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Yunus Husein

Muhammad Faiz Aziz

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# THE NECESSITY TO REFORM INDONESIAN LEGAL FRAMEWORK ON PROVISIONAL ARRANGEMENT TO COMBAT IUU FISHING

Yunus Husein & Muhammad Faiz Aziz

Sekolah Tinggi Hukum Indonesia Jentera, Indonesia  
Correspondence: [yunus.husein@jentera.ac.id](mailto:yunus.husein@jentera.ac.id)

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## Abstract

*Indonesia has not yet concluded its maritime boundaries with neighbouring countries. Incidents often occur including Illegal Unreported and Unregulated Fishing (IUU) Fishing conducted by fishers from neighboring countries. In fact, their actions are sometimes backed by their /coast guard. Maritime delimitation is the final goal that must be achieved to provide legal certainty over the territory and Exclusive Economic Zone of Indonesia and its neighbours. However, achieving that goal is never been easy. Article 74(3) of the United Nations Convention on the Law of the Sea (UNCLOS) 1982 determines joint or provisional arrangements between disputing countries as temporary solution before reaching agreement on delimitation in EEZ. Indonesia must utilize and optimize this provision in order to combat the IUU Fishing, to protect fisheries resources and to support in achieving maritime boundary delimitation. The state already has the relevant legal and institutional framework to implement the provisional arrangement and, once, had a provisional arrangement with Australia decades ago although in the field of hydrocarbon. The arrangement was deemed as the most prominent one at that time. The experience of other countries in implementing of provisional arrangement in combating IUU Fishing, protecting the resources and achieving maritime delimitation might encourage Indonesia to utilize and optimize provisional arrangements in disputed areas.*

**Keywords :** *arrangement, fisheries, maritime, provisional, regulation.*

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## I. INTRODUCTION

Indonesia is one of the many archipelagic countries in the world. The archipelagic state has 17,504 islands and 16,671 of them were already reported to the United Nations (UN) and verified by it.<sup>1</sup> The state has also an area of

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<sup>1</sup> Biro Komunikasi, "Menko Maritim Luncurkan Data Rujukan Wilayah Kelautan Indonesia [Coordinating Minister of Maritime Launches Reference Data on Indonesian Maritime Areas], 10 August 2018, accessed 20 July 2020, <https://maritim.go.id/menko-maritim-luncurkan-data-rujukan-wilayah-kelautan-indonesia/>. According to Coordinating Minister of Maritime as of 2019 Indonesia has reported 16.671 island while the actual number of Indonesia island is 17.504. See also Aditya Mardiasuti, "Indonesia Laporkan 16.056 Pulau Bernama ke PBB [Indonesia reported 16,056 islands with name to UN]," Detik News, 5 May 2018, accessed 15 July 2020, <https://news.detik.com/berita/d-4005694/indonesia-laporkan-16056-pulau-bernama-ke-pbb>.

1.9 million square kilometer.<sup>2</sup> The country rich in natural resources, including at the sea. However, major challenge is also faced by Indonesia in the form of potential security disturbances over natural resources including fisheries resources. This is considering that most of Indonesia's geographical boundaries are maritime borders with ten neighboring countries. Only three countries are directly border both on land and at sea, namely Malaysia, Timor Leste and Papua New Guinea.

As a maritime country, Indonesia is being a country targeted by Illegal, Unreported and Unregulated (IUU) Fishing activities by both local and foreign vessels. During November 2014-May 2019, there were arrests, including sinking, of 516 fishing vessels in Indonesian waters.<sup>3</sup> The number of Vietnamese fishing vessels captured and submerged by Indonesian authorities is the highest among other foreign vessels captured and submerged. It was reach 302 vessels. IUU Fishing activities have resulted in negative economic and social impacts such as decreasing household income of small fishers, discrepancies in export data of official fisheries products and fisheries smuggling as well as stunting.<sup>4</sup>

To overcome IUU Fishing, a number of measures have been taken by Indonesia including through the formulation and implementation of national policies,<sup>5</sup> adoption of sustainable development goals (SDGs) into national policies<sup>6</sup> and cooperation at the regional level, for example through ASEAN Wildlife Enforcement Network; Coral Triangle Initiative on Coral Reefs, Fisheries and Food Security (CTI-CFF); Regional Plan of Action to Promote Responsible Fishing Practices including Combating IUU Fishing in Southeast Asia (RPOA-IUU); Sulu-Sulawesi Marine Ecoregion; and Regional Fisheries

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<sup>2</sup> Badan Pusat Statistik, "Luas Daerah dan Jumlah Pulau Menurut Provinsi, 2002-2016 [Total Area and Number of Islands by Provinces, 2002-2016], accessed 20 July 2020, <https://www.bps.go.id/statictable/2014/09/05/1366/luas-daerah-dan-jumlah-pulau-menurut-provinsi-2002-2016.html>. BPS data shows the exact total area of Indonesia is 1,913,578.68 square kilometers.

<sup>3</sup> Mas Achmad Santosa, "Penegakan Hukum Illegal Fishing di Indonesia [Illegal Fishing Enforcement in Indonesia]." Presented to Coordinating Ministry of Maritime on 20 May 2019, accessed 15 July 2020, <https://wri-indonesia.org/sites/default/files/Presentasi%20SATGAS%20115%20%28Kemenkomar%2C%20Mei%202019%29.pdf>, 13.

<sup>4</sup> *Ibid.*, 7-8.

<sup>5</sup> This is including the optimalisation of marine enforcement based on Indonesian Fisheries Law 2004 and the establishment of Task Force 115 (Satgas 115) to coordinate the prevention and eradication of IUU Fishing.

<sup>6</sup> Indonesia. *Peraturan Presiden tentang Pelaksanaan Pencapaian Tujuan Pembangunan Berkelanjutan*. Perpres No. 59 Tahun 2017. (*Presidential Regulation on Implementation to Achieve Sustainable Development Goals*. Presidential Regulation No. No. 59 Year 2017).

Management Organizations (RFMOs) Initiatives.<sup>7</sup> These policies are taken by the Indonesian government to protect Indonesian fisheries as well as protecting Indonesian fishers and sustainable resources. During the first period of Joko Widodo's administration, the government issued a strict policy on fishing related to licensing including a moratorium on fishing licenses and export of lobster seeds.<sup>8</sup> Together, the Government and the Parliament also issue Laws on the Protection and Empowerment of Fishermen in the framework of protecting and empowering fishers, aquaculturist and salt farmers.<sup>9</sup>

Another challenge that must be resolved by Indonesia in relation to IUU Fishing is the law enforcement of IUU Fishing in the Exclusive Economic Zone (EEZ) which still overlaps with other neighboring countries. It is reported that Vietnam, Timor Leste and Malaysia are the three countries where the EEZ delimitation discussion was still incomplete with Indonesia.<sup>10</sup> Indonesia and Vietnam had settled on the Continental Shelf in 2003 after 30 years of negotiations, but it was not final on the EEZ around the North Natuna Sea.<sup>11</sup> Indonesia and Malaysia have not yet settled on the EEZ in the Malacca Strait and the Sulawesi Sea, especially around Ambalat.<sup>12</sup> Meanwhile, Indonesia and Timor Leste are still discussing the delimitation of maritime boundaries over all their sea boundaries.<sup>13</sup>

In addition, Indonesia also still faces the threat of IUU Fishing carried out by Chinese vessels in the North Natuna Sea. The Chinese government claims

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<sup>7</sup> Southeast Asian Fisheries Development Center, *ASEAN Guidelines for Preventing the Entry of Fish and Fishery Products from IUU Fishing Activities into the Supply Chain*, Endorsed by the SSOM-36<sup>th</sup> MAF, Revision by 24 August 2015, Marine Fishery Resources Development and Management Department: Kuala Terengganu, 2015, 14-16.

