

Policies for Combating Illegal Fishing Crimes in Indonesia: A Comparative Study

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Abstract

Introduction: Indonesia is an archipelago with an area of 5.8 million square kilometers of marine area and has a tremendous amount of fisheries wealth. However, fisheries in Indonesian seas are often the target of illegal fishing from foreign fishermen. To address this problem, the government has issued various very progressive policies. However, illegal fishing crimes still occur frequently.

Purposes of the Research: This research aims to discuss the eradication of illegal fishing crimes in Indonesia from the perspective of Indonesian positive law and Islamic law. This research analyzes several illegal fishing cases that have been decided by the court by applying the ship confiscation penalty as a form of progressive punishment in combating illegal fishing.

Methods of the Research: This study used a normative method with a comparative approach between Indonesian positive law and Islamic law.

Results of the Research: The results showed that the government made a policy by setting up Task Force 115 based on Presidential Regulation Number 115/2015 on the Illegal Fishing Eradication Task Force, which is authorized to prevent and take legal action against illegal fishing criminals. The government issued Law Number 45/2009 on Fisheries jo. Law Number 11 of 2020 on Job Creation (Fisheries Cluster) by applying criminal penalties and administrative penalties. In addition, the government implemented a policy of destroying fishing equipment and foreign fishing boats by submerging them to the ocean. Regarding Islamic law, the policy of combating crime (jarimah) of illegal fishing is also mandated to the government or ruler in a country (ulil amri) because jarimah illegal fishing was classified as jarimah ta'zir. Similarly, the regulation for illegal fishing crimes in which the regulation of law enforcement mechanisms and the types of penalties to be applied are fully determined by the ruler or the state.

Keywords: Policies; Countermeasures; Illegal Fishing.

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INTRODUCTION

Indonesia, which consists of an extensive archipelago, has a marine area that exceeds its land mass. The nation's marine potential is remarkable, encompassing an oceanic area of 5.8 million square kilometers.¹ Within Indonesian territory, marine biological resources are substantial, with a diversity of more than 8,500 species of fish and other marine organisms². This significant fishery potential provides substantial economic resources capable of

¹ Mahmud, Akriani Dewi Bau Sinrang, and Massiseng Andi Nur Apung, "Prospects of Fisheries Industry Development in Indonesia Through Online Publication Media," *International Journal of Applied Biology* 5, no. 2 (2021): 117-29.

² Lucky Rachmawati, Djoko Mursinto, and Nurul Istifadah, "Fishery's Potential in Indonesia," *International Journal of Humanities and Social Science Invention* 6, no. 2 (2017): 2319 - 7714.

enhancing the welfare of the Indonesian population.³ One of the greatest potentials of Indonesia's seas is high seas fishing, with Indonesia's capture fishery potential estimated to reach more than 6.5 million tons per year.⁴ Indonesia has very wide Fisheries Management Areas (*Wilayah Pengelolaan Perikanan, WPP*) covering most of the waters of the Indian Ocean and Pacific Ocean with very abundant fish wealth such as tuna, skipjack, demersal fish and other types of fish.⁵ In addition to the capture of fish, Indonesia also has great potential in aquaculture. With favorable geographical conditions, Indonesia has land that is very suitable for the farming of freshwater, brackish water, and seawater fish. Indonesia's leading aquaculture commodities include shrimp, goldfish, tilapia, and seaweed, which are in high demand in the domestic and global markets.

Indonesia's substantial marine resources serve as a significant attraction for fishermen and business professionals engaged in the marine and fisheries sector, both domestically and internationally. Numerous large-scale foreign vessels frequently exploit Indonesia's marine potential. A significant issue within the marine sector is the widespread illegal fishing that occurs on the Indonesian maritime territory.⁶ As a consequence of illegal fishing activities, the Indonesian state incurs losses of up to 20 billion dollars or approximately 240 billion rupiahs annually. According to data provided by the Food and Agriculture Organization (FAO), illegal fishing results in a loss of 26 million tons, translating to around 23 billion US dollars or roughly 280.4 trillion rupiahs.⁷ The prohibition of illegal fishing is governed by Law Number 45 of 2009 concerning Fisheries in conjunction with Law Number 11 of 2020 on Job Creation (Fisheries Cluster). The rationale for prohibiting illegal fishing lies in its detrimental impact, particularly the reduction of fish stocks in Indonesian waters.⁸ Overexploitation and unsustainable fishing practices have significantly reduced fish populations, adversely affecting not only fishermen but society as a whole. Furthermore, illegal fishing contributes significantly to the degradation of marine ecosystems, including coral reefs and mangrove forests. The use of destructive fishing methods, such as the deployment of fish bombs and toxic substances, can obliterate marine habitats that are crucial for marine species. It poses a threat to marine biodiversity and disturbs the equilibrium of the ecosystem. The threat posed by illegal fishing extends beyond only environmental and economic dimensions, including concerns about maritime security and issues of national sovereignty. At present, most illegal fishing activities are carried out by foreign fishermen or business entities operating within the marine fisheries sector. These people originate from countries possessing substantial capacity vessels, using traditional fishing methods or advanced technological equipment. The ability of maritime authorities to regulate foreign vessels intruding into Indonesian maritime territory is compromised due to the numerous points of entry into Indonesia's sovereign waters, thus allowing foreign ships unhindered access to these marine territories. The Indonesian government has made

