict Nguyen Van Quyen based on the decision of the Tanjungpinang District Court Fisheries Court No.26/Pid.Sus-PRK/2020/PN.Tpg dated September 02, 2020. KM PKFA 8777 and the convict Yelwin OO based on the decision of the Tanjungpinang District Court of Fisheries Court No.23 /Pid.Sus-PRK/2020/PN.Tpg⁹⁶ September 02, 2020; KG 95551 TS with the convict Le Thanh Sang based on the decision of the Tanjungpinang District Court Fisheries Court No.25/Pid.Sus-PRK/2020/PN.Tpg dated September 03, 2020, and finally, KG 85572 TS with the convicted person Nguyen Huu Phuoc based on the decision of the

⁹⁴ Rusadi Kantaprawira, Arry Bainus & Indra Kusumawardhana, 2018, "The Unbreakable Relations Between Indonesia-Vietnam Post "Sink the Vessels" Policy: A Complex Systems Approach", *Journal of ASEAN Studies* Vol. 6 No. 2, p. 168.

⁹⁵ Mirza Hilmi Pahlevi, 2017, "Kasus Pencurian Ikan (Illegal Fishing) di Perairan Indonesia Oleh Kapal Tak Berkebangsaan FV Viking", https://www.academia.edu/41538823/PENDAPAT_HUKUM_Legal_Opinion (11.10.2021).

⁹⁶ Decree of Tanjung Pinang Court with Alleged Person Yelwin Oo, <https://putusan3.mahkamahagung.go.id/direktori/putusan/b6a5fd288a761df35f6ffbb9bda5ec7a.html> (12.04.2023).

Tanjungpinang District Court of Fisheries No.24/Pid.Sus-PRK/2020/PN.Tpg dated September 03, 2020.⁹⁷

The following is the process carried out by the Indonesian government against foreign vessels caught carrying out IUUF in Indonesian territory:

- Bringing the ship and crew ashore;
- On land where there is a fisheries court, a legal process will be carried out;
- After being tried and convicted and the decision has permanent legal force, the ship caught will be confiscated.
- If the ship is confiscated, it depends on what the executing attorney will do with the ship, whether the ship will be auctioned off or destroyed;
- If annihilation is an option, one way is to sink and burn.

The sinking and burning of these boats may serve as a deterrence to international fishermen who engage in IUUF activity in Indonesian waters. In this particular investigation, the prosecutor's team will not be making use of any bombs. The team of prosecutors is more inclined toward eco-friendly tactics to conserve marine biota ecosystems, such as allowing water to flow through the ship's hull so that the vessel sinks at a slower rate.

Nevertheless, before it started leaking, the ship's hull had already been cast and filled with sand so that the sinking process would go more quickly. Additionally, it was apparent that the ship would not cause any damage to coral reefs and that small fish might use it as a new home in a roundabout way.⁹⁸

⁹⁷ Hadi Maulana, 2020, "5 Kapal Asing Pencuri Ikan di Perairan Indonesia Ditenggelamkan di Pulau Abang", <https://regional.kompas.com/read/2020/12/29/08565461/5-kapal-asing-pencuri-ikan-di-perairan-indonesia-ditenggelamkan-di-pulau?page=all#page2> (16.05.2023)

⁹⁸ *Ibid.*

II. SAFEGUARDING THE FISHERY RICHNESS IN INDONESIA'S VESSEL SINKING REGULATION

A) SCOPE OF ACTIONS FOR THE ENFORCEMENT OF THE COASTAL STATE IN UNCLOS 1982

In essence, every ship that conducts a voyage in the EEZ of a country is given the freedom to carry out voyages (known as the right of innocent passage) provided that it does not violate regulations set internationally and those that the coastal country has set. This can be seen from the provisions of Article 58 Paragraph (1) of the international law of the sea convention, which states that:

“In the exclusive economic zone, all States, whether coastal or landlocked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in article 87 of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention.”⁹⁹

This article provides that in the EEZ, all countries can enjoy freedoms such as shipping, flight, and other freedoms such as laying cables and pipes under the sea, provided that they remain subject to the relevant rules in the law of the sea convention. The existence of internationally recognized freedom of navigation in the EEZ area increases the percentage of violations in that area.¹⁰⁰ So, for a country whose supervision is still lacking regarding security personnel and technology, it makes it an easy target for perpetrators of illegal, unreported, and unregulated fishing.

One of the basic principles in international law of the sea is the principle of state sovereignty, which means that coastal states have rights and responsibilities over the waters around their territory. As a sovereign country, the government of the Republic of

⁹⁹ Article 58 Para. 1 of UNCLOS 1982.

¹⁰⁰ P. Joko Subagyo, 2013, *Penerapan Hukum Laut di Indonesia*, Jakarta, Rineka Cipta, p. 4.

Indonesia must maintain its sovereignty by taking firm action against anything determined as a violation within its territory.¹⁰¹

Even though law enforcement for violations that occur in its territory is sovereignty owned by a country, referring to Article 56 UNCLOS, In the EEZ region, Indonesia does not have full sovereignty as it has the territorial sea, the sovereignty possessed in the EEZ area is only limited to sovereign rights. Sovereign rights are rights to exploration and exploitation, management, and conservation of living and non-living natural resources from the seabed and subsoil and the water above it and other activities recognized for the benefit of economic exploration and exploitation in the zone area.¹⁰²

Apart from that, as an extra effort to protect natural resources in a country's waters, UNCLOS also gives coastal countries the right to make their own rules.¹⁰³ The United Nations Convention on the international law of the Sea gives coastal states the authority to make rules for protecting their EEZ. Article 62 Para. 4 of UNCLOS stated:

"Every type of fishing activity in the EEZ carried out by foreign nationals/foreign fishing vessels, in its implementation, must comply with any conservation measures, provisions and other requirements stipulated by the coastal state in its laws and regulations."¹⁰⁴

This gives the coastal state the right to enforce the law for violations in its EEZ area even though the recognized rights are limited to sovereign rights.

However, UNCLOS also stipulates that any regulations made by coastal states must be made under international law of the sea and other international laws. As mentioned in Article 73 UNCLOS 1982, is explained:

Para 1, stipulates:

¹⁰¹ Zaki Mubarak Busro, 2017, "Burning and/or Sinking Foreign Fishing Vessels Conducting Illegal Fishing in Indonesia", *Asia-Pacific Journal of Ocean Law and Policy* Vol 2 (1), p. 34.

¹⁰² Article 56 of UNCLOS 1982.

¹⁰³ Alfons Zakaria, 2012, "Imprisonment for IUU Fishing in Indonesia's Exclusive Economic Zone: Why it Should Not Be Imposed", *Journal of Arena Hukum* Vol. 5 No. 2, p. 92.

¹⁰⁴ Article 62 para. 4 of UNCLOS 1982.

“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.”¹⁰⁵

Para. 2, stipulates:

“Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security.”¹⁰⁶

Para. 3, stipulates:

“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.”¹⁰⁷

Para. 4, stipulates:

“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.”¹⁰⁸

The provisions in that article state that in order to guarantee compliance with the laws and regulations that have been stipulated, the coastal state can take necessary action in the event of a violation in its EEZ area, such as boarding a ship, inspecting, arresting and carrying out a judicial process with the guarantee that the ships arrested and the crew members must be immediately released after being given an appropriate security deposit or another form of security. UNCLOS also states that if no agreement is made between the ship's coastal state and flag state, the penalties that can be imposed against violators in the EEZ shall not include imprisonment or any other form of corporal punishment.¹⁰⁹

¹⁰⁵ Article 73 Para. 1 of UNCLOS.

¹⁰⁶ Article 73 Para. 2 of UNCLOS.

¹⁰⁷ Article 73 Para. 3 of UNCLOS.

¹⁰⁸ Article 73 Para. 4 of UNCLOS.

¹⁰⁹ Ayu Efridadewi & Wan Jefrizal, 2017, “Peneggelaman Kapal Illegal Fishing di Wilayah Indonesia Dalam Perspektif Hukum Internasional”, *Jurnal Selat* Vol. 4 No. 2, p. 261.

Arrangements related to violations in the EEZ of a country in UNCLOS are regulated in Article 73. This article does not explicitly (firmly) state whether or not foreign ships that violate the EEZ are sunk or burn. The article only advises that in the event of an arrest or detention of a foreign ship and its crew, the country that made the arrest/detention must immediately notify the ship's flag state regarding the actions taken and the sanctions imposed on it.¹¹⁰

In exercising its sovereign rights in the EEZ, UNCLOS states that coastal states can do things such as boarding ships, inspecting, arresting, and carrying out judicial processes as an effort to enforce the laws and regulations that have been stipulated regarding violators in their EEZ area.¹¹¹ However, provided that the regulations implemented are determined in line with the provisions in the law of the sea convention or other relevant international law.

It is also essential to keep in mind that the specifics of the case will determine whether or not an enforcement step is required and that this is something that must be taken into consideration.¹¹² It could be argued that the coastal state ought to have more leeway when it comes to the inspection and arrest of fishing vessels operating within its exclusive economic zone (EEZ).

In point of fact, it would seem that the coastal state needs to make use of this jurisdiction to ensure that fishing vessels adhere to the national laws and regulations in place for the fishing industry. On the other hand, the more invasive the powers exercised by the coastal state, the more justification they may be required to have.¹¹³

Here it is seen that there is legal ambiguity because UNCLOS does not regulate the types of sanctions that may or may not be imposed on violators in the EEZ of a country other

¹¹⁰ David Putra Setyawan, 2014, "Analisa Tindakan Khusus Penenggelaman Kapal Asing Sebagai Bentuk Deterrence Effect", *Indonesia Defense University Journal*, p. 2.

¹¹¹ Jawahir Thontowi, 2017, "Pembakaran dan Penenggelaman Kapal Nelayan Asing dalam Perspektif Hukum Laut Nasional dan Internasional", *Pandecta Research Law Journal* Vol. 12 No. 2, p. 156.

¹¹² Kaizar Nararya & Emilio Bintang Risanda, 2017, "Sink That Vessel!: Reflecting Indonesia Sinking Vessel Policy in Light of UNCLOS", *Juris Gentium Law Review* Vol. t No. 2, p. 5.

¹¹³ Dr. James Harrison, 2015, "Safeguards against Excessive Enforcement Measures in the Exclusive Economic Zone – Law and Practice", *University of Edinburgh School of Law Research Paper* Vol. 2014/30, p. 4.

than the prohibition of prison provisions if there is no agreement involving the coastal state with the flag state of the ship. UNCLOS is only limited to giving the coastal state the right to make its regulations related to protecting its territorial waters with the condition that the regulations set by the coastal state must follow the convention's provisions.¹¹⁴

In a similar vein, in the event that an international fishing vessel is just transiting the EEZ, it is debatable whether or not a coastal state should be required to provide some evidence that an offense has been committed prior to exercising any enforcement rights over that vessel.¹¹⁵ Even if the vessel were to be subjected to an inspection, this would still be the case because an inspection in and of itself constitutes an interference with the freedom of navigation that the vessel is attempting to enjoy. To reiterate, it is appropriate to establish a minimal evidential threshold on the coastal state in order to prevent that state from misusing the authorities granted to it by the federal government concerning law enforcement.¹¹⁶

A coastal state has sovereign rights to explore, exploit, conserve, and manage living natural resources within its EEZ.¹¹⁷ ITLOS determined in the *M/V Virginia G* case that the term "sovereign rights" includes a coastal state's right to take necessary enforcement measures against a vessel and its crew, such as "boarding, inspection, arrest, and judicial proceedings" as may be "necessary to ensure compliance with (coastal state's) laws and regulations." Nonetheless, the *M/V Virginia G* case may provide insight into how an International Tribunal would consider whether destroying vessels to punish and discourage IUU fishing in a coastal state's EEZ is a viable enforcement measure under

¹¹⁴ Albert J. Hoffman, 2011, Freedom of Navigation, *Max Planck Encyclopedia of Public International Law*, p. 4.

