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ILLEGAL FISHING IN INDONESIA FROM THE NATIONAL AND THE INTERNATIONAL LAW PERSPECTIVES *)

Mutiara Hikmah ¹

Abstract

Indonesia is the world's largest maritime country, its maritime resources need to be guarded and managed continuously for the welfare and prosperity of the people of Indonesia. One of the examples of issues that attracts attention and is still occurring within the territorial waters of Indonesia is illegal fishing. Indonesia constitutes one of the countries which falls victim to the growing actions of illegal fishing. Illegal fishing constitutes a violation of the law, its impact is not only damaging to the people and state, but also disturbing the stability of security at seas and it also constitutes potential conflicts between Indonesia and other countries. This paper will describe the legal issues pertaining to illegal fishing, how it is regulated from the perspectives of national and international laws, its condition in Indonesia, how illegal fishing cases are handled in Fisheries court as well as what are the efforts made by the Government of RI to overcome and prevent illegal fishing within the territorial waters of Indonesia.

Indonesia merupakan Negara maritim terbesar di dunia, sumber daya maritim tersebut perlu dipertahankan dan dijaga secara berkelanjutan untuk kesejahteraan rakyat Indonesia. Salah satu permasalahan yang menarik perhatian dan masih tetap terjadi di wilayah perairan territorial Indonesia adalah pengambilan ikan secara ilegal. Indonesia merupakan salah satu dari Negara-negara yang menjadi korban aktivitas pengambilan ikan secara ilegal. Pengambilan ikan secara ilegal merupakan tindakan melanggar hukum, akibat dari hal tersebut tidak hanya menimbulkan kerugian bagi masyarakat dan Negara, tetapi juga mengganggu stabilitas keamanan di laut dan juga mengandung potensi konflik antara Indonesia dengan Negara lain. Tulisan ini akan memberikan gambaran atas permasalahan hukum terkait dengan pengambilan ikan secara ilegal, bagaimana hal tersebut diatur dalam perspektif hukum nasional dan internasional, kondisinya di Indonesia, bagaimana penanganan kasus-kasus penangkapan ikan secara ilegal melalui pengadilan perikanan dan juga upaya-upaya yang telah dilakukan oleh pemerintah RI untuk menghadapi dan mencegah penangkapan ikan secara ilegal yang terjadi di wilayah perairan Indonesia.

Keywords: *illegal fishing, fisheries law, international fisheries law.*

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I. INTRODUCTION

Indonesia is known as an archipelago. This is evident from the territory of Indonesia that consists of approximately 17,508 islands and coastal line of 81,290 km. The area of the territorial waters is 5.8 million km squares (63% of total area of territory of Indonesia) aside from the 2.7 million km squares of Exclusive Economy Zone. Aside from that, Republic of Indonesia / *Negara Kesatuan Republik Indonesia* (NKRI) is a vast country, which has maritime boundaries with ten countries² as well as land borders with three countries³. In view of Indonesia's position, therefore Indonesia constitutes an archipelago of strategic importance viewed from geostrategic or geopolitics.

Concepts of geostrategic and geopolitics develop in line with human's awareness to build a nation and a state, starting from the establishment of a nation, then a state and the existence of technology advancement. Formally, Indonesia became a country since its declaration of independence. The formal realization is marked by the existence of people, territory, sovereignty, government, purposes of the state and form of the state (which constitutes a unitary state). A distinctive character of NKRI other than being an archipelago is also being a country that is located between two oceans, namely Indian Ocean and Pacific Ocean and between two continents, namely Asian Continent and Australian Continent. Aside from that, Indonesia is also located under the *Geostationary Satellite Orbit/GSO* of 12.8% of earth GSO. With such distinctive characters, the Indonesian nation is expected to have similar perspectives in the efforts to manage the territory, whether the land territory, territorial waters and air territory⁴. Therefore, an Indonesian

² The ten countries are, among others: India, Thailand, Malaysia, the Philippines, Singapore, Vietnam, Papua New Guinea, Australia and Timor Leste. Read: Bambang Susanto, "Judicial Review on Issues on Maritime Borders of Territorial Waters of RI", *Indonesian Journal of International Law*, special edition Desember 2004, page 54-55.

³ With these countries, which border on seas, Indonesia drew up a number of agreements. Such as with Malaysia pertaining to Malacca Strait and South China Sea which is contained in an agreement in 1969, agreement pertaining to borders of territorial waters on Singapore in 1973. Read: Arief Ussama, "Review in Judicial Sector of the Territorial Waters of Indonesian", *Jurnal Keadilan*, Vol.3, No. 3 year 2003-2004, page 44.

⁴ Purnomo Mirhad, "Geopolitik dan Geostrategi Indonesia [Indonesia's Geopolitics and Geostrategic]" *in*

Geopolitics doctrine is compiled, which constitutes the perspective of a nation of itself and its surroundings. Indonesian Geopolitics is known as the Archipelago Insights. To carry out the concept of Archipelagic Principle, a geostrategic concept is drawn up, which is referred to as the national defense⁵. The national defense is very important considering the geographic condition of Indonesia that is very strategic, especially Indonesia's territorial waters that constitutes two thirds of the whole territory of NKRI.

The strategic position of Indonesia's territorial waters places Indonesia in a very important place for countries of various areas, which has beneficial impacts and simultaneously threatens the interests of the Indonesian nation. This may result in serious issues related to security, legal, economic or national defense sectors.

Indonesia also holds a strategic position, being located between continents that connect developed countries, such strategic position provides Indonesia with opportunities as an economic lane, and for instance, a number of strategic straits of world economic lanes are located within the territory of NKRI namely Malacca Strait, Sunda Strait, Lombok Strait, Makassar Strait and Ombai Wetar Strait. This maritime strategic position places Indonesia's territorial waters in a very important and determining position pertaining to the efficiency of distribution of goods and services necessary to support the growth of national economy.

As a country whose territorial waters are vaster than its land, Indonesia has potential maritime resources that are abundant and valuable to the sustainable national development. However, such condition may also trigger parties from outside Indonesia to utilize Indonesia's mari-

⁵ Idea of concept of national defense originated from speech by President Soekarno in Kotaraja (now Banda Aceh) on 16 June 1948, in the event of review of territory of Indonesia that was not occupied by the Dutch Government. The concept from President Soekarno emphasizes the importance of compilation of national mental defense concept. Read: M. Hasan Basyri, *Untuk Apa Kita Merdeka: Kumpulan Amanat Bung Karno di Sumatera dalam Masa Perang Kemerdekaan 1945 – 1948* [Why We are Free: Collection of Instructions from Bung Karno in Sumatra during the Independence War Period of 1945-1948] in *Study Book III Mata Kuliah Pengembangan Kepribadian Terintegrasi: Bangsa, Negara, dan Pancasila* [Integrated Personality Development Subject: Nation, State and Pancasila], University of Indonesia, Depok, 2011, page 47.

time resources in an illegal manner. Keeping in mind that Indonesia is the world's largest maritime country, its maritime resources need to be guarded and managed continuously for the welfare and prosperity of the people of Indonesia⁶.

