

## ENFORCEMENT OF *ILLEGAL FISHING* CASES AS TRANSNATIONAL CRIMES IN INDONESIA IN THE PERSPECTIVE OF NATIONAL AND INTERNATIONAL LAW

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### Abstract

The purpose of this study is to analyze: 1) What is the form of *Illegal Fishing activities*? 2) How is law enforcement against *illegal fishing* in Indonesia based on national and international law? 3) Why is *Illegal Fishing* called a transnational crime?. The research method used is empirical juridical with a statutory approach, concept approach, and case studies. The results showed that: 1) There are many types of *illegal fishing*, such as manipulation of administrative requirements, use of fishing gear that is not permitted, nets that are not in accordance with laws and regulations, and others. *Illegal fishing* is known as *Illegal Unreported and Unregulated Fishing (IUU)*. 2) Based on the provisions of Article 62 paragraph (4) letter (k) and Article 73 of UNCLOS, Indonesia as an archipelagic country is indeed given the right to enforce the law in the EEZ area if there is or creates a violation of law in the area. However, Article 73 paragraph (3) of UNCLOS provides that penalties imposed by coastal states on actions in EEZ areas must not include corporal punishment. Indonesia can only impose corporal punishment if it has signed bilateral agreements with other countries. Foreign fishing boats that commit fish theft can be fined and then the foreign boat fishermen can be deported to their home country. 3) The existence of transnational crime elements in *the IUU fishing* and *fishing crime* element causes international cooperation to be needed to overcome it. Until now there has been no international cooperation that Indonesia can use to eradicate *IUU fishing and fishing crime* as a crime that requires international cooperation. Until now, there has been no coordination mechanism between the local government and the central government in efforts to prevent and eradicate IUU fishing.

**Keywords:** Enforcement, Case, Illegal Fishing, Transnational Crime, Indonesia, Perspective, Law, National, International.

### INTRODUCTION

#### BACKGROUND

Indonesia is an archipelagic country whose territory is mostly water. The potential of biological resources in the field of Indonesian fisheries is very potential in developing the Indonesian economy. In this case, offshore fisheries or commonly called *offshore fisheries* are types that can prosper the fishing industry. Therefore, the empowerment of these biological resources is a necessity. However, violations of such resource management are estimated to have cost Indonesia 1.9 trillion rupiah per year.<sup>1</sup>

As a unitary state is a consequence of Indonesia's geographical condition with islands stretching from Sabang to Merauke and has a very large sea area, about 2/3 of Indonesia's territory is in the form of ocean. With such a wide coverage of sea areas, Indonesia is also recognized

internationally as an archipelagic country stipulated in UNCLOS 1982 which gives authority and expands Indonesia's sea area with all the provisions that follow.<sup>2</sup> Based on UNCLOS 1982 a country's sea zone is divided into zones where the state has full sovereignty in it and zones where the state has only limited jurisdiction and sovereign rights only.<sup>3</sup>

Fish resources (hereinafter referred to as SDI) on the high seas are one of the most important sources of food and marine industry commodities in the world. According to the report of the Food and Agriculture Organizations (hereinafter referred to as FAO) in The State of World Fisheries and Aquaculture (hereinafter referred to as SOFIA) in 2012, the fisheries sector supports the livelihoods of around 540 million people in the world and world fisheries production reaches 128 million tons of fish<sup>18</sup>. Furthermore, SOFIA 2012 states, that the world's fish stock has decreased due to overexploitation (overexploited), namely 85% of the world's SDI is overexploited and fully exploited.<sup>4</sup>

Overfishing of SDI has actually occurred since the late 1970s, the number of *distant-water fishing vessels* operating on the high seas has increased and their presence threatens vessels and the availability of fish in coastal countries adjacent to the high seas. If overfishing conditions on the high seas occur continuously and are not controlled, it will threaten the reproduction of several species of fish in coastal countries.<sup>5</sup>