³ Catur Desta Sari and Rifki Khoirudin, "Pengaruh Sektor Perikanan Terhadap Pdb Indonesia," *PJEB: Perwira Journal of Economy & Business* 3, no. 1 (2023): 10–22.

⁴ Sapto Andriyono, "The Commercial Marine Fisheries of Java and Bali Island, Indonesia," *International Journal of Life Sciences & Earth Sciences* 1, no. 1 (2018): 39–48, <https://doi.org/https://doi.org/10.31295/ijle.v1n1.12>.

⁵ Abdul Bashir, Zulkarnain Ishak, and Imam Asngari, "The Performance and Strategy of Indonesian's Fisheries: A Descriptive Review," *International Journal of Economics and Financial Issues* 9, no. 1 (2019): 31–38, <https://doi.org/http://dx.doi.org/10.32479/ijefi.7188>.

⁶ Simela Victor Muhamad, "Illegal Fishing Di Perairan Indonesia: Permasalahan Dan Upaya Penanganannya Secara Bilateral Di Kawasan," *Politica* 3, no. 1 (2012): 59–85.

⁷ Wuri Handoyo, Dadang Suprijatna, and Mulyadi, "Upaya Penegakan Hukum Terhadap Pelaku Illegal Fishing Di Perairan Natuna Kepulauan Riau," *Karimah Tauhid* 3, no. 3 (2024): 3564–82.

⁸ Andi Firmansyah, Herman, and Hamka, "Primum Remedium Dalam Tindak Pidana Korporasi Di Bidang Perikanan," *Al-Ahkam: Jurnal Hukum Pidana Islam* 4, no. 2 (2022): 108–25.

various efforts to combat illegal fishing in Indonesia, but the number of foreign vessels engaged in illegal fishing practices has actually increased. During the administration of President Joko Widodo, the Indonesian government issued Presidential Regulation Number 16 of 2017 concerning Indonesia's Marine Policy. Then, the Presidential Regulation was followed up by the Ministry of Maritime Affairs and Fisheries by issuing a moratorium policy and a transshipment ban through the issuance of Minister of Maritime Affairs and Fisheries Regulation Number 56 of 2025.⁹ In addition, the Minister of Maritime Affairs and Fisheries, Susi Pudjiastuti, issued the Ministerial Regulation of the Ministry of Maritime Affairs and Fisheries Number 57 of 2015 concerning Capture Fisheries Business in the Fisheries Management Area of the Republic of Indonesia.¹⁰ One of the breakthrough policy measures in the Minister of Maritime Affairs and Fisheries Regulation is that the Indonesian government, through the Ministry of Maritime Affairs and Fisheries, will carry out the sinking of foreign fishing vessels engaged in illegal fishing practices in Indonesia as regulated in Article 69 of Law Number 45 of 2009 on Fisheries.

This policy is considered controversial, even garnering both support and opposition in society, as well as facing some rejection from friendly countries. The sinking of foreign fishing vessels is not carried out in an authoritarian manner but through a fair and professional legal process.¹¹ There are several cases that imposed severe penalties on foreign fishermen who entered the waters of the Republic of Indonesia, such as court decision Number 4/Pid.Sus-Prk/2014/Pn Tpg Tanjungpinang District Court and Jayapura High Court Number 66, 67, 68, 69, 70/Pid.Sus-Prk/2015/PT JAP. This case attracted public attention because the foreign ships were making huge profits and had long been engaged in illegal fishing practices involving Indonesian citizens themselves. The destruction of marine ecosystems through illegal fishing has been mentioned in al-Qur'an Ar-Rum verse 41: *"Corruption has appeared in land and sea because of the doings of the people's hands, that He may make them taste something of what they have done, so that they may come back."* Furthermore, in Surah Al-A'raf verse 56, Allah SWT prohibits human beings from causing harm to the Earth: *"And do not corrupt on earth after its reformation, and pray to Him with fear and hope. God's mercy is close to the doers of good."*

