

Indonesia's Practice in Combatting Illegal Fishing: 2015–2016

Arie Afriansyah¹

I Introduction

Oceans are notorious for being immeasurable, if not for the arbitrary delineations laid down by people and human-made institutions. The rules governing the use and utilization of the sea are one of the main focuses of international law. The law of the sea is a mixture of agreements and established or emerging customary international law developed over centuries. In considering a particular situation, one must thus consider carefully the legal position of the States involved² – and nowhere is this better exemplified than in the issue of illegal fishing. Illegal fishing practices often occur in developing countries that have a shortage in capacity and resources to implement effective measures of monitoring, control, and surveillance. Its impact is felt throughout the globe, from off the Western coast of Africa to archipelagos such as Indonesia, the Philippines, and Italy's coastal regions of Naples and Sicily.³ Illegal fishing can occur in areas that are not under the jurisdiction of any country (i.e., the high seas), and can occur in areas that are under the jurisdiction of a country (i.e., the State's exclusive economic zone (EEZ), the territorial sea, and internal waters). In many regards, often the former is easier to regulate compared to the latter: illegal fishing done on the high seas primarily violate *international* standards – that is, provisions relating to the conservation and management established by Regional Fisheries Management Organizations, among other things. If illegal fishing is instead carried out in territory under State jurisdiction, not only is it

1 Faculty of Law, Universitas Indonesia, Indonesia. The author would like to thank Andrea C. Purwandaya, Research Assistant at the Faculty of Law, Universitas Indonesia, for her help with the initial research needed for this article.

2 ANTHONY AUST, *HANDBOOK OF INTERNATIONAL LAW* 279–302 (2010).

3 Donald Rothwell and Tim Stephens, *Illegal Southern Ocean Fishing and Prompt Release: Balancing Coastal and Flag State Rights and Interests*, 53(2) *INTERNATIONAL AND COMPARATIVE LAW QUARTERLY* 171–187 (2004). See also, FOOD AND AGRICULTURE ORGANIZATION, *REPORT OF THE EXPERT WORKSHOP TO ESTIMATE THE MAGNITUDE OF ILLEGAL, UNREPORTED AND UNREGULATED FISHING GLOBALLY* (2015); and EMILY ANDREWS-CHOUICHA AND KATHLEEN GRAY, *WHY FISH PIRACY PERSISTS: THE ECONOMICS OF ILLEGAL, UNREPORTED, AND UNREGULATED FISHING* (2005).

done without that particular State's consent, thereby a violation of international norms; it also raises other questions given the transnational nature of the affair.⁴ In the case of Indonesia, illegal fishing has been a long-time national issue which has had little significant improvement in the last decades.⁵ Impacts of illegal fishing have significantly affected the livelihood of Indonesian fisher communities and industries.⁶ With a new strongly backed policy in securing natural resources of Indonesian waters, the government of Indonesia has taken a tougher action, sinking ships of illegal fishers in combatting illegal fishing.⁷

Various reactions have been directed to this policy especially from stakeholders affected by this policy.⁸ Notably, some have argued that this action may violate the rules of international law and render Indonesia responsible for its internationally wrongful acts in sinking (foreign) ships.⁹ In contrast, this paper argues that the Indonesian policy of sinking the ships of illegal fishers is actually in accordance with relevant international and national policies and legal instruments. Indonesia as a sovereign State has the prerogative to institute a new national policy in combatting illegal fishing which is in accordance with relevant international rights and duties as a coastal State. Such policy has been triggered by the negative impacts of illegal fishing to the Indonesian people. In addition, Indonesia's focus on maritime resources has revealed another problem in the fishing labour industry.

This article describes and analyses the practice of Indonesia in combatting IUU fishing, starts with the Global Maritime Fulcrum, a presidential policy which enjoys popular support amongst Indonesians. The state of Indonesia's fishing resources is discussed together with its rights and obligations as a coastal State under international law. Then, it considers the negative impacts of illegal fishing to Indonesia, which lead to the adoption of the new policy of sinking ships of illegal fishers. As additional information, the recent case of Benjina will be explored as it illustrates the complex issues surrounding the

4 Rothwell and Stephens, *supra* note 3.

5 Michael Heazle, John G. Butcher, *Fisheries Depletion and the State in Indonesia: Towards a Regional Regulatory Regime*, 31 *MARINE POLICY* 276–277 (2007).

6 *Ibid.*, at 278–281.

7 Steve Herman, *Indonesia Declares War on Illegal Foreign Fishing Vessels*, *VOANEWS*, 23 December 2014, available at <http://www.voanews.com/a/indonesia-declares-war-on-illegal-foreign-fishing-vessels/2570346.html>.

8 See for example, *Vietnam Concerned about Indonesia's Sinking of Fishing Boats*, *THANH NIEN NEWS*, 20 August 2015, available at <http://www.thanhniennews.com/politics/vietnam-concerned-about-indonesias-sinking-of-fishing-boats-50429.html>.

9 Sunan J. Rustam, *A Legal Review of the "Sink the Vessel" Policy*, *JAKARTA POST ONLINE*, 6 December 2014, available at <http://www.thejakartapost.com/news/2014/12/06/a-legal-review-sink-vessel-policy.html>; and Aaron L. Connelly, *Sovereignty and the Sea: President Joko Widodo's Foreign Policy Challenges*, 37(1) *CONTEMPORARY SOUTHEAST ASIA* 1–28 (2015).

fishing resources in Indonesia. The paper concludes with some of the current issues on illegal fishing within Indonesia's EEZ.

