

Chapter I

Introduction

1.1 Background

Indonesia is the largest island nation in the world, with 16771 islands¹ spread throughout her territory, spread throughout an area of 5.1 million km², 3.2 million km² of those being water². Where the most eastern point to the most western stretch as far as 5120 kilometres. To the north, Indonesia borders the Philippines, Malaysia, and Singapore, while in the west Indonesia borders the Indian Ocean, while on the east Indonesia borders Papua New Guinea, and in the South Indonesia borders Timor Leste and Australia³. With such massive bodies of water in the territory of Indonesia, it is logical to think that Indonesia has one of the largest fishing industries. According to the Food and Agriculture Organization of the United Nations (FAO), Indonesia ranks as the second largest fish capture

¹ “KKP | Kementerian Kelautan Dan Perikanan.” 2019. Kkp.go.id. 2019. <https://kkp.go.id/djprl/p4k/page/4270-jumlah-pulau>.

² Setiawan, Anton. Portal Informasi Indonesia. 26 July 2023. <https://indonesia.go.id/kategori/ragam-ais-forum-2023/7295/menyiapkan-tata-kelola-laut-berkelanjutan?lang=1> (accessed November 13, 2023).

³ Purwanto, Harry, and Dewa Gede Sudika Mangku. 2016. “LEGAL INSTRUMENTS OF THE REPUBLIC OF INDONESIA IN BORDER MANAGEMENT USING THE PERSPECTIVE OF ARCHIPELAGIC STATE.” *International Journal of Business, Economics and Law* 11, no. 4. <https://doi.org/ISSN%202289-1552>.

producer in the world⁴. This goes hand in hand with Indonesia harbouring the second largest biodiversity in the world⁵.

International maritime laws are created to govern activities on the world's ocean. Nations throughout the world recognise that sovereignty not only applies to dryland, but also to the seas, and other bodies of water. With the sovereignty over the countless bodies of water, comes the right for each nation to harvest the resources within. In Indonesia this is governed by Article 6 (2) of Law Nr. 32 of 2014, where it states:

“The Republic of Indonesia is entitled to carry out the management and utilisation of natural resources and the environment in the Sea region as referred to in paragraph (1)”⁶.

The fishery business in Indonesia holds an important economic role in development of the Indonesian economy and inciting economic growth⁷. Especially regarding providing food, and jobs to the people of Indonesia, so that they can live a prosperous life. Not only are the capturing of fish used in the domestic market, but also sold on the international market as exports,

⁴ “TOWARDS BLUE TRANSFORMATION.” 2021. Food and Agriculture Organization of the United Nations. 2021. [Fao.org/state-of-fisheries-aquaculture](https://www.fao.org/state-of-fisheries-aquaculture).

⁵ Butler, Rhett A. Mongabay: THE TOP 10 MOST BIODIVERSE COUNTRIES. 21 May 2016. <https://news.mongabay.com/2016/05/top-10-biodiverse-countries/> (accessed November 25, 2023).

⁶ See Article 6 of Law Nr.32 of 2014 regarding the sea.

⁷ Desta Sari, Catur, and Rifki Khoirudin. 2023. “PENGARUH SEKTOR PERIKANAN TERHADAP PBB INDONESIA.” *Perwira Journal of Economy & Business* 3, no. 1 (February). e-issn: 2775-572X.

⁸ Manaraja, Chris Dialogis, Daisy S.M Engka, and Ita Pingkan F. Rorong. “ANALISIS POTENSI UNGGULAN DAN DAYA SAING SUBSEKTOR PERTANIAN, KEHUTANAN DAN PERIKANAN DI KABUPATEN MINAHASA SELATAN.” *Jurnal Berkala Ilmiah Efisiensi*, 2023.

boosting the economical standing of Indonesia⁹. According to the statistic agency of Indonesia, in the year of 2023, Indonesia has exported up to 4.4 million us dollars of fisheries products¹⁰. All of this is possible due to the large potential of the waters surrounding Indonesia, and the high diversity of species below the waves.

Indonesia faces a challenge with its large water area and the rich potential contained within it, being illegal fishing¹¹ and the practice of illegal transshipping¹². Such illegal acts not only cost the nation economically, but also environmentally, namely causing the rapid decline of fish population due to overfishing.

