

Illegal Fishing Eradication: Comparative Study of Indonesia and Malaysia

Muhammad Yusuf*, Abd. Razak**, Muhadar***, M. Said Karim****

*Phd Student at Postgraduate Program Hasanuddin University

** Professor on Legal Science, Faculty of Law, Hasanuddin University

*** Professor on Legal Science, Faculty of Law, Hasanuddin University

**** Professor on Legal Science, Faculty of Law, Hasanuddin University

Abstract:

Practice of illegal fishing is an obstacle in the practice of countries. Indonesia with a sea area of more than 5 million km² is not an easy thing to overcome. Fisheries crimes or illegal fishing as a violation of the law of the seas is a serious threat because of the potential damage to the state's economy. Illegal fishing or fisheries crimes are considered a type of that garners international attention. The handling of illegal fishing cases in practice is not a stand-alone thing but relates to various aspects/factors. Some factors are substance of law and structure of law. The substance of law includes all regulation such as the Law of Fisheries, the Law of Ratifying of UNCLOS, and Indonesia Criminal Code. The structure of Law consists of the police (water and air police), the ministry of marine and fisheries, the NAVY, Bakamla, and lastly Task Force 115. In Malaysia perspective, the substance of law is in Fisheries Act 1985 No.137 and the structure of law is the Malaysian Maritime Enforcement Agency (MMEA) and Marine Police.

Keywords: Illegal Fishing; Eradication; Comparative Study.

1. Introduction

The practice of illegal fishing haunts law enforcement in the field of fisheries. Within this context, the practice of illegal fishing is an obstacle in the practice of countries. Indonesia with a sea area of more than 5 million km² is not an easy thing to overcome.¹ Fisheries crimes or illegal fishing as a violation of the law of the seas is a serious threat because of the potential damage to the state's economy. Illegal fishing is practiced by both domestic and foreign ships that have been of considerable disadvantage to the state. Counting the state loss due to illegal fishing which reaches Rp300 trillion it seems it is not just a rumor, because according to reports no less than 5.400 foreign vessels operate to steal fish in Indonesian marine waters.²

Illegal fishing or fisheries crimes are considered a type of that garners international attention. Several countries have different legal systems from Indonesia and prioritizes fishery resources as the main source of foreign exchange also have or seek the necessary criminal law instruments as a form of protection. As a step to improve the regulation of criminal law in the field of fisheries, Indonesia and some other countries such as Malaysia need to adopt the relevant state criminal provisions as a complement for existing regulations. In this case, illegal fishing is a violation of fishery rules and crimes against the country's economy. This violation is not only a concern of the Government of the Republic of Indonesia, but its handling and eradication is also a top priority in a number of countries. The perpetrators of illegal fishing or fisheries crimes use various modus operandi in order to fool officers or existing rules of law. Therefore, the focus of this paper is to emphasize the comparison between Indonesian and Malaysian criminal law in the eradication of Illegal Fishing.

2. Comparison of Indonesian and Malaysian Criminal Law Concerning Illegal Fishing

The handling of illegal fishing cases in practice is not a stand-alone thing but relates to various aspects/factors. To deal with some *illegal fishing* cases either Indonesia or Malaysia is connected to the law itself including the law enforcers.

2.2.1. Indonesian Fishery Criminal Law

Indonesia's legal system is the civil law system originally brought by the Dutch Colonials, before and after World War II. In the civil law system or the mainland European legal system, condification is the main source of

¹ Ketut Darmika, "Penegakan Hukum Tindak Pidana Perikanan Oleh Kapal Perang Republik Indonesia (KRI) Dalam Perspektif Undang-Undang No. 45 Tahun 2009 tentang Perikanan", *Jurnal Hukum dan Peradilan*, Vol. 4 No. 3, November 2015, p. 487.

² Anonymous, *Ketika Jokowi "Mengultimatum" Kapal Asing Pencuri Ikan*, <http://wartaekonomi.co.id/berita38459/ketika-jokowi-mengultimatum-kapal-asing-pencuri-ikan.html> accessed on 21 May 2017.

law.¹ Codification is a collection of authoritative, comprehensive, systematic, and some common legal principles divided into several books or sections that are interconnected and related.² Therefore, this codification is full of efforts to collect certain legal or specific material whether civil law, criminal law, trade law and civil procedural law.³ But as the law develops, the dogma that codification is the only source of law is no longer held firmly, many countries with civil law systems also hold judge's rulings as important sources of law.

The United Republic of Indonesia as referred to in the 1945 Constitution of the Republic of Indonesia has sovereignty and jurisdiction over the territorial waters of Indonesia, and authority in the framework of stipulating provisions on the utilization of fish resources, both for fishing and the cultivation of fish while increasing prosperity and justice for the utmost utilization for the benefit of the nation and the state while still taking into account the principles of the preservation of fish resources and the environment as well as the sustainability of the national fishery development.

The legal consequences of ratifying the United Nations Convention on The Law of the Sea of 1982 with Law No. 17 Of 1985 concerning the Ratification of United Nations Convention on The Law of the Sea 1982 places the United Republic of Indonesia has the right to use, conserve, and manage fish resources in the Indonesian Exclusive Economic Zone and the open seas implemented under applicable international requirements or standards.

To ensure the optimal and sustainable management of fish resources, the role of fishery supervisors and community participation in an efficient and effective manner is needed. Implementation of law enforcement in the in the field of fisheries is very important and strategic in order to support fishery development in a controlled manner and in accordance with the principle of fishery management, so that the development of fisheries can be done continuously. Therefore, the existence of legal certainty is a condition that is absolutely necessary. This Law provides legal clarity and legal certainty to law enforcement of criminal acts in the field of fishery, including investigation, prosecution, and examination in court, therefore the authority of investigators, prosecutors, and judges in handling criminal offenses in the field of fisheries must be specially regulated.

In carrying out the duties and powers of investigation, prosecution, and examination in the court, in addition to following the procedural law provided for in Law No. 8 of 1981 concerning the Criminal Procedure Code, as well as in this Law separate procedural laws as special provisions (*lex specialis*).

Law enforcement of criminal offenses in the field of fisheries that occurred during this proved to experience various obstacles. Therefore, there is a need for specific law enforcement methods involving material and formal law. To ensure legal certainty, whether at the level of investigation, prosecution, or at the level of examination in the court, the time must be determined expressly, So that in this Law the formulation of procedural law is faster.

To improve the efficiency and effectiveness of law enforcement on criminal acts in the field of fisheries, this law regulates the establishment of fishery courts within the general judiciary, which was first established within the District Court of North Jakarta, Medan, Pontianak, Bitung, and Tual. However, considering that preparation then the fishery court that has been established, performed its duties and functions no later than 2 (two) of months since the date of this Law's entry into force. The fishery court has the duty and authority to examine, hear and decide on criminal offenses in the field of fishery conducted by a panel of judges consisting of 1 (one) career district court judge and 2 (two) *ad hoc* judges.