II The Widodo Administration and Global Maritime Fulcrum (*Poros Maritim*) Policy

Indonesia has long been dubbed as the epitome of an archipelagic nation. Situated in the middle of the Indian and Pacific Oceans, Indonesia exercises control over strategic points of sea-lanes of communication through several significant number of straits. A point that is often espoused is that Indonesia's geographical position offers opportunities for the State to play a significant role as a maritime power.¹⁰ To this end, Indonesian President Joko Widodo took time in his inaugural speech to emphasize the need for Indonesians to work hard, “[and] restore Indonesia as a maritime power. The oceans, the seas, the straits and the bays are the future of our civilization. For far too long, we have turned our backs on the seas, the oceans, the straits and the bays to restore *Jalesveva Jayamahe* (at sea we are victorious), the motto of our forefathers. We should return back to sailing the seas.” Most notably, the speech ended by quoting the nation's first President, Soekarno, who “...once said that to make Indonesia a great, strong, prosperous and peaceful nation, we need to have the spirit of the *cakrawarti* (brave sailors), who confronted the great tides and the mighty rolling waves.” Through the use of seafaring metaphor, President Widodo had painted himself as, “the captain entrusted by the people,” and his speech appealed to the people to, “come on board the Republic of Indonesia vessel and together we will sail toward Great Indonesia. We will roll open the stout sails. We will face all the ocean tides and waves with our own strength.” In the same vein, he further emphasized the State's status and demography, “[a]s the third-largest democracy in the world, as the country with the largest Muslim population, as an archipelagic State, and as the largest country in Southeast Asia, will continue to pursue its independent-active foreign policy, dedicated to national interests, and to taking part in creating an international order that respects independence, eternal peace and social justice.”¹¹ For the remainder of his

10 David Willis, *Indonesia's New Geopolitics: Indo-Pacific or pacindo?* in PRIYA CHACKO (ED.), *NEW REGIONAL GEOPOLITICS IN THE INDO-PACIFIC: DRIVERS, DYNAMICS AND CONSEQUENCES* 74–94 (2016). See also, DINO P. DJALAL, *THE GEOPOLITICS OF INDONESIA'S MARITIME TERRITORIAL POLICY* (1996).

11 *Indonesia's President Remarks to the Ninth East Asian Summit, Naypyidaw, Myanmar*, RAPPLER, 13 November 2014, available at <http://www.rappler.com/world/regions/asia-pacific/indonesia/74928-pidato-jokowi-indonesia-poros-maritim-dunia/>. See also, Rene L. Pattiradjawane and Natalia Soebagjo, *Global Maritime Axis: Indonesia, China, and*

administration, President Joko Widodo seems committed to a vision of a, “sovereign, independent Indonesia with character based on the principle of ‘*gotong royong*.’” – mutual assistance.¹² Though in foreign policy terms, this is yet to be clear, *gotong royong* remains a central characteristic of Indonesian society – or at least, in political vocabulary. It is no wonder Joko Widodo wants to revive it as a principal ideal – hence his consistent usage of this rhetoric in Indonesia’s foreign policy.¹³ The suggestion – and perhaps currently, the creation – of a Global Maritime Fulcrum is one based primarily on an understanding and vision of the global geopolitical map. Current events and trends undeniably show an economic shift from Europe and America, to Asia: with Indonesia right in the midst of it. From a domestic perspective, it is clear that the Maritime Fulcrum consciously tries to emulate the Nusantara, particularly the 7th century era of Sriwijaya and the 14th century era of Majapahit. It is meant to encourage a sense of nationalism for Indonesia as a maritime State and to capitalize on the geopolitical reality that Indonesia spans between the Indian and the Pacific Oceans. Its nationalistic strain has made many draw parallels to Chinese President Xi Jinping’s idea to create a Maritime “Silk Road,” which seems similarly inspired by historical precedent.¹⁴ Both have been characterized as reactions that allow the respective States to ward off external pressure, particularly for the Chinese vis-à-vis Southeast Asia. Its rose-tinted view of the past cleverly makes way for modern economic, trade, and financial cooperation – including developing marine natural resources.¹⁵ In achieving these ideals, Indonesia faces tremendous challenges. By underlining her nature as an archipelagic nation in international cooperation, and using the concept of the Global Maritime Fulcrum as the center of domestic and regional development policies, studies have noted the difficulty of implementing modern foreign policy of the 21st century based on *gotong royong*.¹⁶ Similar to what basic international relations theories would suggest, Indonesia’s foreign policy implementation would likely be

a New Approach to Southeast Asian Regional Resilience, 6(2) INTERNATIONAL JOURNAL OF CHINA STUDIES 175–185 (2015).

- 12 *Gotong royong* is frequently defined as mutual cooperation. This type of cooperation is unique because it is conducted without reservations in which issues and goals are elaborated before implemented through informal meetings and common interests. In Indonesia and other parts of Southeast Asia, *gotong royong* is seen when people contribute in togetherness of goods and labor to build common infrastructures such as schools, houses of worship, bridges, and roads without government involvement and budgetary assistance. See, T. Pranadji, *Penguatan Kelembagaan Gotong Royong dalam Perspektif Sosio Budaya Bangsa*, 27(1) JURNAL FORUM PENELITIAN AGRO EKONOMI 61–72 (2009).
- 13 Pattiradjawane and Soebagjo, *supra* note 11.
- 14 *Ibid.*
- 15 At the same time, it is a concept which aims to mitigate the disputes with small countries. Pattiradjawane and Soebagjo, *supra* note 11, at 180.
- 16 *Ibid.*

constrained by the interaction of geopolitical changes of big power national interests expanding their spheres of influence.¹⁷ If the sole pillar of argument and central rallying point of the policy is based on Indonesia's nature as an archipelago, Indonesia must enable herself to achieve and ensure the economic development of its many islands. In addition, such development aims to project regionally and globally is supported by what is achieved domestically. In other words, better interconnectivity between Indonesia's many islands that will help enable Indonesia to take benefit of the implementation of the ASEAN community.¹⁸ Recognized by the administration and ambitiously set to be achieved by 2025, it will provide a prospect for Indonesia to actively play an important role both in the regional and global arenas. Thus, the future of maritime connectivity is extremely essential for the economy, trade, food and energy security in the ASEAN region.¹⁹ The strategic position Indonesia occupies between two oceans, along with the current administration's formulation of a maritime State identity, widens opportunities for the State to build a modern maritime industry and for maritime security. Deserting the view of Indonesia as an archipelagic nation and instead of seeing her as a maritime nation, able to connect and defend its many islands, and to sustainably utilize its marine resources, requires a change in mind-set as well as a change in strategy.²⁰

