

## THE NATURE OF LAW ENFORCEMENT OF ILLEGAL FISHING IN INDONESIA AFTER THE ESTABLISHMENT OF THE EMPLOYMENT LAW

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### Abstract

*This research aims to analyze and find out the reality of the enforcement of illegal fishing law in Indonesia as well as the enforcement of illegal fisheries law in Indonesia after the introduction of the Ciptaker Act. The type of research used is normative research, i.e. research with legislative approaches and supporting literature as research source material. The results of the study indicate that (1) the enforcement of the law of illegal fishing in Indonesia as well as enforcing the law on illegal fisheries in Indonesia after the creation of the Ciptaker Act, is basically aimed at protecting fishing resources, ensuring the sustainability of the marine environment, and ensuring that seafood can be sustainably utilized by future generations. (2) The enforcement of illegal fishing laws in Indonesia after the introduction of the Ciptaker Act, there are some changes in regulations that affect the enforcing of illegal fisheries law in Indonesia.*

*Keywords: Facts; Criminal acts; Illegal fishing; Law enforcement.*

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### Abstrak

Penelitian ini bertujuan untuk menganalisis dan mengetahui hakikat penegakan hukum illegal fishing di Indonesia serta penegakan hukum illegal fishing di Indonesia pasca penetapan UU Ciptaker. Jenis penelitian yang digunakan adalah penelitian normatif, yakni penelitian dengan pendekatan perundang-undangan dan literatur pendukung sebagai bahan sumber penelitian. Hasil penelitian menunjukkan bahwa (1) hakikat penegakan hukum illegal fishing di Indonesia serta penegakan hukum illegal fishing di Indonesia pasca penetapan UU Ciptaker, pada dasarnya bertujuan untuk melindungi sumber daya perikanan, menjaga kelestarian lingkungan laut, serta memastikan bahwa hasil laut dapat dimanfaatkan secara berkelanjutan oleh generasi mendatang. (2) penegakan hukum illegal fishing di Indonesia pasca penetapan UU Ciptaker, terdapat beberapa perubahan dalam regulasi yang memengaruhi penegakan hukum illegal fishing di Indonesia.

*Kata Kunci: Hakikat; Tindak Pidana; Illegal Fishing; Penegakan Hukum.*

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## INTRODUCTION

When viewed broadly, the earth's oceans occupy 71% of the world's land, which means 361.1 million square kilometers of land. The sea is full of rich natural resources. Fish is included as one of the natural resources that are in the sea, one of these natural resources is fish is a gift from the richest god to be distributed to his creation in the world, especially as a food for mankind and animals on land. With the high human food demand for fish, it affects the number of people who engage in catching activities to meet their food needs, by which it is to meet the food needs of fish, people in large numbers to traverse the oceans to obtain abundant fish. The beginning of the process of capture activity began about 100,000 years ago. This capture activity was first initiated by the Neanderthal man. The people were the first to carry out capture activities in a very simple way, using only both hands without the help of any means of capture. As human civilization evolved, catching activity began to expand marked by the availability of aids in catching fish. With the development of human-aided fishing activities in the sea, a massive exploitation of these natural resources has resulted, so that fish as a natural resource that was originally intended as one of the sources of human food needs whose purpose is to make it evil becomes a human tool for enriching itself. Then the conservation efforts of the fish then start to arrange its formation. It is meant to ensure that fish resources remain, and can be by every generation to come. Therefore, the diversity of fish resources in the seas needs to be managed and exploited for the greatest human prosperity in the world. Conservation efforts are inseparable from the management of fish resources and the environment as a whole. Given that the characteristics of fish and environmental resources are highly sensitive, both to the influences of global climate and seasonal climate as well as to the interrelated aspects of the local, regional or global interregional aquatic ecosystems, which cross national borders, the management and development of conservation of fish resources must be based on precautionary principles and supported by scientific evidence.<sup>1</sup>

The world's attention to fisheries management actually existed and grew in the 1850s. Before that year, when most of the country's territory was still kingdom-shaped, it assumed that fish were a marine resource that would never exhaustibility.<sup>2</sup> From this concept, Hugo Grotius introduced the principle of free access to the living resources in early 1608.<sup>3</sup> which relates to the principle of freedom of the seas.<sup>4</sup> On the other hand, setting a boundary on the open sea, on the other side if fish and other marine resources can be taken unlimited, thenining the exclusive right to the sea resources becomes irrelevant.<sup>5</sup> The first international treaty specifically regulating fishing and maritime conventions was the Geneva Convention on Fishing and Conservation of the Living Resources on the High Seas 1958 (hereafter known as the 1958 Geneva Conventions). This convention is the initial agreement of the nations of the world to govern the seas, especially the open seas. The establishment of a subsequent international convention regulating the management of the sea in particular the use of natural resources in the sea,

<sup>1</sup> Penjelasan Uuri 31 Tahun 2004 Tentang Perikan

<sup>2</sup> Larry A. Nielsen, "The Evolution Of Fisheries Management Philosophy", Mfr Paper 1226, December 1976, Hlm. 15.

<sup>3</sup> F.T Christy, Jr., And A. Scott, The Common Wealth In Ocean Fisheries: Some Problems Of Growth And Economic Allocation, Johns Hopkins Press Inc, Baltimore, 1965, Hlm. 11.