<sup>8</sup> K. Azis, "5 Tahun Jokowi-JK: Transformasi Pengelolaan Perikanan Tangkap Membanggakan [5 Years of Jokowi-JK Administration: Appreciating Transformation of Fisheries Capture Governance], *Maritime News*, 23 March 2019, accessed 18 July 2020, <https://maritimeneeds.id/5-tahun-jokowi-jk-transformasi-pengelolaan-perikanan-tangkap-membanggakan/>.

<sup>9</sup> It is through the enactment of Law No. 7/2016 on Protection and Empowerment of Fishers, Aquaculturist and Salt Farmers.

<sup>10</sup> Damos Dumoli Agusman and Gulardi Nurbintoro, "Hard Work Continues to Settle Maritime Borders," *The Jakarta Post*, 13 December 2018, *Academia*, Opinion, accessed 26 July 2020, <https://www.thejakartapost.com/academia/2018/12/13/hard-work-continues-to-settle-maritime-borders.html>.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.* See also Maulidya Yuseini, Dian Rachmawati, Fransiska Yuardini and Hafidh Lukmam Syaifuddin, *Penyelesaian Sengketa Laut Antara Indonesia dan Malaysia di Wilayah Selat Malaka Menurut Hukum Internasional [Maritime Disputes Settlement between Indonesia and Malaysia in the Malacca Strait according to International Law]*, 2018, *Lentera Hukum* 5(3): 459.

<sup>13</sup> Maritime Boundary Office of the Council for the Final Delimitation of Maritime Boundaries, *Timor Leste's Maritime Boundaries* (Dili: Maritime Boundary Office of the Council for the Final Delimitation of Maritime Boundaries, 2016), 48.

the South China Sea region, including the North Natuna Sea, is part of their maritime jurisdiction or traditional fishing ground through the unilaterally nine-dash-line concept. China has never made notification this claim to the UN. Meanwhile, the Indonesian government's claim is based on international rules and national laws that apply to these jurisdictions without compromise. The Indonesian government strongly rejects China's claim to the North Natuna Sea and the rejection is implemented through fisheries law enforcement and, in fact, the President's visit to the front line of maritime border to show that the North Natuna Sea is belong to Indonesia's jurisdiction.

The main homework actually lies in governing and combating IUU Fishing in disputed EEZ. With the completion of the negotiations and discussions of the EEZ still unfinished, fishers from their respective countries still do fishing in areas that are still in dispute. Indonesian fisheries law enforcement authorities and neighboring countries protect each their fishers. In fact, various incidents often occur, for example, maneuvers of coast guard ships, intentional collisions, and arrests of Indonesian law enforcement officials.<sup>14</sup>

This situation raises questions. To what extent does IUU Fishing occur in Indonesia and how are national policies taken in detail in combating it? How is Indonesia's policy in determining its temporary jurisdiction before finalizing the delimitation of maritime boundaries with other countries? To what extent can provisional arrangements resolve, prevent, and eradicate IUU Fishing in disputed EEZ together with neighboring countries? How should IUU Fishing be regulated in the disputed EEZ that can provide benefits for fishers, respective national economies, protection of fishery resources and leaps to resolve delimitation of maritime boundaries?

This article discusses those questions to identify maritime boundaries that have not yet been settled, to identify and analyze situation of IUU fishing in Indonesia, to analyze government law and policies in determining temporary jurisdictional boundaries before achieving delimitation of maritime boundaries (including the EEZ Law 1983, the Fisheries Law 2004 and 2009, the

<sup>14</sup> Antara Photo, "Foto: Manuver Kapal Coast Guard China di Laut Natuna [Photo: Maneuver of the Chinese Coast Guard in the Natuna Sea]", CNN Indonesia, 12 January 2020, accessed 21 July 2020, <https://www.cnnindonesia.com/nasional/20200112093139-22-464571/foto-manuver-kapal-coast-guard-china-di-laut-natuna>. See also CNN Indonesia, "Ketegangan di Laut Natuna, Kapal Vietnam Tabrak Kapal TNI AL [Tensions on the Natuna Sea, Vietnam Coast Guards ships crashes into Indonesian Navy ships]", CNN Indonesia, 29 April 2019, accessed 21 July 2020, <https://www.cnnindonesia.com/nasional/20190429083719-20-390387/ketegangan-di-laut-natuna-kapal-vietnam-tabrak-kapal-tni-al>. See also Antique, "Kronologi Malaysia Tangkap 3 Petugas KKP RI [The Chronology of Malaysia Arrests Three Indonesian Fisheries Authority Officials]", Viva, 15 August 2010, accessed 21 July 2020, <https://www.viva.co.id/berita/nasional/171206-ini-kronologis-penangkapan-petugas-dkp>.

Internal Waters Law 1996, the Marine Law 2014 and Laws on Protection and Empowerment of Fishers 2016) and to analyze the use of provisional arrangements based on Article 74 paragraph (3) of UNCLOS 1982. This article is written based on juridical normative approach and with desktop study method. Interview with a resource's person was conducted to discuss and confirm our findings from the study.

Provisional arrangement is complementary and alternative ways that can be utilized by the Indonesian government to overcome IUU Fishing in disputed EEZ before achieving maritime delimitation with neighboring countries. It is discussed considering that UNCLOS 1982 has such provisions and a number of countries have already implemented it to govern cross-border fisheries and combat IUU Fishing as well as protecting their fishery resources, such as Russia-Norway<sup>15</sup> and Sino-Japan.<sup>16</sup> Indonesia itself has never had such a policy after the Indonesia-Australia provisional arrangement mechanism over the Timor gap since 1989.<sup>17</sup>

Provisional arrangement mechanism is generally taken on disputed maritime boundaries in which there are hydrocarbons on the disputed EEZ or continental shelf. A similar mechanism is applied to fisheries, although not as popular as hydrocarbons. Considering that fisheries resources can also be exhausted due to IUU Fishing and overfishing, cooperation between the two disputing countries is also important in order to maintain fish stocks and natural food chains to preserve ecosystems. This is in line with indicators 14.6.1. from the Sustainable Development Goals (SDGs) about "life below water"<sup>18</sup> and surely Parts V and VII of the UNCLOS 1982 and UN Fish Stock Agreement 1995.