The high potential possessed by the Indonesian Sea certainly makes various parties tempted to take advantage of it. Not only Indonesian citizens, foreigners are also tempted by Indonesia's marine wealth. Indonesia's marine natural resources are one of the largest in the world, so it is no secret that Indonesia is a paradise for marine life, one of which is fish. This natural wealth is finally glimpsed by neighboring countries, so that there is a lot of *illegal fishing* in the Indonesian Ocean.<sup>6</sup> At this stage, the legal function is needed to become a medium of control and prevention of actions that can disrupt the stability of management and sustainability of fish resources and the environment.<sup>7</sup>

Basically, Indonesia already has a fairly comprehensive rule of law regarding law enforcement in the field of fisheries. Law Number 31 of 2004 concerning Fisheries and Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries are the main laws and regulations in the field of fisheries. Criminal acts in the field of fisheries are regulated quite comprehensively in Law Number 31 of 2004 concerning Fisheries. The regulation ranges from illegal fishing, fishing using dangerous equipment, to the destruction of the aquatic environment. Moreover, a fisheries surveillance ship was formed. Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries provides additional authority to sink foreign-flagged fishing vessels based on sufficient preliminary evidence. This is certainly an interesting concern for the international community, especially regarding whether it can be justified that the authority given to fisheries surveillance vessels when viewed from the International Action designed by FAO.<sup>8</sup> Seeing violations and crimes in the field of fisheries, especially illegal, unreported, and unregulated (IUU) fishing activities in Indonesian waters is very concerning, therefore it is necessary to take firm and integrated steps immediately by all relevant government agencies to eradicate it.<sup>9</sup>

## Problem Statement

1. What is the form of *Illegal Fishing activities*?
2. How is law enforcement against *illegal fishing* in Indonesia based on national and international law?
3. Why is *Illegal Fishing* called a transnational crime?

## Theoretical Framework

### 1. Sovereignty Theory

Sovereignty is a translation of *sovereignty*. According to Jean Bodin, sovereignty is included in the attributes of the state and the main thing of the country's political unity. In sovereignty there are characteristics that contain power of the following:

- a. Originally, Sovereignty was formed not from the derivatives of other powers.
- b. Supreme, meaning that no other power can limit or reduce the power of a sovereign.
- c. Eternal or eternal
- d. Indivisible sesb is the supreme power
- e. Cannot be handed over or transferred to another body.<sup>10</sup>

Sovereignty can be bound as the supreme power of the state. Sovereignty has two aspects, namely internal and external. The internal aspect explains the sovereignty of being the highest power that governs something that is within the boundaries of the territory. While the external aspect, sovereignty moves to be the highest power to hold international relations or regulate everything that is or happens outside the territory as long as the problems regulated still have something to do with the interests of the state. According to Mochtar Kusumaatmaja, sovereignty is the nature of a state that is aligned with its territorial boundaries.<sup>11</sup>

### 2. Law Enforcement Theory

Law enforcement in Dutch is called *rechtstoepassing* or *rechtshandhaving* and in English law enforcement, includes 30 definitions that are macro and micro. Macro covers all aspects of community life, nation and state, while in the micro sense it is limited in the process of examination in court including the process of investigation, investigation, prosecution to the implementation of criminal verdicts that have permanent legal force.<sup>12</sup>

The purpose of law enforcement in line with the purpose of the law itself, is to achieve certain desired results and the purpose of law is an effort to realize the achievement of order and justice. An order cannot be established, if the law is ignored. Community awareness and compliance with the law, not only affect order and justice, but play a role in shaping the legal culture (culture) of a society because it regulates behavior.<sup>13</sup> Law enforcement is a process of making legal wishes a reality. The so-called legal desires here are none other than the thoughts of the law-making body formulated in legal regulations. That legal regulation. The formulation of

lawmakers' thoughts as outlined in legal regulations will also determine how law enforcement is carried out.<sup>14</sup>

According to Satjipto Rahardjo, progressive law enforcement is carrying out the law not just black-and-white words from regulations (*according to the letter*), but according to the spirit and deeper meaning (*to very meaning*) of the law or law. Law enforcement is not only intellectual intelligence, but rather spiritual intelligence. In other words, law enforcement is carried out with determination, empathy, dedication, commitment to the suffering of the nation and accompanied by the courage to find another way than usual.<sup>15</sup> Basically, human life is inseparable from the law. Throughout the history of human civilization, the central role of law in creating an atmosphere that allows humans to feel protected, coexist peacefully and maintain their existence in the world has been recognized.<sup>16</sup>

