

SINKING OF FOREIGN SHIPS IN INDONESIAN TERRITORIAL WATERS AS AN IMPLEMENTATION OF PENANCE LAWS AND INTERNATIONAL LAW

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Abstract

Indonesia's geographical territory as an archipelago with a large territorial area of water, so Indonesia has great potential in the results of its marine resources. This led to the arrival of many foreign fishing boats that passed within the territory of Indonesia's Exclusive Economic Zone to catch illegal *fishing*. *Illegal fishing* that occurs in Indonesia territorial waters resulted in heavy losses. The management and utilization of fish resources in the territorial waters of the State of Indonesia makes it necessary to be supervised by the supervisory task force created by Presidential Regulation No. 115 of 2015. About the Illegal Fishing Eradication Control Unit. As well as surveillance efforts that the Government of Indonesia in combating *illegal fishing* with the Indonesian Ministry of Marine Affairs by sinking this ship aims to provide a deterrent effect. Foreign actors or ships. This has been regulated in Law No. 45 of 2009 on Fisheries. Sinking of ships in Indonesia in judicial procedures can be done also by assessing the court process and accompanied by clear evidence. Sanctions for the sinking of foreign ships within Indonesian territorial waters against Indonesia's positive laws, as well as the linkage of judicial proceedings to the sinking of ships with the law penance and international law. Sinking foreign ships is a form of application of penance law from sistem Indonesian criminal law, as well as related in Hukum International. Metode yuri research in normative, with comparison of Indonesian law with law in other countries, namely the *Illegal Fishing Law of Malaysia Act 317* and the joint rules Eu countries against foreign ships. The sinking of foreign-flagged vessels that violate Indonesian territorial waters is part of Indonesia's penance laws.

Keywords: *Illegal Fishing*, Penance, Sinking of Ships

Indonesia's government applies the politics of fisheries law to make the Indonesian Sea clean and free from unlawful acts regarding Indonesian marine, and also with this policy the government aims to maintain the sustainability of marine natural resources in Indonesia, as well as for the welfare and prosperity and security of marine products and communities, especially fishermen and marine farmers.

The amount of wealth of a country can be proven by article 33 number 3 of the 1945 Constitution to be further referred to as the 1945 Constitution, it is explained that "the earth and water and natural wealth contained therein are controlled by the state and can be used for the entire prosperity of the people." Indonesia's abundant natural resources included in its marine natural resources cause Indonesia to be targeted by foreign parties who want to reap profits by illegal means. This is also supported by Indonesia's marine benefits which reach US\$ 1.2 trillion per year. The burning and sinking of foreign vessels in Indonesia has been regulated in the origin¹ of P69 paragraph (4) of the Fisheries Act, and it is explained that "In carrying out functions as intended investigators and /or fisheries supervisors can take action especially in the form of burning and / or sinking foreign-flagged fishing vessels based on sufficient preliminary evidence." This is evident in the records of the Ministry of Marine Affairs and Fisheries (KKP) noting that it has secured 135 vessels for violations in fishing in the period January-September 2021.² The Indonesian government's action measures show the seriousness of efforts to combat *illegal fishing* that have occurred a lot, so that Indonesia suffers many losses from the results of marine natural wealth. Indonesia's marine wealth should be able to increase the economy of the Indonesian state significantly.

In addition to being designated as a suspect in fisheries or other criminal acts, other crew members can be repatriated including foreign nationals. Tertulis in article 83 A number (1) of the Fisheries Act, for ships along with evidence seized by investigators are not returned, but to be used as evidence in court. The requirements of this evidence are carried out under article 76 A of the Fisheries Act which is written objects and/ or tools used in and / or resulting from fisheries crimes can be seized for the state or destroyed after obtaining the approval of the chairman of the district court.

According to the application of criminal event law, especially in fisheries justice in addition to the applicable Fisheries Law, the Criminal Procedure Law for the next time called *kuhap* also regulates the issue of confiscation or extermination. Article 38-46 of the *Kuhap* has regulated about the conditions of confiscation, matters that can be subject to confiscation, the authorities for foreclosure.