Given the current and future fisheries development, this Law regulates matters relating to:

- Fisheries management is based on the principles of benefit, justice, partnership, equity, integration, openness, efficiency, and sustainability;
- Fisheries management is based on the principles of planning and integration of its control;
- Fisheries management is done by considering the division of authority between the Central Government and Local Government;

¹RM, Surachman & Jan S. Maringka. (2015). Peran Jaksa Dalam Sistem Peradilan Pidana Di Kawasan Asia Pasifik. Jakarta : Sinar Grafika., hlm. 6. Lihat pula dalam RM. Surachman Dkk. (2015) Eksistensi Kejaksaan Dalam Konstitusi Di berbagai Negara. Jakarta : Sinar Grafika., hlm. 30.

² Peter De Cruz. (1993) A Modern Approach to Comparative Law. Boston : Kluwer. dalam Topo Santoso.(2007) Perbandingan Hukum Pidana Program Pascasarjana Universitas Indonesia, Depok.

³ Imam Syaekani & Ahsin Thohari. (2004). Dasar-Dasar Politik Hukum, Jakarta: Rajawali Pers., hlm. 124.

- Fisheries management that fulfills the elements of sustainable development, supported by research and development of fisheries and integrated control;
- Fisheries management by improving education and training as well as counseling in the field of fisheries;
- Fisheries management is supported by fishery facilities and infrastructure and fishery information system and statistical data;
- institutional strengthening in the field of fishery ports, fishery affairs, and fishing vessels;
- Fisheries management that is encouraged to contribute to marine and fisheries development;
- Fisheries management by still paying attention and empowering small fishermen or small fish-breeders;
- Fisheries management conducted in Indonesian waters, Indonesian exclusive economic zone, and open seas determined in the form of legislation with due regard to applicable international requirements or standards;
- Fishery resource management and utilization, in Indonesian waters, Indonesian exclusive economic zone, and open seas shall be controlled through the making of licenses by taking into account national and international interests in accordance with the capability of available fish resources;
- Fishery supervision;
- Granting the same authority in the investigation of criminal acts in the field of fisheries to civil servant fishery investigators, officers of the Indonesian Republic's Navy and police;
- Establishment of a fishery court; and
- Establishment of a national fisheries development consideration council.

Based on the aforementioned considerations, this Law is a renewal and refinement of fishery regulation in lieu of Law No. 9 of 1985 concerning Fisheries.

In Indonesia, in Law No. 31 Of 2004 concerning Fisheries as amended by Law No. 45 Of 2009 states that the objective of fisheries management, in addition to benefitting from the economic management of fish resources, is to ensure the sustainability of these resources. This Law authorizes the Minister of Maritime Affairs and Fisheries, among others, to determine the potential availability of fish resources, allocation of fish resources, and the number of catches allowed in the State Fishery Management Area of the Republic of Indonesia (WPPNRI) which in its implementation, the Minister receives recommendations from the national commission which studies fish resources.

Based on the consideration of Law No. 45 Of 2009 concerning Fisheries that the waters within the sovereignty of the United Republic of Indonesia and the Indonesian Exclusive Economic Zone and the open seas contain potential fish resources and as a fish cultivation field is a blessing from God Almighty who mandated the Indonesian people who have the philosophy of Pancasila and the 1945 Constitution of the State of the Republic of Indonesia, taking into consideration the existing carrying capacity and its sustainability to be utilized as much as possible for the welfare and prosperity of the people of Indonesia.¹ That the utilization of fish resources has not provided sustainable and equitable improvement of livelihood through fisheries management, supervision, and optimal law enforcement system.²

The general explanation of Law No. 45 Of 2009 stated that the amendment to Law No. 31 Of 2004 concerning Fisheries emphasized issues of growing fishery problems. Overfishing, fish theft, and other illegal fishing activities, but also threatens the interests of fishermen and fish farmers, industry climate, and national fishery businesses. The problem must be solved, so law enforcement in fisheries becomes a very important and strategic part to support fishery development in a controlled and a sustainable way.

Law No. 31 Of 2004 concerning Fisheries not fully able to anticipate technological developments and legal needs in order to manage and utilize the potential of fish resources.³ In the provisions of Law No. 45 Of 2009 concerning Fisheries underwent several changes, namely: Firstly, regarding the supervision and law enforcement that concerns the coordination mechanism between the investigation agencies of fishery crimes, the application of criminal sanctions (imprisonment or fines), the procedural law, especially regarding the limit time of

¹Consideration weighed the letter a.

²*Ibid.*

³*Ibid.*

examination of cases, and facilities in law enforcement in the field of fisheries, including the possibility of the application of legal action in the form of drowning of foreign ships operating in the territory of the Republic of Indonesia. Second, the problem of fisheries management, among others, to fishery port and conservation, licensing, and harbourmastery. Third, concerning the extension of the jurisdiction of the court to cover the entire territory of fisheries management of the Republic of Indonesia.

a. Legal Substance

In connection with the legal substance which regulates the prohibited or required activities in fisheries activities is Law No. 31 Of 2004 jo. Law No. 45 Of 2009 concerning Fisheries. The regulation of prohibited or required conduct is provided in Chapter XV Criminal Provisions Law No. 31 Of 2004 jo. Law No. 45 Of 2009 concerning Fisheries. There are 17 (seventeen) kinds of fishing activities that can be subject to criminal sanctions. 17 (seventeen) kinds of activities can be divided into 4 (four) classes of crime as presented in the table below:

Table1.
Fishery Crime Classifications in Indonesia

Crime Classifications	Article
1	2
Destruction of fishery resources	1) Use of chemicals or the like (Article 84), 2) Cultivation of certain fish species that endanger the fishery resources (Article 88) 3) Use of hazardous raw materials (Article 91).
Permission violation	1) Fishery business without ownership of SIUP (Article 92); 2) Operation of fishing vessels without SIPI ownership in the open seas or the EEZ (Article 93 paragraph 1, 2, 3, and 4); 3) Forgery of SIUP, SIPI, and SIKPI (Article 94A) 4) Operation of foreign vessels without permit (Article 97 paragraph 1, 2 and 3); 5) Captain who did not have a sailing permit (Article 98); 6) Unlicensed fishery research (Article 99); 7) Forgery of SIUP, SIPI, and SIKPI by related officials (Article 100A).
Illegal fishing	a. Use of fishing tools/methods that are not in accordance with established parameters or standards (Article 85) building, importing, or modifying fishing vessels unregistered fishing vessels (Article 95), b. Not registering fishing vessels (Article 96).
Production and marketing violation of fishery resource.	a. Not meeting the eligibility requirements of fish management, quality assurance system, and fishery product safety (Article 89). b. Inclusion or expenditure of fishery products without being equipped with a certificate of health worth consumption for humans must also be fulfilled (Article 90).
Violations committed by small fishermen	a. Violation of the prohibitions as regulated in the Fisheries Law (Article 100B). b. Violation of Article 7 paragraph (2) ¹ (Article 100C).