<sup>4</sup> Hugo Grotius Berpendapat Bahwa Laut Merupakan Common Property Bagi Semua Umat Manusia. Selanjutnya Periksa Hugo Grotius, The Freedom Of The Sea, Oxford University Press, New York, 1916.

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

including fish resources, namely, the United Nations Convention on the Law of the Sea III or more familiarly known as UNCLOS 1982. After the 1982 UNCLOS convention, there were several confrontations related to natural resources, especially fisheries, as most notably the high-level confrontation in Rio de Janeiro, Brazil in 1992, later known as the UNCED or Rio 1992 summit, where these confrontations sought to address increasingly serious environmental issues such as sustainable development or the World Summit on Sustainable Development, abbreviated as the WSSD. Wherein the discussion deals with an increasingly damaged environment, as a result of market integration, accelerated capital flows and investments that result in massive exploitation of natural resources, including fish resources. This conference actually laid the foundations of sustainable development thinking, which contains three important interrelated aspects, economic, social, and environmental, the degree of which must be equal or balanced in the formulation of sustainability development policies.

The importance of the above sustainable development policy is based on the abundance of natural destruction that affects the yield of natural resources on a daily basis, which is depleted by the mass exploitation by humans, in illegal ways. The terminology of Illegal Fishing is derived from the English literal meaning of the two words illegal and fishing. "illegal" means invalid, prohibited or contrary to the law "Fish" means fish or meat and "fishing" means catching fish as a habitat or place to catch fish. According to the Food and Agriculture Organizations (FAO), illegal unregulated, and unreported fishing is a criminal activity, meaning illegal, undocumented and non-conforming fishing. According to the FAO's 2012 State of the World Fisheries and Aquaculture abbreviation SOFIA, the fishing sector supports the searches of some 540 million people around the world and the world's fishing production reaches 128 tons of fish. SOFIA 2012 noted that the world's fish stocks are declining as a result of over-exploitation, with 85% of world fish resources being over-explored and fully exploited and within maximum sustainable catch limits. The SOFIA report explains two conditions that need to be taken into account, namely, fishing boosts the economic development of marine industries and overfishing conditions that put pressure on fish resources.<sup>6</sup> Hopefully, with so many international rules capable of addressing the issue of the exploitation of natural resources, especially fish resources, but still the vulnerability of international rules makes international rules still considered weak by some international communities, such as the weakness that emerged in UNCLOS 1982, one of the shortcomings of UNCLOS 1982 lies in the rules of implementation which confuses the essence of its implementation.

This is what led the Indonesian government to activate UNCLOS 1982 in the form of UURI No. 17 of 1985, giving the right and obligation to Indonesia to carry out the exploitation, conservation, and management of fish resources in the Indonesia fisheries management area and offshore, as well as to comply with the provisions of international law. One of the provisions activated was to require coastal states to take conservation measures, including by fixing the number of allowed catches.<sup>7</sup> Indonesia, as a coastal State, is obliged to make UNCLOS 1982 the legal basis for the regulation of the sea and its use, both in terms of the jurisdiction of coastal States at sea and the rights and obligations of foreign States. As one of the coastal states, Indonesia is the country most affected by the impact of massive exploitation of fish resources. According to FAO data, Indonesian government losses from illegal fishing are estimated at Rs. 30 trillion per year. Furthermore, the FAO explained that at present, the

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<sup>6</sup> Chomariyah, 2014, *Hukum Pengelolaan Konservasi Ikan: Pelaksanaan Pendekatan Kehati-Hatian Oleh Indonesia*, Setara Press, Malang, Hlm.8

<sup>7</sup> Dikdik Mohammad Sodik, 2011, *Hukum Laut Internasional*, Pt Refika Adhitama, Bandung, Hlm. 85.

world's fish stocks that are still capable of increasing catches are only 20%, while 55% are in full exploitation and the remaining 25% are endangered. This is clarified by a statement by the Indonesian Ministry of Maritime Affairs and Fisheries, which affirms that the loss rate is about 25% of the total fishing potential that Indonesia has of 1.6 million tons per year. As for the Indonesian zone that is vulnerable to IUU Fishing: the Malaka Strait, Java Sea, Arafuru Sea, Timor Sea, Band Sea, and the waters around Maluku and Papua.<sup>8</sup> From the description of the losses caused by illegal fishing above, the Indonesian government is generally severely affected by the economy of the country, as the abundance of seafood stolen by the illegal fishermen has resulted in the low income of the state. The decline in state revenues from illegal fishing has a direct impact on the well-being of people who are threatened because marine resources are supposed to be their workplace, but it turns out to be unreliable because of the continuous decrease in marine yields due to mass exploitation, on the other hand, the other losses caused by illegal fisheries, the social losses in which local fishermen lose to compete so that their livelihoods are reduced. Massive exploitation is not only detrimental to fishermen who depend their lives on the yields of marine resources, but also to the loss of habitats, damage to marine ecosystems and the living resources in them. The large number of coral reefs damaged and destroyed by illegal fishing agencies carrying out fishing activities using violated tools and materials such as the use of chemicals and other environmentally friendly devices, will only kill marine biota, which ultimately affects the death of fish and disrupts the cycle of fish breeding in the sea.