If by looking at the legal basis of the *Kuhap* and Fisheries Law in its regulations that apply in Indonesia, the sinking of the ship carried out by The Minister of Marine Affairs Susi Pudjiastuti is in line with positive law in Indonesia. The sinking of this ship can go through a court ruling by the legal procedures of the fishery criminal event and with the court process accompanied by clear and strong enough evidence that the ship has committed a criminal offence.

This research is to find out whether the purpose of sinking the ship in a fast way without judicial process is part of the penance law in the Indonesian justice system, and international criminal law.

A. PROBLEM FORMULA

Based on the background above, then the problem, and become the subject of study, among others:

1. Is the legal action of sinking a foreign-flagged ship in violation of Indonesian waters, an application of penance law?
2. How is the sinking of foreign ships by Indonesia's positive law against the sinking of foreign ships related to international law?

B. LIBRARY REVIEW

1. Penance Law

The State of Indonesia in combating criminal acts of crime is not only legally positive, to determine violations and legal sanctions, Indonesia also adheres to penance laws, this penance law is part of a positive law in determining the type of sanctions or violations, the severity of sanctions or the length of sanctions felt by lawbreakers and the way of execution where sanctions are carried out. The implementation of the punishment that has been decided by the Fisheries Court against the perpetrator,

¹ Jawahir Thontowi, "Pembakaran dan Penenggelaman Kapal Nelayan Asing dalam Perspektif Hukum Laut Nasional dan Internasional", *Pendecta* Volume 12, Nomor 2, Desember 2017, hlm. 158.

² <https://www.kompas.tv/article/214116/puluhan-kapal-asing-masuk-perairan-indonesia-kkp-pencurian-ikan-capai-ribuan>

is carried out by the country where the sovereign territory has been violated to determine the law used and carry out the punishment.³

The function of penance law into part of criminal law is as a form of criminal law work in society, through three

Phases are:⁴

- a) About criminal convictions for their actions that are not liked by the legislators;
- b) About criminal conviction by a judge against a person or co-conspiracy for a criminal act committed; and
- c) About the implementation of criminal penalties carried out by the authorities on the person sentenced to the criminal (penitentiary).

This penance law relates to the purpose and performance of human resources in organizations and institutions. To apply the regulations that have been made by the Indonesian government related to *illegal fishing* crimes that occur in EEZ waters, it is determined the punishment given when a violation occurs. Created an arrangement of institutions that help in surveillance at sea, by forming satuan staffing duties (TaskForce), Security Agency Laut (Bakamla). This is a function of the purpose of penance law which is still part of criminal law.

It has been regulated in a clear way by the law on the criminal imposed on the perpetrator, the type of criminal that can be given to the perpetrator and the amount of the fine imposed, and the way how the criminal should be carried out. Thus the definition of penance law is a legal system and a system of action of positive law itself.

The purpose of the prosecution is to improve the person of the perpetrator of the crime or criminal, making the deterrent effect of people become a deterrent to commit crimes. According to J.E. Sahetapy, as quoted by Marlina the purpose of the application for the liberation of the perpetrator from the wrong path he has taken, and suffering in his goal of being free gives the possibility of repentance with confidence.⁵

2. Previous Research

2.1 Policy of Sinking Foreign Vessels *Illegal Fishing* by the Government of Indonesia in the Perspective of International Criminal Law.

Research conducted by Haryanto and Joko Setiyono through *Jurnal Law Reform* volume 13, number 1, 2017, related to the policy of sinking foreign vessels *illegal fishing* by the Indonesian government in the perspective of international criminal law.

The Indonesian government is trying to eradicate illegal offenders.

Fishing, through the foundation of 5 (five) pillars of the country for policies carried out by the Indonesian state, aims to achieve the vision of the Indonesian state's mission as the world's maritime axis. By establishing Indonesia as a maritime pillar, aimed at strengthening maritime diplomatic relations, to eliminate conflicts at sea that often occur.