III Issues on Indonesia's Marine Resources and Existing Legal Frameworks

Change of any kind are most effective when started at the top-level, and in bureaucracy, especially so.²¹ This is exemplified by how quickly the presidential Maritime Fulcrum/*Poros Maritim* policy was put into action. Shortly after taking office, President Widodo instructed his Minister for Fisheries and Maritime Affairs, Susi Pudjiastuti, to seize and sink any foreign vessels found fishing illegally in Indonesian waters. Since then, the navy has sunk Chinese, Vietnamese, Thai, Malaysian and Papua New Guinean vessels.²² Pudjiastuti's

17 Willis, *supra* note 10.

18 See Seng Tan, *Indonesia among Powers: Will ASEAN Still Matter to Indonesia?* in CHRISTOPHER ROBERTS, ET AL (EDS.), *INDONESIA'S ASCENT: POWER, LEADERSHIP, AND THE REGIONAL ORDER* 287–307 (2015).

19 Leonard C. Sebastian, et al., *Beyond the Archipelagic Outlook: The Law of the Sea, Maritime Security, and the Great Powers*, in ROBERTS, ET AL (EDS.), *supra* note 18, 308–334.

20 *Ibid.*

21 Avinash Dixit, *Democracy, Autocracy, and Bureaucracy*, available at <https://www.princeton.edu/~dixitak/home/DeAuBuo4.pdf/>.

22 *Penenggelaman Kapal* (Vessel Sinking), Kementerian Kelautan dan Perikanan (Ministry of Marine Affairs and Fisheries), 7 April 2016, available at <http://kkp.go.id/2016/04/07/penenggelaman-kapal/>.

execution of the policy has not been without controversies, and has become one of the administration's most well-known policies. While the program violates no international laws per se, it has upset Indonesia's neighbors, who have privately argued that Indonesia could enforce its laws in a less showy manner.²³

Yet this ostentatiousness may be explained by the abundance of resources Indonesia has at its disposal. Indonesia has the world's biggest tuna fishery – it is also one of the least regulated. Tuna remains a highly migratory species that is deeply regulated in international frameworks.²⁴ Article 64 of the United Nations Convention on the Law of the Sea (UNCLOS),²⁵ as well as the 1995 Straddling and Highly Migratory Fish Stocks Agreement (Fish Stocks Agreement)²⁶ together provide that, where the species is found in an EEZ, the coastal State and other States fishing in the EEZ, or on the high seas beyond it, have a duty to cooperate in the conservation and management of the species.²⁷ The tuna regional fisheries management organizations attempt to manage tuna fisheries by strengthening conservation of stocks. To enhance international cooperation, Indonesia ratified UNCLOS in 1985 and the Fish Stocks Agreement in 2005. Throughout the decade, Indonesia became a member of numerous intergovernmental organizations mandated to manage tuna, including the Indian Ocean Tuna Commission (IOTC),²⁸ the Commission for the Conservation of

23 Connelly, *supra* note 9.

24 ROBIN ALLEN, INTERNATIONAL MANAGEMENT OF TUNA FISHERIES: ARRANGEMENTS, CHALLENGES AND A WAY FORWARD (2010).

25 The United Nations Convention on the Law of the Sea – also called the Law of the Sea Convention or the Law of the Sea treaty – is the international agreement that resulted from the third United Nations Conference on the Law of the Sea (UNCLOS III), which took place between 1973 and 1982. The Convention, concluded in 1982, replaced four 1958 treaties. UNCLOS came into force in 1994. Text of the treaty, *available at* http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm/.

26 The Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish. Text of the treaty, *available at* http://www.un.org/depts/los/convention_agreements/texts/fish_stocks_agreement/CONF164_37.htm/.

27 Aust, *supra* note 2, at 299.

28 The Indian Ocean Tuna Commission (IOTC) is an intergovernmental organization mandated to manage tuna and tuna-like species in the Indian Ocean and adjacent seas. The objective of the Commission is to promote the conservation and optimal utilization of tuna and tuna-like stocks covered by the IOTC Agreement, and to encourage sustainable development of fisheries. *See* <http://www.iotc.org/> and also <http://www.fao.org/fishery/rfb/iotc/en/>.

Southern Bluefin Tuna (CCSBT),²⁹ and a cooperating non-member of the Western and Central Pacific Fisheries Commission (WCPFC).³⁰

Aside from international norms and commissions, there are other concerns more practical in nature. For centuries, fishermen have used the traditional pole-and-line method for catching tuna. The method is quite simple: hooked bait is used to attract fish which are then caught one by one. Once a fish is hooked, the fisherman pulls the line to swing the fish on the deck. It is considered the most environmentally friendly means of fishing that ensures sustainability of tuna for future generations.³¹

However, many fishermen no longer practice this method. Dangerous fishing techniques that include using fish aggregation devices (FADs) are used to harvest more and more fish.³² These are the primary reasons for the decline in tuna stocks.³³ These devices attract not just tuna but other creatures such as dolphins, sharks, whales, rays, turtles, sea birds, as well, thereby causing much destruction to marine life in the area.

Aside from that, research shows that around EEZs, another method – purse seining – is used to catch tuna.³⁴ In this method, entire schools of fish are caught through large nets called purse seines. These nets catch whatever comes their way, resulting in ample by-catch. This is yet another cause in the noticeable decline in tuna stocks in the ocean. Overfishing with these harmful, unsustainable methods to meet the growing demand for tuna is reducing the number of tuna in and around Indonesian waters.³⁵ The entire ecosystem

29 The objective of the Commission for the Conservation of Southern Bluefin Tuna (CCSBT) is to ensure, through appropriate management, the conservation and optimum utilization of the global Southern Bluefin Tuna (SBT) fishery. The Commission is responsible for setting a total allowable catch (TAC) and its allocation among the members; takes decisions to support and implement fishery management; and acts as a coordination mechanism for member's activities in relation to the SBT fishery. See <https://www.ccsbt.org/> and <http://www.fao.org/fishery/rfb/ccsbt/en/>.

