

LEGAL STATUS OF ABK IN LICENSING VIOLATIONS ACROSS EXCLUSIVE ECONOMIC ZONES

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Abstract

The purpose of this study is to analyze: 1) How are licensing arrangements across exclusive economic zones? 2) What are the legal penalties for licensing violations across the exclusive economic zone? 3) What is the certainty of the legal status of fishermen in licensing violations across the exclusive economic zone? The research method used is normative juridical with a statutory approach, concept approach, and case studies. The results showed that: 1) legal fishing in the sea of the Exclusive Economic Zone is with permission from the Indonesian government. Permission from the Indonesian government is given to every fisherman, both Indonesian and foreign fishermen. Foreign fishermen have permits to utilize biological resources in Indonesia's EEZ seas if they exceed Indonesia's ability to utilize them. 2) Fisheries Crime in the EEZ Area is specifically regulated in the Fisheries Law, contained in articles 84 to 104. These criminal provisions are criminal acts outside the Criminal Code that are regulated deviantly, because the criminal acts can cause damage to the management of Indonesian fisheries which results in harming the community, nation and state. The application of sanctions against foreign fishing vessels in accordance with Article 10 of the Criminal Code is known to have two types of criminal penalties, namely the main criminal and additional crimes. 3) Perpetrators of *Illegal Fishing* violations in EEZ waters for foreign vessels are subject to greater and appropriate fines so as not to cause major losses to coastal States, and will provide a deterrent effect for perpetrators of *Illegal Fishing violations* against foreign vessels. Meanwhile, violations of *Illegal Fishing* by coastal States are subject to penalties applicable in the country.

Keywords: Status, Law, ABK, Violation, Licensing, Traversing, Exclusive Economic Zone.

INTRODUCTION

Background

Arrangements on the sovereignty and jurisdiction of states in the sea comprehensively began to be carried out by the Geneva Convention in 1958, which was later updated with *the United Nations Convention on the Law of the Sea* (UNCLOS 1982). The 1982 *United Nations Convention on the Law of the Sea* (UNCLOS) is a *constitution for the ocean*. This is because; this Convention regulates comprehensively and covers almost all activities at sea.

The law of the sea convention regulates maritime zones with unequal legal status, consisting of two parts, zones that are under and outside national jurisdiction. Maritime zones under national jurisdiction are divided into maritime zones that are under the full sovereignty of coastal states and maritime zones, parts of coastal states can exercise special powers and rights provided for in the convention.¹

Although UNCLOS 1982 states that coastal States have the right to arrest illegal fishing perpetrators in the EEZ area, in practice in carrying out law enforcement is not an easy matter. Law enforcement related to illegal fishing requires a deep understanding; the Government of Indonesia needs to pay attention to court processes that uphold justice and human values that have so far been hindered. In addition, to determine a crime or criminal act falls into the category of international crimes, analysis is needed regarding the place of occurrence, the nationality of the perpetrator, victims, objects in the form of property belonging to foreign parties, touching human values and justice and human legal awareness.

The Exclusive Economic Zone is a new arrangement established by UNCLOS 1982. Long before the birth of this arrangement, the outermost boundary of the territorial sea was considered to be the boundary between the part of the sea towards land where full sovereignty of the coastal state applies, and the part of the sea outward from that boundary where freedom on the high seas applies. The arrangement of the Exclusive Economic Zone can be considered as a result of a revolution that has changed in such a way the regulation of the sea. The development of the Exclusive Economic Zone (hereinafter referred to as EEZ) reflects international customs that are accepted into customary international law because two important conditions have been met, namely state practice and *opinio juris sive necessitatis*.²

EEZ for developing countries such as Indonesia is vital because it contains a wealth of biological and non-biological natural resources, so it has a very important role for the economic development of the nation and state. More than 90 percent of high-value fish stocks can be found within the EEZ. However, the exclusive jurisdiction of coastal states has not been able to end the decline in fish stocks in the EEZ. In fact, even developed countries fail to manage and conserve fisheries in their EEZs effectively.³