## II. REGULATORY ARRANGEMENT ON COMBATING IUU FISHING IN INDONESIA

IUU Fishing is a multi-sector transnational organized crime. It is illegal activities of fishing without any permit by fishers in the Indonesian jurisdiction, either by local or foreign fishers with Indonesian or foreign-flagged vessel. In terms of licensing, the vessel does not possess Fishing License (*Surat Izin Penangkapan Ikan or SIPI*), Port Clearance (*Surat Persetujuan Berlayar or SPB*) and Vessel Operation Certificate (*Surat Laik Operasi or SLO*). Fishes captured are not showed and reported at the appointed official fishing ports. The fishes are instead transferred to other fishing vessels (transshipment) and unloaded at fishing ports, including at neighbouring countries fishing port, with minimum supervision.<sup>19</sup> They are partly exported to other countries, even surprisingly exported back also to Indonesia. IUU Fishing has intensified overfishing, and it is the biggest threat to sustainable fisheries stocks globally as well as nationally for Indonesia.<sup>20</sup>

Indonesia is a country that has been the target of this organized crime for a long time since the country has rich of natural resources including in the fisheries sector. Indonesia's potential fishery stock reaches 12.54 million tons as of 2017 and 13.1 million tons as of 2018.<sup>21</sup> This stock potential has increased after the enactment of a moratorium on fisheries licensing and exports as well as massive law enforcement. It is conceivable that this potential is clearly a target of IUU Fishing. Indonesia's vast maritime territory that is not protected by proper marine law enforcement infrastructure can make the country's fisheries stock depleted due to IUU fishing and overfishing.

By law, Indonesia already has Fisheries Law 2004 and Laws on Protection and Empowerment of Fishermen 2016. Both are last amended with Job Creation Laws 2020. These laws become the main regulations for the protection of fisheries from illegal captures and the protection of small fishers and aquaculturists. In addition, the state has also promulgated the EEZ Law 1983, the UNCLOS Ratification Law 1985, the Internal Water Law 1996 and the Marine Law 2014 which become the legal basis for protecting territorial and maritime jurisdiction.

Sanctions in the Fisheries Law 2004 are serious. Every person who catches fish without possessing SIPI will face imprisonment and fines. For person owning and/or operating Indonesian-flagged vessels to catch fish without SIPI, maximum imprisonment of 6 years and a maximum fine of IDR 2 billion are the consequences.<sup>22</sup> For person owning and/or operating foreign-flagged vessels, the fine is higher. He or she will face maximum imprisonment of 6

years and a fine of IDR 30 billion.<sup>23</sup> The Indonesian fisheries authority may even burn and/or sink the vessel if there is sufficient preliminary evidence.<sup>24</sup>

Institutionally, several institutions function in protecting and securing national fisheries, including the Ministry of Marine Affairs and Fisheries (KKP), the Maritime Security Agency, the Marine Police, and the Indonesian Navy. The KKP has a function in governing national fisheries through licensing, empowerment, monitoring and supervision.<sup>25</sup> At the regional level, KKP shares authority with the provincial and district/city governments on those four activities.<sup>26</sup> Coast guard (*Badan Keamanan Laut or Bakamla*), Marine Police and Indonesian Navy, as well as KKP, have functions in enforcing maritime and fisheries laws in Indonesian territorial sea and marine jurisdiction.<sup>27</sup> To try the perpetrators of IUU Fishing, Indonesia has already special court on fisheries located in 10 cities.<sup>28</sup>

To support and strengthen the eradication of IUU Fishing, President Joko Widodo, in his first term of administration, formed the Task Force 115 based on Presidential Regulation No. 115/2015 on the Task Force on Combating Illegal Fishing. This Task Force is directly under and responsible to the President.<sup>29</sup> It has roles in determining IUU fishing law enforcement; planning and coordinating data, and information for law enforcement; establishing the structural organization of Task Force and order the organization elements for the implementation of fisheries law enforcement, and carry out command and control in law enforcement.<sup>30</sup> In the second period of President Joko Widodo,

<sup>23</sup> “*Ibid.*,” art. 93(2).

<sup>24</sup> “*Ibid.*,” art. 69(4)

<sup>25</sup> *Ibid.* See also Indonesia. *Peraturan Presiden tentang Kementerian Kelautan dan Perikanan*. Perpres No. 63 Tahun 2015 sebagaimana telah diubah dengan Perpres No. 2 Tahun 2017. (*Presidential Regulation on Ministry of Marine and Fisheries Affairs*. Presidential Regulation No. 63 Year 2015 as amended with Presidential Regulation No. 2 Year 2017).

<sup>26</sup> Indonesia. *Undang-Undang tentang Pemerintahan Daerah*. UU No. 23 Tahun 2014 sebagaimana telah diubah dengan UU No. 9 Tahun 2015 dan UU Cipta Kerja. (*Law on Local Government*. Law No. 23 Year 2014 as last amended with Law on Job Creation).

<sup>27</sup> PSHK, Barunastra, et al., *The Legal Framework and Government Institutional Landscape of the Fisheries Sector in Indonesia*, (Jakarta: PSHK, Barunastra, et al., 2019), 74-78.

<sup>28</sup> Fisheries Law, art 71. See also Kementerian Kelautan dan Perikanan, “Mahkamah Agung dan KKP Buka Pendaftaran Calon Hakim Ad Hoc Pengadilan Perikanan [the Supreme Court and KKP opens recruitment for ad hoc judges for fisheries court],” KKP News, 1 May 2019, accessed 23 July 2020, <https://kkp.go.id/artikel/10339-mahkamah-agung-dan-kkp-buka-pendaftaran-calon-hakim-ad-hoc-pengadilan-perikanan>.

<sup>29</sup> Indonesia. *Peraturan Presiden tentang Satuan Tugas Pemberantasan Penangkapan Ikan Secara Ilegal*, Perpres No. 115 Tahun 2015. (*Presidential Regulation on the Task Force on Combating Illegal Fishing*. Presidential Regulation No. 115 Year 2015).

<sup>30</sup> *Ibid.*

the Task Force 115 continues its role and function to combat IUU Fishing.<sup>31</sup>

Since the formation of Task Force 115, the eradication of IUU Fishing has experienced significant progress. The increase of potential stock of fisheries can be evidence of this progress. Coordination of planning, prevention, and combating of IUU Fishing works effectively. Its implementation gains full support of the President and the Minister of Marine Affairs and Fisheries. Minister Susi Pudjiastuti (in Jokowi's first term of administration) often goes to the frontline to support fisheries law enforcement officers, including in sinking the vessel. In fact, President Jokowi, in an occasion, visits the frontline directly to show the rejection of China's claim on fishing jurisdiction through nine-dash lines. One success story in enforcing IUU Fishing is the capture of Andrey Dolgov vessel (Togo-flagged vessel) in 2018 after 72-hour of chasing. The vessel was Interpol's most wanted fishing vessel.<sup>32</sup>

Within November 2014 - May 2019, the government succeeded in capturing and sinking IUU Fishing vessels in the total number of 516 vessels.<sup>33</sup> Vessels from Vietnam are the most captured and submerged by Indonesian authority followed by vessels from the Philippines, Thailand and Malaysia. Indonesian-flagged vessels also cannot escape from the apprehension as well as Belize vessel and off-flagged vessel. For more details, Table 1 presents the number of vessels captured.