One of the examples of issues that attracts attention and is still occurring within the territorial waters of Indonesia is illegal fishing. Indonesia constitutes one of the countries which falls victim to the growing actions of illegal fishing. This is evidenced by the frequent discoveries of activities, such as, several boats hold the same permit document (permit duplication), counterfeited documents or permits, transshipment in the middle of the seas harvest of which is brought offshore thereafter, installment of VMS that is still disorganized⁷, as well as damaging fishing, such as with bombs and potassium⁸. Illegal fishing constitutes a violation of the law, its impact is not only damaging to the people and state⁹, but also disturbing the stability of security at seas and it also constitutes potential conflicts between Indonesia and other countries.

This paper is written with the intention of describing the legal issues pertaining to illegal fishing, how it is regulated from the perspectives of national and international laws, its condition in Indonesia, how illegal fishing cases are handled in Fisheries court as well as what are the efforts made by the Government of RI to overcome and prevent illegal fishing within the territorial waters of Indonesia.

⁶ Conveyed by Ambassador of France for Indonesia, Bertrand Lortholary, in his speech when engaging in a cooperation with the Ministry of Marine and fisheries in the form of Seacorm (*Southeast Asia Center for Ocean Research and Monitoring*) Station with INDESO (*Infrastructure Development for Space Oceanography*) project credit facility between Indonesia and France, in Jakarta, on 18 June 2012

⁷ VMS is an abbreviation of *Vessel Monitoring System* which is the fishing vessels monitoring system. VMS technology uses satellites and transmitter equipment placed on fishing vessels. This System shall monitor vessels based on their positions and is able to identify all objects at sea. VMS technology may support the government in its war against illegal fishing.

⁸ The statement was conveyed by the Minister of Marine and fisheries, Sharif C. Suardjo, in his speech at the opening ceremony of Ad Hoc Judge Candidates Education and Training in Jakarta, on 3 May 2012.

⁹ Total of state foreign exchange lost due to illegal fishing is estimated at approximately US\$ 2 billion. Read: Wignyo Handoko, "Kebijakan Pengawasan Sumber Daya Kelautan dan Perikanan [Policy on Monitoring of Marine and fisheries Resources]" *Indonesian Journal of Intenational Law*, Special Edition December 2004, page 112.

II. DISCUSSION

A. ILLEGAL FISHING WITHIN THE FRAMEWORK OF NATIONAL AND INTERNATIONAL LAWS

In maintaining the state sovereignty along with all of its content, any independent and sovereign state determines legal products of statutory regulations. Only laws determined by a sovereign state are followed by the people of the world. Therefore, legal products of a state in essence constitute the existence and form of the state sovereignty¹⁰.

State sovereignty includes sovereignty over territory (whether land, waters and air), sovereignty over national interests, as well as sovereignty over monitoring on activities within the territory of the state. The enforcement of sovereignty in territorial waters has two dimensions of understanding, namely state sovereignty and right of sovereign¹¹, as regulated universally in the UN Convention on Laws of the Sea¹².

The enforcement of sovereignty in the sea constitutes an integral part of enforcement of laws and enforcement of security in the sea. Perception of security in the sea contains an understanding that the ocean is safe to be used by users and is free from threats or disturbances to activities of utilization of the sea, namely free from threats of violence, navigation, pollution and ecosystem damages and threats of violation of laws, one of which is illegal fishing¹³.

In the statutory regulation on Fisheries in Indonesia, no particular definition is given pertaining to illegal fishing. However, the statutory regulations regulate the requirement to request for fishing permit. The letter of fishing permit may be in the forms of SIUP, SIPI or SIKPI¹⁴.

¹⁰ State sovereign is the highest power in a country to take an action that is deemed necessary for the national interest of the state itself based on national laws with due observance of international laws. Read: Bernard Kent Sondakh, "Security of Territorial Waters of Indonesia", *Indonesian Journal of Intenational Law*, Special Edition December 2004, page 15.

¹¹ Sovereign right is the right of a coastal state to conduct exploration and exploitation on biologic or non-biologic natural resources in ZEE and Continent Shelf based on international seas law. Read: Bernard Kent Sondakh, *ibid*.

¹² Indonesia has ratified the UN Convention on Laws of the Sea in 1982 with Law Number 17 Year 1985.

¹³ see note 11 page 12.

¹⁴ SIUP means *Surat Izin Usaha Perikanan* / Fisheries Business Permit, a written

The provisions are contained in Article 1 points (16),(17) and (18) jo Article 27 paragraph (1) and Article 28A of Law No. 45 of 2009 concerning Fisheries. The law regulates the requirement to request for fishing permit of a particular category for above 5 gross ton (GT). While for fishing activities conducted by small-scale fishermen with the purpose of meeting daily needs and using boats without motor, external motor or small-sized boats with size less than 5 GT, no permit is necessary.

The provision regulating this permit is the Decision of Minister of Marine and fisheries Number KEP.10/MEN of 2003 pertaining to Fishing Business Permit. Therefore, fishing without permit for those required shall mean illegal fishing.

Upon studying national legal products related to the regulation of marine and fisheries resources in Indonesia, a number of regulations below may be learnt¹⁵:

- 1) Law No, 1 of 1973 pertaining to Continent Shelf;
- 2) Law No. 5 of 1983 pertaining to Exclusive Economic Zone of Indonesia;
- 3) Law No. 6 of 1985 pertaining to Indonesia's Territorial Waters;
- 4) Law No. 9 of 1985 pertaining to Fisheries;
- 5) Law No. 17 of 1985 pertaining to Ratification of UN Convention on Laws of the Sea 1982;
- 6) Law No. 31 of 2004, on 6 October 2004 pertaining to Fisheries, which was then replaced;
- 7) Law No. 45 of 2009, on 29 October 2009 pertaining to Fisheries;
- 8) Government Regulation No. 15 of 1984 pertaining to Management of Biological Resources within Indonesian Exclusive Economic Zone;
- 9) Government Regulation No. 15 of 1990 pertaining to Fisheries Business;

permit that must be held by fisheries companies to be able to carry out fisheries businesses using production facilities contained in the permit. Meanwhile SIPI is *Surat Izin Penangkapan Ikan* / Fishing Permit, a written permit that must be held by any fishing vessel to conduct fishing that constitutes an integral part of SIUP. Other than that, there is also SIKPI (*Surat Izin Kapal Pengangkut Ikan* / Fish Transporter Vessel Permit) which is a written permit that must be held by any fisheries vessel to transport fish. Read: Law No. 45 of 2009 pertaining to Fisheries Article 1 points (16), (17) and (18).

¹⁵ see note 10, page 116-117.