The rights and obligations of other countries in the EEZ are regulated in Article 58 of UNCLOS 1982, as follows;

1. In the Exclusive Economic Zone, all States, whether coastal or nonshore, enjoy, subject to the provisions relevant to this Convention, the freedoms of navigation and overflight, as well as the freedom to lay submarine cables and pipes referred to in Article 87 and sea uses relating to the operation of ships, aircraft, and submarine cables and pipelines, and in accordance with other provisions of this Convention.
2. Articles 88 to 115 and other provisions of applicable international law apply to the Exclusive Economic Zone to the extent not inconsistent with this chapter.
3. In exercising the rights to fulfil obligations under this Convention in the Exclusive Economic Zone, States shall have due regard to the rights and obligations of coastal States and shall comply with the laws and regulations established by coastal States in accordance with the provisions of this Convention and the rules of international law to the extent that such provisions do not conflict with the provisions of this chapter.

These three kinds of rights and obligations are a relic of the freedom of the high seas that have been recognized in the Geneva Law of the Sea Convention 1958 where the part of the sea that

is now an Exclusive Economic Zone and was previously part of the high seas with its four high seas freedoms. Only fisheries freedom is erased, because the purpose and purpose of this Exclusive Economic Zone legal institution is for the sake of protecting biological and non-biological natural resources for the benefit of the coastal state itself. These natural resources are the core in order to meet the interests of coastal states.

In addition, so far many fishing violations committed by foreign vessels have never stopped. Violations of such violations include: violations of fishing grounds and violations of jurisdiction by foreign fishing vessels; fishing activities without the permit or expiration date; manipulation of fishing licenses and/or fishing vessel licenses; the use of fishing gear that is not in accordance with permits and/or the use of fishing gear that damages fish resources.

Problem Statement

1. How do licensing arrangements cross exclusive economic zones?
2. How are legal sanctions in licensing violations across the exclusive economic zone?
3. How is the certainty of the legal status of fishermen in licensing violations across the exclusive economic zone?

THEORETICAL FRAMEWORK

1. Theory of State Sovereignty

Sovereignty is the highest power in a country in which there is no power in other countries. Regarding state sovereignty, Jean Bodin, who lived in the XVI century, revealed that sovereignty is the highest power in a state to determine the laws of the country and its nature: single, original, eternal, and indivisible.⁴

The state is said to be sovereign because of the nature and nature of the country, when it is said that the country is sovereign it means because the country has its own power.⁵ The state has the highest power, meaning that the state has a monopoly of power, which is a characteristic of today's community organizations that does not allow people or individuals to take action on their own if they are harmed.⁶

In essence, an agreement is made for the mutual benefit of the parties. Good *faith* at the time of initiating the contract proves that the agreement is done at the willingness of the parties. The agreement entered into and agreed by the parties will be in force as law when the agreement is performed, so the parties have their respective obligations to fulfill the performance.⁷ When the agreement has been agreed and signed by the parties and has fulfilled the legal conditions of the agreement as stipulated in Article 1320 of the Civil Code, then according to the provisions in Article 1338 of the Civil Code, the agreement becomes a law that must be obeyed and implemented by the parties (*principle pacta sunt servanda*).

The principle of *pacta sunt servanda* is not only a moral issue in the agreement, but a legal issue that will occur if achievements cannot be achieved by one party, especially the debtor. In fact, if brought to court, the judge cannot interfere with the content of the agreement made by

the parties. The main force in the content of the agreement is the parties themselves as lawmakers.⁸

2. Theory of Legal Certainty

According to Soerjono Soekanto: legal certainty requires the creation of general regulations or generally accepted methods, in order to create a safe and peaceful atmosphere in society.⁹ Thus, it can be concluded that legal certainty can be realized by law through legal rules that are then obeyed by the community. These legal rules exist, not necessarily aimed at realizing justice or expediency, but solely for certainty.¹⁰

