

IMPLEMENTATION OF SAFE DROWNING SANCTIONS FOREIGN FISHING

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IMPLEMENTATION OF SAFE DROWNING SANCTIONS FOREIGN FISHING VESSELS IN FISHERIES CRIMES

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ABSTRACT

Background. Fishing activities carried out by a certain country or foreign fishing vessels in waters that are not in its jurisdiction without permission from the country that has jurisdiction. The purpose was to determine the sanctions against perpetrators of fisheries crimes in Indonesia and the implementation of sanctions for the sinking of foreign fishing vessels that commit fishing crimes without permission in Indonesia.

Research Method. This research was the type of normative legal research, doctrinal research because this research is conducted or aimed only at written regulations and other legal materials. Normative legal research is also referred to as literature review because this research is mostly done on secondary data in the library and document studies.

Findings. The implementation of the sanction of sinking foreign fishing vessels against perpetrators of fisheries crimes is carried out through court decisions or due to caught red-handed foreign fishing vessels confiscated based on Court decisions can be sunk by the Prosecutor as the executor or executor of the judge's decision. In the case of being caught red-handed, it must be based on sufficient preliminary evidence or preliminary evidence to suspect the existence of fisheries crime by foreign fishing vessels.

Conclusion. Sanctions against perpetrators of fisheries crime are heavy sanctions because they are cumulative, namely imprisonment and fines imposed at the same time against the perpetrators of criminal acts. In addition to criminal sanctions, perpetrators can also be subject to administrative sanctions in the form of warnings, license suspension, and up to license revocation.

Keywords: Fisheries crimes, Implementation of sanctions, Sinking of fishing vessels.

BACKGROUND

Indonesia is one of the largest archipelagic countries in the world where one-third of the country is the sea, therefore Indonesia is called a maritime country. With this vast sea area, Indonesia is very rich in marine potential. The archipelago's waters under the sovereignty, and jurisdiction of the Unitary State of the Republic of Indonesia and the Indonesian Exclusive Economic Zone (hereinafter abbreviated as IEEZ) as well as the high seas based on international provisions, contain fish resources and potential fish farming land which are a blessing from God Almighty. Fisheries play an important role in Indonesia's economic development.

The potential of Indonesia's coastal and ocean areas in terms of fisheries include 1) Marine fisheries consisting of Tuna/ Skipjack, Shrimp, and others; 2) Mariculture consisting of grass marine, fish, and shellfish and pearls; 3) Public waters; 4) Aquaculture; 5) Freshwater Aquaculture; and 6) Marine Biotechnology Potential. This potential does not include

mangrove forests, coral reefs, renewable energy, and services such as transportation and marine tourism which have great opportunities to be developed.[1] With the potential of the sea, many foreign fishermen try to steal Indonesia's marine wealth in Indonesian waters that occur in the Indonesian Exclusive Economic Zone, as for the mode of theft is committed by unscrupulous people in ways including:

1. Double Flagging is a foreign fishing vessel using another country's flag, fishing in the border area;
2. Painting foreign fishing boats to resemble Indonesian fishing boats;
3. One license for multiple vessels that are intentionally similar (shape and color).

Entering Indonesian territory on the grounds of being lost or avoiding a storm. Fishing activities carried out by a certain country or foreign fishing vessels in waters that are not in its jurisdiction without permission from the country that has jurisdiction.[2]

The fishing activities are contrary to the laws and regulations of the country, which is called illegal fishing. As a result of illegal fishing, Indonesia suffers losses in various aspects including economic, social, and sovereignty. To overcome losses, the government has the task of carrying out affairs in the field of marine and fisheries in the government and has the authority regulated in Law Number 45 of 2009 concerning Fisheries. In this case, the authorized government is the Ministry of Maritime Affairs and Fisheries of the Republic of Indonesia (hereinafter referred to as Directorate General of Capture Fisheries) to carry out ship sinking actions regulated in Article 69 paragraph 4 and Article 76 A of Law Number 45 of 2009 concerning Fisheries. To create a deterrent effect for the perpetrators.[3]

