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Submission date: 05-May-2024 11:52PM (UTC+0700)

Submission ID: 2371355271

File name:

The_Quandary_of_Resolving_Illegal_Unreported_and_Unregulated_IUU_Fishing_Cases_Navigating_the_Crossroads_of_Judicial_Processes_and_Maritime_Diplomacy.pdf
(148.83K)

Word count: 4753

Character count: 27424

The Quandary of Resolving Illegal, Unreported, and Unregulated (IUU) Fishing Cases: Navigating the Crossroads of Judicial Processes and Maritime Diplomacy

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Abstract

The pursuit, arrest, and prosecution of vessels with foreign crew members involved in Illegal Unreported and Unregulated Fishing (IUU Fishing) can disrupt relations between countries. IUU Fishing perpetrators who are prosecuted in court come from a number of countries in Indonesia's border region such as Thailand, Vietnam, the Philippines and Malaysia. For example, 33 illegal foreign vessels have been successfully secured and detained as evidence, consisting of 15 Vietnamese-flagged vessels, 9 Philippine-flagged vessels, 8 Malaysian-flagged vessels and 1 Taiwanese-flagged vessel. The pursuit and arrest above are processed judicially. The purpose of this study is to find a concept of law enforcement action, especially the prosecution process against IUU Fishing perpetrators without disregarding the principle of good relations between countries. Research with a normative juridical approach finally concludes that as a sovereign state, the legal settlement for foreign perpetrators uses stages of the fishery prosecution process. This judicial process is the right of the coastal state without neglecting maritime diplomacy to maintain the principle of good relations between countries. Diplomacy is needed to build cooperation to ensure that maritime areas in the country's border region are safe from IUU Fishing activities.

Key Words: *IUU Fishing*, judicial processes, maritime diplomacy.

1. Introduction

The high number of maritime crimes occurring in Indonesian waters indicates that the country still faces the challenge of strong maritime law enforcement and security, as well as the ability to handle illegal fishing.¹

Maritime crimes are perpetrated using a variety of modus operandi by IUU Fishing perpetrators as a means of obfuscating law enforcement officers. The crime of overfishing in Indonesia's fishing zones is evident in data and trends that show a threat to future fish

production.² In response to the escalating maritime crimes, national law enforcement agencies are compelled to initiate judicial proceedings.

In the context of maritime crimes, Article 111 of UNCLOS 1982 authorizes the pursuit (hot pursuit), apprehension, and detention of foreign vessels and their crew members suspected of engaging in IUU Fishing. It is widely acknowledged that IUU Fishing activities occur across all fishery sectors and geographical areas, ranging from inland waters to the high seas.³ Hot pursuit, apprehension, and detention are integral components of a nation's judicial efforts to combat maritime crimes. Between October 2014 and August 2018, a total of 488 IUU Fishing vessels were sunk as part of the enforcement measures.⁴ Out of the total 488 IUU Fishing vessels sunk during the period from October 2014 to August 2018, 276 originated from Vietnam, 90 from the Philippines, and 50 from Thailand. Since late 2020, several foreign vessels have been apprehended and identified, including the Vietnamese-flagged vessels MV Dolphin 457 and MV Dolphin 638, as well as the fishing vessel M/BCA Marian. According to investigation data from the Ministry of Marine Affairs and Fisheries (KKP) in Bitung, a total of 33 illegal foreign vessels have been secured and detained as evidence, comprising 15 Vietnamese-flagged vessels, 9 Philippine-flagged vessels, 8 Malaysian-flagged vessels, and 1 Taiwanese-flagged vessel.⁵ Throughout 2021, the Ministry of Marine Affairs and Fisheries took action against 53 foreign fishing vessels caught engaging in illegal fishing activities in Indonesian waters. In cases that proceeded to legal proceedings, a total of 144 vessels and foreign perpetrators have received inkracht verdicts (final and binding court decisions).⁶ Illegal fishing practices are generally carried out in Indonesian waters and the Exclusive Economic Zone (EEZ), including inland waters and border areas with neighboring countries.