¹Type, quantity, size of fishing gear; The type, quantity, size, and placement of fishing aids; Regional, path, and time or fishing season; Fish vessel monitoring system; New types of fish cultivated; Fish species and re-stocking areas and cultivation-based fishing, fish cultivation and protection; Prevention of pollution and damage to fish resources and the environment; Minimum size or weight of fish species to be captured; Fishery sanctuary; Outbreaks and areas of fish disease outbreaks; Types of fish that are forbidden to trade, are included. And issued to and from the territory of the Republic of Indonesia; and Types of protected fish.

Based on the above classification there are certain acts or activities in the field of fishery that can be charged criminally. The use of chemicals and licensing violations may be sanctioned. Other offenses such as: illegal fishing, violation of production and marketing of fishery resource provisions. The provisions concerning criminal acts committed by small fishermen/small fish farmers are also regulated in the provisions of the Indonesian Fisheries Law.

Criminal sanctions in Law No. 31 Of 2004 jo. Law No. 45 Of 2009 concerning Fisheries consists of 2 types, namely imprisonment and fines. Imprisonment varies from 1 (one) of to 7 (seven) of, as well as fines varying from Rp. 100.000.000,00 (one hundred million rupiah) to Rp. 20.000.000.000,00 (twenty billion rupiah). The formulation of criminal sanctions under the Indonesian Fisheries Law is largely cumulative. The formulation of criminal sanctions under the Indonesian Fisheries Act is largely cumulative. Especially for small fishermen / small fish cultivators formulation of alternative and single criminal sanctions.

The criminal liability of the perpetrator (individual) of the criminal act of fishery is still embraced by Law No. 31 Of 2004 jo. Law No. 45 Of 2009 concerning Fisheries. The elements of criminal liability in the case of errors in the form of intent, neglect or inner attitude still exist in the total formulation of criminal offenses, such as the use of chemicals / explosives and still must be proven by the prosecutor in the trial.

For corporations or legal entities, the provisions of Law no. 31 Of 2004 jo. Law No. 45 of 2009 also accommodates the criminal liability for corporations. This provision as provided for in Article 101 which reads: "In the case of a criminal offense referred to in Article 84 paragraph (1), Article 85, Article 86, Article 87, Article 88, Article 89, Article 90, Article 91, Article 92, Article 93, Article 94, Article 95, and Article 96 done by the corporation, the demands and penal sanctions are imposed on the committee and the criminal penalty plus 1/3 (one third) of the imposed penalty."

Based on the above provisions, if the criminal act of fishery is committed by a legal entity/corporation then the prosecutor shall be charged to the management. In addition, the imposition of criminal sanctions is also imposed on the board of the legal entity/corporation concerned. Known, conventional doctrine of corporate criminal liability as stated in Article 59 of the Criminal Code is still applied in Law no. 31 Year 2004 jo. UU no. 45 Year 2009 About Fisheries.

b. Legal Structure

When it comes to structures within the legal system, it includes structures or institutions that define law enforcement, such as police, prosecutors and courts. The structure is like a machine. In the handling of cases of fishery crime in Indonesia, the authorized structure or institution is the police (water and air police), the ministry of marine and fisheries, the NAVY, Bakamla, and lastly Task Force 115. Therefore, these institutions play a role important in law enforcement in the field of fisheries.

1) Water Police (Polair)

According to Article 13 Law No. 2 of 2002 Concerning the Indonesian National Police, the primary duty and function of the Indonesian National Police, includes: 1) maintaining public security and order; 2) enforcing the law; and 3) providing protection, shelter and service to the public.

If we were to see from the history of Water Police Law, the Water Police was formed based on Minister of Home Affairs Decision No.4/2/3/Um, of 14 March 1951 concerning the Establishment of Water Police as a part of the National Police effective from 1 December 1950. Based on this legal basis it can be clarified that the Indonesian territory which consists of thousands of islands spread across the stretch of Indonesian sea it is the Water Police's duty to maintain public security and order as well as the enforcement of law.

The policing function is one of the functions of the government in the field of maintaining public security and order, enforcing the law, and providing protection, shelter, and service to the public¹. This is as emphasized in Article 13 Undang-Undang No. 2 of 2002 concerning the Indonesian National Police, that the main function of the Police is to maintaining public security and order, enforcing the law, and providing protection, shelter, and service to the public.

¹Article 2 Undang-Undang No. 2 Tahun 2002 tentang Kepolisian Negara Republik Indonesia

In addition to this, in Article 14 letter g Law No. 2 of 2002 concerning the Indonesian National Police, it is said that “the Indonesian National Police are charged with conducting investigation of all crimes in accordance with Criminal procedural law and other laws and regulations”.

The authority of the police as investigators and investigators and is in accordance with the rules found in the provisions of the Criminal Procedure Code (KUHAP), where Article 4 of the KUHAP states, Investigators are every Indonesian National Police officer. While Article 6 paragraph (1) KUHAP, states that inquisitors are Indonesian National Police officers and civil servants who have been given special authority by the Law. In addition to being based on police laws and KUHAP the authority of the police in the sea is also stated in other laws and regulations which stipulates certain crimes in the sea.

Article 72 Law No. 31 of 2004 concerning Fisheries states that Inquisition in criminal cases in the field of fisheries, is done based on the applicable procedural law, unless stated otherwise in this Law. As for what is meant by applicable procedural law is as stated Criminal Procedure Code (KUHAP), meanwhile according to KUHAP one of those authorized to conduct inquisitions are officers of the Indonesian National Police. On the other hand, Article 73 paragraph (1) Law No. 31 of 2004 concerning Fisheries also state that inquisition of crimes in the field of fisheries done by civil servant fishery investigators, naval officers, and Indonesian National Police officers. In addition to this Article 282 paragraph (1) Law No. 17 of 2008 concerning Sailing also grants authority to Indonesian National police officers to conduct inquisitions into crimes in the field of seafaring.

In addition to being authorized to conduct investigations on criminal acts in the field of fisheries and seafaring, the police is also authorized to conduct investigations of crimes in the territorial waters of Indonesia which are related to environmental pollution and the conservation of biological natural resources and their ecosystems. Hal ini sebagaimana dinyatakan dalam Article 94 Law No. 32 of 2009 concerning Environmental Protection that the police are authorized to conduct inquisitions towards crimes relating to the environment. A similar authority is also granted by Law No. 5 of 1990 concerning Conservation of Biological Natural Resources and their Ecosystem, where Article 39 states that officers of the Indonesian National Police have the authority to conduct inquisitions towards crimes relating to the conservation of biological natural resources and their ecosystem.

2) Indonesian National Army Navy

For the state of Indonesia, whose territory is partially in the form of waters, the Navy plays a big role in securing and guarding the territorial waters of the sea, where universally the Navy has three roles namely the role of military, the role of police, and the role of diplomacy. The role of the police is carried out in the context of upholding the law at sea, protecting the national marine resources and wealth, and maintaining security and order in the sea. By formal juridical these three roles have been implemented in various legislation regulating the tasks of the Navy¹, this is as stated in Law No. 34 of 2004 concerning the Indonesian National Army affirming that the Navy has the duty to carry out the tasks in the field of defense, enforcing the law and maintaining security in the territorial sea of national jurisdiction, and conducting naval diplomacy. Therefore, the Navy is required to be able to perform its roles and duties maximally in order to uphold sovereignty and law in marine areas.