RESEARCH METHODOLOGY

The research method used by the author is a normative juridical approach, namely research that refers to legal norms, rules, principles, and principles contained in laws and national regulations.¹¹ In addition, it also uses international legal instruments using a conceptual approach (*conceptual approach*) and a statutory approach (*statute approach*) Then this paper is presented descriptively-analytically, which is in the form of a comprehensive and complete explanation of the legal situation that applies in a certain place and at a certain time, to then be analyzed based on the norms contained in the regulations legislation.¹²

RESEARCH RESULTS

Licensing Arrangements across Exclusive Economic Zones

The Indonesian Exclusive Economic Zone (EEZ) according to Law No. 5 of 1983 is "a lane outside and bordering the sea of Indonesian territory as stipulated under the applicable law on Indonesian waters which includes the seabed, the land below it and the water above it with an outer limit of 200 (two hundred) nautical miles measured from the sea baseline of Indonesian territory". However, the actual width of this zone is 188 nautical miles, because 12 nautical miles from the baseline (straight base line of the archipelago, ordinary baseline or straight baseline) is a territorial sea subject to the sovereignty of the Republic of Indonesia. In the waters of the exclusive economic zone, there is freedom of navigation for foreign ships, while the airspace above the exclusive economic zone there is freedom of flight for foreign aircraft.¹³

According to UNCLOS III, the sea is divided into 3 Indonesian sea zones, juridically its territory can be divided into 3 regions, namely the sea is a territorial area, the sea is an economic area or Indonesia's Exclusive Economic Zone, and the free sea.¹⁴ Based on the United Nations Convention on the Law of the Sea in 1982, the sea area is divided into 3 regions, namely the first is the sea area that is the sovereignty of a country, namely the inland sea and the territorial sea, then the zone is not the sovereignty of the coastal state but the state has jurisdictional rights, namely the Additional Zone and the Exclusive Economic Zone, and finally is the sea area which is not the sovereign territory of the coastal state and not It has jurisdictional rights but coastal states have interests, namely the free seas.¹⁵ The sea which is the territory of the Exclusive Economic Zone, namely the authority of the country concerned is only limited as far as economic matters are concerned and for foreign countries that want to use the area must

obtain permission from the government as the ruler of the area.¹⁶ Activities in the Exclusive Economic Zone area are very promising, so any action that is closely related to the management of the sea and the land below it must obtain permission from the Indonesian government. This affirmation has been regulated in Law Number 5 of 1983 concerning the Indonesian Exclusive Economic Zone hereinafter referred to as Law Number 5 of 1983, which is contained in Article 5 which states that forms of exploration and exploitation of natural resources or other activities must be equipped with permission from the Indonesian government.¹⁷

One of the exploration activities on biological wealth is fishing. Fishing is an activity that has economic value for the country that does it. This fishing activity has been regulated in Law Number 5 of 1983 contained in Article 5 paragraph (1) for each person while for foreign fishermen the provisions apply Article 5 paragraph (3) states that:

"Without prejudice to the provisions of Article 4 paragraph (2), exploration and exploitation of a biological natural resource in a particular area in the Exclusive Economic Zone of Indonesia by a person or legal entity or a Foreign Government may be permitted if the amount of catch allowed by the Government of the Republic of Indonesia for that type exceeds Indonesia's ability to utilize it".

The above provisions contain rules on fishing, legal fishing in the sea of the Exclusive Economic Zone is with permission from the Indonesian government. Permission from the Indonesian government is given to every fisherman, both Indonesian and foreign fishermen. Foreign fishermen have permits to utilize biological resources in Indonesia's EEZ seas if they exceed Indonesia's ability to utilize them. Further provisions regarding regulations on fishing in the Indonesian Exclusive Economic Zone area are contained in Article 26, Article 29 Paragraph (2) and Article 30 Paragraph (1), (2), and Paragraph (3) of Law Number 31 of 2004 concerning Fisheries as amended by Law Number 45 of 2009 concerning Fisheries. These articles contain provisions on permits that must be owned by every fisherman, both Indonesian fishermen and fishermen with foreign-flagged vessels. Indonesian fishermen and foreign fishermen can utilize biological resources, especially fish, if they have permission from the Government of Indonesia. If the fisherman does not have a permit from the Indonesian government, he has committed a violation of fishing. Violations of unlicensed fishing in the Indonesian Exclusive Economic Zone area are fisheries crimes regulated in the provisions of the Indonesian Fisheries Law.