## RESEARCH METHODOLOGY

This research is included in the type of doctrinal research, where the approach method used is normative juridical. The normative juridical approach is to understand the problem using the approach of legal regulations or applicable laws and regulations.<sup>17</sup> The normative legal research method is also called positive law science referred to here is a law that applies at a certain time and place, namely a written rule and norm that is officially formed and promulgated by the ruler, in addition to written laws that regulate the behavior of community members.<sup>18</sup>

In this study, a statutory approach and a comparative approach were used.<sup>19</sup> Legal research conducted by examining library materials or secondary data.<sup>20</sup> Statute approach: an approach taken by examining laws and regulations related to the focus of research.

Then the conceptual *approach* is an approach that departs from the views and doctrines that develop in legal science. A concept is a mental integration of two or more units isolated according to characteristics and united by a distinctive definition.<sup>21</sup>

## RESEARCH RESULTS

### Forms of *Illegal Fishing Activities*

Illegal fishing is a fishing vessel that fishes without a permit from the Government of the Republic of Indonesia in the Indonesian fisheries management area. Based on article 5 of Law No. 31 of 2004 concerning Fisheries (Fisheries Law 2004), it is stated that Indonesia's fisheries management area includes:

- a. Indonesian waters;
- b. EEZ;
- c. Rivers, lakes, reservoirs, swamps, and other puddles that can be cultivated as well as potential fish farming land in the territory of the Republic of Indonesia.

Meanwhile, *Illegal Fishing* according to the *International North Pacific Fisheries Commission (INPC)* is as follows: "*Illegal and unethical fishing activity included (1) under reporting catch*

*and by catch and keeping double sets of fishing logs, (2) misreporting the names, numbers, and location of fishing vessels, (3) unplugging, breaking or loosing transponders to avoid location detection, (4) harassing monitoring personnel, (5) illegally fishing in the EEZ of other states, (6) using squid driftnet vessels to illegally catch salmon in north pacific in violation of the flag states international agreement as well as customary law, (7) transshipping illegal catches at sea or processing them into fish meal at sea so they cannot be identified, (8) reflagging vessels to circumvent treaty obligation".<sup>22</sup>*

There are many forms of *illegal* fishing, such as manipulation of administrative requirements, the use of fishing gear that is not permitted, nets that are not in accordance with laws and regulations, and others.<sup>23</sup> *Illegal fishing* is known as *Illegal Unreported and Unregulated Fishing* (IUU).

Fishery activities that are considered *illegal fishing* are referred to as follows:

- a. Fishery activities by foreign persons or vessels in waters under the jurisdiction of a State, without permission from that State, or contrary to laws and regulations;
- b. Fisheries activities carried out by vessels flying the flag of a State that is a member of a regional fisheries management organization, but carried out in a manner contrary to the resource management and conservation arrangements adopted by that organization, where such provisions are binding on the State that is a member of it, or contrary to other relevant international law;
- c. fisheries activities contrary to national law or international obligations, including the obligations of member states of regional fisheries management organizations to such organizations;
- d. The most common unlawful fishing activity in WPP-NRI is the theft of fish by foreign-flagged fishing vessels, particularly from some neighboring countries.<sup>24</sup>

Fisheries activities are not regulated *Unregulated Fishing based on the International Plan of Action to Prevent, Deter and Eliminate IUU Fishing (IPOA-IUU Fishing) in 2001, what is meant by fishery activities that are considered to be Unregulated Fishing are:*<sup>25</sup>

1. Fisheries activities carried out in relevant RFMO areas of competence carried out by vessels without nationality, or by vessels flying the flag of a country that is not a member of such organization, or by fishing companies, conducted in a manner contrary to the conservation and management arrangements of that organization;
2. Fisheries activities carried out in territorial waters or for fish stocks where no conservation and management arrangements can be applied, carried out in a manner contrary to the State's responsibility to conserve and manage marine living natural resources in accordance with the provisions of international law.