- 10) Decision of President No. 14 of 2000 pertaining to Utilization of Fisheries Vessels;
- 11) Decision of President No. 15 of 2010 pertaining to Establishment of Fisheries court at Tanjung Pinang and Ranai District Court.

The regulations mentioned above have become basis for officials in carrying out monitoring duties in the effort to enforce laws in marine and fisheries sector within the framework of national laws, aside from a number of regulations issued by the Ministry of Marine and fisheries as the agency with the authority in marine and fisheries sector.

Meanwhile, within the framework of international laws, issues of illegal fishing are set out in the *International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* (IPOA IUU). The membership in IPOA is voluntary, however country members of FAO/*Food and Agriculture Organization* (including Indonesia) are encouraged to take part and carry out its provisions which are contained in the *National Plan of Action* (NPOA)¹⁶.

Arrangement stated in point 3.1. IPOA IUU provides a definition on illegal fishing as activities which are:

- (1) Conducted by any vessel, whether foreign or national vessels, of any country (therefore it also applies to vessels from non-member countries of FAO) which:
 - a. Conducts activities in the territorial waters under the jurisdiction of a country;
 - b. Such activities are conducted without permission from the relevant country;
 - c. In violation of the local laws and regulations.
- (2) Conducted by vessels sailing using the flag of country members of regional organizations on conservation and management of fishing concerned, which are:
 - a. In violation of provisions on conservation and management determined by the organization to which the country is engaged, or
 - b. In violation of international laws¹⁷.

¹⁶ Melda Kamil Ariadno, "Practice of Reflagging by Fishing Vessels", *Indonesian Journal of International Law*, Vol. 3 year 2004, page 492-493.

¹⁷ No territorial borders mentioned in this point, therefore it is assumed that wherever vessels that are using flags of country members of relevant regional organization on

- (3) In violation of national laws and international obligations, including obligations of country members of the organization on regional fishing management to the organization.

Aside from IPOA IUU, the apparatus of international laws relevant to fisheries regulations and which contain prevention of illegal fishing are:

- 1) Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on The High Seas (1993 FAO Compliance Agreement);
- 2) Agreement for the Implementation of the Provisions of the 1982 UNCLOS (United Nations Convention on the Law of the Sea), Relating to the Conservation and Management of Straddling Stocks and Highly Migratory Fish Stocks 1995 (UNIA 1995);
- 3) Code of Conduct for Responsible Fisheries (CCRF).

With due observance of the abovementioned points of IPOA IUU as well as the apparatus of international laws relevant to fisheries, therefore actions of illegal fishing taking place within the territorial waters of Indonesia shall constitute violation of laws, whether national or international laws.

B. ILLEGAL FISHING WITHIN INDONESIAN TERRITORIAL WATERS

Issues of illegal fishing within the territorial waters remain issues that are faced by the maritime world in various countries. Up until now, the total loss due to illegal fishing has reached IDR80 trillion¹⁸. On UN notes for food and agricultural issues (FAO), developing countries, including Indonesia, suffer losses up to USD30 billion due to illegal fish-

conservation and management of fishing are taking actions that violate the international laws (for example: provisions of Conservation of Convention on Laws of the Sea of UN 1982), therefore actions can be taken against them. Read: Melda Kamil Ariadno, *ibid*.

¹⁸ Total of state foreign exchange lost due to illegal fishing is estimated at approximately US\$ 2 billion. Read: Wignyo Handoko, "Policy on Monitoring of Marine and fisheries Resources [Kebijakan Pengawasan Sumber Daya Kelautan dan Perikanan]," *Indonesian Journal of Intentional Law*, Special Edition December 2004, page 112.

ing. Based on FAO estimates, approximately 25% of the fish products originate from illegal fishing¹⁹.

Developing countries with potential maritime condition, such as Indonesia, need to solidly build their marine and fisheries sector. This is due to a number of reasons, which are, among others²⁰: **First**, Indonesia has abundant maritime resources, whether viewed from quantity or diversity. **Second**, Indonesia has high competitive advantage concerning marine and fisheries as reflected in the raw materials possessed and productions generated. **Third**, industry in marine and fisheries sectors has strong relation to other industries. **Fourth**, resources in marine and fisheries sector constitute resources that are always renewable, thus lasting in the long term as long as they are managed properly and wisely. **Fifth**, investment in marine and fisheries sector has relatively high efficiency²¹ and also high absorption of manpower²². **Sixth**, in general, the local resources based fisheries industry with input in Indonesian Rupiah (IDR) but it generates output in foreign currencies.

In its implementation, development of marine and fisheries still experienced problems and obstructions concerning technical micro²³ and structural macro²⁴ aspects. A quite serious which significantly obstructs marine and fisheries sector is the practice of illegal fishing. Forms of illegal fishing are, among others, those conducted by fishing vessels with foreign flags through transshipment and foreign fishing vessels stealing fish from the territorial waters of Indonesia as well as utilization of ship crews that is not in accordance with the prevailing provisions. Practices of illegal fishing often occur in the territorial waters of Indonesia.

The high number of illegal fishing within the territorial waters of

¹⁹ Conveyed by Sahala Hutabarat, maritime observer from the Diponegoro University.

²⁰ see note 10, page 108.

²¹ As reflected in low *Incremental Capital Output Ratio/ICOR*, which is only 3.4.

²² As illustrated by *Incremental Labour Output Ratio/ILOR* amounting to 7 to 9.

²³ This includes high level of poverty amongst fishermen, low productivity, symptoms of over fishing, pollution of and damages to habitat, space utilization conflict, lack of development of small islands, weak handling of post harvest and marketing, as well as low spirit of maritime.

²⁴ This includes macroeconomic condition that is not yet conducive for the progress in fisheries as well as legal system and fisheries institution that is still weak. Read: Wignyo Handoko, *ibid*.

Indonesia is caused by Indonesia's fish resources that are estimated at 6.4 million tons per year. In the report on maritime economic potential, the frequent occurrences of illegal fishing within the territorial waters of Indonesia threaten that reduction in availability of fish in local markets and reduce the availability of protein and security of national food. Aside from that, the practice of illegal fishing has up until now been threatening the safety of Indonesian fishermen, especially traditional fishermen in fishing within the territorial waters of Indonesia²⁵.

Aside from that, there is a tendency of high number of conflicts between traditional fishermen and foreign fishermen (who have modern equipments)²⁶. Conflicts with local/traditional fishermen also often occur, which are related to the discovery of high number of fishing vessels permits that are issued by the Head of Marine and fisheries Working Unit at provincial level, which actually is not his authority. This has resulted in overfishing in a number of territorial waters in Indonesia²⁷.

Overfishing, which exceeds the supporting power of the waters, shall result in reduction in income and welfare of fishermen. Condition such as this encourages local fishermen to conduct fishing in manners that violate the statutory regulations, community agreement (customary law) and to conduct fishing in other regions. All of those are included as actions of illegal fishing. The vast area of territorial waters of Indonesia and weak monitoring by authorized parties of fishing activities have often times been used by foreign fishermen to conduct illegal fishing activities within the territorial waters of Indonesia²⁸.