⁶As a form of enforcement provides a deterrent effect for perpetrators or prospective perpetrators to commit crimes, as a criminal policy effort, in the form of prevention of fishery crimes.⁷

In addition, in the perspective of international criminal law, the policy of sinking foreign ships is the implementation of the theory of State Sovereignty. If a foreign-flagged ship crosses a territorial waters without permission and performs activities that harm the state is a crime, the policy of sinking foreign vessels perpetrators of *illegal fishing* in the perspective of international criminal law makes one application of the theory of the criminal state. Criminal acts in the field of marine and fisheries in the International, which violate the power of the state of a state, in international law are the territorial boundaries of the highest power and sovereignty of a state of a state. The policy of sinking foreign ships, is the implementation of the theory of international criminal law enforcement which in principle according to Romli Atasasmita is divided into two ways, namely: ⁸*direct*

³ Marlina, *Hukum Penitensier*, Bandung: Refika Aditama, 2011.hlm.2.

⁴ *Ibid* hlm.2

⁵ *Ibid*, hlm 24.

⁶ Haryanto dan Joko Setiyono, "Kebijakan Peneggelaman Kapal Asing Pelaku *Illegal Fishing* Oleh Pemerintah Indonesia Dalam Perspektif Hukum Pidana Internasional", *Jurnal Law Reform* Volume 13, Nomor 1, 2017, hlm. 75

⁷ *Ibid* hlm 76.

⁸ *Ibid* hlm 79.

enforcement system; and *indirect enforcement system*.⁹Which is in principle for the enforcement of international criminal law by indirect means in an effort to bring judicial charges against perpetrators of international criminal acts through national law.

2.2 The sinking of foreign vessels of *illegal fishing* by the Government of Indonesia in the perspective of international criminal law.

Research conducted by Ayu Efridadewi and Wan Jefrizal is stated in Jurnal Selat volume 4 number 2, Mei 2017 explaining that Indonesia in implementing its policies carried out based on the ruling of the authority.¹⁰The Indonesian state has a way to act to eradicate fishpens in the territorial waters, with a court ruling, the law has permanent power. In accordance with the laws and regulations that have been promulgated to the state, the task force, especially marine duties, reserves the right to capture, detain, inspect, complete the documents of passing permits or make decisions. Against foreign actors and vessels who commit criminal acts in the fishery waters of the State of Indonesia, along with

evidence that can be used in the trial of fisheries.

The application of the policy of sinking foreign ships perpetrators of criminal acts *illegal Fishing* is based on article 69 paragraph (1) and (4) of the Fisheries Act has been applied to the perpetrators of marine and fishery crimes.

According to Hikmawanto Juwana, as quoted by Ayu Efridadewi and Wan Jefrizal there are five things in the policy of not interfering in bilateral, regional, multilateral relations between countries, among others:¹¹

1. There is no country that does not prohibit if its citizens commit the crime of fishing in the territorial waters of another country, or carry out a ship belonging to his country to commit a crime in the territorial waters of another country, which includes so-called criminal acts that violate the boundaries of its territorial territory;
2. Actions taken by the State of Indonesia in the form of the act of sinking ships that violate the EEZ, which is still within the territorial sovereignty of the State of Indonesia;
3. Actions carried out in accordance with the basis of the rule of law, namely article 69 paragraph (4) of the Fisheries Act;
4. Other countries should be aware that the State of Indonesia has been harmed by the criminal acts committed by the perpetrators of fish theft in the territory of the country of Indonesia; and
5. In addition, Indonesia has taken into account the safety of the crew, at the time before the sinking of foreign ships occurred.

The act of sinking a ship or bombing a foreign ship which is the policy of the Indonesian law, does not contradict the international law of UNCLOS 1982.

2.3 Controversy over the Implementation of The Ship Sinking Policy in order to Combat *Illegal Fishing* in Indonesia.

This research was conducted by Chairun Nasirin together with Dedy Hermawan in an article about the controversy over the implementation of the ship sinking policy in order to combat *Illegal Fishing* in Indonesia. Chairun Nasirin together with Dedy Hermawan in his research stated that the policy in legal efforts in Indonesia to reduce crime in the field of fisheries, received some opposition within his own country and foreign countries. Among other things, legal efforts in the policy of sinking foreign ships are often carried out by Indonesia against foreign ships. It is not actually contradictory under UNCLOS 1982, Article 73(3) which only protects the human being or the person, or can also be called the subject. Of course, stick with the legal process that applies in the country to carry out its legal sanctions, either by means of deportation back to the country of origin,

⁹ *Ibid* hlm 81.