**Table 1 – Flags of Vessel Captured and its Numbers**

No.	Flag of Vessel	Total
	Vietnam	302
	Philippines	91
	Thailand	50
	Malaysia	41
	Indonesia	27
	Papua New Guinea	2
	China	1
	Belize	1
	Without Flag	1
	Total (November 2014-May 2019)	516

Source: Mas Achmad Santosa, 2019.<sup>34</sup>

The modus operandi of fisheries crime is varied. It consists of falsification of documents, double flagging or registered, fishing without permission, modification of vessels, use of foreign fishing master and crews, falsification of personnel documents, shutting down Vessel Monitoring System (VMS),

transshipment, falsification of logbook reports, violations of fishing ground, use of prohibited fishing gear and the fishers do not have any partnership with official fish processing units.<sup>35</sup> In addition to IUU Fishing crimes, there are also fisheries-related crimes which include illegal fuel oil transactions, immigration violation, customs violations, money laundering, drug smuggling, human rights violations such as forced labour and human trafficking, corruption and tax crimes.<sup>36</sup> These are organized, multi-sector, and transnational crime.

IUU Fishing activities happens mostly at the Malacca Strait, North Natuna Sea and Sulawesi Sea.<sup>37</sup> This illegal fishing takes place in those areas because Indonesia is adjacent with neighbouring countries and there is still no final maritime delimitation deal with them specifically related to the EEZ, apart from lack of supervision and limited marine security infrastructures. IUU Fishing in EEZ is a severe problem and challenge to be enforced. The reason is that both Indonesia and neighbouring countries each claim that the location of their fishing vessels is still in their jurisdiction. In enforcing fisheries laws in Indonesian EEZ, police or Navy vessels often chase foreign vessels that want to escape.<sup>38</sup> Sometimes, neighbouring countries coast guards try to dispel and warn Indonesian fisheries authorities. Incidents also sometimes occur between Indonesian marine police or naval vessels and foreign coast guards such as China and Vietnam.<sup>39</sup> It has also happened once that the Malaysian Maritime Enforcement Agency arrested Indonesian officers (MMEA) and MMEA helicopter intimidated Indonesian authorities from the air.<sup>40</sup>

<sup>35</sup> *Ibid.*, 10.

<sup>36</sup> *Ibid.*, 11.

<sup>37</sup> Kementerian Kelautan dan Perikanan, "FAQ Sumber Daya Kelautan dan Perikanan [FAQ of Marine and Fisheries Resources (Ditjen PSDKP)," accessed 22 July 2020, [https://kkp.go.id/artikel/11800-faq-sumber-daya-kelautan-dan-perikanan-ditjen-psdkp#:~:text=Wilayah%20yang%20kerap%20terjadi%20praktek,Laut%20Sulawesi%20\(WPPNRI%20716\)](https://kkp.go.id/artikel/11800-faq-sumber-daya-kelautan-dan-perikanan-ditjen-psdkp#:~:text=Wilayah%20yang%20kerap%20terjadi%20praktek,Laut%20Sulawesi%20(WPPNRI%20716)).

<sup>38</sup> Taufik Fajar, "Cerita Menteri KKP Tangkap 2 Kapal Asing Pencuri Ikan, Kejara-kejara 3 Jam [Story of KKP Minister in capturing two illegal fishing foreign vessels, chasing for 3 hours]," *Okezone Economy*, 22 July 2020, accessed 23 July 2020, <https://economy.okezone.com/read/2020/07/22/320/2250186/cerita-menteri-kkp-tangkap-2-kapal-asing-pencuri-ikan-kejara-kejara-3-jam>. See also Richard Gray, *The hunt for the fish pirates who exploit the sea*, BBC, 5 June 2020, accessed 23 July 2020, <https://www.bbc.com/future/article/20190213-the-dramatic-hunt-for-the-fish-pirates-exploiting-our-seas>.

<sup>39</sup> CNN Indonesia, "Ketegangan di Laut Natuna, Kapal Vietnam Tabrak Kapal TNI AL." See also Antara Photo, "Foto: Manuver Kapal Coast Guard China di Laut Natuna." See also M. Risyal Hidayat, "In Picture: Manuver Kapal Coast Guard China Salip KRI Usman Harun [In Picture: Manuevre of China Coast Guard Ship against Usman-Harun Naval Ship]," *Republika*, 12 January 2020, accessed 18 July 2020, <https://republika.co.id/berita/q3yfsi314/manuver-ofensif-kapal-coast-guard-china-di-natuna>.

<sup>40</sup> Antique, "Kronologi Malaysia Tangkap 3 Petugas KKP RI." See also Dias Prasongko, "Ini Tiga Alasan KKP Layangkan Protes Keras ke Malaysia [This is three reasons why KKP submit protest letter to Malaysia]," *Tempo Co*, 12 April 2019, accessed 19 July 2020, <https://bisnis>.

As an ASEAN member country, Indonesia actively participates in echoing and campaigning for the combating IUU Fishing at the regional level. The state participates in the number of cooperation in the prevention and eradication of IUU Fishing such as the ASEAN Wildlife Enforcement Network; CTI-CFF; RPOA-IUU; Sulu-Sulawesi Marine Ecoregion; and RFMOs Initiatives.<sup>41</sup> However, this cooperation cannot be used in the context of bilateral cooperation in fisheries law enforcement and in the context of maritime boundary delimitation in EEZ. Nevertheless, the cooperation can be a communication bridge for the disputing countries in discussing further and intensively maritime boundary delimitation, including the use of a joint mechanism for preventing and eradicating IUU Fishing in the disputed zones. Article 74 paragraph 3 of UNCLOS 1982 can be the primary reference. Indonesia and its neighbouring countries are bilaterally possible to form common fisheries areas with terms and conditions that benefit the parties. However, the use of this mechanism must depart from the baseline based on the rules in UNCLOS 1982. The baseline must be submitted first to the International Maritime Organization (IMO).<sup>42</sup>

Indonesia and neighbouring countries that are in dispute over EEZ actually already have experience in the provisional arrangement mechanism. With Australia, Indonesia once had a treaty on the Timor gap.<sup>43</sup> Malaysia currently still has cooperation with Thailand on joint management of hydrocarbons in the Gulf of Thailand and with Vietnam on similar matters in the same gulf.<sup>44</sup> These arrangements are carried out in the context of finalizing maritime delimitation amongst them. Details of Indonesia's experience and its regulations on joint or provisional arrangements are discussed in the next section.

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tempo.co/read/1194991/ini-tiga-alasan-kkp-layangkan-protos-keras-ke-malaysia.

<sup>41</sup> Southeast Asian Fisheries Development Center, *ASEAN Guidelines for Preventing the Entry of Fish and Fishery Products from IUU Fishing Activities into the Supply Chain*.