Fishing in the Exclusive Economic Zone must comply with the regulations set by the Indonesian government. One of the rules is to pocket a permit to fish in the Exclusive Economic Zone area. However, many foreign fishermen or foreign vessels make arrests without obtaining a permit. The case of foreign ships that do not have permits occurs in Indonesia's Exclusive Economic Zone Natuna sea area, Riau islands. On September 17, 2011 the Fisheries supervisory vessel (KP) ORCA 02, Directorate General of Marine Resources Supervision (PSDKP) had arrested a foreign vessel owned by the Vietnamese state that was fishing in the Natuna area. Fisheries supervisory vessel ORCA 2 has found a violation, namely that the Vietnamese state vessel does not have a license to fish in the Indonesian Exclusive Economic Zone Natuna waters.

Legal Sanctions for Licensing Violations across the Exclusive Economic Zone

The acts or actions that fall into the category of crimes in the EEZ according to Law No. 5 of 1983 are:

- a. Conduct exploration and/or exploitation of natural resources or other activities for exploration and/or economic exploitation such as power generation from water, currents and wind in the Indonesian Exclusive Economic Zone, without permission from the Government of the Republic of Indonesia or based on international agreements with the Government of the Republic of Indonesia and carried out in accordance with the terms of international licensing or approval.
- b. Create and/or use artificial islands or other installations or buildings in the Indonesian Exclusive Economic Zone without permission from the Government of the Republic of Indonesia.
- c. Carry out actions that cause environmental damage and/or environmental pollution in the Indonesian Exclusive Economic Zone.⁴ Threatened with crime in accordance with applicable laws and regulations in the field of environment.
- d. Conducting scientific research activities in the Indonesian Exclusive Economic Zone does not obtain prior approval from and is carried out based on the conditions set by the Government of the Republic of Indonesia.¹⁸

Broadly speaking, there are two forms of law violations that often occur in Indonesia's exclusive economic zone, among others: Illegal Fishing and Smuggling.

1. Illegal Fishing

Indonesia's EEZ is a sea area whose waters are warm throughout the year so that it becomes a *fishing ground* for various pelagic fish of high economic value. Large pelagic fish is a tropical fish whose fishing operations can be carried out throughout the year in Indonesia's EEZ. Fishing in these waters knows no seasons. For example, during Australia's winter, many fish migrate to Indonesia's EEZ around the Indian Ocean. Likewise, during winter in the Philippines, fish migrate to Indonesia's EEZ in the Pacific Ocean. This is what causes foreign fishermen to carry out many *illegal fishing activities* in the waters of Indonesia's EEZ for almost all year round. This means that Indonesia's EEZ is the most attractive water for *illegal fishing activities*. Moreover, surveillance or sea patrol in Indonesia's EEZ waters cannot be carried out optimally by the authorities considering the limitations of their fleets or sea patrol vessels. Seeing Indonesia's marine potential, especially fisheries resources, Indonesia's sea area is a field of national income that has enormous potential to improve the economic life of the people, so that the sea is not just a means of connecting between islands but is a place to earn foreign exchange for the country. Currently, for example, the demand for tuna in the world market continues to increase along with the increasing awareness of the world population to consume protein sources from fish rich in Omega 3,6 and 9. Based on the data obtained that the causes of *illegal fishing activities* in Indonesian waters include: First, Limited supervision facilities and infrastructure; Second, Limited funds for surveillance operations; Third, the

limited manpower of fisheries police and Civil Servant Investigators (PPNS). Fourth, the limited ability of Indonesian fishermen to utilize the potential of fisheries in Indonesian waters, especially EEZs; Fifth, the need for raw material sources in countries perpetrating *illegal fishing* has been depleted due to the practice of industrialization of fishing vessels so that the growth power of fish is not proportional to the amount caught, and as a result, they expand to Indonesian territory; and Sixth, The ability to monitor every movement of surveillance patrol vessels at sea can be known by foreign fishing vessels because of sophisticated communication tools, So that the results of the operation are not optimal.