The great loss caused by illegal fishing makes the Indonesian Government obliged to make legal arrangements in response to international conventions on natural resources, especially fish resources, but the legal arrangement that forms the basis of the management of marine resources is, Article 33 RULES 1945<sup>9</sup> which determines that the earth, the water and the natural wealth contained therein are controlled by the state and used to the greatest extent for the prosperity of the people. These provisions constitute a constitutional foundation and at the same time a direction for the regulation of various matters relating to fish resources<sup>10</sup>. Article 2 of UNRWA No. 5 of 1990 on the Conservation of Natural Resources and Ecosystems<sup>11</sup>, regulate the basis of conservation of biological resources in a harmonious and balanced manner. UURI No. 6 of 1996 on Indonesian waters<sup>12</sup>. Provides a rule that deals with the calculation of coastline measurements as the consolidation of Indonesian territorial territory. Whereas the management, supervision and sanctioning of illegal fishing offences are regulated in UURI No. 45 of 2009 p.a UURI no. 31 of 2004 on fishing, and Uuri No. 32 of 2014 on marine<sup>13</sup>, as well as UURI No. 11 of 2020 on the creation of work in the field of fishing and fishing<sup>14</sup>. In the case of the rules to accommodate the rules of criminal events set out in the COVID-19<sup>15</sup>. So many regulations of both

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<sup>8</sup> Disampaikan Dalam Seminar Nasional Dengan Tema “*Rekonstruksi Ideal Eksekusi Tindak Pidana Perikanan, Antara Kaidah Dan Harapan*”, Dalam Hut Persatuan Jaksa Indonesia (Pji) Ke 22 Oleh M. Nasir Jamil Pada Juni 2015, Di Gedung Graha Pena Kota Makassar.

<sup>9</sup> Lihat Pasal 33 *Uud 1945*.

<sup>10</sup> Abdullah Marlang Dan Rina Masyana, *Hukum Konservasi Sumber Daya Hayati Dan Ekosistemnya*, Aspublishing Makassar, Mitra Wacana Media, 2011, Hal. 32.

<sup>11</sup> Lihat Pasal 2 Uuri No. 5 Tahun 1990 *Tentang Konservasi Sumber Daya Alam Hayati Dan Ekosistemnya*.

<sup>12</sup> Lihat Uuri No. 6 Tahun 1996 *Tentang Perairan Indonesia*.

<sup>13</sup> Lihat Uuri No. 45 Tahun 2009 *Tentang Perubahan Atas Uu-Nri No. 31 Tahun 2004 Tentang Perikanan Dan Uuri No. 32 Tahun 2014 Tentang Kelautan*.

<sup>14</sup> Lihat Uuri No. 11 Tahun 2020 *Tentang Cipta Kerja Bidang Kelutan Dan Perikanan*.

<sup>15</sup> Lihat Uuri No. 8 Tahun 1981 *Tentang Kuhap*.

international and national law raise questions later on, how can legal regulations promote such a high number of illegal fishing actions, as the day of illegal fisheries is increasingly detrimental to the international community as well as the national community, such as coastal countries as Indonesia. Therefore, this book is written with the intention of inviting readers to immerse themselves in insights and knowledge of criminal law in the field of illegal fishing, although it is not the only book that was first written about illegal fisheries, but there is a great hope of the author that this book will be able to supplement the books of illegal Fishing that have existed before.

## METHOD

This research is legal research, which is thus normative. (yuridis normatif). Normative law research is legal research that is carried out by studying library materials.<sup>16</sup> In this study, library materials are basic data that in research science are classified as secondary data. In this study, the author uses a legislative approach. (statute approach).<sup>17</sup> Legislation is a study carried out by examining all the laws and regulations that relate to the legal issues being dealt with. In this legal study, the author attempts to examine the legislative regulations related to the issue under investigation, namely criminal liability of mining without permission.

## RESULT AND DISCUSSION

### 1. *The Law Enforcement Facts of Illegal Fishing in Indonesia*

At the beginning of human civilization in the world, it could not be released from the sea. The abundance of myths about the early creation of man with the sea makes humanity have its own historical bond over the sea. The sea is a large salt water that is entirely or partially surrounded by land.<sup>18</sup> In a broader sense, the sea is a system of salt-watered ocean waters interconnected on the earth that are considered as global oceans or as some major oceans. The seas influence the earth's climate and play an important role in the water cycle, the carbon cycle and the nitrogen cycle. Although the ocean has been explored and explored since prehistoric times, the modern study of oceanography began at the time of the HMS Challenger expedition from Great Britain in the 1870s<sup>19</sup>. The sea is generally divided into five major oceans that comprise four oceans recognized by the International Hydrographic Organization<sup>20</sup>, The Atlantic, the Pacific, the Indian, and the Arctic.

International maritime law first appeared on the continent of Europe.<sup>21</sup> The Roman Empire, before in the peak of its successes, the kingdoms of Greece, Phoenicia and Rhodes associated maritime power with the possession of the kingdom of the sea, except for the law of the Rhones which governed the civil law related to trade that influenced the development of the maritime law that emerged in Europe. The influence of thought on the rise of public maritime law was not too great and sunk in the evolution of marine law based on Roman law in the Middle Ages. The evolution of the legal thought of

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<sup>16</sup> Soerjono Soekanto dan Mamudji, 2014, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Jakarta: PT. RajaGrafindo Persada, hlm. 13-14

<sup>17</sup> Peter Mahmud Marzuki, 2010, *Penelitian Hukum*, Jakarta: Kencana Prenada Media Group, hlm. 92

<sup>18</sup> National Geographic. Diakses Tanggal 2022-10-06.