IUU *fishing activities* include violations related to the management and preservation of fishery resources in national and international waters. Fish-producing countries enter into bilateral and multilateral cooperation agreements so that they are bound by the rules of fisheries

organizations that are followed.<sup>26</sup> In addition, one of the factors for the occurrence of *Illegal Fishing is the* increasing demand for world fish, on the other hand the world fish supply is decreasing, and there is overdemand, especially fish species from the sea such as Tuna. This is a significant contributor to the problem of declining fish stocks in the sea. *Illegal fishing* activities are often carried out by foreign fishermen from neighboring countries in the region who enter Indonesian waters illegally. Through various modus operandi, these foreign fishermen catch fish in Indonesian waters and are then traded outside Indonesia with double profits. Illegal fishing has harmed the country financially, because it has contributed to significantly reducing productivity and catches, in addition to threatening Indonesia's marine fisheries resources. Foreign fishermen who often enter Indonesian territorial waters are, among others, from Thailand, Vietnam, the Philippines, and Malaysia.<sup>27</sup>

### **Law Enforcement Against *Illegal Fishing* in Indonesia based on National and International Law**

The government's commitment to combat fish theft is a very strategic step in strengthening Indonesia's fisheries sector, especially after entering the current era of the ASEAN Economic Community (AEC). This step will be very important for Indonesia if it wants to become a major player in this AEC era. Do not let Indonesia, which is rich in fish resources in the sea, only be a spectator.<sup>28</sup>

Fisheries is an activity related to the management and utilization of fish resources, and as an economic activity, the fishery business will place motivation as a commander in its implementation.<sup>29</sup>

Fisheries management areas in Indonesia that are prone to IUU fishing in Indonesia's exclusive economic zone (EEZ) are:<sup>30</sup>

1. South China Sea;
2. Sulawesi Sea and Pacific Ocean;
3. Arafura Sea.

While state losses due to *illegal fishing* can be described as follows:

1. It is estimated that per year the country experiences a loss of 30 T.
2. The occurrence of *overfishing* and *overcapacity*.
3. Damage to the sustainability of fish resources as a result of declining fish stocks.
4. The unit catch (CPUE) of fishermen and national companies decreased.
5. Fisheries business is not conducive.
6. Weak competitiveness of Indonesian companies.
7. Indonesian fishermen do not become hosts in their own country (marginalized).<sup>31</sup>

In national law, the main source of law in the field of fisheries is the Fisheries Law. In Law Number 31 of 2004 concerning Fisheries, as amended by Law Number 45 of 2009 concerning



Fisheries. Chapter XV of Law Number 31 of 2004 concerning Fisheries (Fisheries Law) contains criminal provisions. In these Criminal Provisions, Criminal Acts are regulated in Articles 84 to Article 100 of the Fisheries Law. The classification of offenses and crimes is not given in all Special Criminal Laws. However, the Fisheries Law contains this classification as stipulated in Article 103 which states:

1. *"criminal acts referred to in Article 84, Article 85, Article 86, Article 88, Article 91, Article 92, Article 93 and Article 94 are crimes"*
2. *"criminal offences referred to in Article 87, Article 89, Article 90, Article 95, Article 96, Article 97, Article 98, Article 99, and Article 100 are offences"*

Article 84 regulates criminal acts formulated as follows:

*"Any person who intentionally in the fisheries management area of the Republic of Indonesia conducts fishing and/or fish farming using chemicals, biological materials, explosives, tools and/or methods, and/or buildings that can harm and/or endanger the sustainability of fish resources and/or the environment as referred to in Article 8 paragraph (1), shall be punished with a maximum imprisonment of 6 (six) years and a maximum fine of Rp1.200, 000,000, 00 (one billion two hundred million rupiah)"*

