

# Legal Effectiveness in Combating Illegal Fishing

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## Abstract

The fishery sector has an important and strategic role in the development of the national economy, especially in increasing the expansion of employment opportunities, income distribution, and improving the living standards of the nation in general, small fishermen, small fish farmers, and business actors in the field of fishery by maintaining the environment, sustainability, and availability of fish resources. To eradicate illegal fishing, Legal approaches can be applied to show how the law is working to deal with some issue in the society. In this context, the approach is an administrative law and a criminal law. The administrative law mechanisms are conducted in the form of permission and supervision and the criminal law mechanism is done in the form of identifying the problematical handling of illegal fishing, inquiry and investigation of illegal fishing crime as well as the Establishment of Task Force for The Prevention and Eradication of Illegal, Unreported and Unregulated (IUU) Fishing.

**Keywords:** Legal Effectiveness; Combating Illegal Fishing

## 1. Introduction

The fishery sector has an important and strategic role in the development of the national economy, especially in increasing the expansion of employment opportunities, income distribution, and improving the living standards of the nation in general, small fishermen, small fish farmers, and business actors in the field of fishery by maintaining the environment, sustainability, and availability of fish resources. The potential of Indonesian fishery resources in the last 10 years shows a very significant exploitation and exploration of fishery products. However, aside from being potential, activities that accompany sea exploration is fishery criminal activity that is very detrimental to Indonesia.<sup>1</sup>

In fact, Indonesia has an area of sea that reaches 2/3 (two thirds) of the territory of Indonesia, covering an area of 6.32 million square kilometers (km<sup>2</sup>), 17,504 islands, and the second longest beach line in the world after Canada which is 99,093 km<sup>2</sup>. Indonesia mostly borders with other countries in the waters, especially in the handling of illegal fishing. Therefore, the legal effectiveness of illegal fishing is needed to combat illegal fishing.

## 2. Legal Effectiveness in Combating Illegal Fishing

### 2.1. Administration Law

#### a. Licensing

License is a one sided/rectal government act based on the laws and regulations to be applied to concrete events in accordance with specific procedures and requirements.<sup>2</sup> It is a juridical instrument used by the government to influence any person or corporation to follow its recommended way to achieve a balanced utilization of fishery resources so that it can benefit continuously.<sup>3</sup>

Policies and regulations on fisheries business permissions in Indonesia have been arranged in such a way as to bridge the various interests that exist, such as bridging interests for conservation on the one hand and the importance of promoting the welfare of fishermen on the other. The interest between the protection of small fishermen, but also does not limit the development of large fishery investors. For that, the existing permissions system will certainly face difficulty to achieve perfection, because bridging the available various interests will require a very large aspect of dynamism. By giving greater weight to one interest will certainly change the constellation of licensing system that has been arranged previously. On that basis, every effort to improve the permission system is always expected to be able realize the optimal integrated permission to various interests of fisheries management nationally.

Every company which collects fish from the sea, must have a permit namely Fishery Business Permit (IUP) and Fishing Letter (SPI). The Fishery Business Permit (IUP) is a written permit that must be owned by a fishery company to conduct a fishery business using production facilities that is listed in the permit. In addition to IUP and SPI, each fishing vessel is required to have a valid permit issued by sahbandar and a fishery operation permit issued by the fishery supervisor as well as to be given the identification of a fishing vessel in the form of a

<sup>1</sup>Dina Sunyowati, "Effect of IUU-Fishing Activities in Indonesia", Presented at the National Seminar "the Role and the Effort of Legal Enforcers and Stakeholders to deal with and combat IUU-Fishing in Indonesia Border" Cooperation between the Ministry of Foreign Affairs of the Republic of Indonesia and Universitas Airlangga Surabaya, 22 September 2014., p. 2.

<sup>2</sup> Bagir Manan quoted by Ridwan HR, 2007, Administrative Law, Jakarta : Rajawali Press., pp. 207-208.

<sup>3</sup> N.M. Spelt and J.B.J Ten Berge quoted by Ridwan HR, Ibid., p. 5.

tonnage measurement number, a sign of a fishing ground, a sign of a fishing lane.

In accordance with Article 5 of the Government Regulation no. 54 of 2002 concerning Fishery Business that IUP issued for each fishery business is valid as long as the company conducts fishery business activities. In the IUP for fishing business, the coordinates of the fishing area, the number and size of the fishing vessel, the type of fishing equipment used, and the port base are listed. However, the obligation of owning an IUP is exempted for activities such as: fishing by fishermen using a non-motorized fishing vessel or using an external motor or motor in a certain size; cultivation of freshwater fish conducted by fish farmers in quiet water ponds with certain land area; fish cultivation in brackish water conducted by fish farmers with certain land area; cultivation of fish in the sea by fish farmers with certain land or water area.

The Fishing Permit (SIPI) is a permit that must be owned by every Indonesian-flagged fishing vessel that is engaged in fishing activities in Indonesian waters and or the Indonesian Exclusive Economic Zone (ZEEI) which is an inseparable part of the IUP called the Fishing Letters (SPI). SIPI must be owned, except for non-motorized fishing vessels and fishing vessels with inside motor and outside motors weighing less than 5 GT and or with engine power of not more than 10 PK and weighing more than 10 GT and or with a power of more than 30 PK.

The next permit after SIUP and SIPI is a Fishing Vessel Permit (SIKPI) which is a written permit that every fishing vessel must have to conduct fish transportation. The material provision of SIKPI are basically the same as SIPI. All owners and people who operate fishing vessels are required to show original SIKPI, except for small fishermen and small fishers who only aim to fulfill their daily needs. Regarding fishing vessels which transport fish that is caught in the Indonesian Exclusive Economic Zone (which is one of the Fisheries Management Area of the Republic of Indonesia), can be Indonesian-flagged ships (KBI) and foreign flagged ships (KBA).

**Table. 1**  
**Recapitulation of Fishery Permit Data of Year 2014-2017**

no.	Year	Number of Permit issued			Description
		SIUP	SIPI	SIKPI	
1	2	3	4	5	6
1	2014	-	1	-	-
2	2015	-	4	1	-
3	2016	1105	103	6	-
4	2017	888	156	13	-
Total		1993	264	20	-

**Source: Directorate General of Permit and Ministry of Marine and Fisheries Affairs, 2017**

In terms of the types of permits, it turns out that one of the weaknesses is to apply a file inspection approach ("formal" inspection) and giving less attention to physical examination in the field which resulted in many ships that have different specifications with permission obtained. It is a modus operandi to deceive the licensor for the benefit of the shipowner. In addition, the misuse of fishery business permits also often occur. The fishery business permit is allegedly often a "foreign investment cover" to pass foreign ships operating in Indonesian waters. Various conditions of fishery business permit, such as the construction of fishery processing facilities, certainly is not conducted by the perpetrators, since from the beginning the main purpose was only fishing.

So far, the issuance or granting of a fishery business permit is done without taking into account the availability of fish resources in the area. The granting or issuance of permits is based more on fishing grounds and the types of fishing gear used. Permits are continually issued and can negatively impact the availability of sustainable potentials in a particular area. In terms of policy and regulation, this has been well regulated, but the main obstacle is more to the problems of implementation in the field which in fact is not easy to calculate the availability of fishery resources.