<sup>19</sup> *Ocean Explorer*. National Oceanic And Atmospheric Administration. Diakses Tanggal 2022-10-06.

<sup>20</sup> Organisasi Hidrografi Internasional (1953). *Limits Of Oceans And Seas (Special Publication No28)* (Pdf) (Edisi Ke-Ke-3). Diarsipkan Dari [Versi Asli](#) (Pdf) Tanggal 2011-10-08. Diakses Tanggal 2010-02-07.

<sup>21</sup> Mochtar Kusumaatmadja, 1983, *Hukum Laut Internasional*, Angkasa Offset, Bandung, Hlm. 1.

the sea in the Roman era, the Middle Ages, the Portuguese and Spanish periods, as well as the English period.

The plans of the United Nations Conference on the Law of the Sea are very broad, including the establishment of an international regime to regulate the area, the proper defence of the area with regard to the coastal boundaries, and the creation of a broad scope on related issues, including issues of the law of the sea, continental landings, territorial seas including the broad and international seashore issues, additional routes, fishing, and conservation of natural resources in the open sea, to include the issues of special rights of coastal States, the preservation of the marine environment, i.e. prevention of pollution and scientific research. It explicitly dismantles all the provisions achieved at the first United Nations conference on the law of the sea in Geneva in 1958, without completing any of the four conventions to be subsequently approved by the seabed conference committee which was also extended as the preparatory committee for the implementation of the third UN Conference on the Law of the Sea. There were no fewer than 12 third maritime law conferences, from 1973 to 1982, in an effort to the expected results, beginning with a first “organizational” session in 1973 and ending with the validation of the final text of the convention and the signature at the motego bay on 10 December 1982, by 118 countries. The official records of the validation procedures and the decisions reached at each stage are reloaded in the UNCLOS Final Act which was also signed on the same date.<sup>22</sup>

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Illegal Fishing is a foreign term popularized by legal experts in Indonesia which later became a popular term in the mass media and used as an interesting legal study for environmental activists. The terminology of Illegal Fishing is derived from the English literal meaning of the two words illegal and fishing. “illegal” means invalid, prohibited or contrary to the law "Fish" means fish or meat and "fishing" means catching fish as a habitat or place to catch fish.<sup>24</sup>

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<sup>22</sup> J.G Starke, Op.Cit., Hlm. 341-342.

<sup>23</sup> *Ibid*, Hlm. 343.

<sup>24</sup> John M. Echols Dan Hassan Shadily, *Kamus Inggris Indonesia*, Gramedia Pustaka Utama, Jakarta, 2002, Hal. 311.

Initially, the issue of illegal fishing emerged in conjunction with the idea of an Illegal, Unreported and Unregulated (IUU) framework, at the time of the Forum Commission for Conservation of Atlantic Marine Living Resources (CCAMLR) on October 27, 1997, at a time when the forum of CCAMLR discussed the losses resulting from fishing practices carried out by non-members of the Commission. Furthermore, the problem of illegal fishing has been put as one of the major problems at the global level by the food and agriculture organization (FAO) with the reason that, at present, the world's fish stocks show a declining trend and one factor is caused by the abundance of illegal fisheries practices carried out by some irresponsible people. FAO initiates the defence of illegal fishing established through the International Plan of Action Illegal Unreported And Unregulated (IPOA-FISHING) which reads as follows:<sup>25</sup>

- a. The fishing activities carried out by a particular State or by a foreign vessel in waters which do not exclude its jurisdiction without the permission of the State in whose jurisdiction the fishing activity is contrary to the laws and regulations of that State;
- b. Fishing activities carried out by fishing vessels flying the flag of a State that is a member of a regional fisheries management organization;
- c. Fishing activities which are contrary to the laws of a country or international provisions.

Illegal fishing simply means that fishing is carried out in violation of existing rules, or fishing activities can be called illegal if there are rules but it turns out in their implementation such rules are not effectively enforced in the field. Illegal fishing is one of the forms of crime prohibited by law. Those who do or violate the provisions can be punished. At this stage, the functioning of the law is critically needed as a means of control and prevention against actions that may jeopardize the stability of management as well as the sustainability of fish resources and their environment. UNCLOS does not regulate Fishing. UNCLOS regulates only in general the enforcement of law in the territorial seas or the ZEE of a country. If a violation of the rule of a coastal State occurs in the territorial sea or in the inland waters of a State, in accordance with the sovereignty granted by article 27, paragraph 1, of the UNCLOS, the coastal state may impose its rules of law, including its applicable law, on the vessel, provided that the violation has an impact on the coastal State or interferes with the security of the coastal State.<sup>26</sup> However, if the elements referred to in article 27, paragraph 1, of the UNCLOS are not met, then the coastal State cannot exercise its jurisdiction over the vessel. Article 27 (5) of UNCLOS further refers to Chapter V on ZEE in the case of violations of the provisions of the Coastal State Act relating to the exploration and exploitation of fisheries resources.

It is a bit different if violations occurred in the ZEE, especially violations of exploration and exploitation of fishing resources. On Article 73 of UNCLOS<sup>27</sup> It is stated that if a foreign vessel does not comply with the coastal state's regulations in terms of conservation of fishing resources, the coastal state may arrest the vessel. However, the captured vessel and crew must be immediately released with reasonable bonds to the coastal state. Punishment of such foreign vessels should not be in the form of corporal punishment, i.e. imprisonment. It's because in the ZEE, coastal states only have sovereign

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<sup>25</sup> Nunung Mahmudah, *Illegal Fishing Pertanggungjawaban Pidana Korporasi Di Wilayah Perairan Indonesia*, Sinar Grafika, Jakarta, 2015, Hal. 79.