From a normative standpoint, Islam has not traditionally acknowledged the term "illegal fishing" explicitly; thus, this issue is regarded as a modern legal study. Although it is an actual phenomenon within the scope of Islamic jurisprudence, the subject of illegal fishing remains relevant for further in-depth examination, particularly from a viewpoint aligned with current circumstances and conditions. Consequently, this study conducts an in-depth analysis of two legal perspectives. Indonesian positive law and Islamic law. This study conducts an analysis of previous studies on efforts to address illegal fishing in Indonesia, considering both Islamic law and the positive law framework of Indonesia. Among the previous studies, a significant review by Marimin examines the Punishment of Illegal Fishing Perpetrators in Indonesia from the Perspective of Equality before the Law.¹² Furthermore, I Wayan Budha Yasa conducted a study with the subject "Modus Operandi

⁹ R Kurniaty and A. Kurniawan, "Another Threat to the Sovereignty of Indonesia's Territorial Waters: Human Trafficking in the Fisheries Industry," *IOP Conference Series. Earth and Environmental Science* 493, no. 1 (2020): 1–7.

¹⁰ Ayu Efitadewi and Wan Jefrizal, "Peneggelaman Kapal Illegal Fishing Di Wilayah Indonesia Dalam Pespektif Hukum Internasional," *Jurnal Selat* 4, no. 2 (2017): 260–72.

¹¹ Banjarani and Desia Rakhma, "Illegal Fishing Dalam Kajian Hukum Nasional Dan Hukum Internasional: Kaitannya Dengan Kejahatan Transnasional," *Jurnal Kertha Patrika* 42, no. 2 (2020): 150–62.

¹² Marimin Marimin, Lazarus Tri Setyawan, and RB. Sularto, "Punishment of Illegal Fishing Perpetrators in Indonesia in the Perspective of Equality before the Law," *Sasi* 28, no. 2 (2022): 259–67, <https://doi.org/https://doi.org/10.47268/sasi.v28i2.971>.

Pelaku Illegal Fishing Yang Berdimensi Transnasional di Indonesia.”¹³ Mutiara Hikmah also studied Illegal Fishing In Indonesia From The National And The International Law Perspective.¹⁴ In addition, Karina Tri Ambarsari discussed the Concept of Illegal Fishing for Indonesian Regulations and UNCLOS.¹⁵ However, there is no study that specifically analyzes the countermeasure of illegal fishing in Indonesia, both from the aspect of Islamic law and Indonesian positive law.

METHODS OF THE RESEARCH

This study used a normative juridical method, which is based on a study of current legislation (positive law).¹⁶ According to Yaqin, normative studies aim to systematically analyze and present facts, principles, and theories to propose new knowledge and ideas for change or renewal.¹⁷ This study evaluated materials related to addressing illegal fishing in Indonesia, regarding both Islamic and Indonesian laws. This study used a comparative law approach. Watson states that the comparative law approach is a study of the relationship between a country's legislative system or compares legislation between different legal systems that exist in the world.¹⁸ The comparative law approach aimed to compare the mitigation of illegal fishing in Indonesia from the perspective of Indonesian law with Islamic law.

RESULTS AND DISCUSSION

A. Indonesian Illegal Fishing Countermeasure Policy

Offenses in the fisheries sector, specifically illegal fishing in Indonesia, are governed by Law Number 31 of 2004 in conjunction with Law Number 45 of 2009 on Fisheries, and Law Number 11 of 2020 on Job Creation (Fisheries Cluster). The legislation permits fishing activities in Indonesian maritime zones by both Indonesian and foreign fishermen. However, to preserve the marine ecosystem, fishermen and companies in the fishing sector must obtain a fishing business license (*Surat Izin Usaha Perikanan, SIUP*). Article 26 paragraph (1) of Law Number 45 Year 2009 on Fisheries asserts that any business engaged in activities such as capturing, transporting, cultivating, processing, or marketing fish within the state fisheries jurisdiction is obliged to secure a SIUP.¹⁹

Companies operating fishing vessels under the flag of an Indonesian or foreign country that do not have a SIUP can be charged with illegal fishing crimes.²⁰ The modus operandi commonly used by perpetrators of illegal fishing crimes include fishing without a Fish Transportation Vessel License (SIKIP), Fisheries Business License (SIUP), violation of the use of fishing equipment, falsification or manipulation of licensing documents, and

¹³ I Wayan Budha Yasa, “Modus Operandi Pelaku Illegal Fishing Yang Berdimensi Transnasional Di Indonesia,” *Justitia et Pax* 39, no. 2 (2023): 443–69.

¹⁴ Mutiara Hikmah, “Illegal Fishing In Indonesia From The National And The International Law Perspective,” *Indonesian Journal of International Law* 11, no. 1 (2013): 267, <https://doi.org/https://doi.org/10.17304/ijil.vol11.1.267>.

¹⁵ Karina Tri Ambarsari, “Concept of Illegal Fishing for Indonesian Regulations and UNCLOS,” *Yuridika* 38, no. 1 (2023): 1–16, <https://doi.org/https://doi.org/10.20473/ydk.v38i1.38045>.