The implementation of this ship sinking is also complemented by the Minister of Maritime Affairs and Fisheries Regulation No. 37/PERMEN-KP/2017 concerning the following Standard Operational Procedures Enforcement Law Enforcement Unit Eradication of Illegal Fishing.[4] The implementation of ship enforcement had a positive impact on Indonesia, including encouraging an increase in national fish stocks, the implementation of this Government policy in the management of fisheries resources responsibly and immediately received praise from various countries for the government's very serious efforts in eradicating criminal acts of fish theft. Because the ship is the main means of production for the perpetrators of theft. If the ship and its equipment are sunk, thieves will think long to repeat the theft in Indonesian waters, because theft is for profit. With the description above, the researcher is interested in raising the title "Implementation of the Sentence of Sinking Foreign Fishing Vessels in the Crime of Fisheries (Illegal Fishing)" with the formulation of the problem of how the sanctions against the perpetrators of fisheries crimes in Indonesia and how the implementation of the sanction of sinking foreign fishing vessels perpetrators of unlicensed fishing in Indonesia.

RESEARCH METHOD

This research is normative juridical research, which is a scientific procedure to find the truth based on scientific logic from the normative side whose object is the law itself. Normative legal research is also referred to as literature review because this research is mostly done on secondary data in the library and document studies.[5] Secondary data used are:

- 1) Primary legal materials are legal materials issued by the government and are binding in the form of laws and regulations. In writing this thesis, the primary legal material is Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries;[3]

- 2) Secondary legal materials are materials that have provided explanations of primary legal materials such as scientific works of scholars, research results of books or literature, newspapers, magazines, documents, internet related to Indonesian fisheries crime.
- 3) Tertiary legal materials are materials that provide guidance and explanation of primary and secondary legal materials. For example, encyclopedia dictionaries, indexes, cumulative, and so on. The materials that have been collected are then analyzed using a qualitative analysis method, namely by describing the data obtained where the results are compiled in the form of scientific work in the form of a thesis.

FINDINGS

1. Implementation of Imposition Sanctions Sinking Ship Fish Foreign by the Ministry of Maritime Affairs and Fisheries and the Directorate General of Capture Fisheries

In following up on the case of Fisheries Crimes that occurred in Indonesian waters, the government through the Ministry of Maritime Affairs and Fisheries Directorate General of Capture Fisheries (hereinafter abbreviated as Directorate General of Capture Fisheries) in collaboration with the Indonesian Navy has the determination to provide a deterrent effect against countries that still allow fisheries business actors to commit fisheries crimes within the territory of the Indonesian sea. The implementation of the regulation on the sinking of illegal foreign fishing vessels that fish in Indonesian waters is proof of the firmness and seriousness of the government to protect Indonesia's marine wealth, in terms of security, this policy is effective in preventing illegal fishing and has an impact on illegal foreign fishermen who fish without a license in Indonesian waters.

In addition, the issue of unauthorized fishing by foreign fishing vessels is only a criminal offense that results in the loss of our natural resources but this criminal offense is directly related to Indonesian criminal law because it has violated state sovereignty which is a very principle thing. The policy of sinking foreign fishing vessels as perpetrators of illegal fishing is a policy intended to uphold the sovereignty, exercise authority and impose legislation on the issue of violations of sovereignty, which is a violation of the law against the defense and security of the country's territory. Article 7 paragraph (3) of the National Defense Law confirms that the national defense system in dealing with non-military threats places government agencies outside the defense sector as the main element, by the form and nature of the threats faced by being supported by other elements of the nation's power.[6] Therefore, the sanction of ship sinking has been regulated in Law Number 45 of 2009 concerning Fisheries.[3] The implementation of ship sinking is also complemented by the Minister of Maritime Affairs and Fisheries Regulation No. 37/PERMEN-KP/2017 concerning Standard Operating Procedures for Law Enforcement of the Illegal Fishing Eradication Task Force.[4] This Standard Operating Procedure (SOP) states that to implement the provisions of Article 69 paragraph (4) of the Fisheries Law, the Minister of Maritime Affairs and Fisheries shall enforce the following Fisheries Law, example special action in the form of burning and/or sinking of foreign-flagged fishing vessels based on sufficient preliminary evidence.