<sup>26</sup> Lihat Pasal 27 (1) *Unclos* 1982.

<sup>27</sup> Lihat Pasal 27 (5) Dan Pasal 73 *Unclos* 1982.

rights and not sovereignty. Rules of the Law of the Sea As a country that has ratified UNCLOS, Indonesia has undertaken implementation efforts by creating new national regulations or aligning existing rules of the law of the sea with the provisions of the Convention. Regarding the division of the maritime zone, Indonesia has enacted the UURI No. 6 of 1996 on the Indonesian waters.<sup>28</sup> Specifically, Indonesia passed UURI No. 5 of 1983 concerning ZEEI to claim the territory of ZeeI. As implementation of article 58, paragraph (3) of UNCLOS 1982, Indonesia has a regulation No. 31 of 2004 on fisheries. Although the fishing regulations regulate law enforcement in respect of other environmental protection. However, the regulation does not regulate fishing. This is not surprising, because, as mentioned earlier, UNCLOS itself does not regulate the Fishing Act. In later developments, IUU Fishing was widely found in the waters of Indonesia, both in the Indonesian ZEE as well as in the territorial seas and in the islands of Indonesia.

Specifically, Indonesia passed UURI No. 5 of 1983 concerning ZEEI to claim the territory of ZeeI. As implementation of article 58, paragraph (3) of UNCLOS 1982, Indonesia has a regulation No. 31 of 2004 on fisheries. Although the fishing regulations regulate law enforcement in respect of other environmental protection. However, the regulation does not regulate fishing. This is not surprising, because, as mentioned earlier, UNCLOS itself does not regulate the Fishing Act. In later developments, IUU Fishing was widely found in the waters of Indonesia, both in the Indonesian ZEE as well as in the territorial seas and in the islands of Indonesia.

## 2. *Enforcement of illegal fishing laws in Indonesia After the Creator Act*

The regulations on fishing are basically made to manage fishing from the negative impact of catching activities and for those who do not care about fish resources. According to Lawrence M. Friedman<sup>29</sup>, There are three things that are the edge of a good legal order in a society: the substance of law, the structure of law and the culture of law. The three must support each other (synergically) in order to effectively enforce the law on conservation of fish resources. As Antony Allot elaborated the reasons or factors that influence the ineffectiveness of the law, namely: 1. imperfection in the formulation of legal sentences in the regulation (the defects of legal linguistic formulation); 2. Conflict between the purpose of formulating the Law and the will of the public being the target of regulation; 3. Lack of implementing norms, such as the regulations of enforcement and gentleness responsible for ensuring the implementation of the legislation.

This obligation has been largely contained in the Ministry of Maritime Affairs and Fisheries regulations and refers to PP No. 60 of 2007 on Conservation of Fish Resources, and the regulations are guidelines for the public in catching and managing fisheries. The minister's violation of the regulations refers to the Fisheries Act.

If it is seen that the substantial provisions laid down in the legislation to protect fish resources have actually been sufficient, it is only frequently posing the pros and cons of the application of the regulation. For example, in PERMAN-KP No. 2/PERMEN- KP/2015 on the Prohibition of the Use of Trawls and Seine Nets in the WPPNRI, there are several groups of fishermen in Indonesia protesting the ministry's rule, because almost 70 percent of the catch tools used by fisherman are trawls, the

<sup>28</sup> Lihat Uu-Nri No. 6 Tahun 1996 *Tentang Perairan Indonesia*.

<sup>29</sup> Lawrence M. Friedman, 2001, *Amerikan Law: An Intoduction, Second Edition (Hukum Amerika Sebuah Pengantar)*, Penerjemah Wisnu Basuki, Pt Tananusa, Jakarta, Hlm. 285-286



existence of the rule is perceived as harassing traditional fishers and poverty. This is one of the factors that affects the ineffectiveness of the law, which is the conflict between the purpose of legislation and the will of the public that is the target of regulation as proposed by Antony Allot. The Minister's regulation considers that the use of trawls and its nets in the WPPNRI has resulted in a decline in fish resources and threatened the environmental sustainability of fish resources. Based on the results of research that Indonesian marine exploitation has entered a critical stage, production is raised to only 50 percent. If left, then it would be natural degradation, one of which is the smaller the size of the fish, not closing the possibility of disappearing.<sup>30</sup>

On the one hand, the government wants to enforce the rules, but on the other side, the public feels that the rules can reduce incomes, not even a few fishermen are unemployed. It's exactly what the government has done with the transitional implementation of the rules, and the use of prohibited capture devices can only be used 12 miles from the sea of their territory. During the transitional period, the fishing equipment prohibited under the government regulations, it is in accordance with the principles of development of fishing gear and environmentally friendly fishing methods as laid down in article 2, paragraph (2) of PP No. 60 of 2007 on conservation of fish resources. The traps are quickly socialized to the fishermen so that they can adapt to the new traps, the conflict with the use of the forbidden traps can be overcome so that the fishers can reactivate.