<sup>42</sup> Interview with Indonesia experts on maritime law which is also Indonesian ambassador for Germany H.E. Prof. Arif Havas Oegroseno, 11 June 2020. According to UNCLOS 1982, the deposit of chart and geographical coordinates is an obligation due to publicity. See Convention on the Law of the Sea, opened for signature 10 December 1982, 1833 UNTS 397 (entered into force 16 November 1994), art. 16, 47, 75 and 84. See also Robert Sandev, Shawn Stanley, Snjezana Zaric and Emily Cikamatana, "UNCLOS: deposits of straight baselines and outer limits of maritime zones," presented at the 7th-meeting of S-121 Project Team, Division for Ocean Affairs and the Law of the Sea, New York, 3-7 December 2018, 2-3.

<sup>43</sup> Lian A. Milto, "The Timor Gap Treaty as a Model for Joint Development in the Spratly Islands," *American University International Law Review* 13, no. 3 (1998): 750.

<sup>44</sup> J. Tangia Biang, "The Joint Development Zone Between Nigeria and Sao Tome and Principe: A Case of Provisional Arrangement in The Gulf of Guinea International Law, State Practice and Prospects for Regional Integration, The United Nations – The Nippon Foundation of Japan Fellowship Programme 2009-2010, Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, (New York: United Nations, 2010), 27 & 83.

### III. REGULATORY ARRANGEMENT FOR PROVISIONAL ARRANGEMENT IN EEZ

Indonesia already has a regulation related to provisional arrangements in the context of maritime boundary delimitation. Law No. 5/1983 on Indonesian Exclusive Economic Zone (EEZ Law 1983) is the primary legal basis including for arrangement on fisheries and hydrocarbon cooperation. Interestingly, the EEZ Law 1983 was enacted a year after UNCLOS 1982 but before the government ratified UNCLOS 1982 through Law No. 17/1985. The content of the provisional arrangement in the EEZ Law 1983 is straightforward. It does not further regulate its implementation, stages to reach a provisional arrangement, substances to be provided in the provisional arrangement and the in-charge institution. Article 3 paragraph (2) of the EEZ Law 1983 sets the rules as follows:

*“So long as such agreement as referred to in paragraph (1) does not exist, and no special conditions need to be considered, the boundary line between the exclusive economic zone of Indonesia and that of the other State shall be the median line or a line that is equidistant from the baselines of Indonesian territorial sea or the outermost points of Indonesia and the baselines of the territorial sea or outermost points of the other State, except if an agreement has been reached with the said State on a provisional arrangement of the boundaries of the Indonesian exclusive economic zone.”<sup>45</sup>*

This provision actually emphasizes the determination of maritime delimitation boundaries using the equidistant principle as long as there are no special conditions and considerations. This also gives space for the government to negotiate provisional arrangements and the determination of temporary delimitation boundaries before reaching the final ones. The rest of the other articles in the EEZ Law 1983 do not further regulate provisional arrangements. Other articles encourage the parties' obligations to protect and respect the environment and conservation while also regulates compensation from activities at EEZ.<sup>46</sup>

Article 3 paragraph (2) of EEZ Law 1983 is already in line with Article 74 paragraph (3) of UNCLOS 1982. For comparison, the article in UNCLOS determines the following:

<sup>45</sup> Indonesia. *Undang-Undang tentang Zona Ekonomi Eksklusif Indonesia*. UU No. 5 Tahun 1983. (*Law on Indonesian Exclusive Economic Zone*. Law No. 5 Year 1983). Art. 3(2).

<sup>46</sup> *Ibid.*, art. 5-12.

*“Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.”*<sup>47</sup>

Article 74 paragraph 3 of UNCLOS 1982 must be read in conjunction with paragraph 1 of Article 74 as below:

*“The delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.”*<sup>48</sup>

Article 74 (3) 1982 UNCLOS encourages the coastal states to reach a temporary agreement with neighbouring countries when they cannot reach any consensus for maritime delimitation. Arrangements must be made in the spirit of good faith, mutual understanding as well as good cooperation and not to the detriment of one another. Overlapped jurisdictions claimed by the two countries can be jointly managed for the benefit of each country for economic, welfare and environmental protection as well as for science development purposes.

In addition to the EEZ Law 1983 and UNCLOS 1982, the Fisheries Law 2004 indeed is also a legal basis that must be used to establish provisional arrangement. This takes into account that objects protected by EEZ Law are living resources in the water column, including fish and other marine living resources. In connection with the provisional arrangement in the context of combating IUU Fishing and delimitation of maritime boundaries, the Fisheries Law also addresses the issue of bilateral fisheries arrangement. Foreign persons or legal entities may not operate or catch fish in Indonesian EEZ unless the fishing agreement, access arrangement or other arrangements exists between the Indonesian government and the flag state government where the foreign person or legal entity registers itself.<sup>49</sup> The agreement must include the obligation of the flag state government to be responsible for the compliance

<sup>47</sup> Convention on the Law of the Sea, opened for signature 10 December 1982, 1833 UNTS 397 (entered into force 16 November 1994), art. 74(3) . See also Stephan Fietta and Robin Cleverly, *A Practitioner’s Guide to Maritime Boundary Delimitation* (Oxford University Press, 2016), 25.

<sup>48</sup> Convention on the Law of the Sea, opened for signature 10 December 1982, 1833 UNTS 397 (entered into force 16 November 1994), art. 74(1).

<sup>49</sup> Fisheries Law, art. 30(1).

of the person or legal entity registered under its supervision to all contents in bilateral fisheries agreement and Indonesia fishing regulations in EEZ.<sup>50</sup> This bilateral arrangement becomes the basis for the Indonesian government for granting permits for foreign persons or legal entities that want to catch fish in Indonesia's EEZ.<sup>51</sup>

In order to protect and conserve EEZ, fisheries levies are imposed on every person who benefits directly from fish resources and its environment.<sup>52</sup> This provision also applies to foreign persons or legal entities that conduct fishing in Indonesian EEZ.<sup>53</sup> Fisheries levies will be used for fisheries development and preservation of fish resources and the environment.<sup>54</sup> In addition to fisheries levies, any person or legal entity that causes damage and pollution to the marine environment will also be liable for strict liability in paying for the rehabilitation costs of the marine environment.<sup>55</sup> This is important to urge compliance for persons, legal entities, and vessels always to maintain the preservation of the marine environment.

Linking the EEZ Law 1983 and the Fisheries Law 2004 as well as UNCLOS 1982, it is possible for Indonesia to legally conduct provisional arrangements with neighbouring countries for at least two reasons: (1) mutual fisheries cooperation in disputed EEZ in the context of preventing and combating IUU Fishing as well as preserving the marine resources; (2) reaching the final delimitation of maritime boundaries at EEZ. As mentioned in the previous section, however, the use of this mechanism must depart from the baseline based on the rules in UNCLOS 1982. The baseline must be submitted first to the IMO. The absence of official baseline submission to IMO may indicate that neighbouring countries have not yet determined the starting point of their maritime baseline. Before they submit it to IMO, the Indonesian government should not propose or accept the proposal for provisional arrangement discussions on EEZ or continental shelf in the context of maritime boundary delimitation, including combating IUU Fishing.<sup>56</sup>

If Indonesia and neighbouring countries together come up from the maritime baseline submitted to IMO and following UNCLOS 1982, negotiations on provisional arrangements can be conducted. However, in the context of

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<sup>50</sup> *Ibid.*, art. 30(2).