This action can be done after fulfilling:

- 1) Subjective and/or objective conditions, i.e. the ship performs dangerous maneuvers and/or the captain/crew resists acts of violence.
- 2) Objective conditions consist of:

- a) Cumulative requirements are foreign-flagged vessels with all foreign crew members, the scene of the incident (locus delicti) is in the State Fisheries Management Area of the Republic of Indonesia, does not have any documents from the government of the Republic of Indonesia, and is carried out with the principle of caution and on the orders of the leadership.
- b) Alternative requirements, namely old vessels supported by letter facts and/or do not have high economic value, vessels are not possible to be brought to the base/port/department in charge of fisheries, with consideration:
 - i) The ship is easily damaged or compromised;
 - ii) The cost of towing the ship is too high; and
 - iii) Fishing vessels transporting goods containing infectious disease outbreaks or toxic and hazardous materials.

Before the burning and/or sinking of a vessel, action may be taken:

- 1) Rescue as much as possible all fishing vessel crew members;
- 2) All fixtures and fittings on the fishing vessel, stating their condition in full and in detail;
- 3) Document visuals well using a camera and/or audio/video recorder;
- 4) Fish caught by fishing vessels that are burned and/or sunk are set aside for evidentiary purposes;
- 5) Make Minutes of the Burning and/or Sinking of Fishing Vessels be included in the seafarer's report by the agency concerned.

2. Consideration of Ship Sinking Sanctions by the Task Force 115 of the Ministry of Maritime Affairs and Fisheries and the Directorate General of Capture Fisheries.

² The imposition of sanctions for the sinking of foreign vessels carried out by Task Force 115 through several considerations according to applicable law in Indonesia is a very important benchmark before imposing criminal sanctions.[7] Consideration in the imposition of sanctions is a process to realize the wishes of the law into reality. In reality, the process of consideration of the imposition of sanctions culminates in its implementation by law enforcement officials. Consideration of the imposition of sanctions has a considerable role in the implementation of regulations that will be carried out by law enforcement officials. In other words, the success or failure of law enforcers in carrying out their duties started with the consideration of sanctions before the legal regulations are made. The process of considering the imposition of sanctions is not enough to only look at the legal aspects to run effectively, but other aspects must also be considered, such as the legal apparatus, and the culture of the community. Law as a system will be able to play a good role in society if the implementation instrument is equipped with authority in the field of law enforcement.[8] The legal system is composed of legal subsystems in the form of legal substance, legal structure, and legal culture. Consideration of the imposition of sanctions at sea is an action provided by applicable law and related to the jurisdiction of a country. The jurisdiction is the authority both to determine the provisions and to force and requires the ability to maintain and supervise the observance of legal provisions, both nationally and internationally, both in Indonesia and abroad.

Jurisdiction of national waters as well as in other waters such as additional zones and Indonesian EEZ. Factually, law enforcement at sea has 2 (two) dimensions, namely *sovereignty enforcement* and *law enforcement*. From here a new perspective arises that the 2 (two) dimensions will also be interrelated with one another. If viewed as a system, security at sea is a series starting from the perception of all components of the nation towards the organizational structure and procedures and mechanisms for implementing security at sea

involving various agencies authorized to enforce sovereignty and law at sea. Therefore, the security system at sea is still built with efforts to optimize the principle of the synergy of all forces owned by marine security organizers. Cooperation from both aspects must be reflected in the organizational structure, mechanisms, and procedures as well as other provisions that support smoothness in considering sanctions to law enforcement mechanisms. Task Force 115 in carrying out law enforcement in the form of imposing sanctions for the sinking of foreign vessels at sea has special characteristics that are different from the consideration of imposing sanctions on land.

DISCUSSION

1. Implementation of Sanctions for the Sinking of Foreign Fishing Vessels

In the implementation process, many things make the imposition of sanctions not run by what has been regulated by law considering the vast area of Indonesian sea territory. Based on Article 69 paragraph (4) of Law Number 45 of 2009 concerning Fisheries and supported by Presidential Regulation Number 115 of 2015 concerning the Illegal Fishing Eradication Task Force, the Directorate of Monitoring and Fleet Operations of the CTF carries out technical procedures for the imposition of criminal sanctions for ship sinking carried out by the CTF, as follows:

- 1). The Republic of Indonesia Ship, in this case, the team from Task Force 115, conducts cruise patrols at the border of the Indonesian sea area or the Indonesian Exclusive Economic Zone (IEEZ) together with the Indonesian Navy Republic of Indonesia Ship (hereinafter abbreviated as KRI) Fleet.
- 2). The Republic of Indonesia Ship detects (Transmitting) ships that are sailing at a speed of no more than 1 (one) knot in Indonesian waters. And if there is something suspicious, the crew of the KRI contacts the ship to ensure that the crew of the ship is an Indonesian citizen.
- 3). If the crew cannot answer in Bahasa Indonesia, the foreign fishing vessel is stopped for inspection.
- 4). This ship inspection is carried out after the suspected ship has been successfully stopped to find an event suspected of being a criminal offense to determine the next legal process, this inspection includes Ship Documents, Master and crew documents, and Activity Documents. If the documents are missing or there are errors in the documents, the Task Force 115 Patrol Team will issue a permit for arrest.
- 5). After obtaining an arrest permit, the Task Force 115 Patrol Team secured the captain, head of the engine room, and crew and goods. to be handed over to the nearest Naval Base for further examination. The arrest can be carried out if there is sufficient evidence of a criminal offense.
 - 1). The process of arresting for delivery to the nearest Naval Base is carried out by bringing the captured vessel to the Naval Base by coupling or towing.
 - 2). Handover to the Naval Base, after the ship arrives at the Naval Base, members of Task Force 115 immediately hand over the ship and cargo, the captain and crew, and the ship/cargo documents:
 - a) Incident report;
 - b) Ship chase and stop report;
 - c) A statement about the position of the ship;

- d) Warrant and Minutes of Ship Inspection;
- e) Vessel inspection result statement;
- f) Statement of the results of the examination of the ship's papers;
- g) A statement of the state of the ship's cargo; and
- h) Warrant and Minutes of carrying vessels and persons.

After that, further investigation is handed over to the Public Prosecutor at the Base. The Public Prosecutor must immediately conduct further investigation to determine whether or not the vessel and crew handed over by Task Force 115 have committed a criminal offense. Task Force 115 immediately issues an Investigation Order and conducts case filing which is then submitted to the Public Prosecutor. In the investigation process: Investigators make a Notice of Commencement of Investigation to the Prosecutor's Office, search the ship, examine witnesses, examine suspects, confiscate, detain suspects, and handle crew members who are not suspects.

- 3). Based on the results of the investigation, the Public Prosecutor provides P.21 and submits the file to the Fisheries Court.
- 4). After the verdict from the Fisheries Court, the verdict is then submitted to the CTF.
- 5). Directorate General of Capture Fisheries gave the order to Task Force -115 to execute the vessel by punching holes in the hull, opening the sea faucet, or by burning the vessel.

From the perspective of international law, the legal action of ship sinking is not contrary to the 1982 United Nations Convention on the Law of the Sea (UNCLOS). Based on Article 73 (3) of UNCLOS, it is stated that the protected subject in the crime of illegal fishing is the human being, not the vessel by providing a fine or deportation for the perpetrator without being given imprisonment. Meanwhile, the ship can be confiscated after going through the applicable legal procedures in a country. But on the other hand, the Directorate General Of Capture Fisheries has the task of organizing affairs in the field of marine and fisheries in the Government and has the authority to enforce the law in the EEZ based on Article 69 Paragraph (1) of Law Number 45 of 2009 concerning Fisheries.[3] Based on this authority, the CTF carries out sanctions.

The sinking of foreign fishing vessels is intended to have a deterrent effect, as the vessels are the main means of production for thieves. If the vessel and its equipment are sunk, thieves will think long and hard about repeating unauthorized fishing in Indonesian waters. Regarding the legal technicalities of ship destruction, this has been regulated by the provisions of Article 69 Paragraph (4) and Article 76A of Law Number 45 of 2009 concerning Fisheries Jo Article 38 and Article 45 of Law Number 8 of 1981 concerning Criminal Procedure Law. In addition, the Supreme Court also issued Circular Letter Number 1 of 2015 concerning Vessel Evidence in Fisheries Criminal Cases to support the Government's hope to provide penalties that have a deterrent effect on defendants, companies, ship owners/operators who commit fisheries crimes in Indonesia's sovereign territory, even the President of the Republic of Indonesia has issued Presidential Regulation Number 115 concerning the Illegal Fishing Eradication Task Force.[9] In 2014, there were 4 countries whose vessels were sunk by the Indonesian government, namely the Philippines, Vietnam, Thailand, and Papua New Guinea.