As for the task of enforcing the law and maintaining security are all forms of activities related to law enforcement at sea in accordance with the authority of the Navy (constabulary function) which is universally applicable and in accordance with the provisions of applicable legislation to address threats, acts of violence, threats of navigation, as well as violations of law in the territorial sea of national jurisdiction. The enforcement of laws implemented by the Navy is limited in the pursuit, arrest, investigation and investigation of cases which are subsequently submitted to the Prosecutor's Office for prosecution.²

Article 284 paragraph 2 Criminal Procedure Code (KUHAP), states that the Criminal Procedure Code applies to all criminal offenses, with the temporary exception of the special provisions of criminal proceedings as set forth in certain laws. Therefore Article 6 paragraph (1) of the Criminal Procedure Code which states that investigators are certain police officers and civil servants still leaves the possibility of other investigators other than certain police officers and civil servants, as long as the Special cases regulated in the law, certain laws that contain the provisions of the criminal procedural law itself. Thus, in the settlement of certain cases which are

¹ Adi Susanto, “Hubungan Antara Penegakan Hukum di Perairan Indonesia dan Ketahanan Nasional: Sebuah Tinjauan Tentang Peran Indonesian National Army Al Dalam Penanganan Illegal Fishing di Kawasan Lantamal III”, <http://www.digilib.ui.ac.id/opac/themes/libri2/detail.jsp?id=111773>, Diakses pada 16 Mei 2017

² Explanation of Article 9 letter b of law no. 34 of 2004 on the Indonesian National Army.

regulated in certain laws in the application and enforcement of the law contains the procedure itself as a special provision (*Lex Specialis*).¹

Article 9 letter b Law no. 34 of 2004 concerning Indonesian National Army became the basis of Indonesian National Army authority in carrying out law enforcement in the territorial waters of the sea. In addition, the basic authority of the Navy in eradicating criminal acts in the territorial waters of the sea is also stated explicitly in various other laws and regulations that regulate the territorial waters of Indonesia and specifically regulate certain criminal acts in the territorial waters of the sea.

According to Article 73 of Law no. 31 of 2004 concerning Fisheries, as amended by Law no.45 Year 2009, the inquisition of criminal acts in the field of fisheries conducted by Civil Servant Fisheries Investigator, Naval Officers, and Police Officer. In addition to this Article 73 paragraph (2) of Law no. 45 of 2009 granted exclusive authority to the Indonesian National Army to conduct inquisitions in the Exclusive Economic Zone of Indonesia. Similar powers are also granted by Law no. (Article 282 Paragraph (1) authorizes the officers of the Indonesian National Police and civil servants to investigate criminal acts in the field of seafaring, but Article 340 of the Fisheries Act provides exclusive authority to the Navy for conducting investigations in the waters of the Indonesian Exclusive Economic Zone.

In addition to being authorized to investigate criminal acts in the field of fisheries and shipping, the Navy is also authorized to conduct investigations of criminal offenses in the territorial waters of the sea related to environmental pollution and conservation of biological natural resources and its ecosystem, where Article 39 paragraph (2) Law no. 5 of 1990 concerning Conservation of Biological Natural Resources and Ecosystems, stipulates that the authority of Police investigators and civil servants in conducting an inquisition into crimes in the field of conservation of biological natural resources and their ecosystem shall not reduce the authority of investigators as regulated in Law no. 5 of 1983 concerning Indonesian Exclusive Economic Zone and Fisheries Law. Meanwhile, according to Article 14 of Law no. 5 of 1983 concerning the Indonesian Exclusive Economic Zone granted full authority to Naval Officers to conduct investigations and inquisitions in the territory of the Indonesian Exclusive Economic Zone.

The authority of the Indonesian Navy in enforcing the law in the territorial waters of the Sea is also reinforced by other laws and regulations governing the problem of Indonesian waters such as Law no. 6 of 1996 concerning the Indonesian Waters, as well as international conventions such as the United Nations Convention on the Law of the Sea 1982. Article 24 of Indonesian Waters Law affirms that the enforcement of sovereignty and law in the territorial waters of Indonesia, the airspace above it, and the subsoil including the natural resources contained therein and sanctions for its violation, are carried out in accordance with the provisions of International Law Conventions and applicable legislation. The meaning of the International Law Convention one of which is the United Nations Convention on the Law of the Sea 1982 which was ratified by Law No. 17 of 1985. Article 111 Part (5) of the 1982 Law of the Sea Convention states that "*The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect*" thus according to international convention has authority to enforce state sovereignty and law enforcement in accordance with state jurisdiction in sea territory.

3) Ministry of Maritime Affairs and Fisheries

The supervisory duties of the Ministry of Maritime Affairs and Fisheries (KKP) can be seen from the Decision of the Director General of Marine and Fisheries Resources Supervision Number: KEP 307 / DJ-PSDKP / 2011 on the Determination of Supervisors on Technical Implementation Unit, Work Task Force and Monitoring Post Marine Resources and Fisheries. The Directorate General's decision on the second order states that the fishery supervisor performs supervisory duties for activities: 1) Fishing; 2) Fish cultivation, hatchery; 3) Processing, distribution in and out of fish; 4) Distribution in and out of fish medicines; 5) Conservation; 6) Pollution due to human actions; 7) Germplasm; 8) Research and development of fisheries; 9) Genetically engineered fish; 10) The exploitation and utilization of sea sand; 11) Utilization of management of coastal areas and small islands as well as valuable objects of the origin of sinking vessels (BMKT) in coordination with relevant agencies; and 12) Other tasks assigned by the leadership.

Article 6 paragraph (1) of the Criminal Procedure Code (KUHP), affirms that the inquisitor are Republic of Indonesia Police officers and certain Civil Servants who are given special authority by law.

¹Sukardi, 2009, *Penyidikan Tindak Pidana Tertentu*, Jakarta: Restu Agung, Jakarta, hlm. 275

The law referred to in Article 6 paragraph (1) letter b above is a specific law which contains a separate procedural law as a special provision (*lex specialist*). The authority of civil servant inquisitors to conduct inquisition of crimes in the territorial waters of the sea is expressly stated in various laws and regulations governing both the territorial waters of Indonesia and certain criminal offenses in the territorial waters of the sea.

Law no. 31 of 2004 concerning Fisheries, as has been amended by Law no. 45 of 2009, authorizes civil servant inquisitors to conduct inquisitions into fishery crimes both in the territorial sea territory of Indonesia and in the Indonesian Exclusive Economic Zone. Based on Article 282 paragraph (1) of Law no. 17 of 2008 on Seafaring, Civil Servant Inquisitors is authorized to conduct investigation on criminal acts in the field of shipping. In addition, in criminal acts in the field of environmental pollution and conservation of living natural resources in the territorial waters of the sea, civil servant investigators are also authorized to conduct investigations, as defined in Article 39 paragraph (1) of Law no. 5 of 1990 concerning the Conservation of Biological Natural Resources and Ecosystems, Article 94 paragraph (1) of Law no. 32 of 2009 concerning the Protection and Management of the Environment.