So far there has not been a specific law that regulates the transshipment of fishery products. According to Article 1 (34) of Minister of Marine Affairs and Fisheries Regulation Nr.30 of year 2012,

“Alih Muatan (Transshipment) adalah pemindahan ikan hasil tangkapan dari Kapal Penangkap Ikan ke Kapal Pengangkut Ikan.”¹³

⁹ Siregar, Emil Salim, et al. “PENGARUH HASIL TANGKAP IKAN TERHADAP PEMBANGUNAN DAN PERKEMBANGAN PEREKONOMIAN MASYARAKAT PESISIR.” *Journal Of Social Science Research*, 2024.

¹⁰ Badan Pusat Statistik. “PERKEMBANGAN EKSPOR Dan IIMPOR INDONESIA DESEMBER 2023.” *Badan Pusat Statistik*, 15 Jan. 2024.

¹¹ Baiquni, M. Iqbal, Ahsana Nadiyya, and Heni Rosida. “PENEGAKAN HUKUM ATAS PRAKTIK ILLEGAL FISHING DI INDONESIA SEBAGAI PERLINDUNGAN WILAYAH PERAIRAN INDONESIA.” *Journal of Judicial Review*, 2020.

¹² Rizal, Fardhan Haidar, and Indra Yulianingsih. “PENGATURAN ILLEGAL TRANSHIPMENT PADA ZONA EKONOMI EKSKLUSIF INDONESIA BERDASARKAN HUKUM INTERNASIONAL DAN HUKUM NASIONAL.” *Journal Inicio Legis*, 2023.

¹³ See Article 1 of Minister of Marine Affairs and Fisheries Regulation Nr. 30 of year 2012

In article 70 (2) of Minister of Marine Affairs and Fisheries Regulation Nr.30 of year 2012 further states that in a transshipment it is not allowed for the fish to be taken out of the nation, but the fish must be unloaded in the port as stated by the SIKPI (*Surat Izin Pengangkut Ikan*) (Fish Carrier License).¹⁴ From this we can ascertain that the act of Transshipment requires:

1. The transfer of fish from one vessel to another At least one of the vessels involved must be a fishing vessel;
2. The fish must come from a fishery capture industry;
3. The fish must be unloaded in the port written in the Fish Carrier License; and
4. The fish must be unloaded in an Indonesia Port and must not be taken out of Indonesia.

Seeing the criteria for transshipment, we can deduce the meaning of illegal transshipment of fish, which is taking the transferring of fish from one fishing vessel to another, or one fishing vessel to another transport vessel to take the fish outside of Indonesian territory or unloaded in a port that is not written in the Fish Carrier License.

The definition of illegal fishing according to the Minister of Marine Affairs and Fisheries Regulation Nr. 37 /PERMEN-KP/2017, article 1 (3), the illegal capture of fish (Illegal fishing) is fishery acts that are not legal, or fishery acts against the laws and or regulations of fisheries¹⁵. From this we can conclude that the of illegal fishing requires:

¹⁴ See Article 70 of Minister of Marine Affairs and Fisheries Regulation Nr. 30 of year 2012

¹⁵ See article 1 (3) of Minister of Marine Affairs and Fisheries Regulation Nr. 37/PERMEN-KP/2017

1. Illegal fishery activity;
2. Against laws and / or regulations regarding fishery; or
3. The capture of fish.

According to Indonesian law, article 1 (1) of law Nr. 31 of 2004 regarding fishery, states that:

“Fishery is all activities relating to the cultivation and utilisation of fish resources and the environment thereof, starting from pre-production, production, cultivation, up to marketing, implemented in a system of fishery business.¹⁶”

From this, the criteria for fishery are:

1. Cultivation and utilisation of fish;
2. Fish resources;
3. Production acts; or
4. Fishery Business.

In article 1 (2) of Law Nr. 31 of 2004 further states that fish resources are the potential resources of all fish.