In the first year, there were still few caught because at that time the Indonesian government still had constraints on agreements with neighboring countries. In 2014 there were 4

countries whose ships were sunk by the Indonesian government, namely the Philippines, Vietnam, Thailand, and Papua New Guinea. But in 2015 the Government, especially the Directorate General Of Capture Fisheries, made a firm effort to make Indonesia return to being the world's maritime axis and the sea is the future of the nation, therefore the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia made a moratorium and warning to countries that still permit for their ships to sail and take the wealth of Indonesian seas and from there the data on the arrest of foreign fishing vessels that have been sunk continues to increase to date. This is not only because of the ineffectiveness of criminal sanctions for the sinking of foreign fishing vessels but there are many obstacles and courage from other countries to continue fishing without permission in Indonesian waters.

In addition, foreign fishing vessels that can be sunk are only foreign fishing vessels that have an agreement with the Indonesian government, here if the ship enters and fishes without permission in Indonesian waters, the sanction given is in the form of ship sinking. But in reality, it cannot be denied that some commit criminal acts of unauthorized fishing, not only the countries mentioned but there are also foreign fishing vessels whose home countries with the Indonesian Government do not yet have an agreement, so their ships cannot be sentenced in the form of the ship sinking. In addition, many foreign countries take advantage of Indonesian companies with the modus operandi of fishing without a license in Indonesian sea territory by using Indonesian fishing vessels but all the crew members are foreigners and the proceeds from the capture are given to other countries. This can also harm the Indonesian State, but in the Fisheries Law the imposition of sanctions for ship sinking can only be carried out on foreign fishing vessels, the imposition of sanctions for ship sinking on Indonesian fishing vessels is only an alternative punishment if the ship owner company does not want to carry out other sanctions imposed. In the implementation of sanctions for the sinking of foreign fishing vessels, all procedures and requirements are written in Article 69 Paragraph (4) of the Fisheries Law. For the handling of fisheries crimes, there are several laws and regulations governing the eradication of fisheries crimes that are used to handle fisheries crime cases. The regulations used in the eradication and countermeasures of fisheries crime are based on Law No. 45 of the Year 2009 on Fisheries.[3]

Law No. 27 of 2007 on the Management of Coastal Areas and Small Islands and other implementing regulations such as Government Regulation No. 60 of 2007 on the Conservation of Fish Resources, Government Regulation No. 30 of 2008 on the Implementation of Fisheries Research and Development, Minister of Marine Affairs and Fisheries Regulation No. PER.13/MEN/2005 concerning the Coordination Forum for Handling Criminal Acts in the Field of Fisheries, Regulation of the Minister of Maritime Affairs, and Fisheries No.PER.15/MEN/2005 concerning Fishing and/or Fish Cultivation in the Fisheries Management Area of the Republic of Indonesia which is not for Commercial Purposes, and Regulation of the Minister of Maritime Affairs and Fisheries No.PER.05/MEN/2008 concerning Capture Fisheries Business.[10–15]

This provision indicates that the special action cannot be carried out arbitrarily, but only if the investigator and/or fisheries supervisor believes that the foreign-flagged fishing vessel is committing a criminal offense in the field of fisheries. Since 2014-2018, the Directorate General of Capture Fisheries and related parties have sunk 469 foreign fishing vessels. Almost all of the 469 foreign fishing vessels were based on court decisions that required the vessels to be destroyed because they were evidence of criminals. This effort is considered one of the factors that encourage national fish stocks to increase every year. For example, this year, national fish stocks have increased by 35% within one year, whereas last year the

Directorate General Of Capture Fisheries recorded fish stocks of around 6.3 million tons and currently fish stocks of 7.3 million tons, a very significant increase of almost 1.4 million tons. However, the volume of exports of fishery products to various countries has decreased over the past 3 years with details: in 2015 1.273 million tons, and 2016 1.076 million tons, in 2017 1.075 million tons, and in 2018 979 thousand tons (until November 2018), in 2019 -2020 there was a significant decline, but the decline in export volume was due to the large absorption of fish in the country and the level of fish consumers in Indonesian society also increased from year to year.