The meaning of civil servant investigators in this case are certain civil servants in the government agencies whose scope of duties and responsibilities relate to certain areas authorized as investigators. For example, the investigator authorized to conduct an investigation of criminal acts in the field of shipping is a civil servant within the government agencies whose scope of duties and responsibilities in the field of shipping. Likewise, with civil servant investigators who are authorized to investigate the crime of fisheries is a civil servant official at government agencies whose scope of duties and responsibilities relates to the field of fisheries.

4) Marine Security Agency (Bakamla)

In order to improve coordination among government institutions / agencies in the field of maritime security in 2003, through Kep. Menkopolkam, No. Kep.05/Menko/Polkam/2/2003, a Working Group on Development Planning for Security and Law Enforcement has been established on December 29, 2005, stipulated in Presidential Decree no. 81 of 2005 on Marine Security Coordinating Board (Bakorkamla). Bakorkamla is a non-structural institution under and responsible to the President.

The main task of Bakorkamla is to coordinate the compilation of policies and implementation of marine security operations in an integrated manner.¹ According to Article 4 of Presidential Regulation no. 81 of 2005 in carrying out its duties, Bakorkamla held a function:

- a. formulation and determination of general policies in the field of marine security;
- b. coordination of activities in the execution of duties in the field of maritime security, including safeguarding, supervising, preventing and prosecuting law violations and securing the safeguarding of shipping and securing community and government activities in the territorial waters of Indonesia;
- c. provision of technical and administrative support in the field of marine security in an integrated manner.

Article 59 ayat (3) of Law No. 32 of 2014 concerning Seagoverning the establishment of the Marine Security Agency. The Marine Security Agency (Bakamla) is a non-ministerial government institution under the President, which has the main duty of conducting security and safety patrols in the territorial waters of Indonesia and the jurisdiction of Indonesia. Basically, Bakamla is a revitalization of Bakorkamla, whose authority has been strengthened, which is the central command of law enforcement in the territorial waters of Indonesia, unlike Bakorkamla which only coordinates related institutions.

The establishment of the Marine Security Agency (Bakamla) is replacing the Marine Security Coordinating Board (Bakorlkamla). If at the time the Bakorkamla is still a Multi Agency Single Task system this means many sea law enforcement agencies with a similar task that is the sea enforcement in coordination by Bakorkamla. The existence of a change into the Marine Security Agency (Bakamla) who acts as Single Agency Multy Tasks a unity command with various tasks.

This marine security agency is expected to function well in law enforcement, security and safety at sea, whose tasks comprise of aspects of the early warning information systems, law enforcement at sea, customs, security and safety of seafaring, control of biological natural resources and non-biological in marine environment, search and rescue at sea and state defense in a state of war.

¹Article 3 Presidential Regulation no. 81 of 2005 on Marine Security Coordinating Board

Bakamla's establishment will shift the law enforcement paradigm at sea from multi-agency multi-task, to a multi-task single agency, which in practice will create effectiveness and efficiency, as well as "real" law enforcement. The concept of centralization like Bakamla itself has actually been practiced by several countries, such as Malaysia Maritime Enforcement Agency / MMEA, Japan Coast Guard / JCG, United States Coast Guard / USCG, and Indian Coast Guard / ICG. Bakamla will serve as a "home" for each related institution, so overlapping authority, confusion over who is enforcing the law, can be overcome.

5) Illegal Fishing Eradication Task Force (*illegal fishing*)

The issuance of Presidential Regulation No. 115 of 2015 concerning the Illegal Fishing Eradication Task Force is a new breakthrough. Jokowi - JK Government in law enforcement in the field of Marine and Fisheries. In this process seems the legal politics are clear in that the problem of illegal fishing is one of the acute problems so that the need for cooperation and coordination among cross-ministries, state agencies and other agencies. Legal Politics in Presidential Regulation no.115 Year 2015 can be seen in consideration weighing letters b and c as follows:

That the violation and crime in the field of fishery, especially illegal fishing crime (illegal fishing) has been very alarming, because it needs to be taken promptly and integrated by all relevant government agencies for eradication.¹ That the eradication of illegal fishing requires extraordinary law enforcement efforts that integrate intergovernmental forces' strengths with appropriate strategies, utilizing the latest technology to be effective and efficient, capable of deterring effects, and able to restore the state's losses.²

Based on these considerations it appears that the government considers illegal fishing requires extraordinary law enforcement because in addition to harming the country's economy from the fishery sector as well as a form of maintaining the territory kedaulatan state at sea. The following are government agencies involved in the eradication of illegal fishing based on Article 3 on the authority of the point b taskforce namely: Ministry of Maritime Affairs and Fisheries, Ministry of Finance, Ministry of Foreign Affairs, Ministry of Transportation, Indonesian National Army AL, Indonesian Police, Attorney General, Bakamla, PPATK and BIN.

Presidential Regulation No. 115 of 2015 concerning the Illegal Fish Eradication Task Force stipulates that the task force is tasked with developing and implementing law enforcement operations in an effort to eradicate illegal fishing in Indonesian marine jurisdiction region effectively and efficiently by optimizing the utilization of personnel and equipment operations, including ships, aircraft and other technologies owned by the Ministry of Marine Affairs and Fisheries, the Indonesian National Armed Forces of the Navy, the Indonesian National Police, the Attorney General's Office of the Republic of Indonesia, the Maritime Security Agency, the Special Task Force for Upstream Oil and Gas Operations, PT Pertamina, and other related institutions.³

In performing its duties, the Task Force is authorized:

- a. Determine the target of law enforcement operation in order to eradicate illegal fishing;
- b. Coordinate data collection and information needed as law enforcement efforts, with related institutions but not limited to the Ministry of Marine Affairs and Fisheries, Ministry of Finance, Ministry of Foreign Affairs, Ministry of Transportation, Indonesian Navy, Indonesian National Police, Indonesia, Sea Security Agency, Financial Transaction Reports and Analysis Center, State Intelligence Agency;
- c. Establish and order elements of the Task Force to carry out law enforcement operations in the context of illegal fishing in areas designated by Task Force;
- d. Carrying out command and control covering ships, aircraft and other technologies from the Indonesian National Army, the Indonesian National Police, the Ministry of Marine Affairs and Fisheries, and the Marine Security Agency already within the Task Force.

¹Consideration weighing Perpres 165 Year 2015 letter b.

²Consideration weighing Perpres 165 Year 2015 letter d.