30 The objective of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC) is to ensure, through effective management, the long-term conservation and sustainable use of highly migratory fish stocks in the western and central Pacific Ocean in accordance with the 1982 United Nations Convention on the Law of the Sea and the 1995 UN Fish Stocks Agreement. See <https://www.wcpfc.int/about-wcpfc> and <http://www.fao.org/fishery/rfb/wcpfc/en/>.

31 See Allen, *supra* note 24.

32 See Amber Anwar, *The Tuna Question*, 17(12) SOUTHASIA 60–61 (2013).

33 *Ibid.*, see also Allen, *supra* note 24.

34 Uwe Tietze et al, *Fishing with Beach Seines* (2011). See also Peter K.J. Hahn et al, *Beach Seining*, in DAVID H. JOHNSON ET AL (EDS.), *A SALMONID FIELD PROTOCOLS HANDBOOK, TECHNIQUES FOR ASSESSING STATUS AND TRENDS IN SALMON AND TROUT POPULATIONS* 267–323 (.2007).

35 FOOD AND AGRICULTURE ORGANIZATION (FAO), *PRESENT AND FUTURE MARKETS FOR FISH AND FISH PRODUCTS FROM SMALL-SCALE FISHERIES – CASE STUDIES*

is also at stake due to overexploitation that is causing total chaos in the tropic chain. Due to the rise in temperature of the ocean's surface, fish are moving deeper into the ocean, away from the reach of the traditional fishermen whose methods are not designed to catch fish in the deep waters of the ocean.³⁶

IV Indonesia's International Rights and Duties within the EEZ

First, it must be noted that in true transnational form, several international instruments, both binding and non-binding, provide guidance as to the prevention of illegal fishing:

1. Binding instruments: UNCLOS, the 1993 FAO Compliance Agreement,³⁷ the 2009 FAO Port State Measures Agreement,³⁸ and other relevant international agreements such as the 1995 UN Fish Stocks Agreement.³⁹
2. Non-binding instruments: the FAO Code of Conduct for Responsible Fisheries (FAO Code of Conduct 1995),⁴⁰ and the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported, and Unregulated Fishing (IPOA-IUU).⁴¹

FROM ASIA, AFRICA, AND LATIN AMERICA (2008), available at <http://www.fao.org/3/a-i0230e.pdf/>.

36 FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, INCREASING THE CONTRIBUTION OF SMALL-SCALE FISHERIES TO POVERTY ALLEVIATION AND FOOD SECURITY (2005).

37 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas. Text of the agreement available at <http://www.fao.org/docrep/meeting/003/x3130m/X3130E00.HTM/>.

38 Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. Text of the agreement available at <http://www.fao.org/documents/card/en/c/915655b8-e31c-479c-bf07-30cba21ea4b0/>. See also <http://www.fao.org/fishery/psm/agreement/en> for more information.

39 The Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish. Text of the treaty: Text of the agreement available at http://www.un.org/depts/los/convention_agreements/texts/fish_stocks_agreement/CONF164_37.htm/.

40 To promote long-term conservation and sustainable use of fisheries resources, following a call from the International Conference on Responsible Fishing (1992) to strengthen the international legal framework for more effective conservation, management and sustainable exploitation and production of living aquatic resources, the 1995 FAO Conference adopted the FAO Code of Conduct for Responsible Fisheries. Text and information available at <http://www.FAO.org/fishery/code/en/>.

41 International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported, and Unregulated Fishing (FAO IPOA-IUU), available at <http://www.fao.org/fishery/ipoa-iuu/en/>.

Despite this, UNCLOS remains the only instrument to explicitly regulate law enforcement against illegal fishing practices conducted by foreign vessels in the EEZ. Article 73 states that:

1. The coastal State may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention.
2. Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security.
3. Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment.
4. In cases of arrest or detention of foreign vessels the coastal State shall promptly notify the flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed.

There are two interests identified by the provision – that of the coastal State to take the actions needed to ensure compliance with their national laws; and that of the flag State to obtain the “prompt release,” of the vessel and its crew following “reasonable bond” payment to the coastal State.⁴² As a coastal State, Indonesia has implemented those international rights and obligations into a number of national laws. Some of them are quite relevant to the legal enforcement for Indonesia's sovereign rights in the area of EEZ. They are:

- Law No. 5 Year 1983 on Indonesia's Economic Exclusive Zone;
- Law No. 17 Year 1985 on UNCLOS Ratification;
- Law No. 6 Year 1996 on Indonesian Waters;
- Law No. 17 Year 2008 on Navigation;
- Law No. 45 Year 2009 on Fisheries;
- Law No. 32 Year 2014 on Maritime Affairs (Ocean);
- Government Regulation No. 54 Year 2002 on Fisheries Activities;

42 International Tribunal for the Law of the Sea (ITLOS) case *Monte Confurco* case (France v. Seychelles), Prompt Release. Available at <https://www.itlos.org/en/cases/list-of-cases/case-no-6/>. See also Yoshifumi Tanaka, *Prompt Release in the United Nations Convention on the Law of the Sea: Some Reflections on the ITLOS Jurisprudence*, 51(2) NETHERLANDS INTERNATIONAL LAW REVIEW 237–271 (2004); Heiki Lindpere, *Prompt Release of Detained Foreign Vessels and Crews in Matters of Marine Environment Protection*, 33(2) INTERNATIONAL JOURNAL OF LEGAL INFORMATION 240, 241 (2005) and Usmawadi Amir, *Penegakan Hukum IUU Fishing menurut UNCLOS 1982 (Studi Kasus: Volga Case)* [Legal Enforcement against IUU Fishing under UNCLOS 1982 – Case Study: Volga Case] 12 JURNAL OPINIO JURIS, 68–92 (2013).