## **b. Supervision**

One of the discussion of administrative law is related to supervision. The supervision of fishery is an activity to prevent the acts that deviate or a take of repressive actions against a violation of the laws and regulations in the field of fisheries. In short, the duty of the fisheries supervision is to overcome acts of irregularities or offenses in order for the perpetrators of fisheries to comply or obey the rules of applicable fishing law.<sup>1</sup> The fishery supervisor has the duty to ensure the orderly implementation of the provisions of the laws and regulations in the field of fisheries, which includes:<sup>2</sup>

- a. fish catching;
- b. fish cultivation and fish hatcheries;

<sup>1</sup>Gatot Supramono, 2011, *Criminal Procedural Law and Criminal Law in Fishery Sectors*, Jakarta: Rineka Cipta, p. 57.

<sup>2</sup> See Article 10 paragraph 1 Regulation of the Minister of Marine Affairs and Fisheries of the Republic of Indonesia No. 17/Permen-KP/2014 Concerning Implementation of Duties of Fisheries Supervisor.

- c. in and out transportation and distribution of fish;
- d. protection of fish species;
- e. the occurrence of pollution caused by human actions;
- f. utilization of germplasm; and
- g. research and development of fisheries.

Supervision plays an important role in controlling / acknowledging the misuse of permits owned by Indonesian ships and foreign vessels operating in the territorial waters of Indonesia.

**Table.2**  
**Other Capture Data of Operations Result Outside the Supervisor's Ship of Supervision of Marine Resources and Fisheries (PSDKP) Year 2017**

No.	INSTITUTION/ CAPTURER	TPKP AD-HOCK OTHER FROM SUPERVISOR SHIP					TOTAL
		KII	FOREIGNER FISH VESSEL			NON SHIP	
			MALAYSIA	VIETNAM	FILIPINA		
1	2	3	4	5	6	7	8
1	Department of Marine and Fisheries	2	-	-	-	8	-
2	Fisheries Supervisor	3	-	-	-	5	-
3	Water Police	-	8	21	1	-	30
4	Community Group of Supervisor (POKMASWAS)	-	-	-	-	6	6
5	Directorate General of Sea Spaces Management -Ministry of Marine Affairs and Fisheries (PRL-KKP)	-	-	-	-	1	1
6	Maritime Security Agency (BAKAMLA)	-	-	1	-	-	1
7	POLSUS P3WK	-	-	-	-	1	1
TOTAL		5	8	22	1	21	57

**Source: Directorate General of Marine and Fishery Resources Surveillance, 2017**

In addition, infrastructure and facility affects the effectiveness of supervision functions. The weak port control function among which many special terminals are used as smuggling entrances include illegal goods, protected animals, illegal exports and imports, slavery and IUU fishing activities as well as the number of tangkahan ports (not the official fish landing ground) and poor supervision at special terminals because the location is difficult to reach and the fishery supervisor is located in the territory of the fishery company. In addition, the lack of storage facilities for ship, fishing nets and other fishing gear, as well as fish resulted from catch and supervisors which has no fee to take care of the evidence, and also no one is responsible to guard, as well as no payment for the guards.

Supervision practices are also often run not optimally which can be seen from the ex-foreign vessel that do not turn their ownership to the person/legal entity of Indonesia. The fishery business permit of ex-foreign vessel that is being reproduced continuously while the vessel has already switched its flag. This is due to the supervisory function not working at the time of the vessel ownership transfer is conducted and the authority of the ministry of transportation which certainly can not be supervised by other ministries. It should be a common concern, that good supervision will greatly help the availability of evidence for the law enforcement.

Based on the legal consequences that can be imposed, the Ministry of Marine Affairs and Fisheries provides four recommendations of sanctions. *First*, SIPI revocation for valid permit to eight SIPI owned by six shipowners. *Second*, SIPI freeze for valid permit to 14 SIPI owned by 11 shipowners. *Third*, sending the Letter of Notification to Freeze Permits to six SIPI owned by six ship owners. *Fourth*, giving written warning to 35 SIPI owned by 11 ship owners. *Fifth*, to not extend the permit, and to not accept the new permit application from 171 SIPI owned by 58 ship owners.<sup>1</sup>

The following data shows the administrative sanctions imposed by Fisheries Supervisors / Fisheries PPNS, Directorate of Violations Handling, Directorate General of Marine Resources and Fisheries (PSDKP) as follows:

<sup>1</sup> See Estu Suryowati "Doing Illegal Fishing, 126 Ship's Owners threatened to be sanctioned" <http://bisniskeuangan.kompas.com/read/2015/09/17/132942726/Lakukan.Illegal.Fishing.126.Pemilik.Kapal.Terncam.Dikenai.Sanksi> accessed on June 27 2017.

**Table. 3**  
**Number of Cases and Administrative Sanctions Year 2014-2017**

No.	Year	Number of Cases	Administrative Sanctions
1	2	3	4
1.	2014	58	13
2.	2015	198	40
3.	2016	237	12
4.	2017	169	21
Total		662	86

**Source: Directorate General of Marine and Fishery Resources Surveillance, 2017**

Based on the data above, from 2014 to 2017, there were 662 marine and fishery crimes. The year 2016 is the year with the most fishery crime of 237 cases or 35.80%, then Year 2015 with 198 cases or 29.90%, following the year 2017 with 169 cases or 25.52% and Year 2014 with 58 cases or 8.76%. Meanwhile, from 2014 to 2017, the Directorate for Violations Handling provides administrative sanctions of 86 or 12.99% of 662 cases. In terms of the data, it can be said that government administration sanction is revocation of permit. Therefore, the fishery permit is a means of government to control the management of fishery resources and business, by issuing and allocating fishery permits, the government can know and keep the track of how much existing fishery resources are managed and utilized.

## 2. 2. Criminal Law

### a. Regulation Problems of Fishery Crime

Illegal fishing by the International Plan of Action-Illegal, Unreported and Unregulated Fishing (IPOA-IUU Fishing) is a fishing activity conducted by a particular country or a foreign vessel in waters that is not within its jurisdiction without the permission of the country with the jurisdiction over the said territory.<sup>1</sup> IUU Fishing can also be interpreted as fishing activities that are contrary to the laws and regulations of that country. Activities conducted by national or foreign vessels in waters under the jurisdiction of a state, without permission of that state, or in contravention of its laws and regulation.<sup>2</sup>

*Illegal fishing that occurs in Indonesian waters is a transnational crime because the perpetrator is a foreigner or an Indonesian but involves a foreign party behind them.*<sup>3</sup> Illegal fishing activities usually operate in border areas and international waters. For the Eastern waters of Indonesia including: a) Papua Waters (Sorong, Teluk Bintuni, Fakfak, Kaimana, Merauke, Arafuru Waters); b) Maluku Sea, Halmahera Sea; c) Tual Waters; d) Sulawesi Sea; e) Pacific Ocean; f) Indonesia-Australia Waters; g) East Kalimantan Water. For the Western Waters of Indonesia including: a) North Kalimantan Waters, South China Sea; b) Nanggroe Aceh Darussalam (NAD) Waters; c) Malaka Strait; d) North Sumatera (Pandan Waters, Sibolga Strait); e) Karimata Strait; Tambelan Island Waters (Waters between Riau and West Kalimantan); f) Natuna Sea (South China Sea Waters); g) Gosong Niger Island Water (West Kalimantan).<sup>4</sup>

Demand for world fish consumption and permission is one factor that causes illegal fishing in Indonesian waters.<sup>5</sup> While the world demand for fish increased, the world fish supply had decreased causing an overdemand to occur especially towards the types of fish which is obtained from the sea such as tuna. This factor indirectly encourages the world's fishing fleet to hunt fish anywhere with legal or illegal ways. Another factor that is not less affecting is the issue of permission. The current fisheries management system is limited to fishing gear. Such requirements are less suitable if faced with the factual condition of Indonesia's geography that is bordering the high seas.

