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Illegal fishing by foreign vessels against fish resources In Sulawesi Sea Waters, Indonesia

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Abstract. During the Covid 19 pandemic, illegal fishing is still happening. The lack of strict supervision and limited availability of facilities and infrastructure causes fish resources in the territorial waters of a country and especially in Indonesia to have the potential to be looted by foreign vessels by using their technology. The research questions posed in this research, namely; (i) how the law enforcement against illegal fishing in terms of international and national laws, and (ii) how the law resolution against illegal fishing in Sulawesi Sea. Data obtained through qualitative analysis methods as a research procedure that present data sourced from in-depth interviews for selected informants and written sources using the normative-empirical approach method. The results of research indicated that law enforcement against illegal fishing refers to the provisions of Indonesian national law based on international treaties, but law enforcement not yet had an impact on reducing illegal fishing, because the laws used have not been effective and still cause conflicts. Legal settlement of illegal fishing can be carried out by binding international agreements with neighboring countries whose fishing boats carry out illegal fishing in the fishing area. It recommends a legal settlement against illegal fishing by foreign vessels in Sulawesi Sea in order to create an independent, advanced, strong and national interest-based Indonesian marine and fisheries sector.

1. Introduction

Illegal fishing is an activity to steal fish resources conducted in developing countries which become a serious problem in need to be solved. Illegal fishing is an international issue which is characterized as plundering toward sea properties and country sovereignty. A potential of fish stealing in Indonesia improved to 50 cases on average each year since 2014-2016 and in 2017 until 2019 there was a declination until 30 percent [1]. Even though there was a decline on illegal fishing which impacts on the less fish resources of country and further impact on the economy of its people, the development of regional economy from developing countries is limited by the small number of resources that they have [2]. Fish resources is one of the sources for people income which is beneficial for the life of the fishermen



living on the water territory even non-fishermen rely on fish resources to use as food supply [3], for Indonesian citizens who conduct fishing on the fisheries management zone territory which is regulated by the government have to obey the conservation and prevention of illegal fishing.

Specifically, foreign ships which are not having fishing permit letter and are operating in Indonesia Fisheries management zone territory will get sanction which is regulated in article 69 paragraph 4 Law number 45, 2009 on the Amendment of Law number 31, 2004 on Fisheries which states: "in implementing the function as intended on paragraph 1 by the fisheries supervisor can conduct special action such as: to burn/sink the Fishing ships with foreign flags referred to sufficient initial evident. Some foreign ships have been sunken by the government of Indonesia but illegal fishing still exists [4,5]. Anthony allot elaborates some reasons and factors which influence the theory of ineffectiveness, they are: (1). the defects of legal linguistics formulation. (2). The conflict of interest between the objective of the Law maker and the society which is the target of the law. (3). The absence of norms implementation such as the implementation of constitutions [6].

The abundance of fish resources in Indonesia has no doubt, because two-third of Indonesia territory consists of sea and one-third is land area [7]. The sea of Indonesia is very large and of course appealing the attention of foreign fishermen which is close to Indonesia territory especially for fishing territory that is located in exclusive economic zones. For example, fishing conducted by the Philippines fisherman where the territory closed to Sulawesi Sea [8]. The adjacent of Sulawesi Sea with the sea of the Philippines is one of the reasons why illegal fishing occurred [9]. One of the significant aspects of the law enforcement on the sea is the implementation of the Law number 45, 2009 on Fisheries which is related to sink the illegal fishing ships. There were 90 ships came from the Philippines which have been sunken by the WPP-RI 716 in the period of 2014- December 2018 [9] and if we put it on average within a year there was around 22 ships from the Philippines that have been sunken. While, in handling the ship crews who came from the Philippines as the actor of illegal fishing since 2014-2018 there were 469 ship crews have been caught and processed based on the Law number 31/2004. Jo. Law No. 45, 2009 on Fisheries [10].

The presence of agreement in the Joint permanent working group on Maritime and Ocean Concerns between The Republic of Indonesia and The Republic of the Philippines (JPWG-MOC) and the article 56 and article 87 UNCLOS 1982 has not guaranteed the fishermen of the Philippines to obey the law, it is proved that illegal fishing which is conducted by the foreign fishermen as still occur in Sulawesi Sea. The focus research is aimed to answer the following questions: (i) How the law enforcement toward illegal fishing is being implemented considering the International Law and National Law. (ii) How the legal settlement against illegal fishing in Indonesia is applied.

2. Research Methodology

This research applies normative-empiric approach. The normative aspects used secondary data which is descriptive-explorative with study case and the data analysis is qualitative. For the empiric research used primary data which more emphasized on the interview. The research was conducted in the Sulawesi Sea, Indonesia.