Illegal fishing is an ongoing problem within Indonesia. As throughout 2022 to 2023, cases pertaining to IUU fishing has occurred in Indonesia. On February 12th, 2022, the Indonesian Ministry of Maritime and Fishery seized ten fishing vessels, 7 (seven) due to illegal fishing, 2 (two) of the vessels had indication of illegal transshipment of fish, and 1 (one) due to expired licence¹⁷. In March 2022, The Indonesian Ministry of Maritime

¹⁶ See Article 1 of Law Nr. 31 of 2004 regarding fishery, and Law Nr. 45 of 2009 regarding the revision of Law Nr. 31 of 2004

¹⁷ Didik Agus Surwasono, Direktorat Jendral Pengawasan Sumber Daya Kelautan dan Perikanan “*SERIOUS SIAPKAN PENGAWASAN PENANGKAPAN TERUKUR, KKP TERTIBKAN 10 KAPAL IKAN INDONESIA YANG MELANGGAR KETENTUAN*”, <https://kkp.go.id/djpsdkp/artikel/38079-serius-siapkan-pengawasan->

and Fishery seized a further 22 vessels, 21 Indonesia, and one foreign. Ten Indonesian vessels are seized due to fishing outside of their listed fishing zone according to their licence. Nine Indonesian vessels do not have any licence at all. Two of the Indonesian Vessels are seized on the grounds of illegal transshipment on the sea. The vessels were operating around the waters of Raja Ampat¹⁸. They usually commit illegal transshipment in the goal of reaping more profits, by selling higher quality fish to foreign ships that anchor outside of Indonesian Waters, to then sell the fish gain later from the capture industry in each of the respective nations of the foreign ships. The act usually involves an Indonesian fishing vessel, and a foreign vessel, or sometimes an Indonesian fishing vessel, and another Indonesian vessel. Where they sail the vessel itself to a foreign port, or to tranship again to another vessel.

According to the Ministry of Maritime and Fisheries, in 2022, the ministry has handled 137 cases regarding maritime and fisheries. Where 97 of those cases due to lack of appropriate licenses, 5 cases on illegal transshipment, 22 cases involving the use of explosive for fishing, 2 cases involving banned fishing equipment, 2 cases regarding the capture and or trade of protected species, and 5 cases regarding forged licenses¹⁹. The next

penangkapan-terukur-kkp-tertibkan-10-kapal-ikan-indonesia-yang-melanggar-ketentuan

¹⁸ Safyra Primadhyta, CNN Indonesia, “KKP TANGKAP 22 KAPAL IKAN ILEGAL DI 6 WILAYAH MEDIO MARET 2020”, [cnnindonesia.com/ekonomi/20220327125617-92-776678/kkp-tangkap-22-kapal-ikan-ilegal-di-6-wilayah-medio-maret-2022](https://www.cnnindonesia.com/ekonomi/20220327125617-92-776678/kkp-tangkap-22-kapal-ikan-ilegal-di-6-wilayah-medio-maret-2022)

¹⁹ “INFOGRAFIS PENANGANAN PELANGGARAN BIDANG KELAUTAN DAN PERIKANAN TAHUN 2022.” Kementerian Kelautan dan Perikanan, 31 Dec. 2022.

year, from January to August 31st of 2023, the Ministry of Maritime and Fisheries reports that there are 124 cases involving maritime and fisheries issues. 95 cases lack appropriate licenses, 13 cases involving the use of explosives for fishing activities, 4 cases of fish electrocution, 3 cases of not reporting their catch, and one case of fishing in area of conservation²⁰.

In this case the writer is interested in this topic due to the writer's interest in maritime affairs, fishery industry, and international sea boundaries disputes between nations. To add the fact that the intentional trespassing of Indonesian Laws regarding the sea, and fishery still occurs despite existing laws stating the illegality of certain acts pertaining to the fishery industry, such as act of illegal fishing, and acts of illegal transshipment. Due to all of this, the writer decides to write this paper with the intention of discussing the legal mechanism of handling illegal fishing and illegal transshipment and the potentiality of legal transplanted from EU IUU laws.

The EU, just like Indonesia, has issues with IUU fishing activities, this can be seen in problematic ship ownership within the EU²¹. The EU is suffering from flags of convenience, where ships are not registered in the nation where the owner of the vessel do not reside in. The national registry of a vessel is important, as it will determine under which nation's laws and

²⁰ *Ibid.*

²¹ "PROBLEMATIC EU OWNERSHIP OF FISHING VESSELS IN COUNTRIES THAT FAIL TO TACKLE ILLEGAL FISHING." *Oceana In Europe*. 13 October 2022.