¹⁰ Ayu Efridadewi dan Wan Jefrizal, "Penanggulangan Illegal Fishing di Wilayah Indonesia Dalam Prespektif Hukum Internasional", *Jurnal Selat*, Volume 4, Nomor 2, Mei 2017, hlm. 267.

¹¹ *Ibid* hlm. 268.

or by fine by administrative means, related to the evidence used can be allowed to be seized as state income (not state taxes) or made.¹²

The shooting of a foreign ship also violated provisions in the United Nations, as a member state of the United Nations.¹³ Hal this Indonesia is required to be able to provide policies in other forms, to be able to reach a settlement between countries. On the other hand, the sinking of foreign ships using bombing can provide a deterrent effect (*shock therapy*) for foreign fishermen not to commit crimes, by means of socio-cultural, political perspectives, the policy of sinking these ships makes the rise of the economy and marine resources better.

C. RESEARCH METHODS

Presearch in writing is normative juridical, i.e. using the source of legal material with a statutory approach, this approach has the benefit of knowing about the process of sinking foreign ships with positive laws Indonesia is a penitensier. The case concludes by looking at a court ruling that decides on the sinking of foreign vessels that commit criminal acts in EEZ territorial waters, in a review of criminal prosecutions provided by Indonesia's positive law.

Before discussing further about the penance law must first be known the origin of the word and the meaning of this law. There are several origins of the penance word from several references that can be used, namely:

Penitensia comes from Latin: *Penitentia*, meaning regret, goes back to its decision. Furthermore, *Penitentiae* istilah can be traced from the basic words *poena* (punishment, fine) or *Poenaal / Poenalis* (*imposing a penalty; claiming or enforcing a penalty*) or *Penal* (French).¹⁴

Based on the above quote, penance is a form of regret that must be applied. Likewise, the establishment of laws and regulations, especially in the fisheries, has the application of its people and the destruction of evidence.

Penitentia is currently known as Penitentier, by some has been used as another word for the word *straffen*. *Penitentier-recht* or *Straffen-recht* can etymologically be sorted out on the basic word *straffen* (*naamwoord*) which means criminal, but the word *straffen* (*werkwoord*) can also mean sedation, and the word *recht* means law, hal this can be said that *Penitentier-recht* is the law of application.¹⁵

The criminal law that applies in Indonesia is not cut down, all the same in the eyes of the law. Violations of the rules can be committed by foreign parties or Indonesian fishermen themselves. The application written in the Fisheries Act is a penance law. The punishment is imposed to give a deterrent effect to anyone who is the offender. The type of prosecution stipulated in the Fisheries Act for foreign vessels or fishermen of Indonesian citizens themselves in violation as written in Article 9 paragraph 1 Fisheries Act "Everyone is prohibited from owning, controlling, carrying, and/or using fishing gear and/or fishing aids that interfere with and damage the sustainability of fish resources infishing areas in the fisheries management area of the Republic of Indonesia. ""

The application of a vessel found to be in violation of the above provisions may be subject to sanctions as in Article 85 of the Fisheries Act which states that "Any person knowingly possessing, controlling, carrying, dam/or using fishing equipment and /or fishing aids that interfere and damage the sustainability of fish resources in fishing vessels in the area of fishing. Fisheries of the Republic of Indonesia as referred to in article 9 shall be punished with a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 2,000,000,000 (two billion rupiah)."

This rule is made so that the fishery ecosystem in the Indonesian marine region can be maintained intact. There is no violation of any kind from any party. This is done for the future of Indonesian fisheries. But another case if related to the theft of fish carried out by foreign ships and fishermen, there is an implementation of penance laws that are different from just the use of

¹² Chairun Nasirin dan Dedy Hermawan, "Kontroversi Implementasi Kebijakan Peneggelaman Kapal Dalam Rangka Pemberantasan Illegal Fishing di Indonesia", *Jurnal Spirit Publik*, Volume 12, Nomor 1, April 2017, hlm. 11..