<sup>51</sup> *Ibid.*, art. 30(3).

<sup>52</sup> *Ibid.*, art. 48(1).

<sup>53</sup> *Ibid.*, art. 49.

<sup>54</sup> *Ibid.*, art. 50.

<sup>55</sup> Law on Indonesian Exclusive Economic Zone, art. 11.

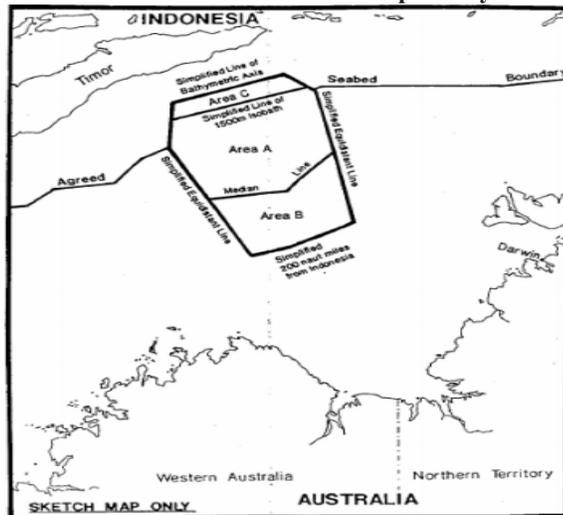
<sup>56</sup> Interview with Indonesia experts on maritime law which is also Indonesian ambassador for Germany H.E. Prof. Arif Havas Oegroseno, 11 June 2020.

fisheries, it is necessary for Indonesia to identify and conduct mapping the disputed fisheries areas and which fishers often catch fish at the disputed area. Suppose the number of fishers, vessels size and its fishing gear are not equal and balanced between Indonesian and neighboring countries. In that case, negotiations must be reconsidered whether to be continued or not.<sup>57</sup>

#### IV. LEARNING FROM OTHER COUNTRIES EXPERIENCES

Indonesia once had a treaty with Australia on joint management of the Timor gap where there was a hydrocarbon source. This treaty has even been a model for similar treaties in the world. The treaty was signed in 1989 for arranging joint arrangement of the Timor Sea jurisdiction which had been in dispute at that time since the 1970s.<sup>58</sup> It divides the management zone into three sub-zones, as depicted in Figure 1, namely neutral zone (Zone A), zone controlled by Australia (Zone B) and zone controlled by Indonesia (Zone C).<sup>59</sup> Institutionally, the two countries formed bicameral models with the format of a ministerial council and a joint authority in which the relationship between the former and the latter is a subordinate one.<sup>60</sup> After East Timor became independent from Indonesia, this treaty legally belonged to Timor Leste and Australia. Although Indonesia's experience with Australia focused on hydrocarbons, the government's experience, its background, the use of UNCLOS 1982 provisions and Indonesian regulations at the time and the formulation of the treaty are good lessons for Indonesia in the future.

Figure 1 – Provisional Zone based on Timor Gap Treaty 1989



Source: Heiser, 2003.<sup>61</sup>

In terms of good and dynamics of joint arrangement in common fisheries ground for combating overfishing and IUU Fishing as well as delimiting maritime boundaries, we can learn from the experience of Russia-Norway in the Barents Sea and Sino-Japan in the East China Sea. The Russia-Norway relationship is considered a success in Europe because the two countries use the fisheries governance cooperation model to fulfil the need for fish stock and against overfishing which ultimately leads to the finalization of maritime delimitation.<sup>62</sup> Meanwhile, Sino-Japan cooperation in the joint arrangement of fisheries is unique because of past experiences of the relation between the two countries in World War II. Different from Russia-Norway relations, China and Japan are not yet finalized maritime delimitation in the East China Sea. However, the two countries were able to maintain their relations well in terms of the standard zone of fisheries including in preserving the marine resources and joint-governing fisheries sector.<sup>63</sup> Also, IUU Fishing often occurs in the East China Sea and joint cooperation in that sea has the purpose of combating it.<sup>64</sup>

Russia and Norway have disputes related to EEZ in the Barents Sea. The Barents Sea, as depicted in Figure 2, includes parts of the Nordic Ocean located between North Cape on the Norwegian mainland, South Cape on Spitzbergen Island of the Svalbard Islands, and the Russian Isles of Novaya Zemlya and Franz Josef Land.<sup>65</sup> This sea is rich in fishery resources, especially cod, haddock, capelin and redfish.<sup>66</sup> The sea becomes the target of fishers from surrounding countries for food and economic security. Both Norway and Russia rely heavily on this sea. However, both countries are also concerned about the protection and conservation of living stocks against overfishing.

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<sup>61</sup> Anthony Heiser, "East Timor and the Joint Petroleum Development Area," *The Maritime Law Association Australia and New Zealand Journal* 54, no. 17 (2003): 60.

<sup>62</sup> Geir Honneland, "Enforcement Co-operation between Norway and Russia in the Barents Sea Fisheries," *Ocean Development & International Law* 31, no. 3 (2000): pp. 250.

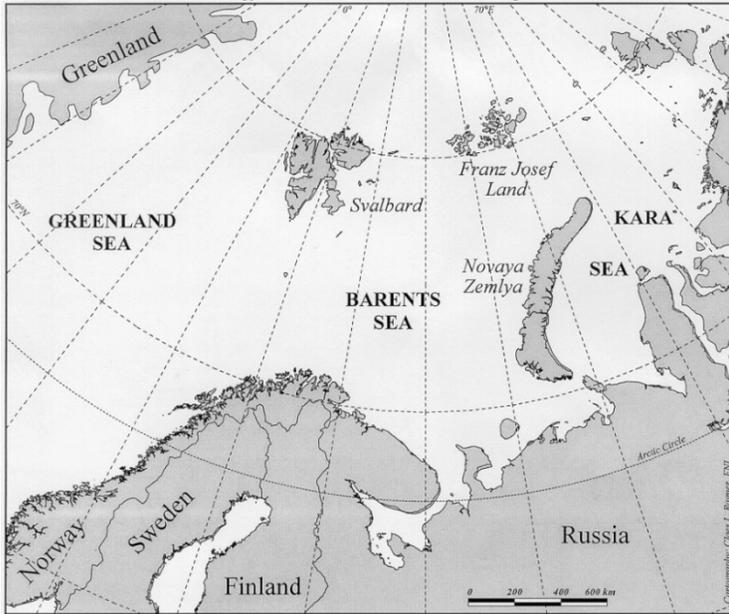
<sup>63</sup> Keyuan, "Sino-Japanese joint fishery management in the East China Sea," 126.

<sup>64</sup> *Ibid.*, 136.

<sup>65</sup> Geir Honneland, "Compliance in the Barents Sea fisheries: How fishermen account for conformity with rules," *Marine Policy* 24 (2000): 11.

<sup>66</sup> Kathleen A. Miller and Gordon R. Munro, "Climate and Cooperation: A New Perspective on the Management of Shared Fish Stocks," *Marine Resources Economics* 19, (2004): 388.