The adjudication of IUU Fishing cases involving foreign nationals necessitates a cautious approach due to the lack of clearly defined boundaries for inland waters and the EEZ in certain regions. During law enforcement actions and court proceedings, foreign IUU Fishing suspects often resort to extrajudicial actions, such as negative provocations, which can negatively impact international relations. However, amicable relations between nations can be maintained if IUU Fishing is addressed through legal mechanisms and processes alongside active diplomacy based on international law. More specifically, maritime diplomacy draws upon the following legal instruments: Decree of the Coordinating Minister for Maritime Affairs of Indonesia No. 128 of 2019 concerning the White Paper on Maritime Diplomacy,⁷ Vienna Convention on Diplomatic Relations of 1969, Law on International Agreements of 2000, Law on Foreign Relations of 1999, The Law on Foreign Relations of 1999 serves as the overarching legal foundation for Indonesia's diplomatic activities, including those related to maritime issues. The professional methods rooted in law and diplomacy have long been established in the conduct of interstate relations, commonly referred to as professional diplomacy.⁸ The legal and diplomatic processes can be effective choices as they can help prevent the escalation of conflicts. Furthermore, engaging in dialogue with affected fishing communities and seeking collaborative solutions regarding fisheries resource management can be beneficial. The urgency of this research lies in the fact that the

enforcement of jurisdictional law in maritime areas is an integral part of sovereignty and its associated sovereign rights. With an increasing number of vessels and perpetrators involved in IUU Fishing being apprehended, delays in legal proceedings can lead to greater burdens in terms of protecting the rights and assets seized from the suspects.

Given the aforementioned background, this study endeavors to elaborate on the question: How can the judicial process of addressing IUU Fishing involving foreign nationals be carried out without compromising the principles of maintaining good relations between nations?

2. Research methods

The research is conducted from two methodological perspectives, namely a normative juridical approach through literature review complemented by primary and secondary data. Primary data is acquired through field research involving interviews with relevant authorities from the Ministry of Maritime Affairs and Fisheries regarding the pursuit, apprehension, detention, and legal processes concerning IUU Fishing perpetrators. Secondary data consists of legal materials such as international conventions, legislation, textbooks, journals, dictionaries, and other relevant sources. Qualitative analysis is employed, elucidating a logical and systematic juridical descriptive analysis. Additionally, a comparative analysis is conducted to juxtapose the formal legal provisions with expert opinions on legal resolution and diplomatic solutions.

3. Results and discussion

Temple et al. define the terminology "Illegal" within the context of IUU Fishing as the act of capturing fish conducted by vessels, whether national or foreign-flagged, within the territorial waters and EEZs of a state or under its jurisdiction without permission or in violation of the state's regulations.⁹ On the other hand, "Unreported" refers to fish captures or related activities that have not been reported, or have been falsely reported, to the relevant state. "Unregulated"¹⁰ pertains to fish captures or activities related to fish captures conducted within EEZs or the fisheries management jurisdiction of a state by vessels without nationality, vessels flying the flag of a non-party state to the relevant fisheries management body, or those associated with fish stocks where there are no applicable conservation or management regulations and which contravene international law as well as the state's management measures for fisheries.¹¹

3.1. Maritime sovereignty

States exercise sovereignty over their maritime territories, including territorial seas and EEZs. Within these areas, states have the authority to regulate and control activities such as fishing, as well as enforce laws against IUU Fishing violations. The state serves as the political entity through which sovereignty is manifested. The highest authority lies with the state as a territory bounded by the seas and/or land.¹² Due to the extensive maritime territory, Indonesia is often referred to as a maritime nation.¹³ Maritime territory encompasses territorial waters, archipelagic waters, and inland waters, including waters within land areas such as rivers, canals, and lakes.¹⁴

In addition to maritime territory, there are also maritime zones that constitute sovereign rights of the state. Indonesia's EEZ constitutes an area where the state exercises sovereign rights, as well as other rights, jurisdiction, and obligations. Law enforcement

authorities of the Republic of Indonesia are empowered to take law enforcement actions in accordance with criminal procedural law. The existence of Indonesia's territory, comprising 17,499 islands, with a maritime area of 5.8 million square kilometers, still faces challenges in realizing maritime security and law enforcement at sea.¹⁵

Sovereignty is one of the fundamental principles underlying the establishment of peaceful international relations. Sovereignty over territory refers to the authority held by a state to exercise its powers within the boundaries that have become part of its jurisdiction.¹⁶ The law is intentionally created to regulate the behavior of society. Additionally, the law is utilized as an agent of change capable of altering societal actions, and it serves as a form of social control that compels community members to adhere to and abide by the prevailing legal norms.¹⁷ Investigation and the implementation of administrative sanctions or criminal penalties constitute the final stage (climax) of law enforcement, preceded by preventive enforcement, which involves monitoring compliance with regulations.¹⁸

The United Nations Convention on the Law of the Sea 1982 places the rights and obligations of states in utilizing the sea adjusted to the legal status of different parts of the sea, which can be categorized as follows:¹⁹ being under the full sovereignty of the state, states having exclusive rights, subject to the principle of freedom on the high seas, and declared as the common heritage of mankind.