¹⁶ Theresia Anita Christiani, “Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object,” *Procedia-Social and Behavioral Sciences* 219 (2016): 201–7, <https://doi.org/http://dx.doi.org/10.1016/j.sbspro.2016.05.006>.

¹⁷ A. Yaqin, “Legal Research and Writting,” *Malayan Law Journal SDN BHD* 1 (2007): 10.

¹⁸ Christiani, “Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object.”

¹⁹ Wuri Handoyo, “Upaya Penegakan Hukum Terhadap Pelaku Illegal Fishing Di Perairan Natuna Kepulauan Riau,” *Karimah Tauhid* 3, no. 3 (2024): 3564–3582, <https://doi.org/https://doi.org/10.30997/karimahtauhid.v3i3.12657>.

²⁰ Shohib Muslim et al., “Omnibus Law: Effectiveness of Online Licensing and Law Enforcement of the Capture Fisheries Sector in Indonesia,” *Journal of Progressive Law and Legal Studies* 2, no. 3 (2024): 237–53, <https://doi.org/https://doi.org/10.59653/jppls.v2i03.1082>.

destructive fishing by using fishing equipment that is not following the rules and endangers fish resources or other marine ecosystems.²¹

Individuals involved in illegal fishing activities comprise not only local fishermen from Indonesia, but also international counterparts who engage in the exploitation and degradation of Indonesian fisheries.²² The considerable fishery resources of Indonesia have attracted fishermen from neighboring countries that border the Indonesian maritime zone, prompting them to engage in fishing activities within the Indonesian territory, particularly in the Indonesian Exclusive Economic Zone (EEZ), whose preservation can be attributed to the extensive expanse of the Indonesian maritime area and the insufficient number of Indonesian fishing vessels available to exploit and manage marine resources within the EEZ.²³ Between the years 2019 and 2023, the government has effectively executed law enforcement measures and arrested individuals engaged in illegal fishing activities within Indonesian marine territories.²⁴

Table 1. Number of Illegal Fishing in Indonesia Year 2019-2023

No.	Origin of the Vessels	Number of Vessels				
		2019	2020	2021	2022	2023
1	Foreign fishing vessel					
	a. Malaysia	14	16	18	4	5
	b. Vietnam	29	23	29	9	7
	c. The Philipines	23	18	5	5	4
	d. Taiwan	-	1	1	-	1
2	Indonesian fishing vessel	125	58	114	79	252
	Total	191	126	167	97	269

Source: Ministry of Maritime Affairs and Fisheries, 2023

To combat the crime of illegal fishing, the government has implemented several policies. It begins with prevention efforts to prevent illegal fishing in the first place. The first policy made by the Jokowi administration was the enactment of Presidential Regulation (*Perpres*) Number 115/2015 on the Task Force for the Eradication of Illegal Fishing. The government formed the Task Force as an effort to enforce the law against illegal fishing practices; the Task Force is known as Task Force 115 which is tasked with carrying out operations, prosecution, and law enforcement to eradicate illegal fishing. Task Force 115 included several institutions such as the Ministry of Maritime Affairs and Fisheries, Ministry of Foreign Affairs, Ministry of Finance, Ministry of Transportation, Attorney General's Office, Navy, National Police, Marine Security Agency, Financial Transaction Reports and Analysis Center (PPATK), and the National Intelligence Agency.²⁵

All of these institutions contribute to the prevention and prosecution of illegal fishing activities in Indonesia. The Ministry of Maritime Affairs and Fisheries cooperates with the

²¹ Anton Rosari and Yasniwati Yasniwati, "Pengaturan Kegiatan Usaha Perikanan Tangkap Di Laut Territorial Dan Zona Ekonomi Eksklusif Indonesia (ZEEI) Dan Kapal Tangkap Ikan Nelayan Di Provinsi Sumatera Barat," *Unes Law Review* 5, no. 4 (2023): 2033-54, <https://doi.org/https://doi.org/10.31933/unesrev.v5i4.580>.

²² Made Andi Arsana and Helik Susilo, "Analysis of Legal and Geospatial Aspects of Indonesia's Forward Position of EEZ (Exclusive Economic Zone) Boundaries of the 2017 National Map in the South China Sea," *Geomatika* 24, no. 2 (2018): 69-76, <https://doi.org/https://doi.org/10.24895/JIG.2018.24-1.815>.

²³ Rhaptyalyani Herno Della and Tanan Kuntasa, "Conflict of Maritime Delimitation in Exclusive Economic Zone (EEZ) between Indonesia and Vietnam," *JMSNI (Journal of Maritime Studies and National Integration)* 6, no. 2 (2022): 117-23.

²⁴ Handoyo, "Upaya Penegakan Hukum Terhadap Pelaku Illegal Fishing Di Perairan Natuna Kepulauan Riau."