2.1. Law enforcement on illegal fishing based on the national law

International regulation on the law enforcement of illegal fishing hands over to each country's policy in regulating the management, supervision and the law enforcement. Each country has the right and is responsible on the activity of marine resources usage, especially the fisheries, including its environmental protection and preservation. Each country has rights and is responsible on marine resources utilization activities especially fishery which includes protection and conservation of its environment. Indonesia has implemented the international convention in many of its law, it is in the Act Number 31 2004 on the Act

number 45 2009 on the amendment of Act number 31 2004 on Fisheries. The instrument of the law enforcement which is used on the Act is to utilize instrument of administrative law enforcement and instrument of criminal law enforcement.

One of the advantages of the agreement on Exclusive Economic Zones borders on the Sulawesi sea and in the Philippines sea will give advantages for the Republic of the Indonesia , such as to: guarantee the effort of environment protection, conservation on living and non-living natural resources, including to encourage effort and cooperation on the protection and eradication of illegal, unreported, unregulated fishing activities and also the implementation of various scientific research activities on Exclusive Economic Zones, [11].

In the beginning of the formation of Indonesian country and the country of Philippines agreed to limit the access of people in the border of Indonesia and the Philippines to cross the borders without completing the legal document. But the government decision was withdrawn by observing the strong social relationship which bind up between the two countries. The Philippines allows the Indonesia people on the borders to visit their family, trading needs, even for vacation in the islands of the Philippines borders and vice versa. Indonesia allows The Filipinos to enter Indonesia particularly on the most outer part of Indonesia but it does not mean that the two nations can be as free as they want to cross the borders, there is a limitation in visitation and they must be equipped with borders traffic card. Those people use the fish resources in the Sulawesi sea and then the haul will be brought across the Indonesian borders,

According to the data of Sangihe island regency in the period of 2017-2018 the average of fish caught by the local fishermen is under 12.000 ton per year, the area is rich for small and big pelagis fish [12]. While according to the decree of the Minster of the marine affairs and fisheries of Indonesia number 50/KEPMEN-KP/2017 about the potential estimation, the numbers of haul which are allowed and the level of utilization of fish resources in the fisheries management area of the country of the Republic of Indonesia [13] especially for the waters of Sulawesi Sea and on the east side of Halmahera island (Table 1).

Table 1. The estimation of potential, the numbers of haul and the level of utilization of fish resources in the fisheries management area

Indonesian fisheries management area			Small pelagis fish	Big pelagis fish	Demersal fish	Coral fish	Panid shrimp	Lobster	Crab	Small squid	total	
Sulawesi sea waters eastern part of Halmahera island	WP	Potential (ton)	332.635	181.4	36.142	34.4	7.94	89.4	2.1	294	1.1	597.1
	PN			91		40	5		96		03	39
	RI	JTB (ton)	266.108	145.1	28.914	27.5	6.35	715	175	235	883	
	716	Management level	0.48	0.63	0.45	1.45	0.50	0.75	0.3	0.5	1.4	
									8	0	2	

Source: Primary data, 2020 (Edited)

However, if we put it on the average, the level of fish resources utilization in the table it is categorized as full-exploited which is $0.5 \leq E < 1(0.73)$ means that the level of exploitation of utilizing the resources is on the level of MSY or catching fish from the sea which has been optimal and need to be managed because if not, it would impact on the lack of the fishing haul and the ecosystem of the sea will get worsen so it cannot be used anymore in the future. Based on the Minister decree number

PER.29/MEN/2012 about the Guide of Fisheries management plan arrangement in the field of fish it is categorized as fully exploited if the number of haul fish sources group per year is on the range of 80%-100% from the estimated determined potential [14].

Based on the condition of Sulawesi sea which is bordered with the Philippines give chances to the Philippines citizens to do illegal fishing because the usage of Indonesia waters condition is weak from a supervision of the law enforcement agent and it is supported by the social situation of the people between the two countries which live in the borders area. The fish resource which is located in the Sulawesi Sea is addressed to the Indonesian people which can be used as the income and the food sources.

According to the national law we did the law enforcement to the doers of the illegal fishing in Indonesia area especially in the Sulawesi sea but the law enforcement on illegal fishing doesn't give a deterrent effect to the doers. By knowing that the Government of Indonesia and the Philippines has agreed on JPWG-MOC which has been ratified with the law number 24, 2017, it is conducted by the two countries so the steps to solve the dispute ideally should be finished by a negotiation. Negotiation is a discussion which is done directly without the presence of the dispute parties which aims to solve the dispute by a dialogue without a third party even some social issues in the society which involves these two countries since before the Independence of Indonesia can be overcome by these two countries.

The use of boycott in handling illegal fishing in Indonesia is another alternative if the negotiation does not work. The completion of the legal action through boycott is permitted according to the International Law because it is one of the settlements of legal action by force which is known as reprisal which means a reprisal of a country to another country in order to get justice about an international offence that has been obtained by another country [15].

2.2. Solution for Law Enforcement of illegal fishing in Sulawesi Sea

Law enforcement toward illegal fishing in the Sulawesi Sea is very complex. The effort on finding the solution of the Law enforcement for illegal for illegal fishing which is done by the foreign fishermen ships is by having international agreement both with bilateral and multilateral agreements in order to protect fish resources in Sulawesi Sea. Basically the can give authority toward the government of Indonesia to do the law enforcement in the area of Indonesia fisheries management by using the national law. However in the implementation of the law, there is a conflict between the law maker and the people and also the institutions that is responsible to implement the law that is why it can cause ineffectiveness.