3.2. Law Enforcement

IUU fishing has been identified by the United Nations as one of the seven primary threats to global maritime security.²⁰ It is estimated that illegal fishing contributes to about one-third of the global annual catch and substantially impacts marine environments and coastal communities reliant on fisheries for their livelihoods. States have an obligation to enforce their laws against IUU fishing perpetrators, including foreign nationals. In the event of disputes between states, they may decide to bring IUU fishing cases to international courts, such as the International Court of Justice or other international arbitration bodies. The International Court of Justice will develop jurisprudence that influences decisions adopted by international courts and tribunals. The value of judicial decisions is based on international law.²¹ This allows for a fair and objective resolution in accordance with international law. States can also conduct regular monitoring and evaluation of the effectiveness of their law enforcement actions and judicial processes against IUU fishing perpetrators to ensure that principles of good relations between nations are maintained. By adhering to these principles, states can enforce their laws against IUU fishing perpetrators without sacrificing good relations between nations and ensure that a fair and sustainable resolution can be achieved.

Perpetrators of IUU Fishing who are foreign nationals are defined as individuals who reside and settle in a particular country but are not native to that country and are not officially registered as citizens. Foreign nationals are referred to as residents when an individual has resided and settled in the territory of Indonesia for 1 consecutive year. The status of foreign nationals as residents in Indonesia is affirmed in Article 13 of Law No. 3 of 1946 concerning Citizenship, which states, "Anyone who is not an Indonesian citizen, namely a foreigner." Regarding foreign nationals perpetrators and their vessel and seized

assets, it is regulated in Article 13 of the Citizenship Law that the rights and obligations of foreign nationals during their stay in Indonesia include the right to all protections of their fundamental rights, including protection of their person or property owned by the foreign nationals, during the official process. Foreign nationals are obligated to comply with and adhere to all applicable laws and regulations in Indonesia.

3.3. IUU Fishing and judicial processes

The practice of IUU Fishing must be prevented and eradicated as soon as possible because the natural resources in the sea must be protected to the fullest extent for the benefit of the people. Pursuit, capture, and judicial proceedings against IUU Fishing perpetrators must be conducted. Regulations regarding illegal fishing are stipulated in both national law and international conventions,²² governed by both the United Nations Convention on the Law of the Sea 1982 and Indonesia's national positive law such as Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries and its derivatives. The Fisheries Law asserts that foreign vessels caught engaging in illegal fishing may be subject to measures such as burning or sinking if sufficient evidence is available. The Supreme Court of the Republic of Indonesia supports the Indonesian government's policy of sinking illegal fishing vessels to deter the impact caused by perpetrators of illegal fishing. Based on Article 69 of Law No. 45 of 2009, there are two (2) ways that the Indonesian government, through the Authority, can take action, namely:²³ Sinking of vessels through Court Decisions: a. The authorized party that has captured the fishing vessel and its crew to shore. b. The existence of a fisheries court conducting legal proceedings against the vessel and its crew. c. After being tried and found guilty, the seized vessel will be confiscated. d. After confiscation, the authorized party has the authority to either destroy or auction the vessel. The policy pursued by Indonesia is not contrary to international law. According to Kahraman et al., domestic courts should resolve legal conflicts. Courts function as platforms to resolve conflicts using their adjudicative roles in accordance with extraterritorial jurisdiction.³

The legal measures to combat IUU Fishing are carried out based on the Minister of Marine Affairs and Fisheries of the Republic of Indonesia Decree Number KEP.50/MEN/2012 concerning the National Action Plan for Prevention and Combating of Illegal, Unreported, and Unregulated Fishing. Handling cases of IUU Fishing begins with law enforcement actions conducted by surveillance vessels based on Article 111 of UNCLOS 1982 (Ratified through Law No. 17 of 1985) regarding Hot Pursuit. Article 111 of UNCLOS 1982 contains requirements for pursuit. The task of immediate pursuit carried out by Fisheries Surveillance (PSDKP) is regulated in Article 66c letter (i) of Law Number 45 Year 2009, where Fisheries Surveillance is authorized to stop, detain, and capture vessels and individuals suspected of committing fisheries crimes in the Indonesian fisheries management area. Fisheries Surveillance is authorized to hand over vessels and individuals violating regulations to the port where the case is to be processed further by investigators.