This is a benchmark for whether the implementation of sanctions for the sinking of foreign fishing vessels has gone well by existing laws and regulations. Based on the description above, in general, the imposition of sanctions for the sinking of foreign vessels by the Directorate General of Capture Fisheries has not been by what should have been regulated in the laws and regulations. The process of examining fishing vessels should be brought back to the base but because of the vast territory of Indonesian waters to bring back to the base is not an easy thing to do. In 2018 starting from October to April 2019, 64 foreign fishing vessels were sanctioned in the form of ship sinking without being checked back to the base. In this case, the examination process until the verdict was carried out in the water area. In addition, the imposition of sanctions for the sinking of foreign fishing vessels by the CTF whose flag country does not have an agreement or moratorium with the Indonesian government cannot be sanctioned in the form of the ship sinking even though the ship has committed illegal fishing because this has been regulated in UNCLOS. In the legislation that can be sanctioned in the form of the ship sinking only foreign fishing vessels, Indonesian fishing vessels cannot be sanctioned by ship sinking, but this ship sinking sanction can be an alternative for Indonesian fishing vessel owners if they cannot be responsible with the imposition of administrative sanctions that have been determined.

The government, in this case the Ministry of Maritime Affairs and Fisheries and Task Force 115 must take more decisive action in carrying out sanctions for the sinking of foreign fishing vessels and remain by applicable regulations. This aims to uphold the law and maintain the sovereignty of the State. Sinking foreign fishing vessels is still not enough, therefore repressive action is needed, besides that, facilities and infrastructure are also needed in conducting surveillance, including more patrol boats, sophisticated communication tools, and the number of personnel who need to be added as fisheries supervisors who have a professional attitude.

2. Consideration of Ship Sinking Sanctions

Considerations in the imposition of criminal sanctions for ship sinking carried out by Task Force 115, namely:

1. **The Role of the Government in Maintaining Sovereignty and Natural Resources Owned by the Unitary State of the Republic of Indonesia.**

Task Force 115 is under the control of the Ministry of Maritime Affairs and Fisheries Directorate General of Capture Fisheries and works directly with the Indonesian Navy. Considering that Indonesia is an archipelagic country with a strategic location in world trade, the crime of unauthorized fishing committed by foreign fishing vessels in Indonesian waters is not only related to the loss of natural resources, but this is a fundamental violation for a sovereign country because its sovereign territory is entered by foreign fishing vessels, so the Government must maintain the sustainability of natural resources by forming TASK FORCE 115 as a law enforcer who is in direct contact with illegal fishing activities within Indonesian waters. Based on International Law regulated in UNCLOS 1982, violation of a country's

territory is a serious international offense, so UNCLOS 1982 gives freedom to a country that has a case of violation of its sovereign territory to resolve the case by the jurisdiction of each country. In addition to the amount of unauthorized fishing, this is a big mistake that will be borne by the Indonesian government. The Nawacita (Nine development priorities for the next five years) of the Unitary State of the Republic of Indonesia is Indonesia as a world maritime axis, in this case, the Government is obliged to protect the rights of every citizen as stated in the 1945 Constitution that the Indonesian Government is obliged to protect the entire Indonesian nation, promote public welfare, and educate the nation's life. All of this is indirectly related to the number of fish food stocks owned by the Indonesian state. If the perpetrators of illegal fishing carried out fishing without a license continuously, it will interfere with the Government in fulfilling its obligations. The amount of fish is also very influential on state revenues which will be returned to all Indonesian people to fulfill the obligation to promote public welfare. And if the fish food stock does not reach the proper level because it has been taken by the perpetrators of illegal fishing, this can result in the growth and development of the nation's children not running optimally and this violates what is written in the preamble of the 1945 Constitution and the Government is obliged to educate the nation's life. Other losses occur if the Indonesian Government does not enforce the law firmly because, in reality, massive fishing (illegal fishing) is not only about the sea and the fish in it but many other forms of criminal acts can also be carried out simultaneously with illegal fishing activities such as drug smuggling, wildlife smuggling, and human trafficking.[16]