¹³ *Ibid* hlm 11.

¹⁴ SR Sianturi, Mompang L. Panggabean, *Hukum Penitensia di Indonesia*, Jakarta, Alumni Ahaem-Petehaem, 1996, hlm. 1.

¹⁵ *Ibid*, hlm. 2

fishing gear. Ordinary fish. The government together with legislators make regulations specifically in the eradication of *Illegal fishing*. One of the sanctions as a criminal penalty and/or fine given by the Ministry of Marine Affairs and Fisheries, through the decree of the Law enacted against *Illegal Fishing* in the territorial waters In Indonesia is the sinking of the ship. In order for foreign-flagged ships that commit theft to be a deterrent. Penance laws apply to foreign vessels that have the intention to steal fish in the Indonesian sea area. As a state of law, the State of Indonesia runs the law as a system that requires its people to comply. If anyone does not comply with the applicable system then there will be sanctions or sanctions that will accompany. The prosecution as part of this criminal law is expected to make the community have the observance of the law, so that the crime does not increase. About what to do after the judgment of a criminal code, has been regulated in the Criminal Code. Sedangkan specifically regarding the application or what is referred to as *penitentiary law* or *penitentiare recht*.

Oleh Prof. van Bemmelen has been interpreted as *Het recht betreffende doel, werking en organisatie der strafinstuuten*.¹⁶ The law relating to the purpose, working force, and organization of the institutions of application. As quoted by Sianturi and Mompang, according to Prof. Van Bemmelen the application is:¹⁷

"Taking into account the institutions of prosecution with the objectives to be achieved, the working power of the prosecution agencies and organizations is needed so that the criminals handed down by the judge can achieve the objectives as desired".

The goal to be achieved by sanctioning or punishing the sinking of the ship by Indonesia to any foreign ship caught carrying out the theft of the ship is to uphold the sovereignty of the Indonesian state. Any ship that will enter Indonesia must report.

The application of *hukum Penitensia* in terms of ship exploration is part of the criminal law that provides prosecution as a matter for every subject of law after getting a verdict for a crime. That's been done. The norms that apply in criminal law are carried out by penance laws. This is in accordance with what is conveyed by Sianturi and Mompang as follows:¹⁸

"The Penance Law is part of the Positive Law which contains provisions or norms regarding the purpose, effort (authority) and organization of an institution to make a person repent, which is the decision of judges (prosecution, release, and release), enforcement, granting of discretion, against a criminal case."

The Indonesian Government's move in conducting the review of foreign ships, is a form of penance law from criminal law by involving several institutions that run in the framework of law enforcement. According to PAF Lamintang, penance law is the whole of the norms governing criminal institutions related to the enforcement, enforcement, discretion regulated by the establishment of laws contained in the material criminal law. The relevant institutions are from the police, prosecutors, justice and the ministry of fisheries and the Navy.¹⁹

To be able to provide a prosecution, a crackdown on violations of foreign ships needs to be given. The sinking of foreign ships in Indonesia is a form of punishment for illegal *fishing* is a violation that is very detrimental to the economy, improper utilization of marine resources and against Indonesian fisheries regulations.

The form of material punishment on fisheries crimes is the application of the regulations of the Fisheries Act and *kuhap*. Sanctions for foreign vessels in the capture of illegal *fishing* in accordance with the regulations, meaning that any act of sinking foreign ships is a form of the purpose of funding and has an effect. deterrent to foreign fishermen. The drowning does not apply to the Indonesian state warga but to foreign nationals who have interests in Indonesia. The charge that is dropped on the perpetrator or suspect from a foreign country with his ship aims to provide a deterrent effect through the act of crossing the ship.

In general, in the series of criminal event legal proceedings related to general criminal cases, the position of the suspect has the same rights in front of his trial. Especially to countries that want to take advantage of the results of their own neighbors.

¹⁶ PAF Lamintang dan Theo Lamintang, "*Hukum Penitensier Indonesia*", Jakarta: Sinar Grafika, 2017, hlm. 2.