Procedural law governing the resolution of IUU Fishing issues is regulated in Chapters XIII and XIV of the Fisheries Law. Essentially, procedural law within the Fisheries Law follows the stages of criminal procedural law as stipulated in the Indonesian

Code of Criminal Procedure. The difference lies only in several provisions that have been specifically regulated by the Fisheries Law. The Fisheries Law stipulates the authority for investigation in resolving IUU Fishing issues to be carried out by 7 law enforcement agencies, namely: the Ministry of Marine Affairs and Fisheries - Directorate of Fisheries Resources Surveillance, Indonesian Navy, Indonesian National Police specifically the Directorate of Marine Police; Ministry of Transportation - Directorate General of Sea Transportation, Ministry of Finance - Directorate General of Customs and Excise; Maritime Security Agency (Bakamla), and the Task Force for the Eradication of IUUF Fishing (Task Force 115). These seven law enforcement agencies conduct patrols related to maritime security sectorally according to their respective authorities based on their legislation. Other law enforcement agencies that do not have maritime patrol task forces include: the Ministry of Tourism, Ministry of Health, Ministry of Environment and Forestry, Ministry of Forestry, Ministry of Energy and Mineral Resources, National Narcotics Agency, and Regional Governments.²⁵

Data regarding the instances of IUU Fishing criminal activities detected in the waters surrounding North Sulawesi between 2017 and 2019, and subsequently investigated, are as follows: a. There were 10 cases of illegal fishing conducted without proper documentation. b. 15 cases involved fishing activities utilizing Crew Members of Foreign Nationality. c. Additionally, 5 cases involved fishing activities conducted by Crew Members of Foreign Nationality without the required Sailing Approval Letter (SPB). Incidents of fisheries-related criminal activities related to IUU Fishing within the Exclusive Economic Zone of Indonesia in the waters of Sulawesi also occurred in the year 2020/2021. The data regarding these cases, handled by the Investigator of Bitung PSDKP in 2020/2021, include: a. The IUUF criminal act was committed by Sherwin G. Laurente, a Filipino national, Captain of the FB Genieve vessel, on May 24, 2021. b. IUU Fishing criminal activity was carried out by Jorge Quisto, a Filipino national, Captain of the FBCA Yaya-3 vessel, on June 22, 2021. These IUU Fishing criminal acts contravene the legislation of Indonesia as stipulated in Article 92 in conjunction with Article 26 paragraph (1) and Article 98 in conjunction with Article 42 paragraph (3) of Law No. 45 of 2009 concerning Fisheries, as amended by Law No. 11 of 2020 concerning Job Creation, in conjunction with Article 55 paragraph (1) of the Indonesian Criminal Code.²⁶

3.4. Foreign nationals perpetrators are not imprisoned

Perpetrators of criminal acts who are foreign nationals and commit fisheries offenses within the EEZs of Indonesia cannot be sentenced to imprisonment unless there is an agreement between the government of the Republic of Indonesia and the government of the respective country (Article 102). This provision parallels Article 73 paragraph (3) of the UNCLOS 1982, which does not authorize coastal state regulations to impose imprisonment or corporal punishment unless there is an agreement to the contrary between the countries concerned. The Fisheries Law does not regulate substitutes if fines are not paid by the defendant. Confiscation of the vessel as a substitute for fines is not relevant, considering that the evidence has been determined to be forfeited to the state (Article 104 paragraph (2)). In practice, the substitute for fines is based on Article 30 of

the Criminal Code, namely imprisonment penalties for a maximum of 6 months or up to a maximum of 8 months if there are aggravating circumstances (*recidive/concursus*).²⁷

3.5. Diplomatic steps

Diplomatic legal resolution steps can be taken both before and after the judicial process for foreign nationals involved in IUU Fishing, either before the court verdict is received or after the court decision becomes final. Maritime diplomacy is an effort undertaken to achieve security, stability, and national interests in maritime waters. The methods and forms used in approaching and negotiating with other countries are referred to as diplomacy. Diplomatic activities are carried out by diplomats appointed by the state.