²⁵ Zaki Mubarak, "Indonesia Legal Analysis of IUU Fishing And Transnational Organized Fisheries Crimes: Loopholes and Proposed Measures," *Indonesian Journal of International Law* 17, no. 1 (2019): 13-137, <https://doi.org/https://doi.org/10.17304/ijil.vol17.1.780>.

Ministry of Foreign Affairs to ensure effective communication with neighboring countries, particularly those with maritime boundaries to Indonesia. The Ministry of Maritime Affairs and Fisheries, through diplomatic missions of neighboring nations, has issued a warning that if their fishermen engage in illegal fishing practices, they will be subjected to the legal frameworks and regulations prevailing in Indonesia. Presidential Regulation Number 115/2015 on the Task Force for Combating Illegal Fishing states the tasks and functions of Task Force 115 as follows: 1) Identify the focus of law enforcement activities; 2) Collecting data and information as law enforcement efforts; 3) coordination with related institutions; 4) Establish and carry out law enforcement operations in the designated area; 5) carry out command and control; 6) Develop and optimize the implementation of the vessel monitoring system (VMS).

The enforcement of fisheries law against foreign fishermen is legally substantiated. Article 73, paragraph (3) of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) stipulates that foreign nationals apprehended by their destination country may undergo legal prosecution, yet are limited to penalties consisting solely of fines, followed by deportation to their home country, in the absence of a bilateral agreement. This regulation is incorporated within Article 102 of Law Number 31 of 2004 pertaining to Fisheries, subsequently amended by Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 relevant to Fisheries, prescribing that incarceration is inapplicable to fisheries-related criminal offenses occurring within the fisheries management area of the Republic of Indonesia, except where a valid agreement exists between the Government of the Republic of Indonesia and the foreign government concerned.

However, due to the increasingly frequent practice of illegal fishing in Indonesia's marine areas, the government regulates specific criminal provisions in the fisheries sector to provide a deterrent effect. Criminal offenses against perpetrators involved in illegal fishing are regulated in Articles 83A through 104. While the responsibility for foreign nationals involved in the criminal act of Illegal Fishing is contained in Article 93 of Law Number 45 of 2009 concerning Fisheries, in which there is a maximum imprisonment of 6 (six) years and a maximum fine of IDR.20,000,000,000.00 (twenty billion rupiah).

An effective and controversial countermeasure against illegal fishing was the submersion of foreign fishing vessels into the sea bed, which is based on Article 49 and Article 76 of Law Number 45/2009 on Fisheries. The law states that investigation or surveillance in fisheries may take special measures, including submersion or burning fisheries vessels that use foreign flags after preliminary evidence is obtained. Then, Article 76 letter a of the same Law on Fisheries determines that objects or tools used or produced from fisheries crimes can be confiscated or destroyed after obtaining Court approval.

The Indonesian government has taken assertive measures by submerging foreign vessels involved in illegal fishing activities on its marine territory. This initiative was designed to protect the sovereignty and natural resources of the area, while also serving as a deterrent. Furthermore, this measure represents the Government's efforts to maintain sovereignty in the Indonesian marine territory. This decisive action is considered effective, concrete, and resolute in the protection of the Indonesian marine territory.

The Indonesian government is currently taking firm steps against perpetrators of illegal fishing in Indonesia by imposing various types of penalties, including criminal, civil, and administrative sanctions. However, the punishment that has garnered both support and

opposition is the application of scuttling, blasting, and burning foreign fishing vessels that engage in illegal fishing in Indonesian waters. The legitimacy of the implementation of such punishments has been regulated in Article 69 paragraph (4) of Law Number 45 of 2009 concerning amendments to Law of the Republic of Indonesia Number 31 of 2004 concerning Fisheries.

In the court ruling Number 4/Pid.Sus-Prk/2014/Pn Tpg of the Tanjungpinang District Court, it is stated that KM. Laut Natuna 28 alias KM. Sudhita, flying the Thai flag along with its contents, was sentenced to imprisonment accompanied by a fine and the confiscation of the ship KM. Laut Natuna 28 alias KM. Sudhita to the state. The sentence is: "The sentence is based on the provisions of Article 92 of Law Number 45 of 2009 concerning Fisheries." In the court ruling Number 4/Pid.Sus-Prk/2014/Pn Tpg Tanjungpinang District Court, the judge decided to sentence Mr. Sangwiam Srisom to 3 (three) years in prison, a fine of IDR. 500,000,000,- (five hundred million rupiah), and stipulated that if the fine is not paid, it will be replaced with an imprisonment of 3 (three) months. Then the Judge also decided that the evidence (KM. Laut Natuna 28 alias KM. Sudhita flying the Thai flag and its contents) be confiscated for the State.