¹¹⁵ Heiki Lindpere, 2005, Prompt Release of Detained Foreign Vessels and Crews in Matters of Marine Environment Protection, *International Journal of Legal Information* Vol. 33 No. 2, p. 248.

¹¹⁶ Belardo Prasetya Mega Jaya & Muhammad Uut Lutfi, 2020, "The Law Enforcement Towards Foreign Vessels which did Illegal, Unreported and Unregulated Fishing (IUU-Fishing) in Indonesia Fisheries Management Area, *Jurnal Dinamika Hukum* Vol. 20 No. 1, p. 249.

¹¹⁷ The *Juno Trader Case* (St. Vincent and the Grenadines v. Guinea-Bissau), 2004, "Case No. 13, Judgment of 18 December 2004", https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_13/13_judgment_181204_en.pdf, p. 38, (25.04.2023).

international law. This section also examines the ordinary meaning of term “necessary” compliance with Art. 73 of UNCLOS.

1- The Common Meaning of the Word “Necessary”

In the matter of the *M/V Virginia G*, Panama requested that the International Tribunal for the Law of the Sea consider whether or not Guinea-Bissau's seizure of the *M/V Virginia G*, a Panamanian oil tanker, exceeded what is permissible under Article 73 (1) of UNCLOS.¹¹⁸

In Guinea-Bissau's exclusive economic zone on August 21, 2009, the Panamanian-flagged tanker *M/V Virginia G* was detained by the government of Guinea-Bissau for illegally bunkering, sometimes known as refuelling, international fishing vessels. After a few days had passed, the government took possession of the *M/V Virginia G* as well as the gas oil (diesel) that was on board.¹¹⁹

Following the owner's request, the Regional Court of Bissau issued orders for subsequent provisional measures, which suspended the confiscation. Regardless of this, the authorities in Guinea-Bissau ordered that the gas oil be taken off the ship. The decision to release the vessel more than a year after its arrest was made by the government after "the persistent request by the Embassy of Spain for its release."¹²⁰ The decision also took into consideration Guinea-Bissau's "friendship and cooperation with the Kingdom of Spain in fisheries," as well as the fact that the vessel, despite flying a Panamanian flag, is owned by a Spanish company.¹²¹

Panama questioned the Tribunal in front of ITLOS in order to determine whether or not Guinea-Bissau had breached UNCLOS when it arrested and confiscated *M/V Virginia G*.¹²² The Tribunal came to a conclusion that according to the rules and regulations of Guinea-Bissau, fishing vessels that broke Guinea-Bissau's fisheries regulations would be

¹¹⁸ The *M/V Virginia G*, *supra* note 18, p. 55.

¹¹⁹ Bernard H. Oxman & Vincent P. Cogliati-Bantz, 2014, “The *M/V “Virginia G”* (Panama/Guinea-Bissau). Case No. 19. 53 ILM 1164 (2014). International Tribunal for the Law of the Sea, April 14, 2014”, *The American Journal of International Law* Vol. 108, p. 769.

¹²⁰ *Ibid.*

¹²¹ *Ibid.*, p. 770.

¹²² The *M/V Virginia G*, *supra* note 18, p. 55.

seized automatically, together with their gear, equipment, and fishery products.¹²³ This would be the case even if the restrictions were not broken. It was pointed out that the confiscation of vessels is not included in Article 73 (1) of UNCLOS, despite many coastal nations using vessel seizure as a sanction for violations of their exclusive economic zone.¹²⁴ As a result, it acknowledged the requirement of interpreting Article 73 (1) of UNCLOS "in the light of the practice of coastal states on the sanctioning of violations of fishing laws and regulations."¹²⁵ Even while the main body of the judgment did not go into depth about how Article 73 (1) should be understood and applied, several judges gave separate and dissenting views addressing how Article 73 (1) should be interpreted.¹²⁶

Black's Law Dictionary explain "necessary" as "that is needed for some purpose or reason; essential; that must exist or happen and cannot be avoided; inevitable".¹²⁷ It can also mean "needed to be done, achieved, or present; essential".¹²⁸ These meanings are good starting points that give general idea of the meaning of "necessary".

In the matter of the *M/V Virginia G*, Judge Paik expressed his opinion regarding the meaning of the term "necessary" as it is used in Article 73 (1) of UNCLOS.¹²⁹ His requirement for necessity was that "if there is a choice between several appropriate measures, the one that is the least onerous (to other protected interests) and is equally effective (in achieving the intended objective) needs to be selected."¹³⁰ He also add safeguard which suggested that "the greater the contribution and the less encroachment, the more likely the measure will be considered to be necessary."¹³¹

¹²³ The *M/V Virginia G*, *supra* note 18, p. 77.

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*

¹²⁶ Dita Liliansa, 2019, The Necessity of Indonesia's Measures to Sink Vessels for IUU Fishing in the Exclusive Economic Zone, *Asian Journal of International Law*, p. 8.

¹²⁷ B.A. Garner, 1999, *Black's Law Dictionary*, Seven Edition, West Group, Dallas, p. 267.

¹²⁸ Oxford Dictionary Online, https://www.oxfordlearnersdictionaries.com/definition/american_english/necessary#:~:text=%2F%CB%88n%C9%9Bs%C9%99%CB%8Cs%C9%9Bri%2F,to%20buy%20a%20new%20one (09.05.2023).

¹²⁹ The *M/V Virginia G*, 2014, *supra* note 17, Separate Opinion of Judge Paik p. 307.

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

Judge Paik argued that the purpose of an Article 73 measure is to ensure compliance with the domestic law of the coastal state. This can include the acts of righting past wrongs and discouraging future wrongdoings.¹³²

Judge Paik observed that despite the fact that international courts or tribunals may be more neutral and impartial, they are "not well positioned to assess the complexities of local conditions, an understanding of which is critical to a proper determination of necessity."¹³³ This is due to the fact that the term "necessary" is fact-intensive and circumstance-dependent. In contrast, states that take essential measures typically have a more comprehensive understanding of their situations, notwithstanding the possibility of being more biased.¹³⁴ Judge Paik concluded that national authorities should be given a certain degree of leeway to exercise their discretion on a case-by-case and issue-by-issue basis.¹³⁵

Within the United Nations Convention on the Law of the Sea (UNCLOS), the word "necessary" appears more than a hundred times.¹³⁶ It's possible that finding the word "necessary" in other areas of UNCLOS won't provide much assistance in interpreting the document. The widespread usage of the same phrase "necessary" throughout the various clauses of UNCLOS may imply that the meaning is dependent on the context in which it is used.

In the same manner, as in the case of the *Juno Trader*, in which the Tribunal ruled that Article 73 (2) of UNCLOS must be interpreted in the context of Article 73 as a whole¹³⁷, this thesis proposes that in order to interpret Article 73 (1) of UNCLOS correctly, one must first examine the other provisions that makeup Article 73. This thesis agrees with Judge Paik's Separate Opinion in the case of the *M/V Virginia G*, which held that the

¹³² *Ibid.*

¹³³ *Ibid.*, p. 201.

¹³⁴ *Ibid.*

¹³⁵ *Ibid.*

¹³⁶ For example, in addition to being in article 73 (1) of the UNCLOS, the word "necessary" also appears in articles 60 (4) and 63 (1) of this treaty's Part V. The word "necessary" is used differently in articles 60 (4) and 63 (1) of the convention. Article 60 (4) refers to the purpose of establishing safety zones around artificial islands, installations, and structures that fall under the coastal state's jurisdiction. Article 63 (1) refers to the context of species conservation within the EEZ of two or more coastal states.

¹³⁷ The *Juno Trader* Case, *supra* note 75, p. 77.

existence of the modal auxiliary verb "may" makes the context of Article 73 (1) "more flexible and less compulsory."¹³⁸

Alongside Judge Paik, Judge Jesus also submitted his Separate Opinion in the matter of the *M/V Virginia G*. In it, he stated that Article 73 (1) of UNCLOS has a "general policy" of what the actions are that a coastal state may adopt in order to exercise its sovereign rights in the EEZ. Judge Paik and Judge Jesus both participated in the case.¹³⁹ While paragraph 2 ensures that a flag state has the right to take swift action, paragraph 3 places restrictions on the range of options available under paragraph 1.¹⁴⁰

Whereas paragraphs 1, 2, and 3 are read together, it can be deduced that paragraph 1 is the general rule for a coastal state's enforcement measures in the EEZ, that paragraph 2 serves as a protection for the protected rights of other states, and that paragraph 3 is an exception to the rule stated in paragraph 1. Given a broad interpretation of a coastal state's enforcement methods, that state would be able to protect its sovereign rights using means other than those expressly provided for in UNCLOS Article 73 (1) if the state were given permission to do so.¹⁴¹ The judges Jesus, Ndiaye, and ad hoc Servulo Correia all came to the same conclusion: if the drafters of UNCLOS had intended for there to be constraints on the measures described in paragraph 1, they would have included those limitations in the body of the document, just like they did with paragraph 3.¹⁴²

A list of acceptable coastal state enforcement methods is provided in paragraph 1 of Article 73 of UNCLOS. However, this list is incomplete. Article 73 (1) of the UN Convention on the Law of the Sea states that the word "including" means that the measures of "boarding, inspection, arrest, and judicial proceedings" are "part of a

¹³⁸ The *M/V Virginia G*, 2014, *supra* note 17, Separate Opinion of Judge Paik p. 203.

¹³⁹ *Ibid.*, Dissenting Opinion of Judge Jesus, p. 341, https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.19/judgment_published/C19_Jesus_diss_op.pdf (25/04/2023).

¹⁴⁰ *Ibid.*

¹⁴¹ *Ibid.*

¹⁴² The *M/V Virginia G* Case, Dissenting Opinion of Judge Jesus p. 341; Dissenting Opinion of Judge Ndiaye p. 335; Dissenting Opinion of Judge Servulo Correia p. 382, <https://www.itlos.org/index.php?id=171> (23.05.2023).

particular group"¹⁴³ or "part of the whole being considered."¹⁴⁴ In other words, these procedures are only examples.