Article 84 has 4 verses which basically the formulation of *actus Reus* is the same, but only differentiated the subject who does. Article 84 paragraph 1 is more general with the formulation "everyone", but paragraph (2) provides specifications for "Masters or leaders of fishing vessels, fishing experts, and crew members"<sup>28</sup>, then paragraph (3) provides subject specifications for "Owners of fishing vessels, owners of fishing companies, persons in charge of fishing companies, and/or operators of fishing vessels"<sup>29</sup>, and paragraph (4) formulates "Owners of fishing companies, power of owner of fish farming company, and/or person in charge of fish farming company".<sup>30</sup> With this distinction, the principle of *lex specialis derogate legi generalis* applies, where when there is a subject who deliberately fishes using goods that are prohibited from fulfilling certain legal subjects as stipulated in Article 84 paragraphs 2, 3, or 4, these paragraphs apply. This particular arrangement is considered very good, because previously in the Fisheries Law of 1985 in practice it was very difficult to ensnare fishery company owners, while many field actors were caught even though they only carried out the orders of superiors.<sup>32</sup>

In Law Number 45 of 2009 changed to: *"Any 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 on fishing vessels in the fisheries management area of the Republic of Indonesia as referred to in Article 9 shall be punished with a maximum imprisonment of 5 (five) years and a maximum fine of IDR 2,000,000,000.00 (two billion rupiah)"*.

Article 85 of Law Number 45 of 2009, it is seen that not only fishing activities that violate the rules are punished, but also activities that result in damage to the sustainability of fish resources in fisheries management areas of the Republic of Indonesia.<sup>33</sup>

According to Law Number 45 of 2009 concerning Fisheries Article 69 paragraph (4) states: *"In carrying out the functions referred to in paragraph (1) fisheries investigators and/or supervisors may take special actions in the form of burning and/or sinking foreign-flagged fishing vessels based on sufficient preliminary evidence".*<sup>34</sup>

What is meant by "sufficient preliminary evidence" is preliminary evidence to suspect a criminal act in the field of fisheries by foreign-flagged fishing vessels, for example foreign-flagged fishing vessels do not have SIPI and SIKPI and actually catch and/or transport fish when entering the fisheries management area of the Republic of Indonesia.<sup>35</sup>

The United Nations Conventions on the Law of the Sea (UNCLOS 1982) broadly distinguish sea areas where countries can enforce their laws against IUU Fishing, namely sea areas that are under sovereignty and sea areas where a country has jurisdiction. Law enforcement against Illegal Fishing contained in UNCLOS is regulated in Article 73 such as the Enforcement of Laws and Regulations of coastal states, namely: **First**, coastal states can exercise their sovereign rights to explore, exploit, conserve, and manage biological resources in the EEZ, take such measures, including boarding ships, inspecting, arresting and conducting judicial proceedings, as necessary to ensure compliance. The laws and regulations adopted by him are in accordance with the provisions of this Convention. **Second**, captured vessels and their crews shall be released immediately upon receipt of a reasonable bail or other form of bail. **Third**, coastal state penalties imposed for violations of fisheries laws and regulations in EEZs shall not include confinement, in the absence of an agreement to the contrary between the States concerned, or any other form of corporal punishment. **Fourth**, in the event of arrest or detention of a foreign vessel, the coastal State shall immediately notify the flag State through appropriate channels of the measures taken and of any penalties subsequently imposed.

Based on the provisions of Article 62 paragraph (4) letter (k) and Article 73 of UNCLOS, Indonesia as an archipelagic country is indeed given the right to enforce the law in the EEZ area if there is or creates a violation of law in the area. However, Article 73 paragraph (3) of UNCLOS provides that penalties imposed by coastal states on actions in EEZ areas must not include corporal punishment. Indonesia can only impose corporal punishment if it has signed bilateral agreements with other countries. Foreign fishing boats that commit fish theft can be fined and then the foreign boat fishermen can be deported to their home country. The action is in accordance with the provisions of Article 73 paragraph (4):

*"In the event of fishing or detention of foreign vessels, the Coastal State shall promptly notify the flag State, through appropriate channels, of the measures taken and of any penalties subsequently imposed."*<sup>36</sup>

Indonesia has ratified UNCLOS 1982 with Law No. 17 of 1985 concerning the Ratification of the United Nations Convention on the Law of the Sea. Implementing the provisions of UNCLOS 1982 related to criminal acts in the field of fisheries (illegal fishing), based on the theory of transformation and delegation theory, the provisions contained in the 1982 Convention on the Law of the Sea are transformed and delegated into national law through legislation. Implementation of UNCLOS provisions, one of which is related to the provisions regarding



the division of sea areas as previously described. The elaboration of UNCLOS provisions in national law related to the regulation of Indonesian sea areas, is further regulated in Law No. 6 of 1996 concerning Indonesian Waters.