- Presidential Regulation No. 16 Year 2017 on Indonesia's Ocean Policy;
- Minister of Marine Affairs and Fisheries (MMAF) Decree No. Kep.60/Men/2001 on the Management of Fishing Vessels on Indonesia EEZ;
- MMAF Decree No. Per.16/Men/2010 on Fishing License for Fishing Vessels above 30 Gross Tonnage;
- MMAF Decree No. Kep/50/Men/2012 on the Implementation of the IPOA-IUU Fishing;
- MMAF Decree No. 17/Permen-KP/2014 on Special Investigator of Fisheries Crimes; and
- MMAF Decree No. 56/Permen-KP/2014 on the Moratorium Foreign Fishing Licensing on Indonesian Waters.

With these main rules and regulations, it can be argued that Indonesia has a sufficient legal basis to enforce its laws and to combat illegal fishing within its jurisdiction.

v Impacts of Illegal Fishing to Indonesia

Research has grouped the economic impact of illegal fishing into two inter-linked categories, direct and indirect/secondary economic losses.⁴³ An example of direct losses is a reduction in catches, which significantly impacts the national income of coastal countries. A myriad of other examples of economic loss includes revenue from the boat landing, license fees, taxes evasion and other charges – all of which should have been paid to the State if the entire affair was conducted via legal means. Secondary losses include loss of income and jobs in the fishing industry, which would result in reduced demands for fishing equipment and vessels as well as product processing, packaging, marketing, and transportation.⁴⁴ To put it in more tangible terms, the Ministry of Maritime Affairs and Fisheries of Indonesia has estimated in various press statements over the years that illegal fishing has cost the country 30 trillion IDR (about 3.11 billion US\$) per year.⁴⁵ Social impacts include loss of employment in the fishing industry, which in turn is caused by a depletion of stocks and reduced catches, and deficits for coastal communities whose lives depend heavily upon the sea: such as fishing communities and those who live on the shoreline.⁴⁶ Furthermore, said depletion can often lead to the import of fish – in Indonesia

43 Rothwell and Stephens, *supra* note 3, at 140.

44 *Ibid.*

45 *Illegal Fishing*, TEMPO, (18 March 2017), available at <https://www.tempo.co/topik/masalah/1022/illegal-fishing/>.

46 FAO, *supra* note 36.

especially – which ruffles nationalistic feathers;⁴⁷ or at least pique interest in supply chain management as to why States of origin (as in, originally possessing the raw materials/resources) are yet to be able to benefit without outsourcing processing and quality control to foreign States.⁴⁸

The tangle with foreign States does not end with matters of trade, however. Given the transnational nature of oceans and maritime territory, impacts of illegal fishing can also spill over into the international arena and relations with other/neighboring States.⁴⁹ This is especially true in cases where illegal fishers and/or their vessels are of another country – either by nationality for the former, or flags for the latter; to name clearest examples. One of the most common fears articulated that attempts to explain aversion to foreign fishing vessels are non-regulation – that is, loopholes (legal or otherwise) that exist that may allow foreign vessels and crew to disavow the regulations where they fish – which may lead to unsustainability as well as over-exploitation.⁵⁰

Besides the problems related to competition over the exploitation of resources, concerns over environmental degradation have also increasingly engaged the attention of governments and civil societies in Asia Pacific.⁵¹ Threats to the marine ecosystem, among others, come from pollution, overfishing and destructive fishing practices.⁵²

Overfishing,⁵³ in particular, is also a serious problem in the Asia Pacific. Unsustainable exploitation of resources is common throughout the region, as countries compete against each other to have the highest economic growth. The economic progress in the region has mostly depended on natural resource mining, living and non-living, on land and at seas. Environmental concerns have often been sacrificed for the sake of economic competitiveness. The economic crisis has worsened pressure on the environment as countries fall back on

47 See Connelly, *supra* note 9, at 23.

48 Enos Kabu and Deviarbi Sakke Tira, *Value Chain Analysis Towards Sustainability: A Case Study of Fishery Business in Kota Kupang, Indonesia*, 5(1) INTERNATIONAL JOURNAL OF ECONOMICS AND FINANCIAL ISSUES 150–154 (2015). See also ERNA M. LOKOLLO ET AL., STATUS AND PROSPECTS OF FEED CROPS IN SOUTHEAST ASIA: AN INTEGRATED REPORT (2006).

49 Andrews-Chouicha and Gray, *supra* note 3.

50 MELDA K. ARIADNO, WHAT IS THE INDONESIAN RESPONSIBILITY FOR HIGH SEAS FISHERIES? (2011). See also COMMONWEALTH EXPERT STUDY GROUP ON MARITIME ISSUES, OCEAN MANAGEMENT, A REGIONAL PERSPECTIVE: THE PROSPECTS FOR COMMONWEALTH MARITIME COOPERATION IN ASIA AND PACIFIC (1984).

51 Dewi Fortuna Anwar, *Resource Issues and Ocean Governance in Asia Pacific: An Indonesian Perspective*, 28(3) CONTEMPORARY SOUTHEAST ASIA 466–489 (2006).

52 *Ibid.*

53 Namely catching more fish than can be regenerated over a span of time. See Anwar, *supra* note 51.

natural resources to outgrowth exports. As one analyst points out, “environmental and natural resource friendly regulatory and enforcement regimes, even if they exist, are likely to be abandoned or ignored in an attempt to cut costs, increase production and expand exports.”⁵⁴ Simply put; at sea, the unsustainable policy of States in their territorial waters and EEZ has been compounded by the illegal fishing activities carried out by fishing boats registered to other countries.