According to the Virginia Commentaries, a coastal state's enforcement measures under Article 73 (1) of UNCLOS are a "broad but limited authority."¹⁴⁵ This indicates that a coastal state can take enforcement measures necessary to exercise its sovereign rights regarding the "living resources" specified in Article 56 (1).¹⁴⁶ If a coastal state's enforcement measures are given a broad meaning, the state would be able to preserve its sovereign rights using means other than those expressly provided for in Article 73 (1) of UNCLOS if the interpretation is given. Harrison maintains that the enforcement actions of the coastal state should only be overturned in exceptional situations, such as when they are arbitrarily applied, manifestly unjustified, or carried out in bad faith.¹⁴⁷

On the other hand, the application of such a broad interpretation should not be made in a way that puts the protected flag state's rights to prompt release actions in jeopardy. This thesis argues that Article 73 (2) of UNCLOS also contains an essential component in balancing such broad enforcement capacity on the part of the coastal state. In accordance with the provisions of paragraph 2 of Article 73, "arrested vessels and their crew shall be released promptly upon the posting of a reasonable bond or other security."¹⁴⁸ It serves as a reminder that, regardless of how broad a coastal state's discretion is in enforcing its rules and regulations such as sinking or burning the ship, the coastal state must respect the rights of neighbouring states, especially the right to timely release.¹⁴⁹

A coastal state is generally permitted to take any measure, such as sinking or burning the vessel that violates the domestic law, as long as it is within the framework of "necessary" enforcement measures with due regard for the flag state's right to prompt release, and

¹⁴³ Cambridge Online Dictionary, <https://dictionary.cambridge.org/dictionary/english/including> (23.05.2023).

¹⁴⁴ *Ibid*, *supra* note 84.

¹⁴⁵ Myron H. Nordquist, Satya N. Nandan and James Kraska, 2011, *United Nations Convention on the Law of the Sea 1982: A Commentary Vol. VII*, Martinus Nijhoff Publishers, Boston, p. 794

¹⁴⁶ *Ibid*, p. 795.

¹⁴⁷ Dr. James Harrison, *supra* note 14.

¹⁴⁸ UNCLOS, *supra* note 15.

¹⁴⁹ Dita Liliansa, *supra* note, 126, p. 11.

does not include imprisonment or corporal punishment unless otherwise agreed upon.¹⁵⁰ Furthermore, taking the ordinary meaning of the term "necessary" in paragraph I means that a coastal state is generally permitted to take any measure that violates domestic law.¹⁵¹

Additionally, it is essential to take into account the negative consequences of the shipwreck and fire, including the potential for environmental damage, the well-being of the crew, the appropriateness of any reaction, the completion of any and all remedial actions, and compliance with international law.

After the ship's crew or the foreign fisherman had been rescued and completed the legal process, the ship was scuttled and set ablaze as an additional punishment. This step must be taken in order to prevent a recurrence of the theft of fish from waters belonging to Indonesia.

2- The Reasoning and Goals Behind Article 73 of UNCLOS

The common meaning of the word "necessary" should not be defined in the abstract but rather in the context of the convention as well as the goals and objectives of the gathering.¹⁵² In this context, "the goals that the treaty's drafters hoped to achieve" is a unified term that refers to the object and purpose of the document.¹⁵³ It is common knowledge that the object and purpose of a treaty are outlined in the document's preamble. This thesis proposes that the intention and goal of Article 73 (1) of UNCLOS can be found both in the preamble to the provision itself and inside the provision itself.

In the preamble to the United Nations Convention on the Law of the Sea (UNCLOS), the drafters expressed their desire for "a legal order for the seas and oceans" that would encourage "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

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.*

¹⁵² Oliver Door & Kirsten Schmalenbach, 2018, *Vienna Convention on the Law of Treaties: A Commentary*, Springer, New York, p. 543.

¹⁵³ David S. Jonas & Thomas N. Saunders, 2010, "The Object and Purpose of a Treaty: Three Interpretive Methods", *Vanderbilt Journal of Transnational Law* Vol. 565, p. 578.

preservation of the marine environment."¹⁵⁴ This thesis suggests that the document's drafters planned to benefit from the ocean while conserving it commercially.

Due to the fact that UNCLOS is an agreement between conflicting interests, neither goal gets prioritized over the other.¹⁵⁵ In other words, the United Nations Convention on the Law of the Sea (UNCLOS) strives to ensure the ocean is used in a manner that is both environmentally and economically responsible.¹⁵⁶

It is also important to note that the "special interests and needs of developing countries"¹⁵⁷ are taken into consideration in the preamble. This aspect suggests that the drafters may have been willing to tolerate some degree of flexibility to suit those particular interests and requirements.

On the basis of this idea, Article 73 (1) of UNCLOS, which authorizes enforcement of a coastal state's laws and regulations to what is "necessary to ensure compliance,"¹⁵⁸ may be understood with the same degree of flexibility in keeping with the treaty's object and purpose if it were to be read in accordance with the idea that the treaty is intended to have. This degree of flexibility is compatible with the standard definition of the phrase "necessary," which was covered in part before this one, which suggests a margin of appreciation for the enforcement measure that the coastal state will take.

In the case of the *Monte Confurco*, the International Tribunal for the Law of the Sea (ITLOS) argued that the purpose of Article 73 of the United Nations Convention on the Law of the Sea (UNCLOS) is to strike a fair balance between the interests of coastal states and flag states.¹⁵⁹ On the other hand, in the case of the *M/V Virginia G*, Judge Paik likewise recognized the need to balance opposing interests as the core of Article 73.¹⁶⁰

¹⁵⁴ UNCLOS, *supra* note 15, preamble.

¹⁵⁵ Roman Dremlluga, 2017, "A Note on the Application of Article 234 of the Law of the Sea Convention in Light of Climate Change: Views from Russia", *Ocean Development and International Law* Vol. 48 (2), p. 130.

¹⁵⁶ *Ibid.*

¹⁵⁷ UNCLOS, *supra* note 15.

¹⁵⁸ *Ibid.*

¹⁵⁹ The *Monte Confurco* Case (Seychelles v. France), Judgement of 18 December 2000, https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_6/published/C6-J-18_dec_20.pdf, p. 108 (25.03.2023).

¹⁶⁰ The *M/V Virginia G*, *supra* note 17, p. 204.

The United Nations Convention on the Law of the Sea (UNCLOS) always rests on the requirement to strike a balance between relevant interests. This could mean attempting to strike a balance between the interests of economic uses of the ocean and environmental conservation, the interests of developed and developing states, the interests of coastal and land-locked and geographically disadvantaged states, or the interests of coastal and flag states. The fact that Article 73 (2) of UNCLOS has a provision for immediate release hints, in addition, that a balance of interests is significant and ought to be perpetually preserved in order to accomplish the goal of establishing an international legal order for the seas.

B) INDONESIA'S MEASURES AGAINST IUUF IN INDONESIAN MARINE AREAS

Even though burning or sinking a vessel is not explicitly permitted under Article 73 (1) of UNCLOS, it should be permissible if it passes the necessity test.¹⁶¹ This is because burning or sinking a vessel is an extreme measure that should only be used in extreme circumstances. For a measure to be considered necessary in the sense that Article 73 (1) of UNCLOS requires, Indonesia must demonstrate that other means are unable to ensure compliance with its laws and regulations and that the impact of the preferred measure is less onerous upon the rights of other states and does not place an unreasonable burden on itself.¹⁶²

The measure to burn or sink a vessel may no longer be necessary for the future if it is later determined that less harsh measures are sufficient to attain the same level of compliance. In addition to this, Indonesia is required to demonstrate that such a measure is implemented on a case-by-case and issue-by-issue basis, taking into consideration the specific circumstances of the case as well as the seriousness of the breach.¹⁶³

In accordance with Indonesia's Fisheries Law, violators of fisheries regulations are frequently subject to financial penalties in the form of fines. They are implemented in a number of situations, including the utilization of fishing practices or fishing gear that are

¹⁶¹ Dita Liliansa, *supra* note 126, p. 17

¹⁶² *Ibid.*

¹⁶³ *Ibid.*

not sustainable, fishing without licenses, the degradation of the maritime environment, the falsification of fishing permits, the absence of port clearance, and unlicensed fisheries research. Article 93 Para. 2 of Law No. 45 of 2009 concerning Fisheries stipulates:

“Any person possessing and/or operating fishing vessel flying foreign flag used for fishing in ZEEI without possessing SIPI as referred to in Article 27 section (2) is sentenced to imprisonment for a maximum of 6 (six) years and fined for a maximum of Rp20,000,000,000.00 (twenty billion rupiah).”¹⁶⁴

In spite of the significant in fines, Indonesia continues to have problems with IUUF. Worse still, Indonesia is unable to collect payment of such fines from those who have broken the law because of the inability of the offenders to pay.

The difficulty of such inability to pay may stem from the fact that the actual owners of IUUF vessels are often not disclosed. Therefore, one must go behind the corporate structure of the IUU fishing vessels in order to possibly compel payment of such fines or confiscate assets as necessary. The final challenge for Indonesia would be figuring out how to get information about who finances and plans activities related to IUUF so that it may take legal action against those individuals.

In situations when the fine is not paid, the offender will get a "substitute punishment" in the form of confinement or imprisonment rather than the original fine.¹⁶⁵ On the other hand, other laws do not permit imprisonment for anyone found guilty of IUUF if there is not an agreement in place with the country in question.¹⁶⁶

On the other hand, the minority opinions maintained that Article 73 (3) of UNCLOS does not prohibit the use of jail as an alternative to the imposition of fines.¹⁶⁷ They argued that the legislation should be given more teeth by permitting a more severe punishment in the form of incarceration as a second-layer punishment. If this alternative is not available,

¹⁶⁴ Law No. 45 of 2009, *supra* note 14, p. 30.

¹⁶⁵ Indonesia Code of Criminal Procedures, Article 30 Para. 2, <https://www.icj.org/wp-content/uploads/2013/01/Indonesia-Code-of-Criminal-Procedure-1981-eng.pdf> (22.03.2023).

¹⁶⁶ Law No. 45 of 2009, *supra* note 14, Art. 102.

¹⁶⁷ Dita Liliansa, *supra* note 126, p. 19

those accused will not be penalized, and Indonesia will be forced to pursue legal or diplomatic action to compel them to pay the penalty.¹⁶⁸

Even if the accused persons make an attempt to leave the country, Indonesian immigration will not let them leave the nation. Eventually, they will be imprisoned for an indefinite duration, which may cost Indonesia a great deal more money than putting them in jail for a fixed amount of time.¹⁶⁹ This exemplifies the financial and technical challenges that Indonesia may need to overcome in order to implement this measure.¹⁷⁰

Article 104 Para. 2 on Law No. 31 of 2004 as amended by Law No. 45 of 2009, stipulates:

“The goods and/or equipment used in and/or produced from the criminal acts on fisheries may be seized for the state.”¹⁷¹

It is possible that fishing gear, catches, and even the vessels used to capture or carry fish could fall under this category. Article 76 A of Fisheries Law stipulates:

“Object and/or instrument used in and/or resulted from criminal act on fisheries can be seized for nation or destroyed after obtaining approval from chief judge of the district court.”¹⁷²

Article 76 C of the same Law stipulates:

“The seized object and/or instruments resulted from criminal act on fisheries as referred to in Article 76A can be auctioned for the interest of nation.”¹⁷³

“Auction is made by state auction board in accordance with the provisions of legislation.”¹⁷⁴

¹⁶⁸ *Ibid.*

¹⁶⁹ *Ibid.*

¹⁷⁰ *Ibid.*

¹⁷¹ Law No. 31 of 2004 as amended by Law No. 45 of 2009, <https://faolex.fao.org/docs/pdf/ins51065Eng.pdf> (12.01.2023).

¹⁷² Law No. 45 of 2009, *supra* note 14, p. 27.