Related to illegal fishing practices in territorial waters, the involvement of foreign parties in fish theft can be classified into two, namely: <sup>37</sup>**First**, semi-legal theft, namely fish theft carried out by foreign vessels by utilizing legal fishing permits owned by local entrepreneurs, using locally flagged vessels or flags of other countries. This practice is still categorized as illegal fishing because in addition to fishing in waters that are not their right, illegal fishing actors directly send catches without going through the process of landing fish in legal areas. This practice is often referred to as the practice of "borrowing the flag" or *Flag of Convenience* (FOC).

Regarding law enforcement in the region (EEZ), Law No. 5 of 1983 Article 13 stipulates, that in order to carry out sovereign rights, other rights, jurisdiction and obligations of the competent government law enforcement apparatus, law enforcement actions may be taken in accordance with Law Number 8 of 1981 concerning the Code of Criminal Procedure, with the following exceptions:

- a. Arrest of vessels and/or persons suspected of violations in the exclusive economic zone (EEZ) includes stopping the ship until the delivery of the ship and/or persons at the port where the case can be processed further;
- b. The delivery of the ship and/or persons must be carried out as soon as possible and must not exceed a period of 7 (seven) days, unless there are force majeure circumstances;
- c. For the purposes of detention, criminal acts regulated in Article 16 and Article 17 are included in the category of criminal acts as referred to in Article 21 paragraph (4) point b of Law Number 8 of 1981 concerning the Code of Law.

Please note that this fisheries law applies to everyone, both Indonesian citizens and foreign nationals; Indonesian legal entities as well as foreign legal entities, as well as Indonesian-flagged fishing vessels that cooperate with foreign parties carrying out fisheries activities in fisheries management areas and outside the fisheries management areas of the Republic of Indonesia.<sup>38</sup>

Related to sanctions for fisheries criminal acts as stipulated in the Fisheries Law in general can have a deterrent effect. However, criminal offenders, especially foreign nationals who commit fisheries crimes in the EEZ area have not caused a deterrent effect because they cannot be sentenced to imprisonment unless there is an agreement between the Government of the Republic of Indonesia and the government of the country concerned (Article 102 Law No. 31 of 2004). This provision parallels Article 73 paragraph (2) of UNCLOS 1982 which does not allow also the regulation of coastal states to carry out imprisonment or corporal punishment if there is no agreement with the State concerned.

Regarding administrative sanctions for violators as stipulated in Law No. 45 of 2009, Law No. 31 of 2004 concerning Fisheries has not caused a deterrent effect and is ineffective. For example, foreign fishing vessels that catch in the EEZ using fishermen are not in accordance with the provisions as stipulated in Article 35 A paragraph (3) of Law No. 45 of 2009, namely administrative sanctions in the form of warnings, license freezes, or license revocations, are not effective because foreign fishing vessels fishing in Indonesian fisheries management areas are not equipped with documents and there are no agents in Indonesia.<sup>39</sup>

### ***Illegal Fishing as a Transnational Crime***

Transnational crime according to I Wayan Parthiana is a crime that crosses the territorial boundaries of a country. The place of occurrence, the purpose of the crime and the consequences arising from the crime are some aspects of transnational crime that do not have specific boundaries.<sup>40</sup> Transnational is a special term that refers to individuals who commit a crime, so that the individual can be held accountable for the crimes committed based on international law and national law of a country.<sup>41</sup> The characteristics of "*transnational crimes*" are regulated by the 2000 Palermo Convention.<sup>42</sup> Article 3 of the UNTOC Convention confirms that the elements of transnational crime are as follows:

- a. Conducted more than one territorial area of a country;
- b. The crime was controlled, prepared, directed and planned in one particular country, but the commission of the crime was committed in a different country;
- c. Crimes committed within one territory of a State, but involving an organized individual or group committing a crime in another State; or
- d. A crime committed in one country, but the consequences of the crime befall another country.