Practice of illegal fishing within Indonesian waters is obviously

²⁵ This is because foreign fishermen, aside from conducting illegal fishing, they often shoot at traditional fishermen who are fishing within the same fishing ground.

²⁶ Based on a research conducted in Natuna, the increase in income of traditional fishermen may increase by 100% if modern fishermen are not in operation. Traditional fishermen may acquire eight kilograms of fish when modern fishermen are not in operation. On a contrary, when modern fishermen are in operation, therefore the income of traditional fishermen reduced by half. The statement is according to Suhana, Researcher at the Maritime Development and Maritime Civilization Review Center [Peneliti Pusat Kajian Pembangunan Kelautan dan Peradaban Maritim].

²⁷ see note 10, page 113.

²⁸ This was conveyed by an Expert in Laws of the Sea from the University of Padjadjaran, Prof, Etty R, Agoes, in a seminar of Anniversary of 30 years of Convention on Laws of the Sea in 1982 at the University of Padjadjaran Bandung, on 5 April 2012.

causing the state losses. Total of state foreign exchange that is lost due to illegal fishing may be calculated, and estimated at US\$ 2 Billion, which consists of among others²⁹:

No.	Description	Total
1.	Arrest of fishing vessels in ZEE and their unmonitored export of approximately 4000 vessels	US\$ 1.200.000.000
2.	Ex import vessels with district court ruling of approximately 475 vessels	US\$ 142.500.000
3.	Illegal fishing vessels violating fishing ground of approximately 1,275 units of vessels	US\$ 573.750.000
4.	Ex import vessels amounting to 650 units with ship crews failing to organize (pay) foreign manpower fee amounting to 6,500 ABK x US\$ 1200	US\$ 7.800.000
Total state losses from fishery sector		US\$ 1.924.050.000

Based on data gathered by the Marine and fisheries Research and Development Institution in 2010, monitoring of marine and fisheries resources which is continuously conducted by the Ministry of Maritime and Fisher has successfully saved potential state loss amounting to 912 billion in one year. Not to mention potential Non-Tax State Income / *Penerimaan Negara Bukan Pajak (PNBP)* acquired from vessels conducting illegal fishing as well as evidence in the form of fish that were successfully confiscated for the state. Illegal fishing and damages resulting from illegal fishing evidently cause damages to marine and fisheries resources, thus results in significant economic state loss³⁰.

²⁹ Wignyo Handoko, *ibid.*, page 112.

³⁰ Conveyed by the Minister of Marine and fisheries, Sharif C. Sutardjo in his speech at the *Gerakan Nasional Masyarakat Peduli Industrialisasi Perikanan (GEMPITA)* Re-

Prior to the establishment of Fisheries court in Indonesia, settlement of cases of violation and criminal acts in fisheries is handled by District Court. However, it is evident that the enforcement of criminal sanction is inadequate when compared to the losses caused by the doers to the state economy³¹.

With the significant amount of loss suffered by the state which is caused by illegal fishing, therefore it is deemed necessary to establish a court that specializes in handling cases of illegal fishing within territorial waters of Indonesia. In this case the role of Fisheries court is very important, as it constitutes the forefront in enforcement of laws at seas, and also to charge illegal fishing doers with deterrent sanctions.

C. ROLES OF FISHERIES COURT IN HANDLING CASES OF ILLEGAL FISHING.

1. Establishment of Fisheries court

Fisheries court is established by the Government, keeping in mind that the practice of illegal fishing frequently occurs in territorial waters of Indonesia. There are two dimensions that need to be paid attention to in the establishment of Fisheries court. The first is economy dimension, in which fish theft from the territorial waters of Indonesia by foreign fishermen has resulted in significant losses by the state economy. The second dimension is the state sovereign at seas. The Fisheries court shall also support the enforcement of sovereignty of NKRI at seas. Through a strong Fisheries court, it shall force foreign parties to respect

gional V at Stasiun PSDKP Pontianak in Pangkalan Pendaratan Ikan Sungai Rengas, Kalimantan Barat, 10 April 2012.

³¹ This is as occurred in the ruling of the following:

- 1) Pontianak District Court against 20 Thailand vessels using Indonesian flag, which only charged them with fine amounting to Rp.20.000.000,- per vessel. This is deemed to light and not equitable to the violation conducted, whether the criminal acts or document forgeries.
- 2) Surabaya District Court against 7 Thailand fishing vessels using Indonesian flag, which declared them as guilty with sentence of imprisonment for 4 months and vessels and the documents were returned to the owners thereafter. This was considered to light and is not equitable to the violation, which is fishing without permit, use of prohibited equipments and documents forgeries. Read: Wignyo Handoko, *ibid*.

state sovereignty at seas as a part of the unity of territory of NKRI.

The basis of thinking of establishment of Fisheries court is as follows:

1. The existing court proceedings do not guarantee a quick trial, thus a Fisheries court with special code of law needs to be established to guarantee a quick trial;
2. Particularly in criminal court, substantive legal provisions are deemed not to have included actions considered as criminal acts or violations, thus expansion of actions that can be charged (*stafbaar*) is necessary. Even if it already exists, it is still deemed as not severe enough, thus aggravation of criminal sanctions is necessary.
3. There are doubts that the existing judges are incapable or have no good faith in examining and trying the case that has broad impact on the lives of the state and people.

Based on such thinking, therefore a Fisheries court is authorized to examine, try, and decide on criminal cases in fisheries sector, which occur within the fisheries management territory of Republic of Indonesia, whether those conducted by citizens of Republic of Indonesia or foreign citizens³². Fisheries court constitutes a special court within the scope of general court. This Fisheries court has special characters, namely:

1. District Attorneys are required to have an understanding about technicalities in fisheries sector and have taken part in education and training in fisheries sector;
2. There is a possibility of Ad Hoc Judge from fisheries sector, whether from academics, government agencies, NGO and associations concentrated on fisheries sector³³;
3. Term of handling of fisheries criminal cases, starting from Investigation up to court ruling shall be approximately 2.5 months;
4. Examination at court may be conducted without the presence of defendant.

With the existence of fisheries court that particularly tries, examines and rules criminal cases in fisheries sector, it is expected that the

³² Indonesia, Law No, 45 Tahun 2009 concerning Fisheries, TLN No. 154 Year 2009, LN No. 5073, article 71A.

³³ Such as GEMPITA, which is: Gerakan Nasional Masyarakat Peduli Industrialisasi Perikanan and KIARA, which is Koalisi rakyat untuk Keadilan Perikanan. For associations, there is APII, which is Asosiasi Pengalengan Ikan Indonesia.

handling of fisheries criminal cases can be processed in an effective, efficient and professional manner. Such is closely related to the role of panel of judges trying fisheries criminal cases at fisheries court.