2. Regulations governing the imposition of criminal sanctions for the sinking of foreign fishing vessels.

The imposition of sanctions for the sinking of foreign fishing vessels carried out by Task Force 115 is an action related to other countries. So that the process of imposing sanctions for sinking ships must not be carried out outside the provisions of existing regulations. In imposing sanctions for the sinking of this ship, Task Force 115 has a legal basis for Presidential Regulation Number 115 and the Minister of Maritime Affairs and Fisheries Regulation on the Eradication of Illegal Fishing in Indonesian waters, besides that the Government of Indonesia has an inter-state agreement, this is also the basis for imposing sanctions for the sinking of foreign ships carried out by Task Force 115. Ratification of inter-state agreements is a basis for the imposition of sanctions in the form of ship sinking and can be implemented. Because both formal and material requirements regarding the sanction of the ship sinking are contained in the agreement between countries. This is also seen in foreign fishing vessels owned by countries that do not have an inter-state agreement with the government of the Republic of Indonesia if the government of the Republic of Indonesia imposes sanctions on the sinking of ships against foreign vessels whose flag does not have an agreement with the Indonesian government, the country of the foreign fishing vessel can file a lawsuit against the Indonesian government in the International Court of Justice.[17, 18]

This is a form of Norm conflict (the rules exist but cannot be applied), many foreign ships that are in Indonesian waters and saltwater fishing vessels belonging to other countries that do not have an agreement with the Indonesian government have carried out Illegal Fishing activities so they cannot be sanctioned by sinking the ship, only that the foreign fishing vessel is ordered to leave the waters of the Fisheries Management Area of the Republic of Indonesia so that there is a sense of deterrence to carry out illegal fishing activities on the owner of the foreign fishing vessel, agreements between countries are also one of the important aspects in consideration for the imposition of sanctions for the sinking of foreign fishing vessels carried out by Task Force 115. These two things are the basis for Task Force 115's consideration to

enforce the law in Indonesian waters. Because the policy of sinking foreign fishing vessels that commit illegal fishing crimes is intended to uphold the sovereignty, exercise authority and impose laws and regulations on the issue of violation of sovereignty, which is a violation of the law against the defense and security of a country's territory. Article 7 paragraph (3) The National Defense Law confirms that the national defense system in facing non-military threats places government agencies outside the defense sector as the main element, by the nature of the threat faced by being supported by other elements of the nation's power, so that by Presidential Regulation No. 115, Task Force 115 also has the authority to carry out law enforcement at sea against illegal fishing.

All considerations in conducting law enforcement actions against foreign fishing vessels that commit illegal fishing in Indonesian waters, it is better to be done after going through the judicial process first, so that the law enforcement process against illegal fishing does not conflict with existing regulations. The government may take firm action for the good of the country, but it should be done in a good way or procedure by the provisions of the Criminal Procedure Code (hereinafter abbreviated as KUHAP) and the Criminal Justice System in Indonesia. To minimize fisheries crimes that occur in Indonesian waters, it is hoped that the Judge imposing imprisonment and fines will be the heaviest to provide a deterrent effect to the perpetrators of unlicensed fishing so that there will be no more unlicensed fishing crimes in Indonesian waters which are very detrimental to the navy and the economy of the Republic of Indonesia.

CONCLUSION

In Indonesian waters, based on Article 69 paragraph (4) of Law Number 45 of 2009 concerning Fisheries, Presidential Regulation Number 115 concerning the Illegal Fishing Eradication Task Force, and Minister of Maritime Affairs and Fisheries Regulation Number 37 of 2017 concerning Standard Operating Procedures for Law Enforcement of the Indonesian Illegal Fishing Eradication Task Force, the sinking of every foreign fishing vessel that commits illegal fishing and its crew can be detained and subject to criminal sanctions. The implementation of sanctions for the sinking of foreign fishing vessels that commit fisheries crimes is carried out through a court decision or because they are caught red-handed. In the case of being caught red-handed, it must be based on the existence of sufficient preliminary evidence, or preliminary evidence to suspect the existence of a fisheries crime by Foreign Fishing Vessels, for example, obviously fishing in Indonesian waters while not having Letter of permit.

Conflict of Interest

The authors declare no conflicts of interest in this work and publication of this paper.

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