Figure 2 –Barents Sea Map



Source: Geir Honneland, 2000.<sup>67</sup>

Although the two coastal states have disputes over the Barents Sea, EEZ disputes between the two countries were not included in the agreement.<sup>68</sup> The two countries entered into and signed two separate agreements regarding activities in the Barents Sea. First, the agreement was signed in 1975. The agreement was about cooperation in the fisheries sector. Second, a different agreement was signed in 1976.<sup>69</sup> The second agreement is about reciprocal fisheries relations. The two agreements are basically a collaboration between the Russian Federation and Norway solely for the issue of fisheries and did not mention any issue relating to maritime delimitation at the EEZ.

They implement the Total Allowable Catch (TAC) mechanism to prevent

<sup>67</sup> Honneland, “Enforcement Co-operation between Norway and Russia in the Barents Sea Fisheries,” 251.

<sup>68</sup> Division of Ocean Affairs and the Law of the SEA Office of Legal Affairs, *Handbook on the Delimitation of Maritime Boundaries* (New York: United Nations, 2000), 84.

<sup>69</sup> Andreas Ostaghen, “Managing Conflict at Sea: the Case of Norway and Russia in the Svalbard Zone,” *Arctic Review on Law and Politics* 9, (2018): 106-107. See also Geir Ulfstein, “the Legal Status of Rights to the Resources in the Barents Sea,” in *Law and the Management of Divisible and Non-Excludable Renewable Resources*, Erling Berge Derek Ott and Nils Chr. Stenseth, eds. (Oslo: the Norwegian Research Council, 1994), 148.

overfishing in this area.<sup>70</sup> They also share balanced quotas of 50:50 for cod to be allocated. Overfishing had occurred in the early of 1990s. In 1990, TAC for cod was as low as 160,000 tonnes.<sup>71</sup> Due to this lowest number of all-time fishing, the two countries then formed the Russia-Norway Permanent Committee for Enforcement of Overfishing in 1993.<sup>72</sup> They together maintain and preserve the Barents Sea with good fisheries governance. The TAC peaked at 850,000 tonnes in 1997 due to the success of the committee.<sup>73</sup> Strict TAC mechanism and committee's good governance has contributed to combating overfishing as well as IUU Fishing. Norway declares that there was no illegal fishing occur in three consecutive years as of 2012.<sup>74</sup>

Russia and Norway's long-standing cooperation through an interim agreement in the fisheries sector has finally achieved its primary goal. The two countries finally signed a maritime boundary agreement and cooperation in the Barents Sea and the Arctic Ocean in 2010.<sup>75</sup> This agreement covers the delimitation of EEZ as well as the continental shelf. The agreement does regulate not only cooperation in the fisheries sector but also cooperation in the hydrocarbon sector within the framework of maritime delimitation.<sup>76</sup>

In terms of China and Japan relationship on fisheries and disputed EEZ, the dispute between them began when Japan ignored the "MacArthur Line" in 1952 determined by the United States.<sup>77</sup> Both countries are two East Asian countries that share a maritime border in the East China Sea. The sea riches in marine resources as well as hydrocarbon resources.<sup>78</sup> Departing from fisher-

<sup>70</sup> Honneland, "Norway and Russia: Bargaining Precautionary Fisheries Management in the Barents Sea," 76.

<sup>71</sup> "Ibid.," 77.

<sup>72</sup> Honneland, "Enforcement Co-operation between Norway and Russia in the Barents Sea Fisheries."

<sup>73</sup> Honneland, "Norway and Russia: Bargaining Precautionary Fisheries Management in the Barents Sea,"

<sup>74</sup> Seafood Source, "NSC: Barents Sea free of IUU Fishing," 7 June 2012, accessed 26 July 2020, <https://www.seafoodsource.com/news/supply-trade/nsc-barents-sea-free-of-iuu-fishing>.

<sup>75</sup> Thilo Neumann, "Norway and Russia Agree on Maritime Boundary in the Barents Sea and the Arctic Ocean," *American Society of International Law (ASIL) Insights* 14, no. 34 (2010), <https://www.asil.org/insights/volume/14/issue/34/norway-and-russia-agree-maritime-boundary-barents-sea-and-arctic-ocean> (accessed 17 July 2020). See also Treaty between the Kingdom of Norway and the Russian Federation concerning Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean, opened for signature 15 September 2010, UNTS 45114 (entered into force 7 July 2011).

<sup>76</sup> Paul Arthur Berkman, Alexander N. Vylegzhanin, and Oran R. Young, *Baseline of Russian Arctic Laws* (Cham, Switzerland: Springer, 2019), 79-82.

<sup>77</sup> Guenter Weissberg, *Recent Developments in the Law of the Sea and the Japanese-Korean Fishery Dispute* (Dordrecht: Springer Science+Business Media, 1996), 8.

<sup>78</sup> Reinhard Drifte, "Territorial Conflicts in the East China Sea -From Missed Opportunities to

ies stock needs, the Japanese government wants to encourage its fishermen to catch fish outside the line. The Chinese government was not pleased to see many Japanese vessels fishing in the East China Sea at the same time; the Chinese government encouraged its fishers to fish along Chinese waters. Interestingly, they realize that disputes must be settled. However, they did not have any diplomatic ties since World War II. After more a decade negotiation through non-governmental organizations each appointed by both countries to settle maritime boundaries, the two governments realized to normalize their diplomatic relations and agreed on fisheries resources in 1975.<sup>79</sup>

Diplomatic relations between the two countries which had thawed after 1975 returned to tension after the enactment of the 200-mile EEZ regime under UNCLOS 1982. The two countries claimed their own EEZ, which overlap each other as depicted in Figure 3. Several negotiations and discussions took place in the context of maritime boundary delimitation. Finally, Japan and China reached an agreement to use a joint arrangement mechanism in accordance with Article 74 (3) of UNCLOS 1982 to accommodate the fisheries needs of the two countries. A joint arrangement agreement was signed in 1997 and replaced the 1975 fisheries agreement.<sup>80</sup> The agreement is valid for five years and could be extended.<sup>81</sup>

**Figure 3 – East China Sea Map**



Source: Drifte, 2009.<sup>82</sup>

Negotiation Stalemate,” 2009, *The Asia-Pacific Journal* 7, no. 22 (2009): 2.

<sup>79</sup> Keyuan, “Sino-Japanese joint fishery management in the East China Sea,” 127.

<sup>80</sup> Clive H. Schofield, “Blurring the lines: maritime joint development and the cooperative management of ocean resources,” *Issues in Legal Scholarship* 8, no. 1 (2009): 23-24.

<sup>81</sup> Guifang Xue, *China’s response to international fisheries law and policy: national action and regional cooperation*, PhD thesis, (Centre for Maritime Policy, University of Wollongong, 2004), 372, <https://ro.uow.edu.au/theses/369/> (accessed 13 July 2020). See also Keyuan, “Sino-Japanese joint fishery management in the East China Sea,” 140.

<sup>82</sup> Drifte, “Territorial Conflicts in the East China Sea -From Missed Opportunities to Negotiation Stalemate,” 1.