The panel of judges handling criminal actions shall consist of three members, one from career judges and two ad hoc judges in fisheries sector. The establishment of Fisheries court constitutes the realization of Law No. 31 of 2004 pertaining to Fisheries, which was thereafter replaced with the latest Law, namely Article 71 Law No. 45 of 2009 pertaining to Fisheries, strengthened by Article 78 paragraph (1) which states that the Panel of Judges of Fisheries Court shall consist of Career Judges and Ad Hoc Judges.

The Ad Hoc Judge of Fisheries Court as a component of law enforcement in fisheries sector has four strategic roles. First, there are still a high number of illegal fishing practices within the Fisheries Management Territory of Republic of Indonesia (WPP RI). Second, criteria for fisheries products required by international markets, especially European Union, in relation to product safety and traceability, are becoming more rigorous. Third, it has authority to overcome with ocean pollution and waste disposal. Fourth, it is authorized to investigate the tendencies of overfishing heading towards the extinction of fisheries resources. With the four strategic roles, therefore the role of Ad Hoc Judge in the Fisheries Court is very important as the forefront element in the enforcement of laws at seas. As Ad Hoc Judge, the judges need to have marine insights along with all of its water biota. Fisheries Laws cannot work well without the support from Human Resources of Fisheries Court who are marine-oriented³⁴.

Up until now, there are seven Fisheries Courts in the territory of Republic of Indonesia³⁵. The seven Fisheries Courts are located in District Court/PN Tual, PN Medan, PN Bitung, PN Jakarta Utara, PN Pontianak, PN Tanjung Pinang and PN Ranai. The seven Fisheries Courts

³⁴ According to Expert on Environmental Law from University of Airlangga, Dr. Suparto Widjojo in an interview with Detik News on 23 March 2012.

³⁵ Establishment of five Fisheries Courts, based on Law No. 31 of 2004 and Article 71 paragraph (3) Law No. 45 of 2009 concerning Fisheries, namely Fisheries Courts established at PN Jakarta Utara, Medan, Pontianak, Bitung and Tual. Meanwhile, the establishment of Fisheries Courts at Tanjung Pinang and Ranai District Courts are based on Decision of RI No. 15 of 2010 dated 17 June 2010.

constitute the forefront of enforcement of laws sovereignty in the territorial waters of Indonesia, and are expected to be able to handle cases of illegal fishing taking place in Indonesian waters.

2. Cases of Illegal Fishing at Fisheries Courts

When studying the number of criminal cases after the Fisheries Law is applied, there were 204 cases in 2009, 138 cases in 2010 and 66 cases in 2011. And 196 cases had been handled by the Fisheries Courts³⁶.

At the national level, in 2012 the Directorate General of Monitoring of Marine and Fisheries Resources (Directorate General PSDKP) had examined 1,150 vessels and arrested 39 vessels, consisting of 11 vessels with Indonesian flag and 28 vessels with foreign flag. For Pontianak PSDKP Station, 65 vessels are recorded as still remaining in this PSDKP Technical Executor Unit. The vessels constitute vessels conducting illegal fishing, which have been processed since 2008 up to now. Amounting to 21 vessels have acquired permanent ruling (*inkracht*), 19 vessels are in the process of an appeal, 5 vessels are in the process of transferring their cases to the Attorney General's Office and 9 vessels from recent arrest are still in process of investigation by Civil State Employee Investigator / Penyidik Pegawai Negeri Sipil (PPNS) of Fisheries of Pontianak PSDKP Station³⁷.

Vessels conducting illegal fishing are to carry out legal process in the Technical Executor Unit / Unit Pelaksana Teknis (UPT) and PSDKP Working Units in the nearest location. Aside from that, Pontianak PSDKP Station constitutes one of the UPTs supported by 24 Working Units and monitoring posts spread in various provinces in Indonesia³⁸.

In the latest law pertaining to fisheries, Articles 85 to 98 set out sanction in the form of fine for doers of illegal fishing. The amount of fine is from as low as Rp. 200.000.000,- (two hundred million rupiah) to as high as Rp. 20.000.000.000,- (twenty billion rupiah). That does not include sentence of imprisonment that varies from one year to six years.

³⁶ see note 9 and note 30.

³⁷ *Ibid.*

³⁸ Among others are in Kalimantan Barat, Kepulauan Riau, Sumatera Selatan and Bangka Belitung.

However, in reality, a number of cases were discovered, ruling of which has been issued by the court, in which defendants of illegal fishing cases were given light sentences. As an illustration, there are some examples, namely³⁹:

- 1). Court Ruling against Cek Wan Jainudin (Malaysian Citizen), who was arrested by the police for conducting illegal fishing, was sentenced with only five months of imprisonment by PN Tanjungpinang. The District Attorney's efforts to contest the sentence failed at the Supreme Court;
- 2). Court Ruling against Aling Samehe (The Philippines Citizen), who was arrested by TNI AL patrol in the waters of Talaud, North Sulawesi, whom PN Bitung sentenced with fine amounting to 30 million out of the 100 million demanded by the District Attorney. The District Attorney's appeal efforts also failed;
- 3). Court Ruling against Wahab Coang (Indonesian Citizen), who went to trial for fishing in Raja Ampat using chemical substances, was declared free by PN Sorong. Appeal by the District Attorney also failed.

A number of cases that lightly sentenced the illegal fishing doers attracted critics from the international community to Republic of Indonesia. European Union urged Indonesia to increase the criminal sanction threats contained in the Fisheries Law. The purpose is to prevent and reduce IUU fishing activities, namely *Illegal, Unreported and Unregulated*, which often found in the territorial waters of Indonesia⁴⁰. To pre-

³⁹ see note 28.

⁴⁰ According to point 3.2. IPOA IUU, *unreported fishing* is fishing activities:

- (1) That are unreported or misreported to relevant national authorities. References applies are national laws and regulations, therefore the definition of unreported or misreported depends on the interpretation of national laws of each State.
- (2) Unreported or misreported to the relevant regional organization on fishing conservation and management. References applied are the provisions of the organization. The limit is within the era in which such organization has competence.

In point 3.3. IPOA IUU, *unregulated fishing* is fishing activities:

- (1) That are conducted in the area of regional fisheries management organization by:
 - a. Vessels without nationality

vent and reduce illegal fishing actions occurring in the territorial waters of Indonesia, serious efforts and management by the Government of RI are necessary.

3. Roles and Efforts of the Government of RI in Handling and Preventing Illegal Fishing in the Territorial Waters of Indonesia

Illegal fishing that takes place in Indonesia shall constitute a violation of sovereignty of territorial waters of Indonesia. In an effort to enforce laws in marine and fisheries sector, aside from the support of the regulations that are the basis of implementation of monitoring and security of territorial waters, therefore the Government needs to make systematic efforts and issue strategic policies. This is because efforts to eradicate illegal fishing need participation from all components existing within the territory of NKRI.