Maritime diplomacy in this context pertains to IUU Fishing activities conducted by foreign vessels and nationals in Indonesian maritime waters. The legal basis for Indonesia's diplomacy is mandated by the 1945 Constitution, specifically Article 11, Paragraph (1), which stipulates that the president holds authority in foreign relations. The fundamental principles of foreign relations, along with the roles and functions of related institutions in foreign relations, as well as diplomatic rights and obligations, are regulated by Law No. 37 of 1999 concerning Foreign Relations. International diplomatic rules are also governed by the Vienna Convention on Diplomatic Relations of 1961, ratified by Indonesia through Law No. 24 of 1971. This convention regulates diplomatic rights and obligations, diplomatic status, immunity rights, and protection for foreign diplomats. Diplomatic activities today are facilitated by the use of information and electronic technology, as regulated by Law No. 11 of 2008 concerning Electronic Information and Transactions. The Ministry of Foreign Affairs is the institution entrusted with the authority to regulate diplomatic activities. Article 387, subparagraph c, of Regulation No. 6 of 2021 issued by the Minister of Foreign Affairs of the Republic of Indonesia regarding the Organizational Structure of the Ministry of Foreign Affairs outlines its responsibilities, which include formulating, implementing, and coordinating policies in the field of foreign relations and foreign politics, both domestically and internationally. This encompasses public diplomacy efforts at home and abroad, as well as empowering the Indonesian community overseas.²⁸

Concrete diplomatic steps have been taken as efforts to address IUU Fishing between Indonesia and China. Diplomatic efforts were initiated through Indonesia's issuance of a protest note to China, followed by the summoning of the Chinese Ambassador by Indonesia.²⁹ The diplomacy aimed to negotiate maritime boundary lines and safeguard marine resources from IUU Fishing activities, particularly between Indonesia and China. Indonesia firmly asserted that China's actions were illegal and a violation of territorial sovereignty.³⁰ Indonesia's diplomacy through the Regional Convention against IUU Fishing and Its Related Crime (2016) is a diplomatic effort to resolve issues. The regional convention with China aims to enhance cooperation and foster good relations between Indonesia and China. This convention was first held in Bali, Indonesia, on May 19, 2016, and the second one took place in Yogyakarta on October 12-13, 2016. This regional convention represents Indonesia's efforts to combat illegal fishing disputes by collaborating with other countries, particularly addressing IUU Fishing disputes repeatedly carried out by China in the waters of Natuna.

Another diplomatic practice carried out by Indonesia was during the Food and Agriculture Organization (FAO) Forum on May 10, 2016, which eventually led to the establishment of the International Port State Measures (PSM) regulations. These regulations govern port states in combating, preventing, and eradicating IUU Fishing. The implementation of PSM is expected to ensure long-term conservation and sustainable utilization of marine and fisheries resources and ecosystems. PSM can also be useful in reducing the likelihood of IUU Fishing practices because it empowers ports to monitor vessels suspected of engaging in IUU Fishing, which will then be promptly addressed according to the mechanisms outlined in the PSM.

In 2023, Indonesia, in its capacity as the Chair of the Indian Ocean Rim Association - Core Group on Fisheries Management (IORA-CGFM), will collaborate with France to promote the development of guidelines for combating IUU Fishing under the framework of IORA. Indonesia aims to continue playing an active leadership role in the Indian Ocean region for the collective benefit of all IORA member countries while also prioritizing national interests in the region. IORA comprises 23 member countries: South Africa, Australia, Bangladesh, Comoros, France, India, Indonesia, Iran, Kenya, Madagascar, Maldives, Malaysia, Mauritius, Mozambique, Oman, United Arab Emirates, Seychelles, Singapore, Somalia, Sri Lanka, Tanzania, Thailand, and Yemen. Additionally, IORA has 10 dialogue partner countries: the United States, United Kingdom, Italy, Japan, Germany, South Korea, Egypt, People's Republic of China (PRC), Russia, and Turkey. There are also 2 observer organizations in IORA: the Indian Ocean Research Group (IORG) and the Western Indian Ocean Marine Science Association (WIOMSA).³¹

4. Conclusion

The resolution of IUU Fishing for foreign perpetrators involves the judicial process of fisheries adjudication. The authority for investigation lies with the Ministry of Maritime Affairs and Fisheries of the Republic of Indonesia through the Directorate General of Marine and Fisheries Resources Surveillance (MFRS). MFRS functions as the investigator, starting from the hot pursuit, apprehension, to investigation. The judicial process for prosecuting IUU Fishing perpetrators, both ship operators and foreign nationals, is carried out by the Public Prosecutor who conducts prosecution until the stage of trial proceedings until the case is declared in craft by the District Court/Fisheries Court.

Maritime diplomacy is a means of maintaining good relations among the involved countries. Diplomacy is also necessary to build cooperation to ensure that maritime areas in border regions are safe from IUU Fishing activities. Diplomacy begins with the formation of regional agreements that regulate joint surveillance of IUU Fishing.

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