³Article 2 Paragraph (1) of Presidential Regulation Number 115 of 2015 concerning the Illegal Fishing Eradication Task Force

Table 2
Regional Comparisons of Enforcement Operators
The Law of Illegal Fishing

Institution	Areas of Operation					
	Inland waters	Islands waters	Territorial Sea	EEZ	Additional Zones	Continental shelf
1	2	3	4	5	6	7
Navy	√	√	√	√	√	√
Coastal Police	√	√	√	-	-	-
KKP	√	√	√	√	-	-
Bakorkamla	√	√	√		-	-
Illegal Fishing Task Force	√	√	√	√	√	√

Source: Results of secondary data processing, 2017

In the field of investigation of fishery crime, Law No. 45 of 2009 concerning Amendment to Law No. 31 of 2004 concerning Fisheries designs institutional authority based on multi-institutional concept. The investigation of criminal acts in fisheries management area of the Republic of Indonesia is conducted by civil servant fishery investigators, Indonesian Navy Investigators, and/or Police Investigators (Polri). The crime of fishery whose locus delicti occurs in the Indonesian Exclusive Economic Zone (EEZ) then the investigation authority is belongs to the Indonesian Navy Investigators and Civil Servant Investigators of Fishery Crimes, while if its locusdelicti is at fishery port is preferred by Civil Servant Investigator Civil Fisheries. Each of the above investigators has independence, but in working relationships in handling cases of fishery crime between investigators to coordinate the relationship. The institutional coordination relationship among the investigators is done by forming a coordination forum established by menter iperikanan and maritime.

The authority of the investigation in the Indonesian Navy, the Indonesian National Police and the Ministry of Maritime Affairs and Fisheries would require coordination arrangements, the division of authority and good responsibility so as to minimize the problems as mentioned above. The Marine Security Coordinating Board is present as an institution that has the main duty of coordinating the compilation of policies and the implementation of integrated marine security operation activities established through the Joint Decree of 5 officials consisting of the Minister of Defense and Security Affairs, the Minister of Transportation, the Minister of Finance, the Minister of Justice and the Attorney General on 1 December 1972. Considering its role as a coordinating agency, the main activity of Bakorkamla is coordinated operation, conducting marine safety and security studies providing legal and cooperation information. Operations by Bakorkamla are operations or patrols up to territorial sea territory, have the right to arrest and inspect the vessel but after that must submit the case to the authorities because it has no investigative authority.

2.2.2. Malaysian Fishery Criminal Law

Malaysia's legal system comes from the United Kingdom and has two main sources, namely *Common law* and *Traditional Law*¹. *Common law* in which the law is made up of court decisions or constituted by concrete legal settlement by judges in solving individual cases.² However, developments that have been established by New Zealand courts have been different from the UK for some aspects of common law. Traditional Law in the form of adat Perpatih practiced in Minangkabau Sumatera and Negeri Sembilan. The customary law is also applicable namely the combined patriarchal law of Hindu and Islamic Law called Adat Temenggung. In addition, marine customary law is collected from the last Malaka relation with the Bugis-Makassar sailors.³ As it is known, the products of written law in the common law state are now beginning to be used even though common law lawyers are still difficult to adapt to such legislative law products.⁴

¹Tata Wijayanta & Hery Firmansyah.(2011). Perbedaan Pendapat Dalam Putusan Pengadilan. Yogyakarta : Pustaka Yustisia., p. 76.

² Barda Nawawi Arief. (2011). Perbandingan Hukum Pidana, Jakarta : Rajawali Pers., hlm. 17.

³ The Hon Tun Dato' Seri ZAKI Tun Azmi, "The Common Law of Malaysia In The 21st Century", (Singapore Academy of Law Journal: 2012 24SACLJ), p. 3.

⁴Rene David & John E. C. Brierley.(1985). *Major legal Systems In The World Today An Introduction to the Comparative*

To anticipate and reduce the development of criminal acts in the field of fisheries the Malaysian government makes provisions of legislation in the field of fisheries. For the fisheries sector, Malaysia enacted Fisheries Act 1985 No.137.

a. Legal Substance

Malaysia as a member of the commonwealth, of course embrace the common law / anglo-saxon law system. Common law system countries generally do not recognize written laws, but Malaysia for fisheries uses written law in the form of laws.

The 1985 Fisheries Act (Malay: The Fisheries Act 1985) is a Malaysian federal law relating to fisheries administration and management, including the conservation and development of fisheries and marine and wildlife fisheries in Malaysian waters, the protection of mammals and sea turtles and the capture fish in the river In Malaysia and associated with the establishment of marine parks and marine reserves.

There are several forms of criminal offenses set forth in the Fisheries Act 1985 No. 137. Criminal provisions of fisheries shall be stipulated in Part VI Offenses, a total of 5 (five) forms of criminal offense. The 5 (five) crimes consist of 5 categories of fishery crime. The fifth class of fisheries crime, among others, is presented in the following table below:

Table. 3
Fishery Crime Classification In Malaysia

Crime Classification	Article
<i>1</i>	<i>2</i>
Violation of the Fisheries Act	Fish offenses committed by foreign fishing vessels or foreign nationals (Article 25 letter a).
Fishing using explosives, poisons and so forth	1) Use of any explosives, toxins or pollutants or the use of any stun electronic appliances with the aim of killing or catching fish resources (Article 26 Paragraph 1 letter a); 2) Carrying or possessing in his or her possession of explosives, toxic or pollutants, electronic equipment of stun or other prohibited equipment (Article 26 Paragraph 1 letter b)
Violation of the capture of aquatic mammals and turtles/ tortoises	1) Conducting fishing activities against aquatic mammals and turtles/tortoise within the jurisdiction of the Malaysian state (Article 27 Paragraph 1) 2) The capture of aquatic mammals and tortoises / turtles by accident but without reporting to the authorities (Article 27 Paragraph 3)
Destruction of fishing vessels	Every person intentionally damaging or destroying fishing vessels, fishing gear or marine culture system (Article 28) .
Destruction of evidence	1) Destroy or exclude any fish, aquatic mammals, turtles/tortoises, poison explosives, pollutants, or any kind of illicit substance in order to avoid seizure (Article 29)

Fisheries Act 1985 No. 137 determines some prohibited actions because of potential losses in the field of fisheries. Prohibition on the use of chemicals in fishing and restrictions on fishing for aquatic mammals and turtles or tortoises. Fisheries Act 1985 No. 137 also imposes criminal charges for any person who damages fishing vessels, including other fishing gear. The prohibition of disposing or destroying the evidence of criminal offenses of a fishery has been subject to criminal sanction in accordance to this law.

Study of Law. London, Steven & Sons, dalam Topo Santoso. (2007). Perbandingan Hukum Pidana Program Pascasarjana Universitas Indonesia, Depok., p. 392.

The criminal sanctions in Malaysia's fishery law are of two types, namely imprisonment and fine. Maximum imprisonment up to 2 (years), as well as with a fine varying between 1,000,000. (one million) Ringgit to 5000 (five thousand) Ringgit. The formulation of criminal sanctions under Malaysian fishery law is a cumulative alternative. Because of the cumulative alternative-formulation, imprisonment or sanctions may be imposed simultaneously or only one may be imposed.

The principle of "no crime without error" is also embraced in the provisions of Malaysian fisheries law. Most of the fishery crime, after proving element reus, the element of criminal offense must be proved, whether in the form of knowingly, attempts, uses (deliberate) or fails, neglect (negligence). Fisheries Act 1985 No. 137 does not adhere to the concept of absolute or strict liability.