Gradually fish theft became a serious problem; therefore the Government of Indonesia issued a regulation in the form of Law No. 31 Year 2004 concerning Fisheries. However, because Law no. 31 of 2004 is considered to be incomplete or not enough, the Government then issued Law No. 45 of 2009 on Amendment to Law No. 31 Year 2004 concerning Fisheries. Law No. 45 Year 2009 jo. Law No. 31 Year 2004 not only regulates all

<sup>1</sup>Abid Muhtarom et.al, "Illegal Fishing Tuna dan Tongkol di Indonesia Economic Exclusive Zone", Jurnal Ekbis, Volume XVII, No. 1 March 2017 Edition. p. 927.

<sup>2</sup>Ibid.

<sup>3</sup> Simela Victor Muhammad, "Illegal Fishing in Indonesian Waters: Problems and Bilateral Effort to Deal With in the Region", Politica, Volume 3, No.1, May 2012., p., 71.

<sup>4</sup>Ibid.

<sup>5</sup> Abid Muhtarom et.al., Loc. Cit.

activities related to the management and utilization of fish resources and its environment ranging from pre-production, production, processing to marketing, implemented in a fishery business system, but also specifically regulates criminal acts of fisheries in Chapter XV, Article 84 to Article 105.

For this type of criminal penalty, the field of fisheries only recognizes the primary criminal penalty, while additional criminal penalty is not regulated in Law No. 31 Year 2004 Jo. Law No. 45 Year 2009.<sup>1</sup> Primary criminal penalty can be sentenced by the judge in fishery case in the form of imprisonment and fine penalty.<sup>2</sup> Although Law No. 31 Year 2004 Jo. Law No. 45 Year 2009 does not specifically regulate additional criminal penalty, the fishery judge may still impose additional criminal penalty under Article 10 of the Criminal Code.<sup>3</sup> Criminal penalties in the field of fisheries are mostly cumulative, either directed against crime offenses or offense violations.<sup>4</sup>

**Table. 4**  
**Classification of Fishery Crime**  
**According to Law no. 31 Year 2004 Jo. Law no. 45 Year 2009 About Fisheries**

<b>Crime</b>	<b>Violation</b>
<i>1</i>	<i>2</i>
1) Every person who intentionally in the territory of fisheries management of the Republic of Indonesia who conduct a fish catching and/or fish cultivation by using chemicals, biological materials, explosives, tools and/or ways, and/or buildings that may harm and/or endanger the sustainability fish resources and/or the environment (Article 84 paragraph 1);	1) Every person who deliberately, in the fishery management area of the Republic of Indonesia damages the germplasm related to fish resources (Article 87 paragraph 1), which due to its negligence in the fishery management territory of the Republic of Indonesia resulted in the destruction of germplasm related to fish resources (Article 87 paragraph 2).
2) The captain, fishing expert, and crew who deliberately, in the territory of fisheries management of the Republic of Indonesia conduct fishing by using chemicals, biological materials, explosives, tools and / or ways, and / or buildings that may harm and / or endanger the preservation of fish resources and / or its environment (Article 84 paragraph 2);	2) Every person who handles and manages fish that does not meet and does not apply the requirements of fish processing feasibility, quality assurance system and security of fishery product (Article 89).
3) The owner of a fishing vessel, owner of a fishery company, person in charge of fishery company, and / or fishing vessel operator who deliberately, in the fishery management area of the Republic of Indonesia conduct fish catching using chemicals, biological materials, explosives, tools and / or methods, and / or buildings that may harm and / or endanger the preservation of fish resources and / or the environment (Article 84 paragraph 3);	3) Every person who deliberately engages in the importation or expenditure of fish and / or fishery products from and / or to the Territory of the Republic of Indonesia who is not equipped with a health certificate for human consumption (Article 90).
4) The owner of a fish farming company, power of the owner of a fish farming company, and / or person in charge of fish farming company who deliberately conduct a fish cultivation business in the fishery management territory of the Republic of Indonesia using chemicals, biological materials, explosives, tools and / or ways, and / or buildings that may harm and / or endanger the preservation of fish resources and / or the environment (Article 84 paragraph 4);	4) Every person who builds, imports, or modifies a fishing vessel without any approval in advance (Article 95).
5) Every person who intentionally owns, controls, carries and / or uses fishing gear and / or fishing aids that interfere with, and damage the sustainability of fish resources in fishing vessels in the fishery management area of the Republic of Indonesia as referred to in Article 9 (Article 85);	5) Every person who operates a fishing vessel in a fishery management area of the Republic of Indonesia who does not register his fishing vessel as an Indonesian fishing vessel (Article 96)
6) Every person who deliberately in the territory of fisheries management of the Republic of Indonesia commits acts that cause pollution and / or damage to fish resources and / or its environment (Article 86 paragraph 1), cultivate fish which may endanger fish resources and / or environment of fish resources and /	6) The captain who operates a foreign-flagged fishing vessel that does not have a fishing permit, which, while being in the territory of fisheries management of the Republic of Indonesia, does not keep fishing gear in the hold (Article 97 paragraph 1) which has a fishing license with 1 (one) certain types of fishing gear in certain parts of ZEEI while carrying other fishing gear (Article 97 paragraph 2), which already has a fishing permit, which does not store fishing gear in the hold while being at outside the area of fishing that is permitted in the territory of fisheries management of the Republic of Indonesia (Article 97 paragraph 3)
	7) Captain of a fishing vessel that does not have a sailing approval letter as referred to in Article 42 paragraph 3 Article 98)
	8) Every foreigner who conducts fisheries research in a fishery management area of the Republic of Indonesia that does not have a government permit (Article 99)
	9) Every person who violates the stipulated provisions referred to in Article 7 paragraph 2 (Article 100), ie any person who conduct and / or fishery activities shall comply with the provisions of: type / quantity / size of fishing gear, type / quantity / size and placements of fishing aids, area / line / time or fishing season, requirements or standards of fishing operations procedures, fishing vessel

<sup>1</sup> Barama M, "Goes to the Effectivity of The Law No. 45 Year 2009 Concening Fisheries and its Implementation", Jurnal Hukum Unsrat, Volume 22, No. 6, July 2016., p. 8.

<sup>2</sup>Ibid.