It is evident from the above ruling that the judge not only imposed a prison sentence but also imposed a fine. Both sanctions were applied simultaneously due to their cumulative nature. These conditions can positively influence the effectiveness of law enforcement in fisheries, both in terms of general prevention and deterrence against perpetrators of fisheries crimes. However, this decision is considered less appropriate because it does not support the government's policy of imposing destruction penalties by sinking foreign fishing vessels involved in illegal fishing in Indonesian waters.

One of the cases that caused quite a stir in Indonesia was the seizure of 5 foreign ships, namely KM Sino in Merauke, Papua, which were captained (fishing master) by Chinese nationals Liu Rongyu KM Sino 16, Lin Dezhi KM Sino 17, Zhuang Dwen KM Sino 18, Liong Junming KM Sino 28, and Guo Yunping KM Sino 29. These Chinese citizens collaborated with Indonesians who were given the responsibility of managing the SIUP and SIPI documentation, and these Indonesians were positioned as if they were the captain or fishing master, whereas in reality, these Indonesian citizens were merely subordinates or crew members (ABK).

On January 14, 2015, the Head of the PSDKP Tual Station quickly issued an Investigation Warrant, and during the arrest, evidence was found including 5 units of ships, 5 units of fish trawl nets, 5 bundles of documents, and mixed fish weighing approximately 393 tons. The captains of the five vessels are suspected of fishing in the Fisheries Management Area of the Republic of Indonesia without the necessary permits from the Government of the Republic of Indonesia. The Deputy Chairman of the *Anti Illegal* Fishing Task Force of the Ministry of Maritime Affairs and Fisheries, Yunus Husen, stated that there are a total of 10 KM Sino vessels suspected of illegal fishing in Indonesian waters.²⁶ The Merauke Court sentenced the Fishing Masters from five Sino ships in Merauke to two years in prison each and a fine of IDR 1 billion each, with a subsidiary of six months in detention. The evidence and several fishing equipment on the five Sino ships have been destroyed, and the value of the fish, amounting to over Rp 6 billion, has been deposited into the state treasury.

²⁶ Sri Mustika Wardani, "Analisis Kasus Illegal Fishing Oleh Warga Negara China Di Merauke Menurut Kejahatan Transnasional," *Jurnal Dwija Kesuma* 12, no. 1 (2004): 55-69.

Interestingly, this verdict, where the perpetrators still claim that they are not guilty by appealing to the Jayapura High Court. However, the Jayapura High Court Number 66, 67, 68, 69, 70/Pid.Sus-Prk/2015/PT JAP. Actually increased their sentences by imposing a 3 (three) year prison term and a fine of IDR 1,000,000,000,- (one billion rupiah), with the provision that if the fine is not paid, it will be replaced with an additional 6 (six) months of imprisonment. In addition, the Verdict states that the evidence in the form of 1 (one) unit of the KM. Sino ship is to be confiscated for destruction, and the fish catch of approximately 88,000 kg, which has been auctioned with a net auction result of Rp 1,724,800,000 (one billion seven hundred twenty-four million eight hundred thousand rupiah), is to be confiscated for the State.

In this ruling, the judge explicitly imposed the punishment of destruction of the ship and other evidence by means of scuttling. The sinking of foreign-flagged fishing vessels is a special action carried out by fishery surveillance vessels in performing their functions as law enforcers in the field of fisheries. However, an important aspect to consider regarding the sinking of foreign vessels is that it must not be done arbitrarily and should be based on sufficient preliminary evidence, where there is strong suspicion that foreign fishermen have committed crimes in the field of fisheries, such as foreign-flagged fishing vessels not having a Fishing License (SIPI) and a Fishing Vessel License (SIKPI), and catching and/or transporting fish in the fisheries management area of the Republic of Indonesia. This provision indicates that such special actions cannot be carried out arbitrarily, but only when investigators and/or fisheries supervisors are convinced that the foreign-flagged fishing vessel has indeed committed a crime in the field of fisheries.