VI Indonesia’s National Policies and Campaigns to Combat Illegal Fishing

It remains one of Indonesia’s national targets to bring the national fish stocks back to sustainable levels. This is even more so given the current administration’s foreign policy, along with action plans formulated during the campaign: *Nawacita*. It is unsurprising to note that a good number of Indonesian nationals expect to hold the government to its promises.⁵⁵

Minister Pudjiastuti has implemented a tougher policy against illegal fishing. Repeatedly characterized as being explosive,⁵⁶ and the highly publicized nature of some law enforcements (e.g., the sinking of illegal fishers’ vessels) in Indonesia’s EEZ are clearly hoped to have a deterrent effect. As of April 2017, the Ministry has seized and blown up around 317 foreign vessels operated illegally in Indonesian waters.⁵⁷ Additionally, the Ministry have also issued moratoriums of fishing license for foreign States.⁵⁸

54 *Ibid.*

55 MARCUS MIETZNER, REINVENTING ASIAN POPULISM: JOKOWI’S RISE, DEMOCRACY, AND POLITICAL CONTESTATION IN INDONESIA 54–61 (2015).

56 Liz Chong, *At Work with the FT: Susi Pudjiastuti, Indonesia’s Fisheries Chief*, FINANCIAL TIMES (22 September 2016), available at <https://www.ft.com/content/08164102-6849-11e6-a0b1-d87a9fea034f>. Avantika Chilkoti, *Indonesian Fisherman Back Explosive Clampdown*, FINANCIAL TIMES, 8 April 2016, available at <https://www.ft.com/content/507e9648-fbbo-11e5-b3f6-11d5706b613b>.

57 Sara Schonhardt and I Made Sentana, *Indonesia Takes Explosive Approach to Illegal Fishing*, WALL STREET JOURNAL, 15 April 2016, available at <https://www.wsj.com/articles/indonesia-takes-explosive-approach-to-illegal-fishing-1460704409>. See also Iwan Supriyatna, *Menteri Susi: 236 Kapal Pencuri Ikan Ditenggelamkan Sepanjang 2016* [Minister Susi: 236 Foreign Vessels Sunked over 2016], KOMPAS.COM, 17 January 2017, available at <http://bisniskeuangan.kompas.com/read/2017/01/17/165433626/menteri.susi.236.kapal.pencuri.ikan.ditenggelamkan.sepanjang.2016>. Fabian Januarius Kuwado, *Lagi, 81 Kapal Pencuri Ikan Ditenggelamkan di Penjur Indonesia* [Again, 81 Illegal Fishing Vessels were Sunked in Indonesia], KOMPAS.COM, 1 April 2017, available at <http://nasional.kompas.com/read/2017/04/01/12003881/lagi.81.kapal.pencuri.ikan.ditenggelamkan.di.penjuru.indonesia>.

58 The moratorium, regulated by Permen-KP No. 56/2014 (Maritime Affairs and Fisheries Ministerial Regulation No. 56/2014) not only prevents new fishing licenses from being

The campaign has been media focus since President Jokowi took office in 2014, and may very well become a noted practice in the international arena. Considering how well received it is by domestic constituents,⁵⁹ it is unlikely that the campaign will stop any time soon; including the prohibition of transshipment.⁶⁰

Even so, there remains a split between the debate of the pros and cons of the policy, especially on the question of whether or not it actually improved the lives of the (small-scale) fishing communities. Said communities arguably continue to be focus of the campaign, which leads to larger, industrialized business to have much to contend to as well. The transnational nature of the issue has also caused Indonesia's Ministry of Foreign Affairs scrambling to ease any diplomatic complaints from flag States of the sunken vessels; especially during the beginning of the campaign. There has been a debate over (il)legality of the campaign especially legal enforcement on the EEZ. Most notably, there has been diplomatic tension with China over Natuna, and the Chinese assertion of the "nine-dash line."⁶¹

VII Letting That Sink In: The (I)llegality of Indonesia's Ship-sinking Policies

In Indonesia, the basis for law enforcement measures against illegal fishing is primarily UU No. 45 Year 2009 (amendment of UU No. 31/2004). Sanctions against foreign vessels perpetrators of illegal fishing include:

1. Fines/financial penalties;
2. Confiscation of fishing gear, catch, along with vessels used;
3. Detention of the vessels' crews and captains; and
4. The burning and/or sinking of said vessel.⁶²

issued to large fishing operations; it also outlaws the extension of licenses expiring within the six-month period. Regulation text *available at* <http://www.astuin.org/content/permen-kp-no56-2014-moratorium-usaha-perikanan-tangkap-di-wpp-nri/> See also Tama Salim, *With Moratorium in Place, Susi Begins Massive Restructuring*, The Jakarta Post, 12 November 2014, *available at* <http://www.thejakartapost.com/news/2014/11/12/with-moratorium-place-susi-begins-massive-restructuring.html/>.

59 Chilkoti, *supra* note 56.

60 The act of off-loading a container from one ship and loading it onto another ship. Regulation text *available at* <http://www.astuin.org/content/permen-kp-no-57-2014-menghentikan-kegiatan-transshipment-di-laut-wpp-nri/>.

61 Evan Laksamana, *The Domestic Politics of Indonesia's Approach to the Tribunal Ruling and the South China Sea*, 38(3) CONTEMPORARY SOUTHEAST ASIA 382–388 (2016).

62 Rothwell and Stephens, *supra* note 3.

Indonesia does not impose criminal sanctions for (individual) foreign perpetrators of illegal fishing in Indonesian EEZ, as provided in Article 102 of UU No. 31/2004. Article 104 stipulates the conditions for prompt release – as per international norms – of a detained and its crew after the payment of a reasonable bond.⁶³

The last of which – that is, ship sinking – remains the form of law enforcement that attracts hype and exposure, and seems to be especially administered by Indonesia in an effort to combat illegal fishing. Data from the Ministry of Maritime Affairs and Fisheries shows that the number of ships sunk increased dramatically over the last two years⁶⁴ – since President Widodo was inaugurated and took office.