<sup>3</sup>Ibid.

<sup>4</sup>Ibid.

<p>or human health (Article 86 paragraph 2), cultivate genetically engineered fish that could endanger fish resources and / or environment of fish resources and / or human health (Article 86 paragraph 3), use of drugs in fish cultivation which may endanger fish resources and / or environment of fish resources and / or human health (Article 86 paragraph 4);</p> <p>7) Every person who deliberately imported, expendite, make available, circulates, and / or keep fish that is harmful to the community, fish cultivation, fish resources, and / or the environment of fish resources into and / or outside the territory of fisheries management of the Republic of Indonesia (Article 88);</p> <p>8) Every person who deliberately uses raw materials, food additives, auxiliary materials, and / or devices that endanger human health and / or the environment in carrying out the handling and processing of fish (Article 91);</p> <p>9) Every person who deliberately, in the fishery management area of the Republic of Indonesia conducts fishery business in fish catching, cultivation, transporting, processing and marketing, which has no SIUP (Article 92);</p> <p>10) Any person who owns and / or operates Indonesian-flagged fishing vessels who conduct fish catching in the fishery management territory of the Republic of Indonesia and / or on the high seas, which does not have SIPI as referred to in Article 27 paragraph (1) (Article 93 paragraph 1 );</p> <p>11) Every person owning and / or operating a foreign-flagged fishing vessel fishing in ZEEI that does not have SIPI as referred to in Article 27 paragraph 2 (Article 93 paragraph 2);</p> <p>12) Every person who operates Indonesian-flagged fishing vessels in the territory of fishery management area of the Republic of Indonesia, which does not carry the original SIPI as referred to in Article 27 paragraph 3 (Article 93 paragraph 3);</p> <p>13) Every person who operates a foreign-flagged fishing vessel at ZEEI, which does not carry the original SIPI as referred to in Article 27 paragraph 3 (Article 93 paragraph 4);</p> <p>14) Every person owning and / or operating a fishing vessel in a fishery management territory of the Republic of Indonesia conducting the transportation of fish or related activities that does not have a SIKPI (Fishing Vessel Permit) (Article 94);</p> <p>15) Every person who forges and / or uses fake SIUP, SIPI, and SIKPI as referred to in Article 28A (Article 94A).</p>	<p>monitoring systems, new species of fish to be cultivated, fish species and re-stocking areas as well as cultivation based fishing;</p> <p>10) Fish cultivation and its protection;</p> <p>11) Prevention of pollution and damage to fish resources and the environment; minimum size or weight of types of fish that can be caught; fishery aquaculture; outbreaks and areas of fish disease outbreaks; fish species that are prohibited to be traded, importation and expenditure to and from the territory of the Republic of Indonesia; and protected species of fish.</p>
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In cumulative punishment of criminal body (imprisonment) with a fine penalty is applied at once.<sup>1</sup> In this, there is no reason for the judge to not impose the two criminal penalty, nor the judge can choose one of the penalties to be imposed, but they're obliged to impose both of the primary criminal penalty.<sup>2</sup>

Nunung Mahmuda identifies several kinds of perpetrators or parties who can be held criminally accountable for crimes and violations based on Law No. 31 Year 2004 jo. Law No. 45 Year 2009 on Fisheries. The perpetrators are:<sup>3</sup>

- 1) Every person;

<sup>1</sup>*Ibid.*

<sup>2</sup>*Ibid.*

<sup>3</sup>Nunung Mahmudah, 2015, "Illegal Fishing: Criminal Responsibility in Indonesian Waters", Jakarta : Sinar Grafika., p. 89.

- 2) Captain of the fishing vessel;
- 3) Fishing expert;
- 4) Crew of the fishing vessel;
- 5) Owner of the fishing vessel;
- 6) Owners of fishery company;
- 7) Person in charge of fishery company;
- 8) Fishing vessel operators;
- 9) Owner of fish farming company;
- 10) Power of the owner of the fish cultivation company
- 11) Person in charge of fish farming in the fishery management territory of the Republic of Indonesia.

Nunung Mahmuda then continues<sup>1</sup> that "Every person" in this law is defined as an individual or a corporation. "Corporations" itself is defined as an organized body of persons and / or assets whether they are legal entities or non-legal entities. Solomon and Palmiter provide the definition of corporation as :<sup>2</sup> "A corporation is a structuring device for conducting modern business. It is a framework – a legal person – through which a business can enter into contracts, own property, sue in court, and be sued. It is taxable entity subject property, sales, income, and other taxes. It can range in size from a one person business to a multinational conglomerate. It is a capitalist invention for the pooling of capital (from shareholders and lenders), management (from executives), and other factors of production (from suppliers and employees). It is a creature of state law; its formation and existence depend on state enabling statutes. A "corporation is an artifice. Nobody has ever seen one. A business conducted as a corporation looks much the same as one conducted in a non corporate form. In the end, a corporation is a construct of the law – a set of legal relationships. It is what the law defines to be."

Paulus Aluk Fajar Dwi Santo further explains the corporate definition of Solomon and Palmiters as stated above, that it appears that the corporation is essentially a construction product or a legal creation that requires the corporation to have the status as a legal subject having rights and obligations regulated by law, as well as the accountability of the corporation if it commits a crime. Thus, corporations according to the understanding of experts and legislation are recognized as one of the subjects of illegal fishing crime.<sup>3</sup>

Nunung Mahmudah adds that basically in the General Provisions of the Criminal Code used until now, Indonesia still adheres that an offense can only be done by humans.<sup>4</sup> However, in its development there is an attempt to make corporations as a subject of criminal law, considering that corporations have rights and obligations attached to them.<sup>5</sup> In addition, in line with the development of the community, it is deemed necessary to place the corporation as the subject of a criminal offense in order so that corporation may be held criminally liable in the event of a crime, so that corporation in carrying out its business, does not take any action that violates the law and harms the public and the state.<sup>6</sup>

Article 101 of Law No. 31 Year 2004 on Fisheries has regulated the existence of "legal entities" other than individuals as legal subjects in illegal fishing crime:

"In the case of a fishery crime conducted by a corporation, the criminal sanctions are imposed against the executives, and the fine penalty is plus one-third of the imposed criminal penalty."

Although Article 101 of Law No. 31 Year 2004 Jo. Law No. 45 Year 2009 has regulated corporations as perpetrators of fishery crimes, Article 101 of Law No. 31 Year 2004 Jo. Law No. 45 Year 2009 still has weaknesses. According to Nunung Mahmudah's observation:<sup>7</sup>

"Although the corporation is acknowledged as a perpetrator of a criminal offense, the corporation itself can not be sought for criminal liability. For certain cases where the profits of the enterprise and / or losses incurred by the public are so great, the imposition of imprisonment or a fine is "only" directed at the corporation executives which is disproportionate. In addition, the imposition of a criminal penalty to corporate executives is also not enough to provide assurance that the corporation will not conduct the same action in the future. In fact, not few corporation sometimes take cover behind the dummy corporation (dummy company) which they intentionally build to protect their main corporation.."