However, policies against illegal fishing in Indonesia shifted slightly after the ratification of Law Number 11 of 2020 on Job Creation (Fisheries Cluster). Several marine and fisheries issues need attention post-ratification as follows: 1) Article 27, number 10 of the Job Creation Law grants foreign fishing vessels access to the Indonesian Exclusive Economic Zone (EEZ). This provision may result in significant exploitation of Indonesia's fisheries resources by foreign entities. Furthermore, Article 27, number 15 of the same law abolishes the requirement for foreign-flagged fishing vessels operating in Indonesia to employ a crew made up of at least 70% Indonesian nationals. The removal of this obligation allows foreign vessels to be crewed entirely by non-Indonesian personnel. Consequently, numerous small-scale Indonesian fishermen have been displaced by these foreign operations, losing access to traditional fishing areas. The opening of EEZ access to foreign fishing vessels contradicts the four conditions stipulated in Article 62 of the United Nations Convention on the Law of the Sea (UNCLOS), as Indonesia continues to strive to satisfy its domestic fish consumption demands, which was targeted at 54 kilograms per capita in 2019; 2) Article 27 point 2 of the Job Creation Law eliminates the National Commission for Fish Resources Assessment. In fact, this Commission has a very important role in maintaining scientific integrity to ensure that the level of utilization of fish resources is within sustainable limits. 3) The provisions set forth in the Job Creation Law regarding penalties for foreign fishermen operating in Indonesian maritime territories are deemed inappropriate. The legislation emphasizes administrative sanctions rather than criminal ones, under the premise that criminal sanctions are considered an *ultimum remedium*. Specifically, Article 18 point 23 of the Job Creation Law pronounces that the activities of exploiting small islands and waters, as well as marine biological ecosystems and the encompassing fish, without appropriate permits in the framework of foreign investment, are merely subjected to administrative sanctions. In

particular, these activities warrant criminal sanctions due to their potentially significant impact. Moreover, the enactments concerning corporate criminal liability within the Job Creation Law, particularly the amendments made to articles in the Fisheries Law, exhibit notable imperfections. Such imperfections in the sanction framework may result in the failure to fulfill the intended objectives of sanctions, specifically the creation of a deterrent effect.

The change in the policy approach to tackle illegal fishing has impacted the effectiveness of law enforcement agencies. This is evident in the operational performance of Task Force 115, which has rarely been observed for the submersion of foreign vessels engaged in fishing activities within Indonesian territorial waters. It is imperative that government policies protect marine environments, uphold maritime sovereignty, and protect the interests of Indonesian fishermen. Although fishermen from any country are allowed to fish in Indonesian waters, they are required to adhere to the legal and regulatory frameworks that govern fisheries in Indonesia.

B. Illegal Fishing Countermeasure Policy according to Islamic Law

Allah SWT endowed the ocean with its many creatures for the benefit of humanity. Consequently, ocean exploitation must be conducted in a manner that does not inflict harm on others or cause damage to the ocean itself. As stated in the Qur'an, Allah SWT remarks in Surah An-Nahl, verse 14: "And it is He who made the sea to serve you, that you may eat from it tender meat, and extract from it ornaments that you wear. And you see the ships plowing through it, as you seek His bounties, so that you may give thanks." In Surah An-Nahl, Verse 14, it is stated that Allah SWT has granted fish and related resources to humanity. These fishery resources are available for use by anyone, provided that such utilization is in compliance with relevant regulations, reflecting gratitude by adhering to rules for the welfare of society. On the contrary, illegal fishing constitutes a criminal act that diverges from this gratitude and potentially harms marine ecosystems, ultimately causing detrimental effects on humanity.

An individual who commits corruption on the earth and seas is explicitly mentioned in the Qur'an, surah Ar-Rum (30), verses 43-45, which states: "So devote yourself to the upright religion, before there comes from God a Day that cannot be averted. On that Day, they will be shocked. Whoever disbelieves, upon him falls his disbelief. And whoever acts righteously they are preparing for themselves. So that He may reward those who have believed and done the righteous deeds out of His bounty. Indeed, He does not love the ungrateful." The aforementioned evidence indicates a prohibition against any form of environmental destruction, including illegal fishing activities that adversely affect the marine environment and ecosystem. The ramifications of such reprehensible conduct are detrimental, inflicting harm on both humanity and the marine ecosystem, which serves as a significant consideration in the imposition of sanctions on those responsible for illegal fishing. Abdul al-Qadir Awdah asserts that sanctions are applicable to individuals who commit *jarimah* due to infractions against the stipulations of the sharia law, where *jarimah* leads to degradation.

However, the status of illegal fishing crimes is not explicitly regulated in the nash, therefore, this type of crime (*jarimah*) can be categorized as *jarimah ta'zir* ²⁷. According to Azhari Akmal Tarigan, in terms of Islamic law, this illegal fishing crime is classified as

²⁷ Nasir S. Tanjung, *Jarimah Dan 'Uqubah Merupakan Dua Sisi Ta'Zir* (Jakarta: Mimbar Agama dan Budaya, 1985).

jarimah ta'zir, because the elements of *jarimah had* and *Qisas Diyāt* are not fully fulfilled, or because there are circumstances that are still considered as *shubhat*.²⁸ Illegal fishing constitutes the act of extracting marine products in violation of legal and religious norms. Some claim that illegal fishing should be classified as robbery (*hirabah*), due to the unauthorized appropriation of marine resources considered state assets, as defined in Article 33 paragraph (3) of the 1945 Constitution, wherein Earth, water, and natural resources are governed by the state for the maximum welfare of the people. However, illegal fishing cannot be considered robbery (*hirabah*) since fish in the sea are not permanently owned, cannot be monopolized, and are regarded as blessings from Allah SWT, accessible to all.²⁹ Therefore, acts not explicitly regulated by the *nash* can instead be classified as *jarimah ta'zir*.