¹⁷³ *Ibid.*, Art. 76 A Para. 1

¹⁷⁴ *Ibid.*, Art. 76 A Para. 2

“Money earned from auction of seized object/instrument resulted from criminal act on fisheries is deposited to state treasury office being non-tax state revenue.”¹⁷⁵

“Law enforcers in the field of fisheries succeeding in performing their tasks appropriately and any party that is rendering a service in the effort to save state assets are provided with appreciation in accordance with the provisions of legislation.”¹⁷⁶

“The seized object and/or instrument resulted from criminal act on fisheries which is in terms of fishery vessel can be delivered to fisher joint business group and/or fisheries cooperatives.”¹⁷⁷

“Further provisions regarding granting of appreciation are regulated by a Government Regulation.”¹⁷⁸

This expropriation clause is likewise restated in Article 76 A of the Fisheries Law, whereas Article 76 C of the Fisheries Law suggests that an auction may follow an expropriation. Both of these provisions can be found in the Fisheries Law. Even though Article 76 A indicates that expropriation requires consent from the Head of the District Court, the Supreme Court has clarified that such approval is only required to demolish or auction a vessel before trial.¹⁷⁹

This is in contrast to the previous interpretation, which stated that approval from the Head of the District Court was necessary for expropriation. In the event that a trial has already

¹⁷⁵ *Ibid.*, Art. 76 A Para. 3

¹⁷⁶ *Ibid.*, Art. 76 A Para. 4

¹⁷⁷ *Ibid.*, Art. 76 A Para. 5

¹⁷⁸ *Ibid.*, Art. 76 A Para. 6

¹⁷⁹ Supreme Court’s Directive No. 1 of 2015 on the Evidence in the form of Vessels in Fisheries Cases (Supreme Court’s Directive 1/2015), Para. b, https://www.google.com/search?q=Peraturan+Mahkamah+Agung+No.+1+Tahun+2015+tentang+Alat+Bukti+Kapal+dalam+Kasus+Perikanan+%28Petunjuk+Mahkamah+Agung+1%2F2015%29%2C+pada+paragraf.+B.&rlz=1C5CHFA_enTR1010TR1018&sxsrf=APwXEdchgVJXoA2wx7IdNw9kzQlksVkJwA%3A1684959066811&ei=Wm9uZPyGMbSXxc8P6oaSwAc&ved=0ahUKEwj8m43V4Y7_AhW0S_EDH_WqDBHgQ4dUDCA8&uact=5&oq=Peraturan+Mahkamah+Agung+No.+1+Tahun+2015+tentang+Alat+Bukti+Kapal+dalam+Kasus+Perikanan+%28Petunjuk+Mahkamah+Agung+1%2F2015%29%2C+pada+paragraf.+B.&gs_lcp=Cgxn3Mtd2l6LXNlcnAQA0oECEEYAFAAWABgAGgAcAB4AIABAIgBAJIBA JgBAKABAqABAQ&scient=gws-wiz-serp (12.05.2015)

begun, consent is given by the Head of the particular District Court or one of the other judges.¹⁸⁰

In the event that it is not sold at auction,¹⁸¹ an item or tool used in IUU fishing could be handed over to a business group of fishermen or a fisheries cooperative.¹⁸² Donating vessels to a group of small fishers, on the other hand, would not be the best idea. This is because some of the fishermen in the group might not have the financial resources necessary to meet the high costs of maintaining the vessels.

Going above and beyond what the law specifies, the vessels have also been given freely to certain local governments and educational institutions. However, they ended up being underutilized and finally broke down. This is even though they were given away for free.¹⁸³

When an investigation or trial is still ongoing, Indonesia's criminal procedural law also enables "confiscation,"¹⁸⁴ however, this is conditional on the stability and longevity of the objects or tools in question as well as the financial considerations necessary to store them in a secure location. During a legal proceeding, if a vessel is sold at an open auction to the general public, the proceeds from the sale are kept as evidence by the court in anticipation of a final court order.¹⁸⁵ In actuality, the revenue will be restored to the accused person in the event that they are proven to be innocent. If, on the other hand, the court decides that the accused is responsible for the crime, the state will take ownership of the revenue.

This method, on the other hand, does not produce a significant amount of dissuasion because it leaves open the prospect that a vessel will make its way back out to sea or, even worse, to the same owner or other IUU fishing operators. The price of a vessel being

¹⁸⁰ *Ibid.*, Para. c.

¹⁸¹ Law No. 45 of 2009, *supra* note 14, Article 76A & 76C (1).

¹⁸² *Ibid.*, Art. 76C (5).

¹⁸³ Dita Liliansa, *supra* note 126, p. 20.

¹⁸⁴ Law No. 8 of 1981 Concerning Indonesia Code of Criminal Procedures, Art. 45 Para. 1, *supra* note 165.

¹⁸⁵ *Ibid.*, Art. 45 Para. 2.

auctioned off is typically lower than its market price and can range anywhere from IDR 8 million (about \$534) to IDR 50 million (approximately \$3,343).¹⁸⁶

Typically, the owner of the vessel, who is not always the accused captain of the vessel, will buy back the vessel through the assistance of an agency. As a result, it was not uncommon for the same vessel to be apprehended for the same offense more than once. In a nutshell, the owners of the IUU vessels, who remain unknown and untouchable, will have less chance of being affected by this action than other people.

C) THE IMPACT ON INDONESIA AND OTHER STATES REGARDING POLICY OF VESSEL BURNING OR SINKING

Article 69 of Indonesia's Fisheries Law empowers patrol vessels to stop, inspect, bring, and arrest any vessel suspected of committing a "fisheries crime" within the country's fisheries management zone. It also allows them to take "special measures" such as burning or sinking foreign fishing vessels if "sufficient pre-preliminary evidence" is presented. The phrase "sufficient preliminary evidence" refers to any preliminary evidence to suspect a foreign vessel of committing a fisheries crime, including a vessel caught red-handed fishing or carrying fish in Indonesia's fisheries zone without the necessary permissions. Article 69 goes on to say that Indonesia cannot burn or sink a foreign vessel unless it is "plainly committing a fisheries crime," which raises the question of what standards are utilized to evaluate whether a vessel is "plainly committing a fisheries crime."

According to the text of Article 69, these so-called "special measures" are only for foreign vessels, not local vessels. Despite the fact that the law expressly discriminates against foreign vessels, Indonesian vessels are not exempted in practice.¹⁸⁷ Article 69 also does

¹⁸⁶ Kasianus Kimin, 2012, "Pelaksanaan Lelang Kapal Perikanan Hasil Rampasan Tindak Pidana Perikanan untuk Negara (Studi di Wilayah Kejaksaan Negeri Pontianak)", *Nestor Tanjungpura Journal of Law* Vol. 8 No. 2, p. 9.

¹⁸⁷ Ambon High Court, 2016, "Decision Number 34/Pid.Sus-Prk concerning (Chen Xiangqi)", <https://putusan3.mahkamahagung.go.id/direktori/putusan/032c649d1d63196ac82a40582b2b0055.html> (25/04/2023).

not explain what constitutes a fisheries crime deserving of being burned or sunk. Article 69 may apply to all crimes under the Fisheries Law.

Article 69 is sometimes mistaken with the application of Article 76A. Despite the fact that Article 76A employs the more generic term "destroy," its application usually entails the act of burning or sinking. Similarly, actions under Articles 69 and 76A are typically implemented before issuing a final and binding court decision. However, contrary to popular belief, contemporary Indonesian practices may not utilize either Article 69 or Article 76A but rather a higher standard by turning to a final and binding court decision.¹⁸⁸ Regardless, the practicalities of vessel destruction, whether based on Article 76A or a final and binding decision, are inspired by Article 69, which states that vessels must be destroyed by burning or sinking.

The number of foreign vessels in Indonesian seas has plummeted from 1,128 in early 2018 to 164 by the end of 2018. According to a report based on an analysis of automated identification system (AIS) data, foreign fishing vessel activity in Indonesian waters have decreased by more than 90% since 2018, with the majority of the fall coming from South Korea, Thailand, China, and Taiwan.¹⁸⁹ Although the MMAF's embargo on foreign and ex-foreign vessels may have contributed to the drop, one may argue that vessel destruction is not the "only means" available to dissuade IUU fishing in IEEZ successfully.

However, the two measures are not the same: The moratorium on foreign and ex-foreign vessels is an executive policy that applies to all foreign and ex-foreign vessels, whereas burning or sinking a vessel is an enforcement measure against a single vessel for a specific offense. According to the interpretation of UNCLOS Article 73 (1), the action implemented must be the only "enforcement measure" capable of assuring conformity with the laws and regulations of the coastal state.

¹⁸⁸ Kementerian Kelautan dan Perikanan, 2018, "Hari Kemerdekaan, Pemerintah Tenggelamkan 125 Kapal Pelaku Illegal Fishing", <https://news.kkp.go.id/index.php/hari-kemerdekaan-pemerintah-tenggelamkan-125-kapal-pelaku-illegal-fishing/> (25.04.2023).

¹⁸⁹ Raniel B. Cabral, Juan Mayorga et al., 2018, "Rapid and Lasting Gains from Solving Illegal Fishing", *Nature Ecology & Evolution*, p. 654.

Even though Indonesia has leeway in determining its preferred tactics for enforcing its rules and regulations in the EEZ, Indonesia must not take any action that would impair the flag state's ability to release its vessel or crew in exchange for a bond. ITLOS confirmed in the *Tomimaru* case that the flag state might request a release as long as the domestic court has not decided on the merits.¹⁹⁰

As a result, the implementation of a decision to burn or sink a vessel must be delayed until the decision is no longer being appealed. Suppose the flag state does not file an appeal or petition for review within the time limit specified by Indonesian law, in that case, the decision becomes final and binding, and the vessel can be expropriated for further actions such as destruction by burning or sinking.

Burning or sinking a vessel before an investigation, or even with judicial approval, is still problematic. If a vessel is auctioned off while the trial is ongoing and the court later judges that the accused is not guilty, the accused will be compensated for the vessel in the amount of the auction. However, if the vessel is torched or sunk before the investigation or during the court proceedings, the accused's remedy will be doubtful if he is later found innocent. Furthermore, the accused may file a fast-release application without opposition.

Even if burning or sinking a vessel is now the only effective way to dissuade IUU fishing, it should only be used where the impact on other states and the coastal state is minimal. Indonesia, the world's biggest archipelago, shares marine borders with eleven countries. The majority of Indonesia's territorial maritime boundaries, such as those between Indonesia and Papua New Guinea¹⁹¹, between Indonesia and Malaysia¹⁹², and between

¹⁹⁰ The *Tomimaru* Case, 2007, “Prompt Release (Japan v. Russia), Case No. 15, Judgement of 6 August 2007”, https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_15/15_judgment_060807_en.pdf, p. 97. (25.04.2023).

¹⁹¹ “Agreement Concerning Boundaries Between Indonesia and Papua New Guinea”, <https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/AUS-IDN1973PNG.pdf> (25.04.2023).

¹⁹² “Treaty Relating to the Territorial Seas of the Two Countries in the Strait of Malacca”, <https://jsumundi.com/en/document/treaty/en-treaty-between-the-republic-of-indonesia-and-malaysia-relating-the-delimitation-of-the-territorial-seas-of-the-two-countries-in-the-straits-of-malacca-1970-treaty-between-the-republic-of-indonesia-and-malaysia-relating-the-delimitation-of-the-territorial-seas-of-the-two-countries-in-the-straits-of-malacca-1970-tuesday-17th-march-1970> (25/04/2023).