Next, the law enforcement of fishery criminal offenses concerning Violation of Article 85 to Article 100C of Law No. 45 of 2009, by which the provisions of Article 85 to Article 100 although it is formulated to be cumulative and single, the formulation of sanctions in this Law does not set the lowest sanction or the minimum special sanction so it's considered to be ineffective in its application.

<sup>1</sup> *Ibid.*

<sup>2</sup> See Paulus Aluk Fajar Dwi Santo, "an Overview of Corporation Legal Subject and its Criminal Responsibility Formulation", *Humaniora*, Vol. 3 No. 02 October 2012., p. 426.

<sup>3</sup> *Ibid.*

<sup>4</sup> Nunung Mahmudah, *Loc. Cit.*

<sup>5</sup> *Ibid.*

<sup>6</sup> Paulus Aluk Fajar Dwi Santo, *Op. Cit.*, p. 429.

<sup>7</sup> Nunung Mahmudah, *Op. Cit.*, p. 152.

#### Article 85

Every person who deliberately owns, controls, carries and / or uses fishing gear and / or fishing gear which interferes with and damages the sustainability of fish resources in fishing vessels in the territorial fishery management territory of the Republic of Indonesia referred to in Article 9 shall be imprisoned with a maximum imprisonment of 5 (five) years and a maximum fine of Rp2,000,000,000.00 (two billion rupiah).

#### Article 92

Every person who deliberately, in the territory of fisheries management of the Republic of Indonesia conducts fishery business in fish catching, cultivation, transporting, processing and marketing, which has no SIUP as meant in Article 26 paragraph (1), shall be punished with imprisonment maximum 8 (eight) years and a maximum fine of Rp 1,500,000,000.00 (one billion five hundred million rupiah).

#### Article 93

- 1) Every person who owns and / or operates Indonesian-flagged fishing vessels who conduct fish catching in the fishery management territory of the Republic of Indonesia and / or on the high seas, which does not have SIPI as referred to in Article 27 paragraph (1), shall be punished with a maximum imprisonment of 6 (six) years and a maximum fine of Rp 2,000,000,000.00 (two billion rupiah).
- 2) Every person who owns and / or operates a foreign-flagged fishing vessel, which conduct fish catching in ZEEI without SIPI as referred to in Article 27 paragraph (2) shall be punished with a maximum imprisonment of 6 (six) years and a maximum fine of Rp. 20,000,000,000.00 (twenty billion rupiah).
- 3) Every person who operates an Indonesian-flagged fishing vessel in the territorial fishery management area of the Republic of Indonesia, which does not carry the original SIPI as referred to in Article 27 paragraph (3) shall be punished with a maximum imprisonment of 6 (six) years and a maximum fine of Rp. 2,000,000,000.00 (two billion rupiah).
- 4) Every person who operates a foreign-flagged fishing vessel at ZEEI, which does not carry the original SIPI as referred to in Article 27 paragraph (3), shall be punished with a maximum imprisonment of 6 (six) years and a maximum fine of Rp. 20,000,000,000.00 (twenty billion rupiah).

#### Article 94

Every person who owns and / or operates a fishing vessel in a fishery management area of the Republic of Indonesia who conduct fish transportation or related activities which does not have SIKPI as referred to in Article 28 paragraph (1) shall be punished with maximum imprisonment of 5 (five) years and a maximum fine of Rp. 1.500.000.000,00 (one billion five hundred million rupiah).

#### Article 94A

Every person who forges and / or uses fake SIUP, SIPI, and SIKPI as referred to in Article 28A shall be punished with a maximum imprisonment of 7 (seven) years and a maximum fine of Rp. 3,000,000,000.00 (three billion rupiahs).

#### Article 98

The captain of a fishing vessel who does not have a sailing permit as referred to in Article 42 paragraph (3) shall be punished to a maximum imprisonment of 1 (one) year and a maximum fine of Rp200,000,000.00 (two hundred million rupiah).

#### Article 100B

Article 100B In the event of a criminal offense referred to in Article 8, Article 9, Article 12, Article 14 paragraph (4), Article 16 paragraph (1), Article 20 paragraph (3), Article 21, Article 23 paragraph (1) 26 paragraph (1), Article 27 paragraph (1), Article 27 paragraph (3), Article 28 paragraph (1), Article 28 paragraph (3), Article 35 paragraph (1), Article 36 paragraph (1), Article 38 , Article 42 paragraph (3) or Article 55 paragraph (1) conducted by small fishermen and / or small fish-farmer shall be punished with imprisonment for a maximum of 1 (one) year or a maximum fine of Rp250,000,000.00 (two hundred and fifty million rupiah).

#### Article 100C

Article 100C In the event that the criminal act as referred to in Article 7 paragraph (2) conducted by small fisherman and / or small fish-farmer shall be punished by a maximum fine of Rp100,000,000.00 (one hundred million rupiah).

It is clear from the formulation of sanctions under Article 85 to Article 100C above is cumulative and single. However, the formula does not regulate the lowest criminal sanction or minimum special sanction resulting in the imposed criminal sanction to not give a deterrent effect to the perpetrator of illegal fishing.

#### **b. Inquiry and Investigations of Illegal Fishing**

Law enforcement of criminal offenses in Indonesia is conducted through a criminal justice process where every form of crime that occurs is handled through the Pre Adjudication, Adjudication and Post Adjudication stages. Pre Adjudication: At this stage, the institution or law enforcement agency is directly involved together, which consist of investigator (Police, Navy and Civil servant Investigator) and Prosecutor (Attorney). Law enforcers conduct an action, based on information and reports of an Illegal Fishing crime.

The process of handling cases in the theft of fish or fishery crime by the Government of Indonesia through



the Ministry of Fisheries and Marine Affairs in coordination with the Navy, Civil Investigators, Indonesian maritime security agencies, Police and Attorney are as follows:

- 1) Inquiry  
The inquiry is an event to obtain definite and clear information which is the beginning of a criminal offense, inquiry can be done in an open manner as long as it can produce the required information.
- 2) Investigation  
It is an accurate data collection activity to clarify an act of violation to find a suspect (Article 1 point 2 Criminal Code Procedures).
- 3) Action  
Action can be conducted in areas where violation and shelter and fish processing occur. The steps taken are as follows: Preparation and Implementation of Action.
- 4) Handling of Evidence  
Foreclosure is conducted with the the Letter to be seized in the emergency situation and it is necessary to be done without the permission of the Head of District Court but it is limited to immovable things. It must be reported to the Head of District Court.
- 5) Summons  
The summons is imposed on the suspect and the person at the crime scene by sending a notice to the suspect or witness by mentioning the reason for the summons and a brief description of the crime.
- 6) Arrest  
Arrest is done on the suspect and can also be done on the company who owns the fishing vessel.
- 7) Detention  
Suspects are placed under the investigator supervision to be continued to further processing level.
- 8) Search  
The search is conducted by a law enforcer who conducts an overall examination of a person or a place of a crime, which has been regulated by the applicable law (Article 32 Criminal Code Procedures).
- 9) Examination  
Examination is an activity to obtain information, assertiveness and equality of perception about evidence and suspects related to elements of violation acts that is committed so that evidence in the criminal act becomes clear. Checking the suspect and examination of witness / and expert witness.
- 10) Completion of examination results / files

It is the last stage of criminal offense procedure, which activity consists of: The making of a resume which is a series of procedures for examining the suspect and concluding a problem and a criminal act. Preparation of the Case File Contents, namely the preparation of the contents of the case file in accordance with the sequence of actions and groupings of letters / Official report which have been made and attached in accordance with documents of evidence and other letters that need to be attached as explained in the Technical Inquiry Instruction, filing, which is an activity to file the contents of the Case Files with the arrangement and certain binding sealing requirements, the submission of the Case File, namely; which will be delegated to the prosecutor and penalty for the perpetrators of fishery crime.