In the event of handling illegal fishing cases, therefore the role and effort that can be made by the Government is to compile policies and monitoring its strategy in enforcing the laws. The implementation of policies on enforcement of fisheries law may be done in a number of ways, among others:

- a. Development of legal and economic instruments as well as increasing their utilization, namely at decision making and planning level, at implementation level through determination of standards of quality of waste and at production level through application of standardization in fisheries sector and sanctions to violations in fisheries sector.
- b. To grant authority to the larger region in environmental management that is in line with regional autonomy principle. Such authorities are, among others, appointment of monitoring officials in regional

b. Vessels using flags of countries which are not members of the organization or

c. Other fishing entities in violation of the provisions on conservation and management of the organization in which such provisions may be applied.

- (2) That are conducted in violation of state's responsibility pertaining to conservation of marine resources based on international laws, if there is no conservation or management provisions applied.

fisheries sector and the government requiring parties responsible for businesses or activities to prevent and terminate pollution at seas as well as to handle the impacts resulting from such.

- c. To develop policies as basis of implementation of settlement of disputes in fisheries sector outside fisheries courts. Through this policy, it is expected that settlement of disputes in fisheries sector may provide an appropriate way out for the parties.

To be able to realize the enforcement of laws in fisheries sector, therefore the strategies that can be implemented are as follows:

- a. To increase the role of IPOA IUU Fishing as an effective instrument in managing fisheries resources.
- b. To improve coordination whether at central or regional levels and to conduct periodic monitoring on activities that can potentially cause pollution and damage fisheries resources.
- c. To be transparent, whether at the time of formulation of policies, planning, implementation and evaluation. As such, it is expected to be able to increase the role of the community in managing fisheries resources.
- d. To increase monitoring on activities that can potentially cause pollution or damage the fisheries resources and to conduct follow up in the event of violations.

In eradicating and preventing illegal fishing in the future, therefore efforts that can be made by the Government of RI are to draw up Framework of Development of Marine and Fisheries Resources Monitoring System. Systematic and strategic efforts that can be made are, among others:

a. Preparation of Legal Tools

In an effort to follow up on statutory regulations in fisheries sector, therefore the Marine and Fisheries Ministry has issued a number of regulations in order to support the security of territorial waters and law enforcements, as follows:

- 1) Decision of Minister No. 45 Year 2000 concerning Fisheries Business Permit;
- 2) Decision of Minister No. 46 Year 2001 concerning Re-registration of Fishing Business Permits;
- 3) Decision of Minister No. 60 Year 2001 concerning Procedures

- on Handling Foreign or Ex Foreign Vessels Permits;
- 4) Decision of Minister No. 67 Year 2001 concerning Establishment of Integrated Team on Handling of Abuse in Fisheries Sector;
 - 5) Decision of Minister No. 58 Year 2001 concerning Procedures on Implementation of SISWASMAS (Community Based Monitoring System / Sestim Pengawasan Berbasis Masyarakat);
 - 6) Decision of Minister No. 02 Year 2002 concerning Guidelines on Implementation of Monitoring on Fishing;
 - 7) Decision of Minister No. 03 Year 2002 concerning *Log Book* for Fishing and Transportation of Fish;
 - 8) Decision of Minister No. 10 Year 2003 concerning Fishing Business Permits;
 - 9) Decision of Minister No. 50 Year 2008 concerning Productivity of Fishing Vessels;
 - 10) Regulation of Minister No. 05 Year 2008 concerning Capture Fisheries Business;
 - 11) Regulation of Minister No. 01 Year 2009 concerning Fisheries Management Area of Republic of Indonesia.

General Directorate of Trawl of Fishery (Direktorat Jenderal Perikanan Tangkap) issued a regulation Number 1760/DPT.O/PI.420.S4/IV/06 on 28 March 2006, concerning Organization of Assistance for Fishing Business Permits Service Process.

Such regulations are the basis in carrying out monitoring duties in an effort to bring to order and enforce the law to prevent illegal fishing. Aside from the legal tools, the Government needs to make efforts to strengthen national fisheries fleet.

b. Strengthening National Fisheries Fleet

Such strengthening is necessary, keeping in mind that fisheries resources are *common property* in nature, utilization of which needs to be done by empowering local fishermen to become hosts in their own country. In capture fisheries, one of the steps that need to be taken is to improve the capabilities of fisheries fleet, especially those of small-scale fishermen, thus able to operate in a broader area, whether for economic interest or security function conducted by the officials.

As a maritime country, strengthening of national fisheries fleet shall work if there is coordination between sectors (ministries) in fisheries development activities. The coverage of development of fisheries is broad and involves numerous parties. Efforts towards development, utilization and use of fisheries resources need unity and integration of relevant elements. There is a number of ministries that are related to marine and fisheries sector, namely:

- 1) Ministry of Marine and Fisheries
- 2) Ministry of Trading
- 3) Ministry of Industry
- 4) Ministry of Environmental Issues
- 5) Ministry of Public Works
- 6) Ministry of Transportation
- 7) Coordinating Ministry of People's Welfare
- 8) Ministry of Cooperatives
- 9) Ministry of Finance

Aside from the abovementioned ministries, all existing ministries should have a concept of building a maritime state. This is conducted to optimize maritime resources which also include national fisheries fleet. An important thing that also must be done by the Government is organization of permits.

c. Organization of Permits

Up until now, there is an indication of surplus in utilization of fisheries resources in ZEE Indonesia. In the event of organizing Indonesian vessels using foreign flags, a Minister Regulation⁴¹ has been issued, which was followed by the provisions of an opportunity for the foreign fishing vessels to return to operation through a leasing scheme, capital investment or licensing cooperation, as long as there is surplus in the total weight of fish captured allowed.

Based on an internationally applicable provision, as contained in Article 62 of UN Convention on Laws of the Sea in 1982, the Government of Indonesia shall give other countries opportunities to utilize the

⁴¹ Minister Regulation Number 60/Kepmen/2001 concerning Procedures on Handling of Permits of Foreign or Ex Foreign Vessels.

surplus in fisheries resources within the area of ZEE of Indonesia. Pertaining to this permit, it must be organized as thoroughly as possible so that it will not cause losses to traditional or local fishermen. Aside from organization of permits, the Government also needs to make efforts to establish an institution that can handle the operational of monitoring.

d. Institution

In the event of enforcement of the laws, an institution that can handle monitoring operations needs to be established in order for the laws to become more authoritative and respected:

- 1) Monitoring institution that includes organization, authority, duties and functions, hierarchy and working mechanism, support of working facilities as well as administration guidance.
- 2) Monitoring Facilities and Infrastructures in the forms of guidelines, standard operating procedures and working equipments or monitoring operations support such as supervisor vessels, weaponry, utilization of radars and satellites.
- 3) Development of human resources to fulfill the need for monitoring in regions. Other than increasing the quantity, the quality of the supervisors needs also to be improved, thus meeting the quality of as Civil State Employee Supervisor / Pengawas Pegawai Negeri Sipil⁴².
- 4) The existing legal foundation is Law No. 45 of 2009 pertaining to Fisheries, which concerns aspect of monitoring authority and sanctions for those committing criminal acts in fisheries sector, set out in Articles 66 to 69.