According to the *International Plan Of Action (IPOA)*, *IUU Fishing (Illegal, Unreported, Unregulated) Fishing* is a fishery activity that is carried out illegally, activities that are not regulated by existing regulations, or whose activities are not reported by the head of an institution or fisheries management institution that has been available. IUU fishing operations are very common transnationally because usually perpetrators carry out these operations within the territory of a country without official permission or legal documents to fish in the area. This illegal activity has occurred massively and also has a very strong relationship with organized crime.<sup>43</sup>

IUU Fishing, including *illegal fishing*, can be categorized as one type of transnational crime because its elements involve more than one country, namely the planning, preparation and consequences of the crime have involved more than one country. Article 3 of the UNTOC Convention affirms the elements of transnational crime.<sup>26</sup> In Perkap 7 of 2009, transnational crime is organized crime, whose area of operation includes several countries, which affects the political, governmental, socio-cultural, and economic interests of a country and is global, or In concept, transnational crime means a criminal act or crime that crosses national borders.<sup>44</sup> Therefore, in cases regarding IUU fishing can be categorized as transnational crimes because

they involve one country with another.<sup>45</sup>

The existence of transnational crime elements in *the IUU fishing* and *fishing crime* elements causes international cooperation to be needed to overcome them. Until now there has been no international cooperation that Indonesia can use to eradicate *IUU fishing and fishing crime* as a crime that requires international cooperation. Until now, there has been no coordination mechanism between the local government and the central government in efforts to prevent and eradicate IUU fishing.<sup>46</sup>

Various prevention and eradication policies that have been carried out by the Government of Indonesia have not been able to comprehensively solve the problem of IUU fishing in Indonesia. The establishment of a comprehensive and coordinated IUU fishing prevention and eradication model is based on thinking that is in line with Indonesia's vision as a maritime country that views the sea as the nation's future. To build a maritime country, it was built with five pillars, namely

- a. Development of maritime culture;
- b. Safeguarding and management of marine resources;
- c. Infrastructure and connectivity development;
- d. Conduct maritime diplomacy to eliminate conflicts at sea with other countries;
- e. Development and safety at sea.<sup>47</sup>

Based on the fact that the issue of *illegal fishing* is a *multi-actor problem* in the context of involving many parties (fishing communities, government and fisheries actors); *multi-level* because it also involves *global* (foreign) actors, especially those related to *fishing ground conflicts*, multi-lateral cooperation at the sub-regional and regional levels; and *multi-mode*, especially those related to regulatory regulations, *law enforcement*, to the provision of supervisory facilities and infrastructure.<sup>48</sup>

## CONCLUSION

The results showed that;

1. There are many forms of *illegal fishing*, such as manipulation of administrative requirements, the use of fishing gear that is not permitted, nets that are not in accordance with laws and regulations, and others. *Illegal fishing* is known as *Illegal Unreported and Unregulated Fishing* (IUU).
2. Based on the provisions of Article 62 paragraph (4) letter (k) and Article 73 of UNCLOS, Indonesia as an archipelagic country is indeed given the right to enforce the law in the EEZ area if there is or creates a violation of law in the area. However, Article 73 paragraph (3) of UNCLOS provides that penalties imposed by coastal states on actions in EEZ areas must not include corporal punishment. Indonesia can only impose corporal punishment if it has signed bilateral agreements with other countries. Foreign fishing boats that commit

fish theft can be fined and then the foreign boat fishermen can be deported to their home country.

3. The existence of transnational crime elements in *the IUU fishing and fishing crime* elements causes international cooperation to be needed to overcome them. Until now there has been no international cooperation that Indonesia can use to eradicate IUU *fishing and fishing crime* as a crime that requires international cooperation. Until now, there has been no coordination mechanism between the local government and the central government in efforts to prevent and eradicate IUU fishing

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