In order to protect the survival of fish resources, in addition to PERMEN-KP No. 2015, restrictions on catching lobster (SPP *panulirus*), interest (*scylla* SPP), and extension have been issued. (*Portunus* SPP). The policy was laid down in PERMEN-KP No. 1 of 2015, regarding the size of the lobster that can be caught is above 8 cm or equivalent to 300 grams, crabs 15 cm wide or equal to 350-450 grams wide, extension of 10 cm width or the equivalent of 55-80 grams. Based on the fact that there is still the sale of lobster, crab, and extension that is not in accordance with the regulations, and this sale is usually done by fishermen in the middle of the coast with the fisherman's fishing to be carried out by the fishing man in the midst of the shore with the crawler to be marketed directly to the public, without going through the fish auction.

There is still a violation of fishing, of course inviting the question for us, is the role and effectiveness of the law enforcement wives given in the Fisheries Act still applicable? in order to enforce the law of conservation of fish resources and how does it happen.

According to Yulia A. Hasan<sup>31</sup> Fishing resource conservation violations occurring in the southern and western polda sulawesi waters directorates from 2012 totalled 99 cases, roughly 47.52 per cent of which were violations of the conservation of fish resources, with the mode of catching fish using explosives and killing protected turtles. The application of the violated articles is article 84 paragraph (1) and article 85 UURI No.45 Year 2009 About Fishing p.a UURI no. 31 Year 2004 About fishing which stipulates that: Any person who deliberately at WPPNRI commits fishing or fishing by using chemical, even biological, explosives, which may endanger the sustainability of fish resources or its environment, punishable with a penalty of not more than 6 (six) years and a fine of up to Rs. (satu miliar dua ratus juta rupiah). Article 85 of the Act stipulates that any person who possesses, possesses and

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<sup>30</sup> <https://bisnistempo.co>, 12 Februari 2015, "Menteri Susi Diprotes Nelayan Soal Larangan Pukat, Diakses Pada 17 Oktober 2022

<sup>31</sup> Yulia A. Hasan, 2020, *Konservasi Sumber Daya Ikan Di Indonesia*, Prenada Media Grup, Jakarta, Hlm. 161

carries or uses fishing gear and/or fishing aid that interferes with and damages the sustainability of fish resources is punishable by a penalty of imprisonment of 5 (five) years and a fine not exceeding Rs. (Two Million rupiah).

From the above data we can see how criminal sanctions or fines are no longer effective in reducing crime in the field of fishing, so there is a need for the addition of civil sanctions as a companion of new law enforcement in the protection of fish resources. Giving the obligation to restore the environment and compensation for damages to fishermen whose capture area has been damaged. But according to Freed T. Wildes<sup>32</sup>, that the conservation of natural resources contains the real meaning of the concept of preservation and development of the natural resources for the needs of mankind on earth in the present and future. Conservation therefore implicitly involves the moral aspect and human responsibility to preserve, nurture, save, and preserve natural resources for present and future generations. If human morals and responsibilities are not fulfilled, then there must be sanctions given to human beings according to what they have done. Considering the conservation of fish resources, ecological centres are how human beings can safeguard the sustainability and functioning of the environment in accordance with the purposes of conservation and management of fisheries, namely achieving sustainability, harmony, and environmental balance to ensure the fulfilment of justice of present and future generations.

For foreign vessels carrying out fishing activities at the WPPNRI which do not have SIPI and SIKPI authorized to carry out sinking of the vessel. It is based on the general explanation of article 69 paragraph (4) of UURI No.45 of 2009 on fishing p.a UURI no. 31 of 2004 on fisheries:

“In carrying out the functions referred to in paragraph (1) the investigator/fishing supervisor may carry out a special act of burning/sinking a fishing vessel flying a foreign flag on the basis of sufficient evidence of commencement”

It is one of the ways in which the government is implementing the principles of conservation of fish resources, among other things the principle of community-based management, as fish resources in Indonesia are allocated to the Indonesian people. It is unethical for foreign vessels to catch fish at WPPNRI and have no SIPI and SIKPI, clearly engage in illegal fishing activities and have violated the sovereignty of the country. The move is expected to have a disruptive effect on other foreign ships. To avoid the sinking of a fishing vessel has socialized such a sink policy on the ambassadors serving in Indonesia.

In addition to the ineffectiveness of law enforcement, we need to have a strong and courageous law-enforcement apparatus. For marine surveillance activities carried out by fishing supervisors consisting of the Civil Fisheries State Inspector (PPNS) and Non-Investigator Civil Fishing State Officer. The limitation of the number of NPAs in a single fishing area constitutes one of the obstacles to the enforcement of fishing law, and the duty of the maritime and fishing agencies to pay attention to the utilization of fish resources through the use of environmentally friendly fishing gear, this constituted one or more obstacles due to the limitations of funding in the optional activities of such activities. The PPNS in carrying out its duties must synergize with the water police directorate in fisheries surveillance.

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<sup>32</sup> Ahkmad fauzi, 2006, ekonomi sumber daya alam dan lingkungan, gramedia pustaka utama, jakarta, hlm 13.

pursuant to article 47 (2) PP No. 60 of 2007 on the Conservation of Fish Resources that the monitoring of the conservation of fish resources can be carried out through: 1. the care and patrol of water conservation areas; and 2. the surveillance of the use of protected fish and genetic species.