The handling of fishery crime cases is categorized into three stages: investigation level, prosecution level and court level, this is called integrated criminal justice system. Law no. 45 Year 2009 on Fisheries mandated that law enforcement in the field of fishery is done by an Integrated Criminal Justice System in the field of fisheries that is through fishery supervision, fishery investigator, fishery prosecutor, and fishery court.<sup>1</sup>

The following table shows the number of cases of marine and fishery crimes handled by Fisheries Supervisors / Fisheries Civil Investigator, Directorate of Violence Handling, Directorate General of Marine Resources and Fisheries (PSDKP), as follows:

**Table .5**  
**Cases of Marine and Fishery Crime : Year 2014-2017**

No.	Year	Frequency	Percentage
1	2	3	4
1.	2014	58	10,15
2.	2015	195	27,14
3.	2016	237	38,17
4.	2017	169	24,51
	<b>Total</b>	<b>662</b>	<b>100</b>

**Source: Director General of Marine and Fishery Resources Surveillance, 2017**

Based on the data above, it illustrates that from 2014 to year 2017 as many as 662 cases of marine and

<sup>1</sup> Law no. 45 Year 2009 on Fisheries contains rules regarding procedural law as a special provision (*Lex Specialis*) from Law no. 8 Year 1981 on Criminal Code Procedures.

fishery crimes is handled by the Directorate of Violations Handling, Ministry of Fisheries and Marine. Marine and fishery crimes during the last four years fluctuated, with year 2016 as the year with the most marine and fisher criminal acts which is 237 cases or 38.17%. While the Year 2014, it is with the least cases of 58 cases or 10.15%.

The following empirical data shows the legal process of marine and fishery crime conducted by Fisheries Supervisor / Fisheries Civil Investigator, Directorate of Violations Handling, Directorate General of Marine and Fishery Resources (PSDKP), as follows:

**Table .6**  
**Data on *Inkracht* Marine and Fisheries Crime**  
**Year 2014-2017**

No.	Year	Number of Case	<i>Inkracht</i>
1	2	3	4
1.	2014	58	42
2.	2015	198	134
3.	2016	237	116
4.	2017	169	50
	Total	<b>662</b>	<b>342</b>

**Source: Directorate General of Marine and Fishery Resources Surveillance, 2017**

Based on the data above, it illustrates that from 2014 to 2017 there is as many as 342 *inkracht* cases of marine and fishery crimes, Year 2015 is the year with the most *inkracht* cases with a total of 134 cases or 39.11%, year 2016 with 116 cases or 33.91%; Year 2017 with 50 cases or 16.41%. If the number of cases from 2014 to 2017 with *inkracht* cases is observed, then the percentage only reaches 59.89%.

The handling of cases that are cross and multi-sectoral overlap each other due to the friction of authority. This will certainly have an impact on the creation of legal uncertainty. One example is the determination of the investigation decision in Law Number 27 Year 2007 on the Management of Coastal Areas and Small Islands with Law No. 31 of 2004 on Fisheries. Law Number 27 Year 2007 only designates certain institutions of Police and Civil Servant Investigator whose scope of duties and responsibilities are in the field of management of Coastal Zone and KKP which are authorized as investigators in the event of criminal acts occurred in the field of marine and fisheries. The Law Number 31 Year 2004 stipulates that the authorities to conduct investigations are Police, Navy and Civil Servant Investigator. Different regulation between these two laws creates legal uncertainty for the position of the Navy in the process of investigating the criminal act of fisheries, especially those that occur in coastal areas and small islands.

Problems in the settlement of criminal cases in the field of fisheries can not be separated from the various law enforcers who are authorized by law to do the *pro justitia* action, which sometimes becomes counter-productive with law enforcement efforts itself. Thus, the complexity of this comes from the existence of a legal issue arising, in connection with the law enforcement authority.

As has been previously described, the enforcement of criminal norms in the territorial waters of Indonesia has involved various agencies and units, even the armed forces. In accordance with existing laws and regulations, the authority of supervision and law enforcement in Indonesian waters is granted to 3 (three) agencies or units, in accordance with the provisions of Article 73 of Law no. 45 Year 2009 on Fisheries namely the Office of Marine and Fisheries (DKP), the Indonesian National Army Navy (TNI AL), the Indonesian National Police. The involvement of these three institutions in the handling of fish theft looks convincing but instead it resulted in criminal law enforcement to become ineffective.

Bakri Rudiansyah expressed the weakness of Law No. 31 Year 2004 Jo. Law No. 45 Year 2009 on Fisheries which does not clearly set the division of authority and also does not set a definite working mechanism, resulting the three agencies to declare that their agencies are equally authorized in law enforcement of fisheries and without any system integration in the implementation. This resulted in the eradication of illegal fishing becoming ineffective. One case occurred at a certain coordinate point where illegal fishing has occurred (without permission). The information was distributed to the three fisheries law enforcement agencies, ie DKP, Navy and Police agencies simultaneously, then each of the three agencies send their fleet to make the arrest, causing the three fleets to meet in the middle of the sea. Although there is no debate, with each agencies sending their own fleet means that there has been an inefficiency by performing a futile action.

Susanto Masita suggests that a weak coordination among law enforcement agencies causes an overlap towards their authority and policy respectively, so it is very prone for a conflict of interest to happen. Uncoordinated law enforcement is one of the obstacles in the handling of Illegal Fishing crime.<sup>1</sup> Judicial proceedings from investigations to trials require enormous costs, lengthy legal proceedings and adequate

<sup>1</sup> Susanto Masita, "Law Enforcement on Illegal Fishing crimes in Arafuru Water, Jurnal Pascasarjana Universitas Hasanuddin., pp. 9-10.

facilities / infrastructure which require special expertise in the handling of the case.<sup>1</sup>

One agency certainly will not have all the components of data / information or facilities and infrastructure needed in the framework of law enforcement. Therefore, coordination and synergic cooperation is required between related agencies in law enforcement efforts against Illegal Fishing.<sup>2</sup> Susanto Masita expressed that in the eradication of Illegal fishing crime in Indonesia, one of the obstacles is the lack of effective and efficient coordination between various related institutions. Coordination between various institutions is required in determining the success in criminal law enforcement to Illegal fishing crime which is categorized as an organized crime that has a very wide network ranging from illegal fishing, transshipment of fish in the middle of the sea, to illegal fish exportation.<sup>3</sup>

### **c. Establishment of Task Force for The Prevention and Eradication of Illegal, Unreported and Unregulated (IUU) Fishing.**

Violations and crime in the field of fisheries, especially illegal fishing have been very concerning, thus firm and integrated steps should be taken by all the relevant government agencies for its eradication. Handling of illegal fishing requires extraordinary law enforcement efforts that integrate the intergovernmental forces with appropriate strategies which utilize the latest technology to make sure it runs effectively and efficiently, and to be able to cause a deterrent effects and return state losses. Based on these considerations, the government issued Presidential Regulation no. 115 Year 2015 on Task Force for The Prevention and Eradication of Illegal, Unreported and Unregulated (IUU) Fishing. With the issuance of Presidential Regulation no. 115 Year 2015, Indonesia has new institutions besides Indonesia Maritime Security Agency (bakamla), Navy, Maritime Police and Investigator of the Ministry of Marine Affairs and Fisheries, in the fisheries law enforcement.