Indonesia and Singapore¹⁹³, have been negotiated and confirmed in national legislation. Unlike territorial sea limits, the majority of Indonesia's EEZ boundaries are unclear.

The lack of a definite EEZ line between Indonesia and Vietnam, for example, has created various difficulties. Indonesia and Vietnam agreed on their continental shelf border in 2003. However, they have yet to agree on their EEZ because they agreed not to utilize a single boundary line. The Vietnamese Coast Guard intercepted an Indonesian patrol vessel in 2017 while arresting five Vietnamese fishing vessels near the Natuna Islands.¹⁹⁴ In 2019, two Vietnam Fisheries Resources Surveillance patrol vessels disrupted the Indonesian Navy's operations to apprehend four Vietnamese fishing boats accused of unlawfully fishing in Indonesian waters in the northern section of the Natuna Islands.¹⁹⁵ Despite continuing delimitation talks, Indonesia maintains its position of arresting and prosecuting Vietnamese fishing boats.

Given Indonesia's increased anti-IUU fishing efforts and the existence of an adjacent South China Sea dispute that could have a spill over effect, Indonesia must make every effort to enter into any conflict-management type of provisional arrangement with the states involved until they reach an agreement on a delimitation line. Without such arrangements, Indonesia and the other party to the undelimited EEZ should refrain from doing anything that could cause a disagreement or impede the final agreement, such as fishing or arresting each other's fishers in the overlapping region. Indonesia must carefully consider the measures it implements in its unsettled EEZs in order to avoid engaging in military-style activity.

¹⁹³ “Treaty Relating to the Territorial Seas of the Two Countries in the Strait of Singapore”, <https://jusmundi.com/fr/document/pdf/treaty/en-treaty-between-the-republic-of-indonesia-and-the-republic-of-singapore-relating-to-the-delimitation-of-the-territorial-seas-of-the-two-countries-in-the-strait-of-singapore-1973-treaty-between-the-republic-of-indonesia-and-the-republic-of-singapore-relating-to-the-delimitation-of-the-territorial-seas-of-the-two-countries-in-the-strait-of-singapore-1973-friday-25th-may-1973> (25.04.2023).

¹⁹⁴ Wahyudi Soeriaatmadja, 2017, “Vietnamese Coast Guard Prevented Indonesia from Arresting Poachers”, <https://www.straitstimes.com/asia/se-asia/vietnamese-coast-guard-prevented-indonesia-from-arresting-poachers> (25.04.2023).

¹⁹⁵ Arya Dipa & Agnes Anya, 2019, “Indonesia Slams Vietnam for Disrupting Arrest”, <https://www.thejakartapost.com/seasia/2019/02/27/ri-slams-vietnam-for-disrupting-arrests.html> (25.04.2023).

In practice, nations have objected to the arrest of fishermen for allegedly fishing in disputed areas.¹⁹⁶ Because the rights to grant fishing permits are relevant to the sovereign rights over the disputed EEZ, burning or sinking vessels of another party of the contested zone for fishing without authorization is likely to generate retaliatory conflict by the other party. Thus, in an unexplained EEZ, measures to burn or sink the other party's vessels are only essential within the indispensable or absolute need range.

Unsustainable fishing activities are an example of when such measures may be used in good faith, as they may produce a physical change to the maritime environment of the unresolved EEZ, which could jeopardize the future settlement of the boundary. This approach is common between Indonesia and Malaysia, where they have agreed to detain fishing vessels from the other side only when they use illegal fishing gear.¹⁹⁷ A simple act of fishing would simply result in banishment from the unresolved area, not arrest or other enforcement steps such as vessel burning or sinking.

Coastal states monitor their EEZs, while flag states command their vessels. Many coastal governments need help maintaining compliance with their rules and regulations, primarily due to a lack of resources to cover a broad 200 NM EEZ along their coastline. As a result, the role of flag states in ensuring that their boats and crew adhere to the rules and regulations of the coastal states is critical.

Flag states are responsible for ensuring that their boats follow the rules and regulations of the coastal state. The Tribunal stated in its Advisory Opinion on IUU Fishing that flag states should impose punishments "sufficient to deter violations and deprive offenders of the benefits of their IUU fishing activities."¹⁹⁸ The Tribunal further found that the flag states' action is without prejudice to the coastal state's authority to take actions under

¹⁹⁶ Khanh Linh, 2019, "Vietnam Opposes Indonesia's Use of Force on Fishers", <https://e.vnexpress.net/news/news/vietnam-opposes-indonesia-s-use-of-force-on-fishers-3917475.html> (25.04.2023).

¹⁹⁷ M. Adnan Madjid, Widodo Amcs, Eko G. Samudro, 2019, "The Implementation of Sinking Illegal Fishing Vessels Policy Towards the Bilateral Relations Between Indonesia and Malaysia", *Indonesian Political Science Review* Vol. 4 No. 2, p. 196.

¹⁹⁸ Request for an Advisory Opinion Submitted by the Sub-Regional fisheries Commission (SRFC), "Advisory Opinion of 2 April 2015 No. 138", https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.21/advisory_opinion_published/2015_21-advop-E.pdf, p. 42 (12.02.2023).

UNCLOS Article 73.¹⁹⁹ As a result, in addition to sinking or burning IUU fishing vessels, Indonesia may bring actions against flag states for failing to meet their due diligence obligation to take all necessary and appropriate measures to ensure that their vessels do not engage in IUU fishing activities in Indonesia's EEZ.

Adopting the policy of significant ship sinking elicited an adverse reaction from the governments whose ships were sunk. This adverse reaction arose because these countries perceived Indonesia's ship-sinking policy as harsh and arrogant.²⁰⁰ For example, in early January 2015, a Thailand-based newspaper, the Bangkok Post, published an editorial with the provocative title: "Indonesia is wrong," asserting that "Indonesia's hard-line policy lacks tact and is not friendly to its Association of Sea East Asian Nations (ASEAN)-neighbours and partners."²⁰¹ Criticism also came from Malaysia, as stated by an expert named Farish A. Noor in his writing in the *New Straits Times*. He said that Indonesia's crackdown on foreign illegal fishing vessels gave the impression that Indonesia was the only victim, which he said was invalid. He criticized Indonesia's attitude, which was "too selfish", and worried about the future of ASEAN if other ASEAN countries used the same method.²⁰²

However, protests and unfavourable reactions from other countries have had no substantial impact on Indonesia's ship-sinking policy. Indonesia's persistent policy implementation demonstrates this as a tactical policy for reducing IUUF. The ship-sinking policy can continue to be implemented as a strategic policy because it does not violate national or international law.²⁰³

There are various reasons why Indonesia implemented the ship-sinking plan. The first are resolutions to establish deterrence and distress against offenders of IUUF crimes. Sinking,

¹⁹⁹ *Ibid*, No. 139, p. 42.

²⁰⁰ Rainer Lagoni, 1984, "Interim Measures Pending Maritime Delimitation Agreements", *The American Journal of International Law* Vol 78 (2), p. 350.

²⁰¹ Bangkok Post, 2015, "Indonesia is Wrong", *Bangkok Post* <https://www.bangkokpost.com/opinion/opinion/454323/indonesia-is-wrong> (08.08.2022).

²⁰² Farish Noor, 2014, "Troubling Display of Populism", *New Straits Times*, <https://www.nst.com.my/news/2015/09/troubling-display-populism> (09.08.2022).

²⁰³ Agus Raharjo, Tedi Sudrajat, Rahadi Wasi Bintoro & Yusuf Sawfuddin, 2018, "The Sinking Ship Policy to the Perpetrator of Illegal, Unregulated and Unreported Fishing in Criminal Law Perspective", *E3S Web of Conference* Vol 47, p. 5.

burning, and blowing up foreign-flagged vessels imposed on the wrongdoers of the crime of IUUF based on the policy of sinking foreign-flagged vessels. Progressive policies that are designed to prevent illegal fishermen.

The second phase is to implement criminal policies through crime prevention and rule enforcement. All policies are implemented through legislation and official agencies to enforce society's fundamental principles. Enforcing criminal regulations as part of the Indonesian government's social policies amounts to sinking foreign-flagged vessels for IUUF.²⁰⁴

The third step is to affirm, realize, and enact Indonesia's authority and independence. The approach of sinking overseas flagged boats for IUUF is fundamentally an assertion, embodiment, and application of the power and independence of the Indonesian state. IUUF is classed as an actual crime, which means that lawbreaking can be accompanied by or give rise to other misconducts. The Indonesian government considers IUUF a Transnational Organized Crime (TNC) category.²⁰⁵

Indonesia promises to take all needed precautions to preserve its land. The sinking vessel's conduct is meant to send a message to other foreign fishermen not to disobey the law and rob the sea's richness, as well as to have a philanthropic impact and reduce infractions of the law in the Indonesian national sea.

D) FACTORS EXISTENCE OF IUU FISHING IN INDONESIA

IUU fishing is still prevalent in Indonesian waterways. IUUF activities have a massive impact on ecologies. These broader ecosystem management methods will only be adopted if IUUF issues are resolved. Furthermore, IUUF estimates have proven effective for

²⁰⁴ Hongzhou Zhang, 2017, "Fisheries Cooperation in the South China Sea: Evaluating the Options", *Marine Policy* Vol. 89, p. 5.

²⁰⁵ Ella Syafputri, 2014, "Almost Half of Illegal Fishing in the World Occur in Indonesia", <https://en.tempo.co/read/594269/almost-half-of-illegal-fishing-in-the-world-occur-in-indonesia> (20.06.2022).

balancing ecosystem models is an exertion to examine environment-based administration.²⁰⁶

There are two contributing elements to the rise of IUUF in Indonesia, namely internal and external forces:

1- Internal Causes (Indonesian Government Perspective)

a) Water and Law Enforcement Instruments Imbalance Comparison

Lack of action against IUUF caused by broad Indonesian waterways is unstable with guards or patrols provided by rule enforcement, based on “*Maximum Sustainable Yield*” (MSY) data. Three regions of the Indonesian ocean, the Natuna Islands near the SCS, northern seawaters adjacent to North Sulawesi and bordering the Pacific Ocean, and the Arafura Sea are all prone to illegal fishing.²⁰⁷

b) The Fragile National Fishing Fleet

Because of the frail national fishing fleet, the government has failed to emphasize fishermen as crucial actors in the fishing fleet. Until now, small-scale fleets dominated 99.04 percent of the fishing vessel armada.²⁰⁸ Temporarily, 45.5 % of the mini armada consists of vessels minus motor engines, which are pretty feeble and trail significantly behind international fishermen who employ enormous vessels capable of harvesting large numbers of fish.

Furthermore, perambulations at the maritime zone were used to monitor fishing operations using the vessel monitoring system (VMS) and the monitoring, controlling, and surveillance (MCS) system.²⁰⁹ The officer of MMAF conducts monotonous perambulations and integrated operations with all apparatus components in the marine area, including the Indonesian Marine, Waters Police, Air Force, and community

²⁰⁶ Maula Asep, 2009, *Illegal Fishing Perspektif Hukum Islam*, Yogyakarta, Fakultas Hukum Syari’ah, Universitas Islam Negeri Sunan Kalijaga, p.1.