The weak enforcement of fish conservation law by the Indonesian government, due to the vague implementation of fisheries law sanctions, the limited legal enforcements in fisheries, and the limited optional funds allocated by the government, affects the conservation protection of fish resources. The existence, the availability of fish species and the genetic diversity of fish will be extinct. Because there is a tendency for governments to prioritize economic interests over the sustainable exploitation of fish species and the preservation of fish genetic diversity. Therefore, there is a need for fair cooperation on the part of nature, responsible management of fisheries on the basis of benefits, justice, equity, partnership, independence, cohesion, openness, efficiency, sustainability, and sustainable development. management and conservation of fish resources can be divided into three stages, namely: 1. the stage before catching fish resources, through the authorization mechanism, so that the number of fleets of vessels that are in WPPNRI can be controlled; 2. the stage of implementation of catch, through mechanisms of measures of management and preservation fish resources and surveillance, so the catch does not violate the provisions of legislation; and 3. the stage after catching, through an evaluation mechanism so that it can improve the management and conservation measures already implemented, so as to be a guideline for the preparation of a plan of managing and conserving fish resources.

The term Omnibus Law was a hot topic in mass media and academia in 2019. At the 6th National Conference on the Law of the State Order with friends “Strengthening an Effective Presidential Cabinet” in Jakarta on 2-4 September 2019, the then Secretary of State, Pratikno, presented a government complaint regarding excessive regulation that could hinder investment in Indonesia. As of October 2018, there were 7621 ministerial regulations, 765 presidential regulations and 452 government regulations. The implications of such excessive regulation raise new issues of potential overlap, the burden of harmonization and synchronization and the absence of monitoring and evaluation agencies. Then, in addition to establishing Regulatory Technology, the government will cut 100 rules every month and design Omnibus Law as a means of facilitating business licensing. The current state of licensing regulation in Indonesia is unqualified due to overlapping, multitasking, burdensome, disproportionate quantity of regulation and inefficiency.<sup>33</sup> The debate was warmer when President Jokowi presented a political idea officially in front of the MPR-RI plenary sitting on October 20, 2019 that offended the Omnibus Law to enter the 2020 Prolegnas. Recalling the vision of President Jokowi's government that it wants to rearrange the various lagoons of legislation that are obstructing the business world. Then President Jokowi's will on Omnibus Law is appropriate when used in Indonesia, which has many overlapping legislative regulations and a time-consuming and cumbersome legal regulation process. This era requires a breakthrough in the concept of Omnibus Law. In the digital world of Ecosystem and Global Governance, it's not wrong when Indonesia breaks the boundaries. The Philippines has begun reforming the legislation with the investment context by publishing The Omnibus Investment Code. Later, the Vietnamese learned the technique of making the Omnibus Law, as part of the regulatory reforms they did. The various legal systems in this world meet and influence each other and try to influence and penetrate into the legal system of a country so that its values are absorbed and become

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<sup>33</sup> Muhammad Saleh, *Regulasi Yang Ramah Investasi*, <http://Law.Uad.Ac.Id/Regulasi-Yang-Ramah-Investasi/>, Diakses 16 Oktober 2022.

the standard of norms in the country concerned. It is only in that way that the great legal systems of this world like Common Law, Civil Law and Islamic Law can survive and maintain their existence and influence.<sup>34</sup>

Based on the Omnibus Law policy formulated by the government, it seems that little by little, there has been a paradigm shift against the legal system used throughout. To accelerate the licensing process, a legal approach that prioritizes the value of benefits is an option and an alternative that the government will make. With regard to the purpose of law, Mochtar Kusumaatmadja still agrees that the primary goal of law in general is order and justice. The purpose of justice is meant by the purpose of law in a state of law and justice in Indonesia refers to the five Pancasila, that is, social justice. The division of maritime territory has so far not been universally acceptable. The marine ecosystem can be divided into two, namely, coastal sea waters that cover the exposure area of the continental and offshore or oceanic seas. In general, sea and coastal waters function as world water reserves, global climate regulators, habitats of various types of biota, land and livelihoods of populations, especially those that live around the coast, and foodstuffs of various marine biota.<sup>35</sup>

In its use, the boundaries are determined by the determination of the zoa. Boundaries through zoning. According to UURI No. 11 Year 2020 on Creation of Works, a zone is a space whose use is agreed jointly between various stakeholders and has established its legal status. The legal status intended is the zoning plan in the spatial planning plan. More technically, zoning is a form of engineering of space utilization techniques through the establishment of functional boundaries according to potential resources and supporting power, as well as ecological processes that take place as a unity in coastal ecosystems.

Implications of the conception of the appropriate use of marine space lie in the reinforcement and positioning of the marine zoning plan remains necessary, but some technical considerations must be dismissed, eliminated, or reconceptualized. The omission of the precautionary principle leads to a shift of law enforcement in the settlement of disputes, so it is necessary to anticipate, given that there will be many lawsuits related to business activities and material proofing, in which case the appropriateness of the use of space will be more dominant. In the end, no matter what system is chosen, the legal basis remains mandatory. Changes or paradigm shifts and legal policies will affect what legal system will be used. As long as the law is to be used. As long as the system continues to advance the optimization of economic and environmental aspects, which need to be considered in order to promote the well-being of Indonesian people. The policy direction of suitability of marine exploitation activities remains essentially compulsory to advance the precautionary principle implicit phases and processes in terms of authorization of attempts in marine space.