¹⁷ SR Sianturi, Mompang L. Panggabean, *Op. Cit* hlm 4

¹⁸ *Ibid.*

¹⁹ *Ibid.* hlm 4

The Fisheries Law between Article 71 and Article 72 is inserted 1 (one) article, namely Article 71A, which reads as follows: The fisheries court is authorized to examine, prosecute, and decide criminal cases in the field of fisheries that occur in the fisheries management area of the Republic of Indonesia, both conducted by Indonesian citizens and foreign nationals. The Fisheries Law also regulates evidence that can be seized or seized by the state, namely in Article 76 and Pasal 76 letter c paragraph (5). Article 76 states that benda and/or tools used in and/or resulting from fisheries crimes may be seized for the state or destroyed after obtaining the approval of the chief justice of the district court. Article 76 letter c paragraph (5) states: objects and/or tools seized from the proceeds of fishery crimes in the form of fishing vessels can be handed over to joint business groups of fishermen and/or fisheries cooperatives.

The sinking of foreign ships carried out by Indonesia's positive law is one form of execution of court rulings for the destruction of ships used to carry out fish theft. Cara to provide a deterrent effect to countries that commit fish theft or kutan fishing or fish purchases that are not in accordance with the regulations. In general, the investigation process up to the seizure carried out by police officers in accordance with the existing regulations in Undang-Undang Fisheries with KUHAP. The sinking of foreign-flagged vessels that violate Indonesian territorial waters is part of Indonesia's penance laws. The process that must be carried out against foreign ships that will be sunk has a verdict issued by the Court. Not only will be drowned because it was caught stealing fish in the Indonesian sea area.

The theft of fish that occurred on the territory of the Indonesian state by a foreign-flagged vessel has violated the norms of applicable international law. With perpetrators who come from various nationalities and enter the territory of another country, it can be categorized as a transnational criminal offence. Elements of transnational criminal law according to Tolib Effendi are "crimes that are national in nature but contain transnational or cross-border aspects of the country."²⁰ Or it can also be interpreted as a domestic crime or crime of a national nature but crosses the borders of the country. The crime that occurs does exist in the country of Indonesia as a crime that is national but transnational aspects occur. This aspect occurs because there are actors of nationality outside Indonesia and ships are flagged by other countries. Another flagged ship is the expansion of the territorial territory of a country under international law.

Fish theft cannot be classified as an individual crime but as an organized crime due to the very careful preparation of any party that has an interest in the acquisition of fish. The stolen proceeds. Made clear in Article 2 of the Parlemo Convention 2000 the Convention against Transnational Organized Crime states that crime is transnational if:²¹

1. Conducted in more than one country;
2. Conducted in one country but substantive parts of its preparation, planning, direction, and supervision are carried out in another;
3. Committed in one country but involving an organized crime group participating in crime activities in more than one country; and
4. It was done in one country but has had a considerable impact in another.

Foreign-flagged vessels that enter Indonesian territory to carry out fish theft, they must have prepared all the necessary needs. The captain and abk have prepared equipment that will be used to carry out fish theft. It becomes a transnational criminal crime because both abk and the captain of a foreign-flagged ship have several nationalities. The crime of fish theft becomes an organized crime because without careful planning, it is impossible for them to catch fish and bring back or bring it to buyers who have indeed paid for their catch.

The purpose of transnational criminal regulation is contained in the Parlemo Convention 2000 and 3 (three) protocols, namely, "*Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*. (Protocols to prevent, eradicate, and punish human trafficking, particularly women and children.) These three protocols concern criminal acts that can occur in crimes that occur in some countries. These three protocols were served²² at in the Parlemo Convention of 2000.

According to the Konvensi Parlemo, it regulates transnational criminal acts that occur within the scope or territory of a country i.e. "Transnational criminal acts are criminal acts prosecuted under the jurisdiction of domestic / national law, not under the jurisdiction of international courts or other *ad hoc*

²⁰ Tolib Effendi, *Hukum Pidana Internasional*, Pustaka Yustisia, Yogyakarta, 2014, hlm 34.

²¹ *Ibid*, hlm 35.