<https://europe.oceana.org/reports/problematic-eu-ownership-of-fishing-vessels-in-countries-that-fail-to-tackle-illegal-fishing/> (accessed March 13, 2024).

regulation they would be under. This can be and has been used to circumnavigate EU IUU laws. This will provide the perpetrators with new fishing grounds and more access to more fish. If the flag of convenience happens to be a nation that is unsupportive of combatting IUU fishing activities, this will be inconsistent with the EU's effort in combatting IUU fishing internationally. In 2022, it has been documented that there were 41 EU vessels flying the flags of non-EU members who are currently under sanction by the EU for lacking efforts in combatting IUU fishing.

Seeing as both EU and Indonesia share a similar legal system, in the form of civil law. Civil law is a legal system that uses codified laws as the primary source of law, where judges do not use precedence set by previous judges, but cases are judged based on existing laws and regulations. This applies to all aspects of the legal system, where everything is regulated through codified laws and regulations.

1.2 Research problem

1. What are the legal mechanisms for handling of illegal fishing and illegal transshipment in Indonesia?
2. How and to what extent could Indonesian Law on illegal fishing and illegal transshipment adopt the best practices on legal mechanism pursuant EU Regulation Number 1005/2008 on IUU Fishing?

1.3 Research Purposes

As all research that exist in a thesis has an intention and goal, these are the goals of this research:

1. To understand and analyse what are the legal mechanisms for handling of illegal fishing and illegal transshipment in Indonesia.

2. To understand to what extent could Indonesian Law on illegal fishing and illegal transshipment adopt the best practices on legal mechanism pursuant EU Regulation Number 1005/2008 on IUU Fishing.

1.4 Research Benefits

1.4.1 Theoretical Benefits

The writer hopes that with the results of this research, it will benefit theoretically by giving inputs in the field of law and business, especially regarding illegal fishing, illegal transshipment, and legal aspects of maritime and fishery matters.

1.4.2 Practical Benefits

The writer hopes that with this research, it will benefit those who work in the field of fishery capture industry, legal maritime matters, the public in general, law observers, and institution pertaining to Indonesian fisheries, by providing inputs in regarding the legal aspects of the previously mentioned fields, and practical lawful thoughts regarding fisheries and maritime affairs of Indonesia.

1.5 Framework of Writing

CHAPTER I INTRODUCTION

This chapter consists of the introduction to the research paper, and has five subdivisions, those are background, formation of issues, purpose of research, benefits of research, and systematics of writing.

CHAPTER II LITERATURE REVIEW

In this chapter, the theories regarding the subject's illegal fishery acts, primarily in illegal fishing, and illegal transshipment shall be discussed by

the writer. The writer shall further breakdown and elaborate the definitions of illegal fishing and illegal transshipment. The writer shall also analyse some cases of illegal fishing and illegal transshipment from 2022, and the writer shall examine the handling of the cases. Afterwards the writer shall discuss the regulations and laws, and the efforts of the Indonesian government in the eradication of illegal fishing and illegal transshipment.

CHAPTER III RESEARCH METHODOLOGY

In this chapter, the writer will discuss the type of research, data collection method, theoretical approach, and data analysis being used in the making of this thesis.

CHAPTER IV DISCUSSION AND ANALYSIS

Chapter four will consist of research findings, analysis of the findings. Where the writer will discuss the analysis of the handling of the cases pertaining to illegal fishing and illegal transshipment in the realm of fishery. Afterwards the writer will discuss the analysis of the efforts of the Indonesian government in its efforts of eradicating illegal fishing and illegal transshipment of products of fishery.

CHAPTER V CONCLUSION AND RECOMMENDATION

Chapter V, the last chapter of this thesis, the writer shall with all the research, and analysis, gathered in Chapter four of this thesis explain the conclusion of this thesis. After the writer has finish explaining the conclusion, the writer shall put forward suggestions and recommendations for issues regarding the handling of cases of illegal fishing and illegal transshipment of fishery products, and suggestions and recommendations regarding the efforts of the government of the Republic of Indonesia in

combating and eradicating illegal fishing and illegal transshipment of fishery products.