2. Drug Smuggling

The mode of smuggling through airplanes has been widely revealed and is generally carried out between foreign nationals and Indonesian citizens, but smuggling through the Indonesian Exclusive Economic Zone (EEZ) is still very rarely revealed, even if it occurs in Indonesian territorial waters. Even though foreign ships that will enter Indonesian waters must first enter the EEZ, except for countries directly adjacent to Indonesia such as Singapore and Malaysia. So it is undeniable that the crime of drug smuggling is carried out in an organized manner and the subject involves foreign nationals.¹⁹ Some laws relating to sea areas and sovereignty as mentioned above have not expressly regulated the handling and enforcement of narcotics smuggling crimes in the EEZ. Facing the crime mode of narcotics smuggling in the EEZ at this time is very difficult to prove because in general the goods transported are packed in containers, checks can only be carried out in certain rooms or in the rooms of the crew (ABK). The Indonesian police have detected the entry of drugs into this country, many of which are through sea routes. This change in shipping patterns made the authorities unprepared to anticipate, because of the lack of personnel and patrol boats to hunt down the dealers. In addition, air routes are still fertile in demand.²⁰ According to the provisions of International Law, the provisions of law enforcement in Indonesia's EEZ in the Law of the Sea Convention can be detailed as follows:

- a. Coastal States may carry out processing and preservation of natural resources in the EEZ, as well as conduct inspections in accordance with legal procedures in force in that State in accordance with the provisions of the convention, article 73 (paragraph 1) of Unclos 1982.
- b. The detention of the detained vessel and crew shall be released after dependents have been paid or other security guarantees, article 73 (paragraph 2) of UNCLOS 1982.
- c. Violation of law applicable to a coastal State in its exclusive territorial waters does not include confinement if there is no agreement from the State involved in the treaty. It is contained in "Article 73 (paragraph 3)Unclos 1982". In the event of detention in that country, immediately report to the representative ambassador who committed the criminal act of violation in the waters. It is contained in "Article 73 (paragraph 4) of Unclos 1982".²¹

Meanwhile, in terms of law enforcement regarding fisheries criminal acts in accordance with the provisions of national law, it is carried out with 2 (two) forms of activities carried out in

the field, namely prefective activities which are distinguished from:

1. Technical Operations, namely activities or efforts to prevent and take action against perpetrators of violations directly in the field through patrol activities, confiscation of evidence, storage of evidence, security of ID cards, administrative completion and reports.
2. Legal Operation is, an act and enactment on every person so that someone is converted or kapok.