²⁰⁷ N. Kawarazuka & C. Bene, 2010, “Linking Small-Scale Fisheries and Aquaculture to Household Nutritional Security: An Overview”, *Food Security Springer Journal* (4), p. 350.

²⁰⁸ Ioannis Chapsos & Steve Hamilton, 2019, “Illegal Fishing and Fisheries Crime as a Transnational Organized Crime in Indonesia”, *Trends in Organized Crime* Vol 22 (3), p. 256.

²⁰⁹ *Ibid.*

monitoring groups (Pokwasmass), and the establishment of a Community-Based Marine Resources and Fisheries Monitoring System (SISWASMAS).

c) Feeble Control of Indonesian Marine Apparatus

The VMS can eliminate around half of the problem of illegal fishing, according to the director general of supervision and control of MMAF. Nevertheless, VMS adoption has not been optimal due to a lack of response from fishing vessel holders, who are the primary objective of VMS connexion. 1,339 new transmitter components were installed from an extra capability of 3,055 components, leaving 1,716 ships without a transmitter in 2010.²¹⁰

d) The Existence of the Irresponsible Officers

The engagement of unscrupulous persons who collaborate with capital owners/fish entrepreneurs in the event of IUUF gives enormous and desirable benefits. An example of IUUF in North Sulawesi waters in 2007 was a systematic collaboration between individuals, fish entrepreneurs on land, and fish operators at sea, according to data from the Indonesian Environmental Forum (WALHI).²¹¹

e) Weak Law Enforcement in the Indonesia Territorial Sea

Inadequate coordination among authorities results in the imbrication of power and rules, leading to disagreements. One of the issues in preventing IUUF is the disjointed state apparatus. The court process, from detective to hearing, is expensive and time-consuming. As a result of inadequate law enforcement, some parts of the sea have never been patrolled. This action results in unmanageable criminality in Indonesia's oceans, allowing IUUF actors to conduct crimes at sea in Indonesia.²¹²

²¹⁰ Tanty S. Reinhart Thamrin, 2016, "Penegakan Hukum Laut Terhadap Illegal Fishing", https://www.academia.edu/13120162/PENEGAKAN_HUKUM_LAUT_TERHADAP_ILLEGAL_FISHING (12.12.2021).

²¹¹ Pujo Wahjono, 2010, *Transnational Crime and Security Threats in Indonesia*, Strategy Research Project, US Army War College Publisher, Pennsylvania, p. 98.

²¹² Widodo, Johannes and Suadi, 2006, *Pengelolaan Sumberdaya Perikanan Laut*, Gajah Mada University Press, Yogyakarta, p. 192.

f) Response to Uncounted and Unhandled Cases of Illegal, Unreported and Unregulated Fishing

Malaysia, Vietnam, China, Myanmar, Thailand, and the Philippines contributed to Indonesia's IUUF.²¹³ Unfortunately, not all cases in the archipelago's waters are processed and followed up on, particularly by the Indonesian government. Even though MMAF conducts repetitive guards, in Indonesia IUUF is still prevalent.

This situation is being examined by at least 4,326 local and international ship units. The ships were built with 317 crew members from Indonesia, ten crew members from Malaysia, 407 crew members from Vietnam, 270 crew members from Thailand, 266 crew members from the Philippines, one crew member from Laos, one crew member from Cambodia, one crew member from Myanmar, and one crew member from China.²¹⁴

Only a few of the ships are followed by going to the court. This demonstrates that the Indonesian government's commitment remains very low. Whereas the loss of illegal fishing recorded by FAO Indonesia, in the range of 2001, estimates of research figures, about 25% of fish stocks discarded, should serve as a wake-up call for Indonesia to take immediate action.

g) Limited Supervision and Human Resources Infrastructure and Facilities

It is difficult to prohibit illegal fishing, especially in large quantities, due to an absence of infrastructural mechanism, personnel and accommodations. In 2008, for example, there were 578 Fisheries Investigators and 340 Crew Fisheries Supervisory Boats. Of course, the amount is modest compared to the vast number of marine areas that must be monitored.²¹⁵

²¹³ Greenpeace Report, 2015, "Laut Indonesia dalam Krisis", <https://www.greenpeace.org/static/planet4-indonesia-stateless/2019/02/e797aec3-e797aec3-laut-indonesia-dalam-krisis.pdf> (02.12.2022).

²¹⁴ Pengawasan Sumber Daya Kelautan dan Perikanan, 2016, "Refleksi 2015 dan Outlook 2016", https://psdkpinfrastruktur.weebly.com/uploads/2/9/6/4/29643353/refleksi_2015_dan_outlook_2016_psdkp.compressed.pdf (02.12.2022).

²¹⁵ W. Battista, Rainer Romero-Canyas, S. Smith, Jose Fraire, Micah Efron, Dylan Larson-Konar and R. Fujita, 2018, *Behavior Change Interventions to Reduce Illegal Fishing*, Frontiers in Marine Science, California, p. 89.

h) Overfishing and the State of the Fishery Disaster

Indonesia has an advantage in continuing to expand the fishing industry because Indonesia includes the three countries with the highest fishery manufacturing. However, the steps to attain the goal are still delayed by various hurdles, one of which is optimization, which is hampered by the lack of a decent ecosystem and supervision of oceanic conservationism, which is inadequate. Economic growth and national export growth demonstrate Indonesia's readiness to face the ASEAN Economic Community in 2015. Indonesia's preparation can be measured in terms of economic growth. Furthermore, enormous production / overfishing exploitation is boosting fishery activity, depleting fish supplies, and harming Indonesia's territorial waters. However, the incentive of a substantial worldwide fish demand has not stopped the criminals.²¹⁶

2- External Factors

a) Global Fish Stocks Drastically Fall

Without a good ecosystem growth cycle, the number of fish is fast dropping. Due to IUUF and overfishing, the world's fish stocks have declined dramatically reduced vessel operating licenses, allowing IUUF to thrive in Indonesian waters. Data from a 2012 study show that Indonesia's most vulnerable fisheries are demolished based on coral ridge supervision indicators, nourishment safety, and fishery condition, even though Indonesian waters are home to numerous species of marine biota and are sought for fishing by other countries. This is also why some fishing sector nations have a steady supply of fish, both officially and illegally.²¹⁷

b) The Rising of Global Fish Use

Demand for fish has risen highly nationally and internationally because fish is a good source of protein. National fish consumption has increased to more than 1,2 million tons in the last five years, according to WALHI. As a result, the value of national fisheries

²¹⁶ Heru Prijanto, 2007, *Hukum Laut Internasional*, Bayumedia Publishing, Malang, p. 79.

²¹⁷ S. Hughes, A. Yau, L. Max, 2012, "A Framework to Assess National Level Vulnerability from The Perspective of Food Security: The Case of Coral Fisheries", *Environmental Science & Policy Journal*, Toronto, p. 104.

imports increased by 12,51 percent from 2004 until 2005, significantly less than the 1,6 percent standard increase in fishery trades. This indicates the growing popularity of fish in modern Indonesian society, with annual consumption reaching 26 kg/per capita. At the same time, the FAO projects that global fish consumption will increase.²¹⁸

The increasing global fish consumption has resulted in a fish crisis in the oceans, particularly in the absence of immediate anticipation steps from countries worldwide, including Indonesia. There are no concrete steps to anticipate the crisis, so it will significantly accelerate the exercise of illegal fishing, which has been predicted to be a source of abundant fish.²¹⁹

c) Other Countries' Fish Resources are Depleting

Fast hi-tech advancements over the previous few periods have helped the worldwide fish stock to the international fish supply. Fishermen's sophisticated equipment has dramatically increased the amount of fish catches, resulting in a loss of fish output because of an unbalanced between capture and breeding. According to a 2007 FAO report, around 52% of the world's sea fish supplies have been entirely fished. As a result, around 52% of the world's marine fish populations are no longer exploitable. Furthermore, the FAO report states that around 17% of the earth's fisheries have been damaged. An edition of the scientific journal released in 2006 said, “*If existing patterns of fish supply exploitation continue, the earth's commercial fisheries will "collapse" by 2050*”.²²⁰

d) Fish Price Inconsistency

The price difference between Indonesia and other fishing sector countries is enormous. Even though illegal fishing is costly, there is still a profit to be made. The price differential

²¹⁸ FAO, 2010, “World Review of Fisheries and Aquaculture”, <https://www.fao.org/3/i1820e/i1820e01.pdf> (01.01.2022).

²¹⁹ *Ibid.*

²²⁰ WWF Indonesia, 2008, “Krisis Perikanan Landa Indonesia”, http://awsassets.wwf.or.id/downloads/krisis_perikanan_landa_indonesia.pdf (05.09.2022).

between whole fish from other nations and Indonesia is large enough to generate a profit.²²¹

²²¹ George Junus Aditjondro, 2003, *Kebohongan-Kebohongan Negara, Perihal Kondisi Objektif Lingkungan Hidup di Nusantara*, Pustaka Pelajar, Yogyakarta, p. 27.

III. IUU FISHING AND THE IMPACT FOR INDONESIA

Indonesia has suffered considerable losses as a result of the growth of IUUF. In general, IUUF has three effects on Indonesia: the ecological impact, the economic impact, and the Indonesia's worldwide image. Ecological impacts are those that have an impact on the long-term viability and sustainability of fishing resources.²²² Ecological implications of IUUF are poisons and other harmful compounds in some IUUF techniques, which have deadly consequences for atoll ecosystems and can jeopardize human healthiness and fish types.²²³

The condition of coral reefs in Indonesia is rapidly deteriorating. Data from 1,259 observation stations across Indonesia showed that only 5 percent of atolls were in an extraordinary situation in 2015, and 27.01% were in good condition. The remaining 37.97% were in poor condition, with 30.02% in deplorable condition.²²⁴ The primary causes of coral reef degradation are destructive fishing methods and natural phenomena. The destructive ways are diverse, with explosives and toxic substances dominating. These destructive fishing methods can significantly impact biological diversity, reducing fish populations. Conditions in which fish stocks begin to deplete will directly affect humans since the obtainability of fish as foodstuff is life-threatening, mainly aimed at coastal communities.²²⁵

IUUF in Indonesia territory results in lost potential income from the state fishing sector, regarding economic impact. This is because illicit fishing operators do not pay the numerous fees that should be paid. Annual losses in Indonesia might reach 4 billion, or IDR 56,13 trillion. Based on 11 to 26 million tons of captured, estimated losses from IUUF practices range from 15,5 to 36,4 billion USD. It ranges from 4 to 7 million tons

²²² U.R. Sumaila, J. Alder and H. Keith, 2006, "Global Scope and Economics of Illegal Fishing", *Marine Policy* Vol 30 (6), p. 699.

²²³ Collin Koh, 2016, *Post-South China Sea Arbitral Ruling and Indonesia's Pivot to the Natura Islands*, Broader Horizons S. Rajaratnam School of International Studies, p. 48.

²²⁴ Faradiba Putri Rahmadani & Agus Triono, "Ship Sinking Policy: A Legal Choice to Eradicate Illegal Fishing in Indonesia", *Lampung Journal of International Law* Vol. 4 (2), p. 59.