The marine and fishing potential of the Indonesian state is an economic potential that can be exploited for the future savings of the nation. The optimum exploitation of sustainability will enhance the acquisition of foreign currency, the provision of jobs, as well as the increase in incomes and welfare of the community, and the dominant role of the sea as a means of uniting and sticking the unity of the

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<sup>34</sup> R. Muhammad Mihradi, Omnibus Law: Menuju Hukum Ramah Investasi?, [https://Unpak.Ac.Id/Pdf/2019/Mihradi\\_Omnibus.Pdf](https://Unpak.Ac.Id/Pdf/2019/Mihradi_Omnibus.Pdf), Diakses 16 Oktober 2022.

<sup>35</sup> Hengky K. Baransano And Jubhar C. Mangimbulude, "Eksplorasi Dan Konservasi Sumberdaya Hayati Laut Dan Pesisir Di Indonesia," *Jurnal Biologi Papua* 3, No. 1 (2011), Hlm. 39.

nation. In order to unlock the potential of marine and fishing, the need for a legal framework for the management of fish resources is crucial.

The presence of this Act is expected to anticipate the occurrence of enormous changes in the field of fisheries, both in relation to the availability of fish resources, environmental sustainability fisheries resources, as well as the development of more effective, efficient, modern fisheries management methods. The law is also expected to enhance the exploitation of marine potential. With the marine potential of the Indonesian state, there are also problems in the maritime sphere. Problems in harvesting and fishing include marine pollution, symptoms of overfishing, physical degradation of coastal habitats, fish theft, and illegal disposal of waste. With the spirit of the foundation formed the rules of fishing and the sea is solely to create a harmonious distinction between the preservation of the Indonesian nature and the well-being of its people.

In line with the spirit of the government to re-elaborate the legislative regulations of UURI No. 11 Year 2020 on the creation of work in the field of fishing and fishing which is considered to be able to promote the development of the fishing sector by keeping ahead of the factors of sustainability or sustainability.

With the spirit of birth of this regulation, in order to be able to promote the development of the sea and fishing, it is hoped that these rules can go hand in hand with the regulations of UURI 31 Year 2004 On Fishing p.a UURI No. 45 Year 2009 On Fisheries and UURI 32 Year 2014 On Clutches, or other regulations in accordance with it. But when we look at the substance of UURI No. 11 of 2020 on the creation of work in the field of fishing and fishing, there are at least 10 substances that are contrary to each other's laws and regulations so that they potentially give rise to conflict of norms. This is in line with the publication of an analysis of the IOJI (Indonesia Ocean Justice Initiative), concluding that there are 10 serious issues related to the sewer sector and sewerage that should be concerned in the UURI No. 11 Year 2020 on the creation of Sewerage and Fisheries field work.<sup>36</sup>

In fact, in every fishing crime in the WPPNRI almost entirely the accused is a nahkoda. This is because the nahkoda is the person who is most responsible for the movement of the vessel during the sailing as well as during the catch, including the determination of the time and place or coordinate point of catching, the speed of the engines and the passage of the fishing vessel are all determined by the Nahkoda. So it's natural for nahkoda to be charged with criminal offences in the field of legal fishing fishing. Though nahkoda bears responsibility for all matters related to fishing, but most of them are not employers or owners/operators of fishing vessels, they are merely a fisherman who is employed by the owner or operator of a fishing ship to lead or catch fish, plus many who are only educated in elementary school and are paid by the salary system or for income to meet daily needs. As a person employed by a shipowner or operator, the status of a nahkoda is as a fisherman worker whose livelihoods catch fish by using a ship to meet daily living needs, according to the provisions of UURI No. 11 Year 2020 On Creating Jobs, this kind of condition is called small fishermen and has some exceptions in the enforcement of the law. Who is a small fisherman? The definition of small fishermen is contained in section 11 of the UURI No. 31 of 2004 on fishing p.a URI No. 45 of 2009 on fisheries, i.e., a person whose eyes of navigation engage in fishing to meet the needs of everyday life. Then the formula of section 11 of UURI No. 31 of 2004 on Fishing p.a UURI no. 45 of 2009 on fishing

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<sup>36</sup> Acmad Santosa, *Analisis UU Cipta Kerja Sektor Kelautan Dan Perikanan*, Edisi 7, 11 Oktober 2020.

was changed to be, a person whose fishing eye carries out fishing to meet the needs of daily life using fishing vessels of a maximum size of 5 (five) gross tons. (GT). Then in article 1 of UURI No. 7 of 2016 on the Protection and Empowerment of Fishermen is defined, that is, fishermen to meet their daily needs, both those who do not use fishing vessels and those who use a fishing boat with a maximum size of 10 (ten) gross tons. (GT). Lastly, the uncertainty of the defence related to the defense of small fishermen is attempted to be explained through section 1 of the maritime and fishing section of UURI No. 11 Year 2020 on creation of work which is meant as a little fisherman is a person whose sights are carrying out fishing to meet the needs of daily life, both those who use fishing vessels and those who do not use fisheries.

## CONCLUSION

Based on the explanations presented above, the author would like to draw the conclusion, that the application of sanctions to notaries who misbehave or commit negligence can be subject to sanctions such as the code of ethics of notaries, administrative sanctions, criminal sanctions. Until now, there has been no change from the UUJN, so the provisions of the UJN until now remain in force as they have been prescribed. A notary may also be subject to a criminal sanction as an *Ultimatum Remendium* or confiscation of law enforcement with certain limitations as described. This is because, UUJN is basically only the scope of administrative sanctions, civilian sanction, criminal sanction and sanction code of ethics which basically all stand with the respective violations of the law provisions.

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