Corporate criminal liability as a legal subject in a fishery crime is also regulated in *Fisheries Act* 1985. Article 30 *Fisheries Act* 1985 states that :

"where an offence under this Act has been committed by a company, partnership, firm or business, every director and every officer or that company directly connected with the activity resulting in the commission of the offence, every member of that partnership and every person concerned with the management of that firm or bussines shall each be guilty of that offence"

If during the process of examination by a legal entity engaged in violation of this law, requiring the establishment of a rationale for the corporation, by indicating that the director, employee or agent of the legal entity acting within the scope of the actual or real authority of te person with that rationale. The error of a corporation when committing a fishery crime under this provision is seen from the thoughts or authorities of the director, employee or agent of corporate legal entities. *Fisheries Act* 1985 No. 137 determines that a corporate fault is imposed directly on the board or management of the corporation concerned.

b. Law Structure

1. Malaysian Maritime Enforcement Agency (MMEA)

The enforcement of fisheries laws in Malaysian done by the Malaysian Maritime Enforcement Agency (MMEA) has been established since 2004 as a Malaysian version with the hope of becoming a single maritime enforcement body that effectively replaces various law enforcement agencies responsible for Malaysia's security and maritime zone security.

The Malaysian Maritime Enforcement Agency is part of the Malaysian Civil Service and is under the Department of Prime Minister. The institute is headed by the director general of the rank of Grand Admiral. Malaysian Maritime Enforcement Agency (MMEA) is commonly known as the Malaysian coast guard. The background of the MMEA was the result of a study conducted by the National Security Council of the Prime Minister in April 1999. The result of this research is that "maritime enforcement in Malaysia is ineffective because of the involvement of too many institutions with overlapping functions. Overlapping jurisdictions and uneconomical use of resources Prior to the establishment of the MMEA, there were twelve different Institutions performing law enforcement functions in the Malaysian Maritime Zone, namely: Marine Operations Force, Royal Malaysian Police, Immigration Department, Royal Malaysia, Navy, Royal Malaysian Air Force, Ministry of Maritime Peninsular of Malaysia, Ministry of Marine Affairs Sabah and Sarawak, Department of Home Affairs Fisheries (DOF), Malaysian Customs and Excise Department, Ministry of Environment, Mining and Mining Department of Minerals and Minerals Department of Geoscience and Maritime Enforcement Coordination Center.¹

The Malaysian Maritime Enforcement Agency (MMEA) was established to coordinate activities and to actively protect Malaysian waters. In addition to the establishment of these new bodies, Malaysia also established new naval bases while increasing the ability of maritime police in areas of high security, such as the waters between Sabah and the southern Philippines. Despite the modernization of maritime agencies, it remains difficult to secure Malaysian waters.

The main function of the MMEA is the deployment of troops in the Malaysian maritime zone for law and order enforcement, peace conservation, safety and security, crime prevention and detection, arrest and prosecution of perpetrators and security intelligence gathering.

¹Abdul Ghafur Hamid et.al, "Entrusting Coast Guards With Maritime Law Enforcement Powers: Lessons For Malaysia", *IUUM Law Journal*, Vol. 24 No. 1, 2016, hlm. 92

The function of the Malaysian Maritime Enforcement Agency (MMEA) is based on the Malaysian Maritime Enforcement Agency Act no. 633 of 2004, namely:

1. To enforce law and order under federal law;
2. To conduct maritime search and rescue;
3. To prevent and suppress criminal acts;
4. To provide assistance in criminal matters at the request by a foreign State as defined in the gotong royong in the Criminal Problems Act of 2002 (Act 621);
5. To carry out air and coastal authorities;
6. To establish and manage maritime agencies for training;
7. To ensure maritime security and security;
8. Carry out an obligation to ensure maritime safety and security or to do all matters relating to it;
9. Controlling and preventing maritime pollution at sea;
10. Prevent and suppress piracy and illicit drug trafficking in the open seas;

Placed under the control of the Malaysian Armed Forces during a special crisis or martial war period.

In accordance with Law no. 633 of 2004, MMEA operates in the Malaysian Maritime Zone "for the maintenance of law and order, the preservation of peace, security, prevention and custody of crime, the arrest and prosecution of violators and the collection of security intelligence, while the MMEA function shall be carried out in the Malaysia Maritime Zone covering deep waters , territorial sea, continental shelf, exclusive economic zone and Malaysian fishery waters and including airspace above the zone.

In performing its duties, MMEA has the authority to perform the necessary actions in order to carry out the previously mentioned functions, in particular such powers among others:

1. Receiving and following up reports on criminal offenses on the sea;
2. Stopping, entering, boarding, inspecting, and searching any premises, buildings, ships or aircraft, and for holding boats or aircraft;
3. Request, inspect, copy, and enclose licenses, permits, records, certificates, or other documents;
4. Investigate criminal offenses which are believed to be committed, or will be committed or committed;
5. Conduct hot pursuit;
6. Inspect and retrieve fish, documents, equipment, goods, ships, planes or other objects related to offshore crimes that have been committed or are believed to be committed;
7. Disposing of fish, documents, equipment, goods, ships, aircraft or other objects related to offshore crimes committed or believed to be committed;
8. To arrest individuals who are believed to have committed offenses on the sea; and
9. Drive away ships believed to harm the interests or threaten order and safety in Malaysia's maritime zones.

As a major maritime law enforcement agency in Malaysia, MMEA has a very challenging responsibility, and in addition to its role in the national territory, MMEA should also promote awareness of maritime security among neighboring countries¹. In addition, MMEAs operates in a single line of command and control have a better position in terms of fighting offshore crime in the Malaysian Maritime Zone (MMZ)².

2) Marine Police

The marine police have the responsibility to control, plan and carry out operations involving public orders. It is also involved in the planning and coordination of joint maritime patrols and border patrols along with Malaysian

¹ Iskandar Sazlan, 2006, *The Concept of a Malaysian National Maritime Security Policy*, *Maritime Studies*, Kuala Lumpur: Maritime Institute of Malaysia, hlm. 16

² Swati Parashar, 2008, *Maritime Counter-terrorism: A Pan-Asian Perspective*, Delhi: Dorling Kindersley, hlm. 114

armed forces and army / naval guards of neighboring countries. It also involves planning, controlling, and coordinating search and rescue operations.

This agency is responsible for Malaysian Territorial waters patrol (MTW), Exclusive Economic Zone (EEZ) and Contiguous Zone. Headed by the Marine Police Commander based at the Police Headquarters in Bukit Aman, Kuala Lumpur and fully responsible to the Inspector General of Police to the Director of the Department of Homeland Security and Public Order in every aspect of administration and operation.

Their main duties are:

- Search and rescue in the territorial waters of Malaysia and EEZ. Especially in helping to transport flood or natural disaster victims, especially shipwreck etc.
- Assisting other units in police organizations performing duties other than maritime police duty with the approval of the Director of the Department of Homeland Security and Public Order with the advice of the Sea Police Commander.
- Perform diving duties at any time if required by the police, harbor from threats from the sea.
- Conducting joint training with neighboring countries on Coast Rendezvous, patrol coordination, search and rescue operations

Their functions are:

- To protect the waters of Malaysia.
- Maintain peace and uphold maritime law
- To protect life and property in the sea.
- Conducting ambushes and operations in Malaysian waters.
- To patrol, investigate and maintain coastal areas and islands of Malaysian waters.
- Provide communication facilities in areas that are accessible only by sea or river.
- Defend the country against subversive elements and external threats.