Other than institutional element for monitoring operations, the Government needs also to make efforts to develop monitoring technology.

e. Develop Monitoring Technology

Development of monitoring technology is necessary to support

⁴² From data available, it is recorded that only 536 human resources for fisheries monitoring, and 458 amongst them have acquired the authority to investigate as PPNS. For national needs, 5,000 human resources for fisheries monitoring are needed, with 2,500 amongst them as investigators.

the implementation of monitoring and development of monitoring institution. Some of the said monitoring technologies are, among others:

- 1) VMS (*Vessel Monitoring System*), which is a vessels monitoring system, purpose of which is to facilitate inspection of fishing vessels by identifying fishing vessels, activities of vessels, types and number of vessels as well as other information⁴³. VMS is enforced on vessels acquiring permits from Jakarta Head Office starting in Budget Year of 2002.
- 2) CDB (*Computerized Data Base*) is a computer based information system. On-line CDB is installed in primary ports with Jakarta Control Center / Pusat Pengendalian (PSDKP) Jakarta, thus information generated from each port can be promptly sent to the Central through an on-line network⁴⁴.
- 3) Alkom (Communications Tools / Alat Komunikasi) is means of communications built using radio communications equipments placed in fisheries ports and which are directly connected with the Control Center in Directorate General of Central PSDKP Jakarta⁴⁵. This mean of communication is highly effective in providing information and communication, thus it needs to be continuously developed in fisheries ports that are not yet equipped with this tool.
- 4) Monitoring Vessels are vessels placed in primary ports that are the Monitoring Units and Stations spread throughout Indonesia. These monitoring vessels are prepared to support monitoring operation, whether for observation, monitoring or operation. With monitoring vessels, it is expected that monitoring can be

⁴³ Monitoring is implemented by installing transmitters in each fishing vessel and monitoring them through the communications network between control central and the area supported with the Information System through the Satellite. This way the movement of vessels can be monitored at any time, should a violation occur, it can be immediately discovered and acted on.

⁴⁴ Therefore, quick, accurate and up-to-date data and information can be acquired. In the future, if possible, it shall be developed in all ports, where it has currently been installed in 13 ports, one Provincial working unit and one Jakarta Central Office.

⁴⁵ This Communication Tool is equipped with *Linear Amplifier, Modem and Guy Tower*; thus capable of generating quite expansive emission power as well as reaching ports that are quite far. Currently, communication tools have been built in 23 primary ports which are directly connected to the Control Central at Jakarta PSDKP Office.

implemented in preventive or repressive ways⁴⁶.

With the abovementioned monitoring technology development tool, it is expected that monitoring function in fisheries sector can be maximum and illegal fishing can be minimized.

f. Coordination with Relevant Agencies

The Government (in this case the Ministry of Marine and Fisheries) needs to coordinate with several agencies related to law enforcement in the event of preventing and overcoming illegal fishing . The related agencies are, among others:

- 1) Supreme Court, as the highest and final court in handling illegal fishing cases. With the establishment of Fisheries Court supported by an Ad Hoc Judge in fisheries sector, therefore the Supreme Court needs also to be prepared along with its human resources (Supreme Judges) who understand and comprehend the maritime insights in Indonesia. This is because if such cases reach the Appeal level, therefore the Panel of Judges at the Supreme Court level needs to also understand illegal fishing and the legal issues.
- 2) Attorney General's Office, Prosecutors are expected to be able to charge the most severe sentence by applying vessels confiscation claim in accordance with Article 76 A of Law No. 45 of 2009 pertaining to Fisheries, or documents forgeries offences to those proven guilty for forging the necessary requirements⁴⁷. In the event of solidifying and optimizing the process of law enforcement in fisheries sector, District Attorney for Fisheries Sector who handles fisheries criminal actions⁴⁸ need to be established.

⁴⁶ According to the latest data of the Ministry of Marine and Fisheries, the operational schedule for fisheries monitoring vessels is planned to be decreased from 180 days in 2012 to become 125 days in 2013 due to limited budget of KKP. In 2012, there were only 24 monitoring vessels that can only operate for 180 days.

⁴⁷ The Article 75 paragraph (2) Law Number 45 Year 2009 regulates requirements to become Prosecutors for criminal actions in fisheries sector, namely:

- a. Experience as prosecutor for at least 2 years;
- b. Received education and technical training in fisheries sector;
- c. Competent and has high moral integrity when implementing his duties.

⁴⁸ The purpose is for the proceedings to be quick and the legal claim to be charged accurately and maximum in order to have deterrent impact on the parties committing criminal actions, especially owners of vessels / business doers who often get away

- 3) Department of Transportation, in this case the Directorate General of Sea Transportation. Action that can be taken is revoking fishing vessels documents, issuance process of which is not in accordance with the provisions, and assigning the authority of issuance of fisheries vessels documents to the Ministry of Marine and Fisheries, as the *Management Authority*⁴⁹.
- 4) Department of Finance, in this case the Directorate General of Taxation. The Directorate General needs to conduct research on payment of taxes on fishing vessels as company's assets. Researches are conducted on fisheries vessels using national or foreign vessels.
- 5) Indonesian Navy (Tentara Nasional Indonesia Angkatan Laut/TNI AL), is the element of the enforcement of the state sovereignty and enforcement of security at seas. In carrying out its principal duties and functions, TNI AL is under the Law as its legal foundation⁵⁰. Universally, the Navy in several countries plays the role referred to as "Trinity Roles of Navy", namely the Military Role, Constabulary Role and Diplomatic Role⁵¹. Such roles constitute crucial roles for each navy throughout the world, including the Indonesian Navy ("TNI AL"). TNI AL needs to play such three roles to prevent illegal fishing from occurring within the territorial waters of Indonesia.
- 6) Territorial Waters Police/POLAIR/POLRI, also plays the role as the element of law enforcement at seas. The principal duties of the Territorial Waters Police is to guide and establish the Functions of Central Territorial Waters Police in the event of serving, protecting,

from legal claims.

⁴⁹ This is as has been applied in Japan, Malaysia, and several other maritime countries.

⁵⁰ In Article 9 Law Number 34 Year 2004 concerning Indonesian National Armed Forces / TNI, duties of TNI AL are described as follows:

- a. To carry out duties of TNI of seas dimension in defense sector;
- b. To uphold the laws and maintain the security at territorial waters under national jurisdiction in accordance with the ratified provisions of national and international laws;
- c. To carry out diplomatic duties of the Navy in the event of supporting overseas political policy determined by the Government;
- d. To carry out duties of the Navy in building and developing the seas dimension power;
- e. To carry out empowerment of territorial waters defense area.