The sinking of foreign vessel that committed illegal fishing has its own sets of standard operating procedures (SOP), namely:

1. Securing the crew;
2. Inventory of the equipment on the vessel, as well as emptying the vessel of fuel;
3. Documentation;
4. Setting aside (part of) the illegal catch for evidentiary purposes; and
5. Prepare and enclose minutes (*berita acara*).

Officials and institutions authorized to conduct such enforcement include the Ministry of Maritime Affairs and Fisheries (MMAF), the Indonesian Navy (TNI-AL), and the Indonesian National Police (Polri). The same three institutions are also authorized to pursue and halt vessels suspected of illegal fishing alongside another institution: the Coast Guard (*Badan Keamanan Laut – Bakamla*), the last of which was formed in 2013.

Ship sinking remains an effective means of Indonesian law enforcement to reduce the practice of illegal fishing by foreign vessels in Indonesian waters, especially in an area as vast as the EEZ. The issuance of Presidential Decree No. 115/2015,⁶⁵ which also put forward the establishment of Indonesia's Task Force on Illegal Fishing, aims to reinforce rule of law and the effort to bring together the strengths of the various aforementioned maritime institutions.

Despite its seemingly grandiose and highly-publicized nature, this particular policy of Indonesia does not run contrary to Article 73 of UNCLOS – rather, it can be argued that it is still in accordance with the provisions set forth by

63 *Ibid.*

64 *Peneggelaman Kapal, supra* note 22.

65 Peraturan Presiden No. 115 Year 2015 Tentang Satuan Tugas Pemberantasan Penangkapan Ikan secara Ilegal [Presidential Regulation No. 115 Year 2015 concerning Special Task Force against Illegal Fishing]. Regulation text available at http://kkp.go.id/wp-content/uploads/2016/10/PERPRES_NO_115_2015.pdf/.

Article 73(1) of the Convention. The sinking of foreign vessels that commit illegal fishing is a form of law enforcement; to ensure (State) compliance both to existing Indonesian domestic law as well as international standards. It is not done arbitrarily. Implicit agreement by the international community is also arguably shown, as there has yet to be a State that submits the practice or used it as grounds to bring Indonesia to tribunals responsible under the international regime (i.e., the International Tribunal for the law of the Sea (ITLOS)).

Fishing is far from the only maritime activity regulated under said international regime. It also boasts several other conventions that govern problems such as drug trafficking, maritime terrorism, illegal fishing, marine pollution, shipping, containers, trade, biodiversity and human trafficking.

VIII Slavery within the Fishing Industry: Violations of Human Rights in Indonesian Waters

It is then despairing that human trafficking can still be seen in the fishing industry as recently as 2016. The transnational nature of the human rights regime submits that slavery and forced labour – for that is what has happened – so prejudicial to the interests of all States, that it allows any State to exercise jurisdiction over them, wherever they take place and whatever the nationality of the alleged offender or victim.⁶⁶ An especially poignant case for Indonesia, that includes the island village Benjina in its territory, and lists the offending company (Pusaka Benjina Resources) as an Indonesian business entity.

In 2015, more than 300 slaves forced to work fishing in Indonesia were rescued in an effort of investigation.⁶⁷ The small harbor in the Island occupied by Pusaka Benjina Resources, whose five-story office compound stands out and includes the cage with the slaves. The company is the only fishing operation on Benjina officially registered in Indonesia, and is listed as the owner of more than 90 trawlers. However, the captains are Thai, and the Indonesian government is reviewing to see if the boats are really Thai-owned. The Arafura Sea provides some of the world's richest and most diverse fishing grounds, teeming with mackerel, tuna, squid and many other species. Although it is Indonesian territory, it draws many illegal fishing fleets, including from Thailand.

66 Aust, *supra* note 2, at 44. See also ANDREW CLAPHAM, HUMAN RIGHTS: A VERY SHORT INTRODUCTION (2007).

67 AP Explore: *Seafood from Slaves*, ASSOCIATED PRESS, available at <https://www.ap.org/explore/seafood-from-slaves/>. See also MARTHA MENDOZA ET AL., FISHERMEN SLAVES: HUMAN TRAFFICKING AND THE SEAFOOD WE EAT (2016).

The Associated Press (AP)⁶⁸ revealed a report that thousands of workers were being held against their will on an isolated island in often-brutal conditions. Slavery runs rampant in the industry, the AP investigation found, and some of the fish caught by slaves makes its way to grocery stores and markets throughout the world.⁶⁹

Many of the slaves were originally from Myanmar and were trafficked through Thailand to the Indonesian fishing companies.⁷⁰ In response to the AP report,⁷¹ officials from three countries went to a remote island of Indonesia to investigate how thousands of foreign fishermen wound up there as slaves and were forced to catch seafood that could eventually end up being exported to various countries.⁷²

To further demonstrate the interlinking between States, businesses, and their dealings with international norms,⁷³ it must be noted that even before the publicizing of slavery in Benjina, the Thai government has promised a new national registry of illegal migrant workers, including more than 100,000 workers in the seafood industry. However, policing has now become even harder because decades of illegal fishing have depleted stocks close to home, pushing the boats farther and deeper into foreign waters.⁷⁴

Meanwhile, the Indonesian government has continued to aim to clear out foreign poachers who take billions of dollars of seafood from the country's waters. As a result, more than 50 boats were docked in Benjina, leaving up to 1,000 more slaves stranded onshore and waiting to see what would happen next.⁷⁵

68 Robin McDowell and Margie Mason, *Over 300 Slaves Rescued from Indonesia Island After AP Investigation Into Forced Labor*, ASSOCIATED PRESS, 4 April 2015, available at <https://www.ap.org/explore/seafood-from-slaves/over-300-slaves-rescued-from-Indonesia-island-after-ap-investigation.html>.