Task Force for The Prevention and Eradication of Illegal, Unreported and Unregulated (IUU) Fishing or popularly known as Task Force 115 in the execution of its duties have the authority which consist of:

- a. Determine the target of law enforcement operation in order to eradicate illegal fishing
- b. Conduct coordination in the collection of data and information required as law enforcement efforts, with related institutions including 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, Attorney General Republic of Indonesia, Maritime Security Agency, Financial Transaction Reports and Analysis Centre, State Intelligence Agency;
- c. Establish and order the elements of the Task Force to carry out law enforcement operations in the context of eradicating illegal fishing in areas designated by Task Force;
- d. Carry out command and control as referred to in letter c which includes ships, aircraft, and other technologies of the Indonesian Navy, Indonesian National Police, Ministry of Marine Affairs and Fisheries, and Maritime Security Agency who is already within the Task Force.

Task Force 115 performs its duties and authorities with organizational structure, operating guidelines, reporting and period of duty. Task Force 115 has an organizational structure consisting of:

- a. Commander of the Task Force: Minister of Marine Affairs and Fisheries;
- b. Daily Chief Executive: Deputy Chief of Staff of the Indonesian Navy;
- c. Daily Deputy Chief Executive 1: Head of the Maritime Security Agency;
- d. Daily Deputy Chief Executive 2: Head of the Security Maintenance Agency, Indonesian National Police;
- e. Daily Deputy Chief Executive 3: Deputy Attorney General for General Crimes, Attorney General of the Republic of Indonesia.

When carefully examining the organizational structure of Task Force 115, the Task Force 115 does not only come from the Ministry of Marine Affairs and Fisheries (KKP). Task Force 115 is a combination of elements of the KKP, Navy, Maritime Security Agency, Indonesian Police Security Maintenance Agency and Attorney General. Task Force 115 then formed a joint team led by the On Scene Commander and conducted law enforcement of eradication on illegal fishing operations based on intelligence data supply. Hierarchically, this joint team is directly responsible to the task force commander.

The Task Force Commander is directed by Coordinating Minister for Political, Legal and Security Affairs, Coordinating Minister for Economic Affairs, Coordinating Minister for Human Development and Culture, Coordinating Minister for the Ministry of Marine Affairs, Commander of the Indonesian National Armed Forces,

<sup>1</sup>*Ibid.*

<sup>2</sup> Regulation of the Minister of Marine Affairs and Fisheries No. PER/11/MEN/2006 on Amendment to Minister Regulation No. PER/13/MEN/2005 on Coordination Forum of Crime Handling in the Field of Fisheries determines that there are 10 (ten) related institutions that are in a chain of Eradication on Illegal Fishing which determines the process of law enforcement of fishery crime, namely: Ministry of Marine Affairs and Fisheries, Indonesian National Police, 10 TNI - Navy, Attorney General, Ministry of Law and Human Rights Director General of Immigration, Ministry of Transportation Directorate General of Sea Transportation, Ministry of Finance Directorate General of Customs and Excise, Ministry of Manpower and Transmigration Directorate General of Labour Inspection Development, Supreme Court and Provincial / Regency / City Government.

<sup>3</sup>*Ibid.*

Chief of the Indonesian National Police and the Attorney General of the Republic of Indonesia. Task Force 115 conducts law enforcement operations which is guided :

- a. The elements of the Task Force are submitted by the Ministry of Marine Affairs and Fisheries, Indonesian Navy, Indonesian National Police, Attorney General's Office of the Republic of Indonesia, and Maritime Security Agency to the Commander of the Task Force to carry out the illegal fishing eradication operations;
- b. The Commander of the Task Force is the sole authority holder and is authorized to exercise command and control over the elements of the Task Force, and each element is required to report the execution of its duties to the Commander of the Task Force;
- c. The Commander of the Task Force can give the authority to execute command and control of Task Force elements to the Daily Chief Executive to be executed by the Joint Team;
- d. The Joint Team runs an operation led by the Sector Commander and is responsible to the Commander of the Task Force through the Daily Chief Executive.
- e. The Chief and Deputy of Daily Chief Executive conduct supervision and control of operations conducted by the Joint Team and report it to the Commander of the Task Force;
- f. Determination of electronic equipment to monitor and identify objects at sea level is determined by the Task Force Commander; and
- g. The replacement and duplication of elements within the Task Force can be coordinated with the original units according to the requirements of the operations.

Task Force 115 in carrying out its duties will be evaluated by the Coordinating Minister for Political, Legal and Security Affairs. This evaluation came from the suggestion of Coordinating Minister for Economic Affairs, the Coordinating Minister for Human Development and Culture, the Coordinating Minister for the Ministry of Marine Affairs, the Commander of the Indonesian Armed Forces, the Chief of the Indonesian National Police, and the Attorney General of the Republic of Indonesia. Coordinating Minister for Political, Legal and Security Affairs conducts such evaluation every six months. In addition, the Task Force reports all the progress of its duties to the Presidents every 3 (three) months or at any time as necessary.

As it is known, illegal fishing activities are often carried out by foreign fishermen from neighboring countries in the region that entered the Indonesian waters illegally. Through various modus operandi, foreign fishermen conduct fish catching in Indonesian waters and then traded the fish outside Indonesia to make a huge amount of profit. Illegal fishing has harm the state financially, as it has significantly reduced productivity and result of catch, in addition to threatening Indonesia's marine fisheries resources. Foreign fishermen who frequently enter Indonesian waters among others comes from Thailand, Vietnam, Philippines, and Malaysia.<sup>1</sup>

For this purpose, Task Force 115 since its establishment through Presidential Regulation Number 115 Year 2015 has made several concrete steps. Record shows that Task Force 115 has sinked 176 vessels of illegal fishing perpetrators. Attempts to sink the vessels<sup>2</sup> of fish theft by Task Force 115 solely aim to provide a deterrent effect as a warning to other foreign vessels that tries to enter the Indonesian waters illegally.

The decisive action in the form of sinking foreign vessels who commits illegal fishing in Indonesian marine territory, aims to show the firmness and seriousness of Indonesia Government in protecting their territorial sovereignty and natural resources they possesses. This effort is also a concrete manifestation of the government's efforts to translate the vision of the maritime axis which is currently being intensified by the government in the past year, especially with regards to the full sovereignty of the sea. Details of the sinking of vessels during 2014 to 2017 as shown in Tables 3 and 4 are as follows:

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<sup>1</sup> Akhmad Solihin cited by Ayu Efridawati (et.al), "Drawing of the Ship of *Illegal Fishing* di Indonesia Zone in International Law Perspective", Jurnal Selat, Volume 4, No. 2 May 2017., p. 266.