The category of *ta'zîr* punishment has been implemented in response to contemporary crimes, such as drug offenses, terrorism, corruption, and illegal fishing, among others³⁰. *Ta'zîr* punishment, also referred to as '*al-qatlu alsiyâsi*', indicates that illegal fishing is not governed by specific rules related to the severity, leniency, or type of punishment in the Qur'an and Sunnah³¹. Instead, the determination of these aspects is entirely entrusted to the leader or state, as the ruling authority (*ulil amri*), encompassing the formulation of rules, the legal enforcement mechanisms, and the administration of punishment.³² The approach to combating illegal fishing within the framework of Islamic law is predominantly influenced by individual countries that enforce Islamic law. In cases where illegal fishing is classified under the *jarimah ta'zir* classification, the imposition of penalties is left to the discretion of the ruling authority or government, aligned with the prevailing legal customs of the local community.³³ The implementation of *ta'zir* sanctions in different Islamic nations exhibits variation in both form and procedure. For example, countries such as Malaysia, Brunei Darussalam, and Indonesia (Aceh) enforce *tazir* punishments through imprisonment, flogging (*jilid* or *dera*), and monetary fines. On the contrary, in other Islamic nations, sanctions can include banishment or alienation, among other forms of punishment.

When a government assesses that unlawful fishing poses a threat to national sovereignty and jeopardizes the welfare of the people, the implementation of capital punishment may be justified based on the *ijtihad* of *fuqaha*, *muftis*, or scholars whom the government consults. Similarly, the Indonesian government's policy of eliminating foreign fishing vessels is considered permissible, depending on the legal framework of a state adhering to Islamic law.

CONCLUSION

Strategies to mitigate illegal fishing are subject to continuous evolution in parallel with legal advances in Indonesia. To improve the efficacy of measures that address illegal fishing, the government instituted Task Force 115 in accordance with Presidential Regulation Number 115/2015 on the Illegal Fishing Eradication Task Force. Task Force 115 has the

²⁸ Azhari Akmal Tarigan, "Ta'zîr Dan Kewenangan Pemerintah Dalam Penerapannya," *Ahkam* 1, no. 17 (2017): 153–60.

²⁹ Etim E. Okon, "Hudud Punishments In Islamic Criminal Law," *European Scientific Journal* 10, no. 14 (2014): 227–38.

³⁰ Muhammad Mawardi Djalaluddin, "The Implementation of Ta'zîr Punishment as an Educational Reinforcement in Islamic Law," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 1 (2023): 2549 – 3167.

³¹ Panji Adam, "Eksistensi Sanksi Pidana Penjara Dalam Jarimah Ta'zîr," *TAHKIM, Jurnal Peradaban Dan Hukum Islam* 2, no. 2 (2019): 39–66.

³² Abd al-Qadir Audah, *Al-Tasyri' Al-Islâmi Jina'iy: Muqâranah Bi Al-Qanûn Al-Wadh'I*, Juz 1 (Beirut: al-Risâlah Mu'assasah, 1992).

³³ Hambali Yusuf & Saifullah Basri, "Model Penyelesaian Alternatif Perkara Pidana Pembunuhan Biasa Menurut Hukum Islam Dan Relevansinya Dengan Pembaharuan Hukum Pidana Indonesia," *Jurnal Hukum Ius Quia Iustum of Law* 24, no. 1 (2016): 73–93.

mandate to carry out preventive actions and legal enforcement against individuals engaged in illegal fishing activities. In pursuit of prosecuting such individuals, the government has undertaken three amendments to the fisheries law, notably including Law Number 45 of 2009 concerning Fisheries and Law Number 11 of 2020 on Job Creation (Fisheries Cluster). The aforementioned legislation and regulations administer both criminal and administrative sanctions. Furthermore, the government has adopted a policy that involves the destruction of fishing tools and the submersion of foreign fishing vessels in the seabed. Within the framework of Islamic jurisprudence, countermeasure policies are entrusted to the government or ruler of a nation (*ulil amri*). Illegal fishing represents a crime that has not been explicitly and thoroughly delineated in the nash, and therefore, this jarimah falls under the category of jarimah ta'zir. All offenses classified as jarimah ta'zir, such as gambling, khalwat, ihtilat, or other modern crimes including drug-related offenses, corruption, terrorism, money laundering, euthanasia, and others, are subject to punishments determined by the ruler or governing state. Similarly, the regulation, enforcement mechanisms, and types of punishment applicable to the crime of illegal fishing are comprehensively determined by the ruler or the state.

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