In general, preventive actions against violations of law in the sea of Malaysia are coordinated by Malaysian Maritime Enforcement Agency (MMEA), which coordinates law enforcement at sea, ranging from Malaysian Maritime Army, Marine Police, Excise, Ministry of fisheries, Ministry of the environment. Each has duties and powers in their respective fields.

However, the authority to prevent violations of Malaysian national law provisions at sea becomes the authority of MMEA. Authorities to prevent MMEA are among others Prevention and countermeasures of maritime attacks, including if there is a threat from sea piracy action and Patrolling of air and coastal surveillance in Malaysian waters. The legal basis governing MMEA to perform supervisory functions can be found in the MMEA function in the MMEA Act 2004 s7 (2) (c). In this article the preventive authority of the MMEA is the production of licenses, permits, records, certificates or other documents and to examine licenses, permits, records, certificates or other documents or make copies or withdraw licenses, permits, notes, certificates or other documents. MMEA may also assist the Ministry of Fisheries and the Department of Marine Affairs of Malaysia in enacting licensing requirements under the Fisheries Act of 1985 (the Fisheries Act) (Malaysia) and the Oil Pollution Act 1994 (Malaysia).

MMEA has the authority to investigate any violations that they have reason to believe is being done, or will be done or have been done and also have the power 'to arrest the person who they believe had committed an offence.

However, the investigative and arresting authority carried out by MMEA must comply with the legal requirements of the KUHAP (Malaysia) (CPC). This is to ensure that MMEA officers should not reduce investigation procedures and their arrests are regulated in the code. If a person has provided information to MMEA under federal law, that person may, at the request of MMEA 2004 Article 9 (1) report on the status of investigation of the offense in his or her information from the Agency. After such a request has been made, Article 9 (2) provides that an investigation status report of such violation should be provided to the informant within two weeks of receipt of the request filed under Article 9 (1). These two conditions seem to be aimed at introducing an acceptable level of efficiency and transparency in the functioning of the MMEA. However, Article 9 (3) states that a status report should not be provided if one of the three conditions is running:

1. a considerable offense;

2. the four-week period has elapsed from the date of information submission; or if the status report;
3. contains matters that are likely to have adverse impacts on investigations of offenses or prosecutions of the case.

If the MMEA fails to provide such a report, the informant can make a report to the Prosecutor regarding the failure. The Public Prosecutor then has the authority to direct the Agency to provide a brief status report of an investigation that has been committed by the agency in connection with a breach of information provided by the informant. In addition, the Public Prosecutor also has the authority to provide the informant, or direct the Agency to provide information to the informant, a status report containing such information that may be directed by the Public Prosecutor.

To ensure compliance with the orders of the Public Prosecutor, MMEA 2004 Article 9 (7) provides that any officer who does not comply with the Public Prosecutor's Order is in violation and must be held for a period of not more than one month, a fine not exceeding RM1,000 or both.

3. Conclusion

The Comparative study of handling illegal fishing between Indonesia and Malaysia can be approached into the substance of law and the structure of law. The substance of Law in Indonesia perspective can be seen in the Law of Fisheries, the Law of Ratifying of UNCLOS, and Indonesia Criminal Code. The structure of law can be seen in the police (water and air police), the ministry of marine and fisheries, the NAVY, Bakamla, and lastly Task Force 115. In Malaysia perspective, the substance of law can be found out in Fisheries Act 1985 No.137. The structure of law further is the Malaysian Maritime Enforcement Agency (MMEA) and Marine Police.

Bibliography

- Abdul Ghafur Hamid et.al, "Entrusting Coast Guards With Maritime Law Enforcement Powers: Lessons For Malaysia", *IUUM Law Journal*, Vol. 24 No. 1, 2016.
- Adi Susanto, "Hubungan Antara Penegakan Hukum di Perairan Indonesia dan Ketahanan Nasional: Sebuah Tinjauan Tentang Peran Indonesian National Army Al Dalam Penanganan Illegal Fishing di Kawasan Lantamal III", <http://www.digilib.ui.ac.id/opac/themes/libri2/detail.jsp?id=111773>, Diakses pada 16 Mei 2017.
- Anonymous, Ketika Jokowi "Mengultimatum" Kapal Asing Pencuri Ikan", <http://wartaekonomi.co.id/berita38459/ketika-jokowi-mengultimatum-kapal-asing-pencuri-ikan.html> accessed on 21 May 2017.
- Barda Nawawi Arief. (2011). *Perbandingan Hukum Pidana*, Jakarta : Rajawali Pers.
- Imam Syaukani & Ahsin Thohari. (2004). *Dasar-Dasar Politik Hukum*, Jakarta: Rajawali Pers.
- Iskandar Sazlan, 2006, *The Concept of a Malaysian National Maritime Security Policy*, *Maritime Studies*, Kuala Lumpur: Maritime Institute of Malaysia.
- Ketut Darmika, "Penegakan Hukum Tindak Pidana Perikanan Oleh Kapal Perang Republik Indonesia (KRI) Dalam Perspektif Undang-Undang No. 45 Tahun 2009 tentang Perikanan", *Jurnal Hukum dan Peradilan*, Vol. 4 No. 3, November 2015.
- Peter De Cruz. (1993) *A Modern Approach to Comparative Law*. Boston : Kluwer. dalam Topo Santoso.(2007) *Perbandingan Hukum Pidana Program Pascasarjana Universitas Indonesia*, Depok.
- Rene David & John E. C. Brierley.(1985). *Major legal Systems In The World Today An Introduction to the Comparative Study of Law*. London, Steven & Sons, dalam Topo Santoso. (2007). *Perbandingan Hukum Pidana Program Pascasarjana Universitas Indonesia*, Depok.
- RM, Surachman & Jan S. Maringka. (2015). Peran Jaksa Dalam Sistem Peradilan Pidana Di Kawasan Asia Pasifik. Jakarta : Sinar Grafika., hlm. 6. Lihat pula dalam RM. Surachman Dkk. (2015) *Eksistensi Kejaksaaan Dalam Konstitusi Di berbagai Negara*. Jakarta : Sinar Grafika.
- Sukardi, 2009, *Penyidikan Tindak Pidana Tertentu*, Jakarta: Restu Agung.
- Swati Parashar, 2008, *Maritime Counter-terrorism: A Pan-Asian Perspective*, Delhi: Dorling Kindersley.
- Tata Wijayanta & Hery Firmansyah.(2011). *Perbedaan Pendapat Dalam Putusan Pengadilan*. Yogyakarta : Pustaka Yustisia.
- The Hon Tun Dato' Seri ZAKI Tun Azmi, "The Common Law of Malaysia In The 21st Century", (Singapore Academy of Law Journal: 2012 24SACLJ),..