Fisheries Crime in the EEZ Area is specifically regulated in the Fisheries Law contained in articles 84 to 104. These criminal provisions are criminal acts outside the Criminal Code that are regulated deviantly, because the criminal acts can cause damage to the management of Indonesian fisheries which results in harming the community, nation and state. The application of sanctions against foreign fishing vessels in accordance with Article 10 of the Criminal Code is known to have two types of criminal penalties, namely the main criminal and additional crimes. The main crime is a punishment that must be imposed by a judge consisting of the death penalty, imprisonment, confinement, and fines. While additional crimes are not mandatory imposed by the judge, namely in the form of revocation of certain rights, confiscation of certain goods, and announcement of the judge's decision. The type of criminal punishment in the fisheries sector only recognizes the principal crime, while additional crimes are not regulated in the Fisheries Law. Regarding the main crime that can be imposed by judges in fisheries criminal cases in the form of imprisonment and fines. additional under article 10 of the Criminal Code. The nature of criminal punishment in the field of fisheries is mostly cumulative, both directed against criminal offenses and offenses. In the cumulative law of criminal bodies (imprisonment) with criminal fines applied at once. Although the Fisheries Law does not specifically provide for additional crimes, fisheries judges can still impose crimes. The types of fisheries criminal violations by not having a SIUP, subject to article 26 paragraph (1) jo article 92 of the Fisheries Law, are punished with a maximum imprisonment of 8 (eight) years and a maximum fine of Rp. 1,500,000,000 (one billion five ratur million rupiah), while fishing equipment is not in accordance with the size, can be subject to article 85 of the Law with a maximum penalty of 5 (five) years and a maximum fine of Rp. 2,000,000,000 (two billion rupiah) and for fishing boat owners who do not have a SIB, subject to article 98 of the UUP with a maximum imprisonment of 1 (one) year and a maximum fine of Rp. 200,000,000 (two hundred million rupiah).²² To overcome the problem of foreign fishing vessels carrying out fishing that must comply with legal regulations applicable to a coastal State and fishing activities that must be reported and coordinated, as for the method that can be used, namely the licensing process for foreign ship owners in accordance with "Ministerial Decree No. 60 / Sept / 2011". This method is well achieved; it is proven that the number of foreign ships that do not use permits in the EEZ is decreasing. It is evident from the guidance of the Marine and Fisheries Service explaining that before the emergence of the Decree, there were still many foreign vessels committing illegal fishing crimes in coastal countries totaling 7,000 units of vessels.²³

Certainty of ABK's Legal Status in Licensing Violations across the Exclusive Economic Zone

Indonesia's marine waters are rich in fish and other marine life, as well as energy, natural tourism to biopharma, seems to be no man's land so that illegal fishing vessels enter and exit easily. These foreign fish looters not only operate on the border with their country, but more than that operate in the middle of Indonesia's legal sea territory, even crossing the border next to it. For example, *illegal fishing* from Thailand, Vietnam, the Philippines, Korea, and Taiwan whose countries are in the north of Indonesia, but the looting operations reach the southern seas of Maluku, North Maluku, the north and south seas of Java, even to the Arafura Sea bordering Australia and East Leste (the southern side of Indonesia).

Fish looting carried out by foreign countries in various modes, because the price of fish in the international market is very promising, In addition, Indonesian sea wilayah from various studies show that the Indonesian sea is rich in fish, coral reefs and others. Indonesia's marine potential, based on a McKinsey Global Institute study revealed that both Indonesia's marine and fisheries are estimated to reach US \$ 1.2 trillion per year ranging from fisheries to energy, natural tourism to biopharma.

The operation of these *foreign illegal fishing* vessels clearly violates the law, especially international law because of the entry and exit of vessels in a sovereign country regardless of the rule of law. The Indonesian government should be firm to cut off the *illegal fishing mode* because it can harm Indonesia. In the constitution, the Constitution of the Republic of Indonesia Year 1945 in Article 33 paragraph (3) has stated unequivocally that "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people."²⁴

Regarding law enforcement in the EEZ, Law No. 5 of 1983 Article 13 stipulates, that in order to implement sovereign rights, other rights, jurisdiction and obligations as referred to in Article 4 paragraph (1), the competent law enforcement apparatus of the Republic of Indonesia, may take law enforcement actions 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 (ABK) suspected of violations in the Indonesian Exclusive Economic Zone includes the act of 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 Criminal Procedure.²⁵

Perpetrators of *Illegal Fishing* violations in EEZ waters for foreign vessels are subject to larger and appropriate fines so as not to cause major losses to coastal States, and will provide a deterrent effect for perpetrators of *Illegal Fishing violations* against foreign vessels.