²²⁵ Dikdik Muhammad Sodik, 2007, "Combating IUU, Unreported and Unregulated Fishing in Indonesian Waters: The Need for Fisheries Legislative Reform", *PhD Thesis*, University of Wollongong, p. 9.

each year, with a value ranging from 4,3 billion to 8,3 billion USD, with the Pacific Ocean region accounting for most of it.²²⁶

The most recent impact of IUUF has been on Indonesia's international image. Indonesia is committed to eradicating any maritime crime that violates international or national regulations. The practice of IUUF in Indonesia exemplifies the country's disappointment to control fishing movement in its region. Indonesia is prone to worldwide protests and criticism due to its unfavourable reputation in the international community due to its failure to handle IUUF procedures. Aside from protests and criticism, a distorted view of Indonesia may reduce sanctions or restrictions imposed by international organizations or other countries.²²⁷

A) VESSEL-SINKING POLICY IMPLEMENTATION AS A STRATEGIC APPROACH TO IUUF ERADICATION

The Indonesian government has created a policy of sinking ships as a planned goal in its IUUF eradication agenda. The implemented ship-sinking policy is enormous and organized, with enough policy instruments to back it up. Forming a task force for the prevention and eradication of IUUF, as a result of this referred to as “Task Force 115”, demonstrates policy instrument support.²²⁸

The task force's responsibilities include developing and functioning regulation to eradicate illegal fishing by maximizing the utilization of personnel and operating equipment belonging to the MMAF, Indonesian National Police, Indonesian Navy, Special Task Force for Upstream Oil and Gas Business Activities (SKK Migas), Maritime

²²⁶ Basten Gokkon, 2018, “Indonesia’s Crackdown on Illegal Fishing is Paying off, Study Finds”, <https://news.mongabay.com/2018/04/indonesias-crackdown-on-illegal-fishing-is-paying-off-study-finds/> (02.12.2022).

²²⁷ Adelle Neary, 2014, “Jokowi Spells Out Vision for Indonesia’s”, *Global Maritime Nexus, Center for Strategic and International Studies* Vol V (24), p. 1-3.

²²⁸ Musthafa Hadi Munawar, 2018, “Kebijakan Penenggelaman Kapal sebagai Kebijakan Strategis Pemberantasan Illegal, Unreported, and Unregulated (IUU) Fishing di Indonesia Tahun 2014-2017”, *Journal of International Relations* Vol. 4 (4), p. 883.

Security Agency (Bakamla), Attorney General's Office, PT. Pertamina and linked organisations.²²⁹

The Indonesian government continuously conducted ship-sinking as a planned directive to eradicate IUUF from 2014 to 2017. According to MMAF data in February 2018, the number of IUUF vessels sunk between October 2014 and October 2017 totalled 363, containing information on 18 IFVs and 345 FFVs. Vietnamese vessels (188), Filipino vessels (78), Malaysian boats (52), Thai vessels (22), Papua New Guinea vessels (2), Chinese vessels (1), Belize vessel (1), and (1) Nigerian vessels were among the 345 FFVs sunk.²³⁰

D) THE SHIP SINKING RULE'S EFFECT AS A STRATEGIC PLAN FOR IUUF ERADICATION

The execution of the ship sinking strategy in Indonesia as a tactical policy for eradicating IUUF has considerably impacted the dynamics of Indonesian fisheries and maritime matters. The establishment of a primary ship-sinking policy had a significant influence. The effect is mainly favourable, given that the performance of the ship sinking strategy indicates that areas of state apparatus in Indonesia's seas are a priority for the government.

The positive consequences include both direct and indirect outcomes. The direct outcomes are an increase in domestic fishing productivity. According to MMAF statistics released in 2018, the volume of fishery production in 2014 was 20,94 million tons. In 2015, it reached 22,31 million tons, with 6,68 million tons of capture fisheries and 15,63 million tons of cultural fishing manufacture. This output climbed by 23,26 million tons in 2016, with a capture fishery output of 6,58 million tons and an aquaculture output of 16,68 million tons. Total production increased to 24,21 million tons in 2017, with 6,99 million tons of capture fisheries and 17,22 million tons of aquaculture production.

²²⁹ Sekretariat Kabinet Republik Indonesia, 2015, "Prihatin Pencurian Ikan, Presiden Jokowi Bentuk Satgas Pemberantasan IUU Fishing", <https://setkab.go.id/prihatin-pencurian-ikan-presiden-jokowi-bentuk-satgas-pemberantasan-illegal-fishing/> (02.10.2022).

²³⁰ Marine Resources and Fisheries of Indonesia, "Directorate General of Marine Resources and Fisheries Supervision", <https://kkp.go.id/dipsdkp/infografis> (02.12.2022).

Following the increase in production numbers, there was an increase in the *Indonesian Fish Consumption Rate* or IFCR and the exportation capacity of fisheries goods.²³¹

The indirect positive impact affecting in the local fishing industry, adopting the vessel-sinking rule as a tactical policy, has increased public awareness of IUUF as an issue in Indonesia's marine sector. The enhanced level of public knowledge is due to the vessel-sinking policymaking of many national and international media headlines at the start of its execution as a tactical policy. This is since sinking ships as a strategic rule is novel and has never been applied.²³² The rise of knowledge of this fisheries issue is also one of the purposes of the Indonesian authority's application of the boat's sinking plan as a planned program for eradicating IUUF. Where there is responsiveness, there will be a concern for concerns associated with IUUF, which will inspire the society to enthusiastically participate in the outline of eradicating Indonesia's IUUF.

The indirect impact is that the volume of Indonesian fishery goods exported has increased. Based on data announced by the MMAF, the quantity of fisheries trades to key partners such as the European Union (EU), China, Japan and the U.S improved during 2016-2017, with exports to ASEAN countries reaching 3.28 percent, the U.S 12.92 percent, Japan 7.81 percent, the EU 9.69 percent and China 14.47 percent.²³³

²³¹ Victor Nikijuluw, 2008, *Blue Water Crime: Illegal Fisheries Social Economic Dimensions*, Jakarta Cidesindo, Jakarta, p. 26.

²³² Food and Agriculture Organization of the United Nations, 2016, "FAO Director-General Meeting with Indonesia's Minister for Marine Affairs and Fisheries", https://www.fao.org/indonesia/news/en/?page=38&ipp=5&tx_dynalist_pi1%5bpar%5d=YToxOntzOjE6IkwiO3M6MToiNyI7fQ==,%20 (09.09.2021).

²³³ Benjamin Sovacool, 2009, "A Game of Cat and Fish: How to Restore the Balance in Sustainable Fisheries Management", *Ocean Development and International Law* Vol 40 (1), p. 9.

IV. LEGAL ENFORCEMENT ON IUU FISHING IN IEEZ

Sinking and burning foreign illegal fishing vessels is not a fresh strategy because this strategy was implemented during the reign of Megawati Soekarnoputri. As is acknowledged, one of the functions of applying legal sanctions is to create a deterrent effect on perpetrators of violations or crimes.²³⁴

Weak law enforcement so far and the absence of action against perpetrators of violations or crimes that occur because they are not oriented towards a deterrent effect can be considered an indirect contribution by the state to the proliferation of criminal acts. It can even be said to be a form of the state's inability to provide legal protection to its citizens, both fishermen in particular and the Indonesian people as owners of Indonesia's marine resources generally.²³⁵ Because the ship is the main object for the offenders, this move will have a deterrent influence. If the vessel and its gear are sunk or burn, perpetrators will consider repeating the crime in the Indonesian area.

Although there are pros and cons to sinking or burning overseas ships that engage in IUUF in Indonesia seawaters, this action intends to demonstrate the Indonesian government's determination and authority in protecting its territory and natural resources, as well as safeguarding its independence, creating a deterrent consequence, safeguarding the maritime space from predatory by external parties, and being a concrete act of struggles to interpret the *vision of the maritime axis*.²³⁶

The strategy of sinking or burning vessels by Indonesia raises both advantages and disadvantages, and the sinking or burning will affect international ties, notably those with the fishermen's home country.²³⁷ In truth, these behaviours are abuses of human rights,

²³⁴ Setyo Widagdo, Ikaningtyas & Rika Kurniaty, 2018, "The Implementation of Sinking Vessel Policy as an Effort to Protect Indonesian Fishery Resources and Territorial Waters", *IOP Conference Series: Earth and Environmental Science* 137, p. 2.

²³⁵ Mansur Juned, Galby Rifqi Samhudi and Rahmat Aming Lasim, 2019, "Indonesia's Sinking of Illegal Fishing Ships on Major Southeast Asia Countries", *International Journal of Multicultural and Multireligious Understanding* Vol. 6 (2), p. 70.

²³⁶ Mary Ann Palma, 2009, "Combating IUU Fishing: International Legal Developments", <https://ro.uow.edu.au/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1229&context=lawpaper> (04.06.2022).

²³⁷ H. Kissinger & H. Klitzing, 2012, *Nation Interest Between International Politic Disorder*, Palgraff Publishing, London, p. 87.

defilements of the law, and inhumane behaviour. The strategy of sinking boats that breach the rules in Indonesian territory will not deteriorate bilateral relations. There are various reasons why shipwrecks do not worsen international relations, such as:

- There is no country in this world that justifies the actions of its citizens who commit crimes in other countries;
- Foreign fishing boats that are burn or sunk are vessels that do not have an operating license to fish in Indonesian sea areas;
- The act of sinking or burning is carried out in the territory of sovereignty and is Indonesia's sovereign right in the EEZ; and
- The sinking or burning process paid attention to the safety of the crew and the sinking was carried out on the basis of a valid legal umbrella, namely Article 69 paragraph (4) of the Fisheries Law No. 45 of 2009 concerning Fisheries.²³⁸

This policy was also carried out by other countries in the same case. Law enforcement of the sea, which provides sanctions for sinking ships, is considered very effective and can give shock therapy for perpetrators of fishing theft. China and Malaysia, for example, have adopted a policy of sinking Vietnamese fishing vessels.²³⁹ Australia did the same for Thai and Indonesian fishing vessels. As a result, as long as it is implemented following legal requirements, this policy determination does not jeopardize Indonesia's bilateral affairs with the states of origin of the ships.²⁴⁰

However, the Indonesian government must publicize this policy to other countries, particularly those whose ships frequently illegally enter Indonesian maritime/fishing zones, for example the Philippines, Thailand, Malaysia, and China. The administration will then communicate with delegations from the states whose ships were sunk. As a result, strong connections between countries are preserved.

²³⁸ B. P. Resosudarmo, L. Napitupulu & D. Campbell, 2009, "IUU Fishing in the Arafura Sea: Working with Nature Against Poverty: Development, Resources, and the Environment in Eastern Indonesia", *Institute of Southeast Asian Studies*, Singapore, p. 187

²³⁹ Melania Borit & Petter Olsen, 2012, "Evaluation Framework for Regulatory Requirements Related to Data recording and Traceability Designed to Prevent Illegal, Unreported and Unregulated Fishing", *Marine Policy* Vol 36 (1), p. 98.

²⁴⁰ Lisbet Sihombing, 2004, "Diplomasi Indonesia Terhadap Kasus Penenggelaman Kapal Nelayan Asing", <https://onerech.id/Author/Home?author=P3DI+Setjen+DPR+RI>, *P3DI Setjen DPR RI*, p. 7.