<sup>2</sup> See Article 69 Paragraph (4) Law No. 45 Year 2009 on Fisheries "Fishery investigators and / or supervisors may take special measures in the form of burning and / or sinking of foreign flagged fishing vessels based on sufficient initial evidence". See also Article 111 United Nations Convention on the Law of the Sea(UNCLOS) on rights of hot pursuit concerning the imminent pursuit of a foreign ship may be made if the coastal state authorities have reason to believe that the ship has violated the laws and regulations. The technical law of the sinking of vessels is also regulated in Article 66C paragraph (1) letter K stipulating that in carrying out the duties as intended in Article 66, the fishery supervisor is authorized to take special action against fishing vessels attempting to flee and / or resist and / or endanger the safety of fishery supervisor vessels and / or fishery vessels crew members.

**Table. 8**  
**Data Recapitulation of Sunked Illegal Vessel**  
**Year 2014-2017**

Year	Fish Vessel		
	Unit	Foreign	Indonesia
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>
2014	8	8	-
2015	113	109	4
2016	115	112	3
2017	127	123	4
<b>Total</b>	<b>363</b>	<b>352</b>	<b>11</b>

**Directorate General of Marine and Fishery Resources Surveillance, 2017**

**Table .9**  
**Recapitulation Data of Sunked Vessel Based on Vessel Flag**  
**Year 2014 - Year 2017**

No.	Vessel Flag	Frequency	Percentage
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>
1.	Malaysia	52	14
2.	Vietnam	188	51.79
3.	Filipina	77	21.21
4.	Thailand	22	6.06
5.	China	1	0.27
6.	Papua Nugini	2	0.55
7.	Nigeria	1	0.27
8.	Belize	1	0.27
9.	Indonesia	19	5.23
<b>Total</b>		<b>363</b>	<b>100</b>

**Directorate General of Marine and Fishery Resources Surveillance, 2017**

During 2014 to 2017, there are 363 fishing vessels from nine countries: Malaysia, Vietnam, Philippines, Thailand, China, Papua New Guinea, Nigeria, Belize and Indonesia. Vietnam-flagged vessels with the number of 188 vessels or 51.79%; then the Malaysian-flagged vessel of 52 vessels or 14%; Philippine-flagged vessels of 77 vessels or 21.21%; Thailand-flagged vessels of 22 vessels or 6.06%; flagged vessels of China, Nigeria and Belize respectively of 1 vessel or 0.27%; Papua New Guinea-flagged vessels of 2 vessels or 0.55%; lastly, Indonesian-flagged vessels of 19 vessels or 5.23%. The operation is an effort to firmly eradicate illegal fishing and provide a deterrent effect, to which the sinking is done to the fishing vessels which are the result of arrest.

The act of sinking these illegal foreign vessels will not affect Indonesia's bilateral, regional and multilateral relations with other countries. Hikmanto Juwana argues that there are five reasons why the policy is actually worth supporting and will not worsen the relations between countries. The five reasons are as follows<sup>1</sup> :

1. There is no country in the world that justifies the actions of its citizens committing crimes in other countries. Sunked foreign vessels are unpermitted vessels who catch fish in Indonesian territory, so it is classified as a crime;
2. the act of sinking is done in the territory of sovereignty and sovereign rights of Indonesia (Exclusive Economic Zone).
3. the act of sinking is conducted on the basis of lawful provisions, namely Article 69 paragraph (4) of the Law on Fisheries.
4. other countries should understand that Indonesia is harmed by such criminal acts. If the act is continued, then the losses experienced will be greater.
5. the sinking process is done by paying attention to the safety of the crew

### 3. Conclusion

Legal effectiveness in eradicating illegal fishing can be done through two approaches, namely administrative law and criminal law. Administrative law mechanisms are conducted in the form of permission and supervision. The criminal law mechanism is done in the form of identifying the problematical handling of illegal fishing, inquiry and investigation of illegal fishing crime, as well as the Establishment of Task Force for The Prevention and Eradication of Illegal, Unreported and Unregulated (IUU) Fishing.

<sup>1</sup> Hikmahanto Juwana by Ayu Efridadewi (et.al), "Drawing of the Ship of *Illegal Fishing* di Indonesia Zone in International Law Perspective", Jurnal Selat, Volume 4, No. 2 May 2017., pp. 267-268.

## Bibliography

- Abid Muhtarom et.al, “*Illegal Fishing* Tuna dan Tongkol di Indonesia Economic Exclusive Zone”, Jurnal Ekbis, Volume XVII, No. 1 March 2017.
- Akhmad Solihin cited by Ayu Efridadewi (et.al), “Drawing of the Ship of *Illegal Fishing* di Indonesia Zone in International Law Perspective”, Jurnal Selat, Volume 4, No. 2 May 2017
- Bagir Manan quoted by Ridwan HR, 2007, Administrative Law, Jakarta : Rajawali Press.
- Barama M, “Goes to the Effectivity of The Law No. 45 Year 2009 Concening Fisheries and its Implementation”, Jurnal Hukum Unsrat, Volume 22, No. 6, July 2016.
- Dina Sunyowati, “Effect of IUU-Fishing Activities in Indonesia”, Presented at the National Seminar “the Role and the Effort of Legal Enforcers and Stakeholders to deal with and combat IUU-Fishing in Indonesia Border” Cooperation between the Ministry of Foreign Affairs of the Republic of Indonesia and Universitas Airlangga Surabaya, 22 September 2014.
- Estu Suryowati “Doing Illegal Fishing, 126 Ship’s Owners threatened to be sanctioned’ <http://bisniskeuangan.kompas.com/read/2015/09/17/132942726/Lakukan.Illegal.Fishing.126.Pemilik.Kapal.Terncam.Dikenai.Sanksi>. accessed on June 27 2017.
- Gatot Supramono, 2011, *Criminal Procedural Law and Criminal Law in Fishery Sectors*, Jakarta: Rineka Cipta.
- Hikmahanto Juwana by Ayu Efridadewi (et.al), “Drawing of the Ship of *Illegal Fishing* di Indonesia Zone in International Law Perspective”, Jurnal Selat, Volume 4, No. 2 May 2017.
- Nunung Mahmudah, 2015, “Illegal Fishing: Criminal Responsibility in Indonesian Waters”, Jakarta : Sinar Grafika.
- Paulus Aluk Fajar Dwi Santo, “an Overview of Corporation Legal Subject and its Criminal Responsibility Formulation”, Humaniora, Vol. 3 No. 02 October 2012..
- Simela Victor Muhammad, “Illegal Fishing in Indonesian Waters: Problems and Bilateral Effort to Deal With in the Region”, Politica, Volume 3, No.1, May 2012.
- Susanto Masita, “Law Enforcement on Illegal Fishing crimes in Arafuru Water, Jurnal Pascasarjana Universitas Hasanuddin.