The first solution offered is substantially, to revise some of the laws related to illegal fishing, especially the articles on the law of Fisheries which beneficial for the illegal fishing doers with foreign flags such as on the article 93 the Law number 31, 2004 as it has been ratified with the Law number 45, 2009 on fisheries which has criminal sanction of very heavy fine comparing with other criminal acts but it still has not given a deterrent effect to the doers of illegal fishing crimes. The formulation of sanction in this law does not regulate the lowest or minimum sanction so often the criminal sanction which is given not proving a deterrent effect to the doers as there is no difference on the sanction menace for the legal subjects on the Indonesia citizens and the foreign citizens. The criminal sanctions for the foreign citizens who enter Indonesian area illegally and take natural resources in the sea area of Indonesia must be punished heavier because illegal fishing is against the principles of Indonesian law sovereignty.

The second, according to the law structure, it provides sufficient infrastructures and medias to do supervision on fisheries on the fisheries area which is vulnerable for illegal fishing, especially the fisheries supervisor which regulates on the article 66 B the Law number 31, 2004 which has been amended with the Law number 45, 2009 about the amendment on the Law number 31 on fisheries which is the supervision on the private harbors which the regulation is not detail about the supervision task of the private harbors which is large in numbers, while the fisheries harbor and the public harbor is not enough to accommodate the whole fisheries activities in the private harbor. Beside that it needs a structure

improvement and organization hierarchy as explained in the research result that: according to President decree number 115 , 2015 on the task unit for eradicating the illegal fishing. The task unit is appointed as the commandant in conduction the operational of the action on IUU fishing. But according to article 3 paragraph (d) president decree number 115 2015 regulates that: the Unit Task has an authority to command and control which consists of ships, aircrafts, and other technologies from the Indonesian armed forces-Naval Forces. In fact the authority is contradicted with the Law number 3, 2022 on country the national defense.

The third, according to law culture, to give an understanding to the Indonesian citizens and the Philippines citizens, and the apparatus of the law enforcement about Indonesian fisheries management area to be obeyed according to the Joint Permanent Working Group on Maritime and Ocean Concerns between the Republic of Indonesia and the Republic of the Philippines (JPWG-MOC) that has been ratified by the government of Indonesia with the Law number 4, 2017 on the ratification agreement between the government of Republic Indonesia and the Philippines Republic about the regulation on the exclusive economic zone borders, 2014. However the agreement which is done by these two countries does not give impact on the activity of foreign ships or foreign fishermen because until now there is still illegal fishing activities happened. Actually if the government of the Philippines take this issue seriously in handling with the illegal fishing doers which is done by its countries, they van withdraw the letter of fishing permit and other document which is issued by the government of the Philippines to the ships who violate the exclusive economic zones of Indonesia. So the agreement written on the JPWG-MOC provides legal protection to the fisheries management area of Indonesia and vice versa to the Philippines fisheries management area.

If there is no serious action from the government of the Philippines to help Indonesia in handling the illegal fishing which comes from its country it is the time for Indonesian government to use another alternative to solve the dispute by force such as boycott. The consideration in solving the dispute using boycott is because the risk is lower comparing to other forced dispute settlement. According to the intention of the boycott is as the implementation of protest or as a form of compulsion action to other parties to fulfill the forced intentions.

As being discussed on the research result that doing boycott need a careful thought because it is related to export and import relations between the government of Indonesia and the Philippines. During this time the trading relations between the two countries is running smoothly. And the most important one is the government is ready to take a risk of financial loss on the export products and is ready to search for exchanged product to be imported. There are some countries using boycott to reach an agreement and the government of Indonesia can use this alternative to solve a dispute, if the negotiation does not work to prevent illegal fishing which is conducted by the fishermen or the foreign ships in the Sulawesi Sea. The fish resources which is located in Sulawesi Sea is Indonesian sovereignty rights and these rights is acknowledged the Philippines in JPWG-MOC.

3. Conclusion

The law enforcement for illegal fishing in Sulawesi sea according to international law that give authority toward a country to do law enforcement which is later implemented by fisheries law as a special law is not effective because it still cause a conflict especially the same penalty giving toward illegal fishing actors that use foreign flag and Indonesian citizens, and also there is an institutional conflict in implementing the law. The solution is to have some revisions on the law related to illegal fishing so it can have clear and useful objective. The reason to choose negotiation as an amicably solution for dispute settlement is because the relationships between the people in Sangihe-Talaud, North Sulawesi and the Philippines people has been intertwined for a long time. So it is not really nice to use another amicably solution. If this kind of negotiations cannot work properly in handling the illegal fishing, this is the right time for

Indonesian government to use dispute settlement by force such as boycott. The consideration of using boycott in dealing with the dispute is less risky comparing to other forces dispute settlement.

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