The Indonesian government carried out this policy in stages following the stages of a conventional diplomacy strategy.

First is the scheming and arrangement stage.

At this step, the diplomatic format's plan is simulated to assess the potential response. This drowning policy statement, for example, seeks to protect the rule of law in Indonesia's sovereign territory.²⁴¹

The second stage is the constraining stage.

In this situation, the government must consider how far the communication target will respond to the message and which news components must be addressed. The political attempt will be to educate ambassadors from nations whose fishermen are alleged to engage in illegal fishing regularly. The MMAF and the Ministry of Foreign Affairs (MFA) have communicated this strategy with various ambassadors from friendly nations in this context. It is expected that this rearing will be passed on to their corresponding authorities, economic players, and fishers. This measure is also taken to keep good relations.

The third is the exercising stage.

In this stage, diplomacy is launched. The governments of Vietnam, Thailand, and Malaysia have also taken this case of drowning seriously and reminded their fishermen not to violate territorial boundaries in fishing. On December 11, 2014, Vietnam's MFA held tough talks with Indonesia regarding the incidents of the sinking of its fishing boats. According to the Vietnamese government, their fishermen should follow other nations' regulations and laws to avoid interrupting their territorial seas. As a result, Vietnam believes that Indonesia resolves with its citizens, ship owners, and crew who breach Indonesian regional oceans in accordance with jurisprudence and humanitarian concerns.

²⁴¹ Nasirin Chairun & Dedy Hermawan, 2017, "Kontroversi Implementasi Kebijakan Peneggelaman Kapal Dalam Rangka Pemberantasan Illegal ishing di Indonesia", *Jurnal Spirit Publik* Vol. 12, Lampung, p. 26.

Meanwhile, the Government of Thailand has announced in the local mass media that its fishermen do not carry out illegal fishing in Indonesian territory. Malaysia has also taken similar steps. Dato Seri Zahrain Mohamed Hashim, Malaysia's Ambassador to Indonesia, stated that “He does not mind Indonesia sinking foreign fishing vessels because this policy applies to foreign fishing vessels poaching fish in Indonesian waters”.²⁴² Additionally, Ambassador Hashim will continue to remind his country's fishermen not to be careless crossing the border. To avoid this carelessness, fishermen have installed a detector or Global Positioning System (GPS) on every boat.

Efforts to strictly enforce the law are also carried out by considering the agreements between Indonesia and the relevant countries. The proper diplomatic steps ensure that the countries concerned are ready to help Indonesia to prevent their fishermen from entering Indonesian territory without permission.²⁴³

However, no state in the world can justify its citizens' activities in other states. For example, after obtaining information about the arrest of a foreign fisherman in Kalimantan waters, the MFA sent a consular notification to the relevant embassies in Jakarta. This consular notice is intended to warn foreign representatives about their citizens who enter Indonesian territory without permission and are suspected of engaging in unlawful activities.²⁴⁴ Despite Malaysia's encouraging response, Indonesia still has to reinforce the *Indonesia-Malaysia MoU on the Handling of Fishermen by Law Enforcement Agencies in the Sea of the Republic of Indonesia and Malaysia* to avoid future problems.

On January 27, 2012, in Bali, Indonesia, represented by the Daily Executive of the Maritime Security Coordinating Board (Bakorkamla), and Malaysia, represented by the Secretary of the Malaysian State Safety Council, signed a *Memorandum of Understanding Between the Government of Malaysia and the Common Guidelines*

²⁴² Enrico Brivio & Stoycheva Daniela, 2019, “Commission Lifts “Yellow Card” from Thailand for its Actions Against Illegal Fishing”, https://ec.europa.eu/commission/presscorner/detail/en/IP_19_61 (27.09.2022).

²⁴³ Arief Ussama, 2003, “Review in the Judicial Sector of the Territorial Waters of Indonesia”, *Journal of Keadilan* Vol 3, p. 345.

²⁴⁴ Amelia Rahmi & Melda Kamil Ariadno, 2018, “Sinking of Vessel as the Country’s Efforts in Keeping the Utilization of Sustainable Fish Resources”, *E3S Web of Conferences* Vol. 74, p. 5.

Concerning the Treatment of Fishermen by Maritime Law Enforcement Agencies.
According to the MoU Art. 3 stated that:

“Law enforcement will only conduct inspections and require fishing vessels to leave Indonesian territorial seas if they utilize unlawful fishing gear such as explosives and electric and chemical fishing gear”²⁴⁵

Fourth, evaluating.

The government needs to assess the results of diplomacy that have been done. Indonesia is currently evaluating the results of the policy diplomacy on sinking foreign fishing vessels, which has been submitted to the Ambassadors and has expected affirmative replies after some governments of the ship's country of origin.

Fifth, the stages of reapproaching or concluding.

The evaluation results will be used as a basis for the government to determine the next steps.

²⁴⁵ M. Ambari, 2022, “Indonesia, Malaysia to Hold Joint Patrols Against Illegal Fishing”, <https://news.mongabay.com/2022/02/indonesia-malaysia-to-hold-joint-patrols-against-illegal-fishing/> (21.12.2022).

CONCLUSION

The three most important conclusions that may be taken to answer the questions raised by the thesis can be derived from the explanations that came before them. Significant economic and environmental harm can be caused by illegal, unreported, and unregulated (IUU) fishing, which puts Indonesia's interest in maintaining its EEZ for sustainable resource usage at risk.

Existing international sanctioning measures are rendered ineffective as a result of a lack of political will, capacity, and resources on the side of coastal and flag states to implement primary international instruments pertaining to illegal, unreported, and unregulated fishing (IUUF). According to one interpretation of the term "necessary" in UNCLOS Article 73 (1), in order for a coastal state's enforcement actions to be considered "necessary," they must be the only available means capable of ensuring effective compliance with the coastal state's laws and regulations, such as applying a burning or sinking policy.

This interpretation was provided by the United Nations Convention on the Law of the Sea (UNCLOS). In addition, this "only means" cannot place an undue burden on the protected rights of other states, nor can it be prohibitively difficult for the coastal state to put into practice. Article 73 of UNCLOS outlines the procedures that must be followed in the event that a country's exclusive economic zone is violated. It is not stated unequivocally (with absolute certainty) in this article whether or not foreign ships that violate the EEZ are sunk or burned. Only the advice that in the event of an arrest or detention of a foreign ship and its crew, the nation that carried out the arrest or detention must promptly notify the flag state of the ship regarding the actions taken and the sanctions imposed on it is contained in this article is provided. In point of fact, the coastal state is required to make use of this jurisdiction in order to ensure that fishing vessels adhere to the national laws and regulations that have been put into place for the fishing industry. On the other hand, the more invasive the powers exercised by the coastal state, the greater the likelihood they will be compelled to have a rationale for such powers.

Even though, International Law do not clearly state that burning or sinking policy are allowed, but there are some international legal bases might assist as a foundation for

Indonesia to enact ship sinking or burning legislation responding to reckless and unlawful fishermen, such as:

A) International Law

- UNLOS
- IPOA–IUUF 2001
- CCRF, Code of Conduct for Responsible Fisheries
- Agreement on Port State Measures to Prevent, Deter and Eliminate IUUF

B) Domestic Law

- The 1945 Constitution of the Republic of Indonesia
- Law No. 45/2009 on Fisheries

The following is the procedure that the government of Indonesia follows when dealing with foreign vessels that have been detected engaging in IUUF activity within Indonesian territory:

- Bringing the ship and all of its passengers and crew ashore;
- A judicial proceeding will be carried out on land, in locations where there is a fisheries court;
- The vessel that was captured will be seized when the defendant has been prosecuted and found guilty, and the verdict will have long-lasting legal force.
- If the ship is taken into custody, the executing attorney will determine the vessel's fate. The ship may be put up for sale at an auction, or it may be sunk and burned.
- If the ship is to be destroyed, the sinking and burning option is one possibility.

In order to effectively give the deterrence effect and prevent illegal, unreported, and unregulated fishing within Indonesia's exclusive economic zone (EEZ), Indonesia must take the necessary procedures to sink or burn any foreign vessel caught participating in such activities. These kinds of remedies ought to be utilized on a case-by-case basis, with careful consideration given to both the particulars of the situation at hand and the severity of the violation that has been committed.

Even so, maintaining consistency across all measures is necessary to demonstrate that there are no less intrusive options that can have the same result. The fact that illegal, unreported, and unregulated fishing is increasingly carried out across international borders makes it necessary for Indonesia and the proper flag nations, whose vessels are involved in IUU fishing in Indonesia's exclusive economic zone (EEZ), to work together and have the political will to do so. Suppose the relevant flag nations do not agree to participate in Indonesia's efforts to give the deterrence effect and prevent IUU fishing. In that case, Indonesia may resort to more powerful enforcement techniques, such as burning or sinking IUU vessels as the last option.

ACADEMIC SOURCES

A) PRIMARY SOURCES

1- Convention Based Regime

- ◆ UNLOS, United Nations Convention on the Law of the Sea, https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf
- ◆ International Plan of Action to Deter Illegal, Unreported and Unregulated Fishing 2001, https://www.wto.org/english/tratop_e/rulesneg_e/fish_e/2001_ipoa_iuu.pdf
- ◆ CCRF, Code of Conduct for Responsible Fisheries, <https://www.fao.org/3/v9878e/v9878e.pdf>
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ABSTRACT

Indonesia has burned or sunk foreign vessels to prevent illegal, unreported, and uncontrolled fishing (IUUF) in its exclusive economic zone (EEZ). Although Article 73 (1) does not explicitly (firmly) state whether or not foreign ships that violate the EEZ are sunk or burned, and the article only advises that in the event of an arrest or detention of a foreign ship and its crew, the country that made the arrest/detention must immediately notify the ship's flag state regarding the actions taken and the sanctions imposed on it, it allows coastal states to take measures that are "necessary to ensure compliance with their laws and regulations." This thesis examines the need for a sinking and burning policy to combat IUUF in Indonesia's exclusive economic zone. The thesis uses normative legal research, secondary data, and a case-relevant approach.

Keywords: Necessary; IUU Fishing; Vessel Sinking Policy; Deterrence Effect.

ÖZ

Endonezya, münhasır ekonomik bölgesinde (MEB) yasadışı, kayıt dışı ve kontrolsüz balıkçılığı (IUUF) önlemek için yabancı gemileri yaktı veya batırdı. Madde 73 (1) MEB'i ihlal eden yabancı gemilerin batırılıp yakılmadığını açıkça (kesin bir şekilde) belirtmemesine ve maddede yalnızca yabancı bir gemi ve mürettebatının tutuklanması veya alıkonulması durumunda, tutuklama/tutuklama yapan ülkenin geminin bayrak devletine yapılan işlemleri ve uygulanan yaptırımları derhal bildirmesi, kıyı devletlerinin "kanun ve yönetmeliklerine uyumu sağlamak için gerekli" tedbirleri almasına olanak tanıyor. Bu tez, Endonezya'nın münhasır ekonomik bölgesinde IUUF ile mücadele etmek için batan ve yanan bir politikaya duyulan ihtiyacı incelemektedir. Tez, normatif yasal araştırma, ikincil veriler ve vakayla ilgili bir yaklaşım kullanır.

Anahtar Kelimeler: IUU Balık Tutma; Gemi Batma Politikası; Caydırıcılık Etkisi.