The Sino-Japanese Agreement focuses on fisheries governance, conservation and utilization of living resources.<sup>83</sup> They agreed to share common fisheries zone for the interests of the two countries. Sino-Japanese provisional arrangements also stipulate rules on traditional fishery activities, fishing permits for fishers of the two countries, treatment for foreign vessels that would like to catch fish, fisheries levies, fishing coordinates and types of fish that may or may not be caught.<sup>84</sup> To implement the agreement and monitor it, China and Japan dealt to form a Joint Fisheries Committee (JFC) consisting of two members from China and two other members from Japan.<sup>85</sup>

Russia and Norway and China and Japan have similarities in using the concept of common fishing ground in disputed EEZ. They use the approach of joint arrangement mechanism to settle their maritime boundary delimitation. The provisions contained in the agreement are not much different in their scope where generally regulates fisheries governance in the context of combating overfishing and also includes preventing IUU Fishing. The purpose of the agreements is the protection and conservation of fisheries and other living resources to meet the fisheries stock needs of citizens from their respective countries. For the implementation and supervision of the implementation of the agreement, they use joint committees. Comparing to Sino-Japan provisional arrangement, cooperation between Russia and Norway is recognized as successful ones since they already have signed maritime delimitation agreement covering EEZ dan continental shelf.

## V. WHAT SHOULD BE REGULATED

Reflecting on the regulatory arrangements in Indonesia and the similarities between the experiences of Indonesia and other countries in the previous sections, there are still provisions of joint arrangement in Indonesian regulations that must be adopted by current EEZ Law 1983, and it is necessary to consider improvising regulations to anticipate future needs. The experiences of Indonesia-Australia, Russia-Norway and Sino-Japan, as well as their agreement clauses, provide elements that should be included for revising EEZ Law 1983 concerning the need for implementation. Determining what is needed in the agreement is indeed a discretion of the negotiator. However, a guideline legalized through regulation is ideal. EEZ Law 1983 has not yet regulated further or is intended to delegate to further subordinate regulations. The provision of joint arrangement stops at just one verse of an article. Indeed, this is

<sup>83</sup> Keyuan, "Sino-Japanese joint fishery management in the East China Sea," 133.

<sup>84</sup> *Ibid.*, 133-134.

<sup>85</sup> Article 3 and Article 11 Sino-Japanese Agreement. See *Ibid.*, 138-139.

not an ideal provision to govern and provide guidance and support for heavy and tiring work.

The law, which has been in effect for more than three decades, should have been amended and included regulatory content that supports the government in maritime boundary delimitation. One of the contents is provisional arrangement ones. What should be regulated and revised on EEZ Law 1983 in terms of provisional arrangement? In regards of joint provisional arrangements with neighbouring countries in combating IUU Fishing as well as delimitation of EEZ maritime boundaries, the regulatory elements that should have appeared in the revised EEZ Law 1983 are as follows:

First, the ideal form of provisional arrangement should be a bilateral treaty. This considers that what is stipulated in the agreement is related to the jurisdiction and economic sovereignty of Indonesia. Based on the Indonesian International Treaties Law 2000 (*UU Perjanjian Internasional*), ratification is needed to implement the treaty, and it must take the form of a ratification Law;

Second, the committee in charge. EEZ Law 1983 revision should regulate a committee in charge of provisional arrangement. This committee consists of at least the relevant coordinating ministries, the Ministry of Marine Affairs and Fisheries, the Ministry of Defense, the Ministry of Foreign Affairs, the Ministry of Law and Human Rights, the Ministry of Environment and Forestry, the Marine Security Agency (Bakamla), the National Police, the Indonesian Navy, academics, practitioners, and civil society representatives. The revision of EEZ Law 1983 should also cover each task and responsibilities;

Third, provisional arrangement zone concept. Either using standard zone as Russia-Norway did and Sino-Japan does or clustering zone as Indonesia-Australia did, determination of the zone must be based on economic sovereignty and needs. The scientific approach shall be one of supporting approaches in determining the form of the zone;

Fourth, the objective of the provisional arrangement must be related to the protection and conservation of sustainable resources including through the enforcement of IUU Fishing and overfishing;

Fifth, minimum clauses for provisional arrangement, which consists of (a) the managed zone; (b) joint authority and its tasks and responsibilities as well as its number of members; (c) decision making by joint authority; (d) objective of provisional arrangement; (e) essential elements related to fisheries such as fishing quota; fish capture permit, fishing vessels, capture zone and coordinate, total allowable catch, fishing gear, fees and levies, and rules for other foreign vessels entering the zone; (f) security and law enforcement; (g)

applicable law at the zone; and (h) financing.

Lastly, the revised of EEZ Law 1983, importantly, should also set the rules for government to consider to discuss further or not to discuss with neighbouring countries when the sea baselines they draw are not based on the provisions in UNCLOS 1982, and the chart and geographical coordinates are not still deposited in IMO.

The above pointers are suggestions of elements to be included when the government wants to revise the EEZ Law 1983. To support the revision, it is critical to design for advocacy for changes or reforms to the EEZ Law 1983. Steps that can be conducted include: (1) making the initial design for the revision of EEZ Law 1983; (2) establishing the working group team for the revision; (3) conduct in-depth study related to provisional arrangements where the results are then mentioned in an academic paper on the revision of the EEZ Law; (4) formulation of the revised EEZ Law provisions relating to the provisional arrangements and the objectives must be in line with the objectives of combating IUU Fishing and marine conservation; (5) public dissemination and advocacy for change. These all steps can be done at any time when the need for revision arises.

## **VI. CONCLUSION**

Indonesia can be said to be successful in overcoming illegal fishing in the 2014-2019 period. Massive law enforcement against IUU Fishing is continuously conducted. Hundreds of vessels are captured and submerged. The potential number of fish stocks is increasing. Formation of Task Force 115 directly led by Indonesian President effectively secures Indonesia marine resources and fish stock needs.

There is one issue that Indonesia must solve in terms of IUU Fishing. It is illegal fishing conducted by foreign vessels in the disputed EEZ. The vessels sometimes are guarded and protected by neighbouring coastal guard vessel. Incidents often occur especially in disputed area or claimed area. Indonesia has not finalized some disputed EEZs with Malaysia, Vietnam and Timor Leste. Provisional arrangement based on Article 74(3) UNCLOS 1982 becomes an alternative option.

Indonesia experience and other countries experiences such as Russia-Norway and Sino-Japan can be lessons to be learnt. This archipelagic state has also enacted some laws and regulations related to provisional arrangement and IUU Fishing. However, to have an excellent provisional arrangement and

as a legal guideline for government in negotiating it, it is crucial to revise EEZ Law 1983. The revision shall include the form of a treaty, committee-in-charge, zone concept for provisional arrangement, sustainable resources and fish stock needs an objective, minimum clauses of joint-arrangement and strict condition for the government whether to discuss further or not discuss. The government shall also consider the fishing situation in disputed EEZ areas such as the number of fishers, vessels size and its fishing gear between Indonesian fishers and foreign-flagged vessels. If the situation is not equal and does not contribute any benefits for Indonesia, discussion or negotiation must be reconsidered whether to be continued or not.

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