⁵¹ Ken Booth, "Navies and Foreign Policy", Corm Helm, London, 1977, see note 11, page 3.

guarding as well as maintaining the safety of and order in the community and law enforcement in the territorial waters of Indonesia. Firm and consistent enforcement of laws at seas shall have impact on the state sovereignty and glory of Republic of Indonesia at seas.

With coordination between several related agencies, it is expected that the efforts to prevent and overcome illegal fishing in Indonesia are able to carry on according to the people's expectations. Another matter that the Government needs to make an effort on is to improve monitoring operations.

g. Improve Monitoring Operations

To improve the monitoring operations, in order to suppress the occurrences of illegal fishing, therefore since Budget Year of 2002 up until now the following activities have been implemented:

- 1) Security Control Operation at Seas with the Indonesian Navy (Gelar Operasi Penertiban Keamanan di Laut Bersama TNI AL)
- 2) Security Control Operation at Seas with the Territorial Waters Police (Gelar Operasi Penertiban Keamanan di Laut Bersama POLAIR)⁵²
- 3) Cluster Control Operation with the Indonesian Navy (Gelar Operasi Penertiban Rumpun Bersama TNI AL)⁵³
- 4) Joint Operation between the Indonesian Navy and Territorial Waters Police (Gelar Operasi Gabungan antara TNI AL dan POLAIR)
- 5) To carry out structuring of orderliness of vessels at ports, by way of the following:
 - a. To apply completion of *Log Book* and LLO in every port in comprehensive and consistent manners.
 - b. To equip monitoring equipments in the forms of *bar-code*, net gauge and TED angle measurement tool.

⁵² Between 2001-2003, the operations carried out have had significant impact, which is the decline in number of violations. Indication of illegal fishing has lessened.

⁵³ This operation is to act as a *shock therapy* to fishermen using cluster bomb as a fishing tool, thus improving their correct understanding and obedience with regards to utilization of cluster bomb.

Aside from improving the monitoring operations, the Government also needs to develop a Community-Based Monitoring System / Sistem Pengawasan Berbasis Masyarakat.

h. Development of Community-Based Monitoring System (Sistem Pengawasan Berbasis Masyarakat / SISWASMAS)

Sistem Pengawasan Berbasis Masyarakat or referred to as SISWASMAS is a monitoring system that involves the active role of the community in monitoring and controlling the management and utilization of marine resources in responsible manners. Utilization of marine resources in responsible manners is practiced in order for the benefits to be enjoyed continuously by the people.

SISWASMAS needs to be implemented in a proactive manner, which means that if an alleged illegal fishing is discovered⁵⁴, then it should be reported to the nearest fisheries supervisor officer or PPNS or officials (TNI AL or POLRI), and the officials shall then conduct pursuit and apprehension.

SISWASMAS has been nationally socialized by the President and followed up by the Minister of Marine and Fisheries. Through the socialization activity, technical guidance and empowerment, therefore as a response, SISWASMAS has developed in several regions, such as: Jambi, Sulawesi Selatan, Nusa Tenggara Barat, Sulawesi Tenggara and Jawa Barat.

If SISWASMAS has developed throughout the territorial waters of Indonesia, therefore it shall be very helpful in strengthening and improving the capabilities of monitoring and law enforcement at seas. Thus it is expected to prevent illegal fishing, and also to engage in cooperation relationship with other countries maritime boundaries of which border on Republic of Indonesia.

⁵⁴ Such as actions taken by foreign or Indonesian vessels prohibit private persons to conduct fishing in manners that are damaging to the habitat or biota at seas or foreign vessels violates the Fisheries Territory of Indonesia.

i. Offshore Cooperation Network

Efforts need to be made to build offshore cooperation network, especially in ASEAN territory, in order to strengthen security at seas, whether in bilateral, regional or multilateral manner. Cooperation includes joint training of law enforcement and security at seas officials, exchange of intelligence information, building and improving joint patrol coordination. These joint patrols are done with countries maritime boundaries of which border on Republic of Indonesia, such as Malaysia, Singapore and the Philippines. Other than that, efforts need also to be made to develop monitoring technology with developed countries, such as Norway, Japan, and United States of America. Currently cooperation between the government of Republic of Indonesia and France has been engaged.

In June 2012, cooperation is engaged with the Minister of Marine and Fisheries in the form of development of Seacorm (*Southeast Asia Center for Ocean Research and Monitoring*) Station with INDESC (*Infrastructure Development for Space Oceanography*) project credit facility between Indonesia and France. The station is installed in Perancak, Jembrana District, Bali.⁵⁵

Other than with France, cooperation is also engaged with Germany. With cooperation engagement with foreign countries, therefore illegal fishing becomes a joint responsibility of countries in the world, thus mechanism of monitoring and prevention is easier to be implemented.

III. CONCLUSION

As a conclusion of this paper, therefore there are a number of suggestions that may be formulated in relation to issues of illegal fishing occurring within the territorial waters of Indonesia. To prevent illegal fishing in the future, the following needs to be done:

- 1) In relation to the Monitoring Operation Development, development of infrastructures on the border areas needs to be accelerated, with the purpose of increasing the role of monitoring of marine and fisheries resources. The strengthening of infrastructures is for the

⁵⁵ Bali is elected as the location of development of station because it is considered strategic for monitoring of movement of vessels in western and eastern Indonesia.

- interest of resources and marine monitoring operation, among others through improvement of port for monitoring vessels, as well as *detention centre* for ship crews involved in illegal fishing and other facilities for monitoring operation. This Monitoring Operation Act is done not only by KKP (in this case representing the Government in Marine and Fisheries sector) but also involving related agencies and also components of society which care about fisheries sector;
- 2) In relation to practice of illegal fishing conducted by foreign fisheries businesses, foreign investors in fisheries sector entering Indonesia must be reduced in order to encourage growth in domestic investors for the country's independence. The Government needs to pay more attention to the fate of local or traditional fishermen, for instance by providing capital for fishermen to procure adequate vessels. With larger vessels, the volume of fish that can be captured also increases, thus improving the welfare of the fishermen.
 - 3) In some of cases of illegal fishing, foreign vessels conducting illegal fishing were let go by the officials because they have made particular transactions. Aside from that, there are cases of illegal fishing that went unreported or unclaimed to the court because they were able to negotiate with the officials on the field. No matter how good the regulations and agencies created, without qualities of state officials such as honest, moral, and good characters, such regulations and agencies are of no use. Those conditions happen to the illegal fishing issue in Indonesia as well. The regulations and court are complete, however if the moral and characters of the law officials are not improved, then all will be wasteful. The most important thing is to educate and instill values of Pancasila and guidance on characters to the nation. This education on characters should not be given only to students at schools, universities, employment education and training, but also to state officials who are about to be in office or hold positions in all agencies throughout the country. This includes agencies related to marine and fisheries. With the eradication of illegal fishing within the territorial waters of Indonesia, therefore the people of Indonesia may move towards prosperity and glory for the Republic of Indonesia as an archipelagic state with maritime vision.

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