Meanwhile, violations of *Illegal Fishing* by coastal States are subject to penalties applicable in the country.²⁶ Coastal States can only carry out the processing and utilization of biological natural resources in Indonesia's exclusive territorial waters and can only carry out detention proceedings up to the court level in accordance with international law of the sea agreements and are not allowed to carry out prison sentences, provided there is cooperation and agreement between these States. And immediately inform the sanctions given to perpetrators of *Illegal Fishing* violations to the State that commits criminal acts.²⁷

In the criminal offence of fisheries by foreign vessels in the EEZ, those detained by the coastal State as soon as possible are released with appropriate compensation received by the coastal State. Detention is not permitted in the form of imprisonment. To support the enforcement of the criminal act of *Illegal Fishing* that occurs in Indonesia, several laws and government regulations have been established, so that the legal umbrella used becomes stronger.²⁸

Fisheries Crime in the EEZ Area is specifically regulated in the Fisheries Law, contained in articles 84 to 104 as explained in the previous discussion. These criminal provisions are criminal acts outside the Criminal Code that are regulated deviantly, because the criminal acts can cause damage in the management of Indonesian fisheries which results in harming the community, nation and state. With high and severe criminal penalties as one way to be able to overcome criminal actions in the field of fisheries. This means that criminal sanctions applied to criminals in the fisheries sector in the Indonesian Exclusive Economic Zone (EEZ) can have a deterrent effect, so that *Illegal Fishing* can be overcome or at least can be reduced.

Sinking of Foreign Fishing Vessels that carry out *Illegal Fishing* in the EEZ The legal basis is contained in Law of the Republic of Indonesia No. 45 of 2009 concerning amendments to Law of the Republic of Indonesia No. 31 of 2004 concerning Fisheries. There are two ways of sinking foreign fishing vessels carried out by the Indonesian government:

1. Sinking of the ship through a court ruling:

- a. Authorities who capture foreign fishing vessels bring ships and crew ashore.
- b. On land where there is a fisheries court, legal proceedings will be carried out
- c. After trial and conviction and verdict has legal force, the ships will be seized.
- d. If the ship is impounded, it is up to the prosecutor that the executor will do what to do with the ship.
- e. Whether the ship will be auctioned or destroyed.
- f. If it is destroyed, which is an option, one way is to be blown up and drowned.

2. Caught by authorities:

- a. The second method is based on article 69 of Fisheries Law No. 45 of 2009.

Article 69:

1. Fisheries supervisory vessels function to carry out supervision and law enforcement in the field of fisheries in the fisheries management area of the Republic of Indonesia.
2. Fisheries supervisory vessels as referred to in paragraph (1), may be equipped with firearms.²⁹

Regarding the application for the release of ships and/or persons arrested for alleged violations of the EEZ Law, Article 15 stipulates as follows:

1. An application to release a ship and/or persons arrested for an offence of this law or any legislation issued under this law, may be made at any time prior to a decision by the competent district court.
2. An application for release as referred to in paragraph (1), may be granted if the applicant has submitted an appropriate amount of bail, the determination of which is made by the competent district court.³⁰

CONCLUSION

The results showed that;

- a. Legal fishing in the seas of the Exclusive Economic Zone is with permission from the Indonesian government. Permission from the Indonesian government is given to every fisherman, both Indonesian and foreign fishermen. Foreign fishermen have permits to utilize biological resources in Indonesia's EEZ seas if they exceed Indonesia's ability to utilize them.
- b. Fisheries Crime in the EEZ Area is specifically regulated in the Fisheries Law, contained in articles 84 to 104. These criminal provisions are criminal acts outside the Criminal Code that are regulated deviantly, because the criminal acts can cause damage to the management of Indonesian fisheries which results in harming the community, nation and state. The application of sanctions against foreign fishing vessels in accordance with Article 10 of the Criminal Code is known to have two types of criminal penalties, namely the main criminal and additional crimes.
- c. Perpetrators of *Illegal Fishing* violations in EEZ waters for foreign vessels are subject to larger and appropriate fines so as not to cause major losses to coastal States, and will provide a deterrent effect for perpetrators of *Illegal Fishing* violations against foreign vessels. Meanwhile, violations of *Illegal Fishing* by coastal States are subject to penalties applicable in the country.

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