69 Associated Press, *supra* note 67.

70 *Indonesia: Burmese Workers in Slave-like Conditions to Catch Seafood Supplying US Businesses*, BUSINESS AND HUMAN RIGHTS RESOURCE CENTER, 24 June 2015, available at <https://business-humanrights.org/en/indonesia-burmese-workers-in-slave-like-conditions-to-catch-seafood-supplying-us-businesses/>.

71 *AP Investigation: Men Forced to Work as Slaves to Catch Seafood for Global Supply*, US NEWS, 24 March 2015, available at <https://www.usnews.com/news/business/articles/2015/03/24/ap-investigation-are-slaves-catching-the-fish-you-buy>.

72 Claudia Koerner, *More than 300 Slaves Rescued in Indonesia after AP Investigation*, BUZZFEED NEWS, 6 April 2015, available at https://www.buzzfeed.com/claudiakoerner/more-than-300-slaves-rescued-in-indonesia-after-ap-investiga?utm_term=.xnOQN-RovL#.qvAXEpGoe/.

73 ELENA SHIH, *THE PRICE OF FREEDOM: MORAL AND POLITICAL ECONOMIES OF THE GLOBAL ANTI-TRAFFICKING MOVEMENT* (2015).

74 FAO, *supra* note 3.

75 International Organization for Migration, *Final Group of Fisheries "Slaves" to be Repatriated from Indonesia*, IOM, (22 March 2016), available at <http://www.iom.int/news/>

Indonesian officials are trying to enforce laws that ban cargo ships from picking up fish from boats at sea. This practice forces men to stay on the water for months or sometimes years at a time, essentially creating floating prisons, and given the common practice of faking or duplicating licenses.

As of this article's writing, it has been almost two years since the AP report revealed deaths and slavery aboard fishing boats in Indonesian waters and sparked a mass rescue of men in Benjina and Ambon.

The testimony of more than 1,100 of these fishermen, as well as more than 280 returned Indonesian fishers, has since been pieced together by the International Organization for Migration (IOM) to form a detailed account of how those involved in IUU fishing on foreign vessels in Indonesia go about their business.⁷⁶ It has since been concluded that when compared to trafficking in persons in other sectors, exploitation in the fishing industry is among the most severe.⁷⁷

On more lofty and quantifiable terms, it is safe to say that national laws were breached, fraudulent front companies established, different flags raised aboard vessels, and catch changed hands at sea until the fish entered the global supply chain where people were ignorant of its provenance and the human toll. The case, and the harrowing stories of the slaves contained within, is symptomatic of the insidious trade in people,⁷⁸ not only in the Indonesian and Thai fishing industries, but globally.

On the private side of things, it seems high time that businesses and consumers educate themselves and disavow, "criminal activity and exploitation potentially underpinning their profits or the fish on their plate."⁷⁹ In the public arena, recommendations have been made for the Indonesian government, including that investigators be trained to spot the signs of human trafficking. Minister Pudjiastuti has also announced that fisheries businesses must now comply with a "human rights audit," as part of the licensing process.⁸⁰

final-group-fisheries-slaves-be-repatriated-indonesia/.

76 International Organization for Migration, *Crimes at Sea Focus of New Indonesian Research, Maritime Security Forum Told*, IOM, 11 March 2016, available at <http://www.iom.int/news/crimes-sea-focus-new-indonesian-research-maritime-security-forum-told/>.

77 International Organization for Migration, *Human Trafficking in the Fishery Sector: The Benjina Case*, IOM, 15 June 2015, available at <https://indonesia.iom.int/human-trafficking-fishery-sector-benjina-case/>.

78 *Ibid.*

79 *Ibid.* See also Shih, *supra* note 73.

80 *Peraturan Menteri Kelautan dan Perikanan (Permen-KP) No. 2/2017 tentang Mekanisme Sertifikasi Hak Asasi Manusia pada Usaha Perikanan* [Ministerial Regulation of Marine Affairs and Fisheries No. 2 Year 2017 concerning Human Rights Certification Mechanism for Fishing Industries]. Regulation text available at <http://www.hukumonline.com/pusatdata/detail/lt589c3f91867co/node/534/peraturan-menteri-kelautan-dan-perikanan-nomor-2-permen-kp-2017-tahun-2017/>. See also the Ministry's immediate

IX Conclusion

Illegal fishing is an act that is tremendously ecologically unsustainable, leading to overfishing and a myriad of issues – including slavery, taking into account of the Benjina case – if the lax nature of fishing regulations remains unabated. At first glance, the posture Indonesia's current administration has taken, especially when it comes to maritime matters, seems to be in accordance with the law. Though the notorious law enforcement measures may ruffle diplomatic feathers, it is inseparable from national politics and approach favoured by President Widodo. In fact, it would be easy to argue that it is an expression of sovereignty.

A great body of international instruments and conventions as well as bilateral and regional arrangements has been adopted to deal with various maritime issues. The problem may lie in the lack of ability in implementing many of these conventions and agreements, particularly among developing countries that have limited capacity and resources. As maritime issues are usually transnational in nature, it is imperative that countries cooperate with each other in overcoming most of these problems. Indonesia, as an archipelagic State with a vast area of waters upholding its tougher policy against illegal fishing, is indeed in accordance with both national and international law. Despite foreign diplomatic concern, Indonesia needs to consistently implement its policy due to its positive impact on fish stocks and the livelihood of fishing communities.

On the other hand, although non-State actors are increasingly taking an active part in ocean governance – such as the Associated Press exposé that revealed the distressing conditions of slavery in Benjina – ultimately, States bear the primary responsibility in ensuring the security of the waters under their national jurisdiction and in protecting their marine environment. Developing countries need financial support as well as technological and technical assistance from each other as well as other countries so that they can enhance their ability to protect their marine environment and prevent illegal acts in their national waters. At the same time, however, regional and international cooperation should not be seen to be overstepping on the sovereignty of particular States, especially on issues related to law enforcement at sea.

press release, available at <http://kkp.go.id/2017/01/24/laporan-penelitian-dan-permen-sertifikasi-ham-awak-kapal-perikanan/>.