²² *Ibid* hlm 36.

tribunals." It is not in international²³ court or any other temporary judicial body established by the UN council. This transnational crime judicial authority is in a country that feels aggrieved, such as fish theft crimes that occur in Indonesia with perpetrators from other countries.

In the development of criminal law in the international world, there are several trends that can be noted, including:²⁴

1. *Treatment philosophy (not revenge philosophy).*

This theory of improvement based the punishment on the construction of inmates, thus leaving behind aspects of retaliation known in the Classical School. This philosophy has been embraced in the Indonesian criminal law system.

By carrying out a crackdown in the form of burning or sinking ships used for fish theft is expected to retaliate against their evil behavior. So that they will not do the same again in the sea area of Indonesia; and

2. *Alternative sanction (alternative to imprisonment)*

The international tendency to provide alternatives between criminals

The deprivation of independence with criminals other than deprivation of independence, among others developed:

- Effectively conditional criminal (criminal supervision);
- *Probation* (conditional release);
- Externalize as far as possible with criminal fines;
- Formulate a criminal social work (community service order).

It cannot be given for the criminal act of fish theft in the Indonesian marine area because it does not provide maximum deterrent effect. Ships that are not destroyed will be reusable to carry out fish theft. Here are some comparisons of the law with the Law of Law in other countries.

1. Fisheries Act of Uni Eropa states

Countries that are members of the European Union make common rules that bind their members to the management of shared waters in the case of illegal fishing.

According to the rules of countries belonging to the European Union the three main economic causes of IUU fishing are *overcapacity, ineffective management, and subsidies. Economic benefits are a key driver for actors to engage in IUU activities.*²⁵ The main causes in illegal fishing are the economy, overcapacity, ineffective management, and subsidies. The economy is the main driver for perpetrators to engage in illegal arrest activities. The criminal act of illegal fishing in marine areas bordering other countries, can be enforced laws that apply in the local country both distinguishing between administrative sanctions and criminal sanctions. *The Illegal, Unreported and Unregulated Fishing Act* Article 4 letter a Foreign Ship does not carry out the following activities: "Committing²⁶ acts that constitute a threat or use of violence against sovereignty, territorial integrity, political independence of the coastal state, or by means of any other that constitutes a violation of the principles of international law asset out in the Charter of the United Nations." The existence of state sovereignty is appreciated, it is not allowed foreign ships that will pass into the territory of the country without permission. Especially with the theft of fish carried out in the sea area of the intended country. It is a threat to sovereignty, resulting in a violation of the principles of international law.

There are three types of sanctions in the European Union Fisheries Act:

1. For ships that do not apply for a ship arrest permit.

*Article 3 of the IUU Regulation states that fishing vessels shall be conservation and management measures applicable in the fishing area concerned, it has:*²⁷

Article 3 of the IUU regulations states that *fishing vessels will be deemed to be involved in IUU fishing if indicated that, contrary to the applicable conservation and management measures in the fishing area concerned.*

All forms of violations and violations committed in the territory of EU legislation are determined by every legal sanction.

²³ Ibid hlm 126.

²⁴ Sianturi, Mopang Panggabean, *Op.Cit.* Hlm. 166

²⁵ European Parliament, *Illegal Unreported and Unregulated Fishing Sanctions In The EU*, 2014.

²⁶ Djoko Tribawono, "Hukum Perikanan Indonesia", *Op.Cit.* hlm. 55.

²⁷ European Parliament, *Illegal Unreported and Unregulated Fishing Sanctions In The EU*, 2014.

*These activities are considered serious infringements in accordance with Article 42, depending on the gravity of the infringements in question which shall be determined by the competent authority of the Member State, (Article 3 (2)).*²⁸

The above activities are considered serious violations in accordance with Article 42 depending on the gravity of such violations to be determined by the competent authorities of the Member States, Article (3) Verse (2).

Similarly, any serious violation committed by the ship's owner or the ship's captain and his crew will be subject to serious sanctions from the competent authorities in the member state. The European Union was violated.

The investigation process contained in the fisheries rules in the Europa Union in preventing the sustainability of serious fisheries violations, as well as ensuring in the examination can be completed by confiscation fishing vessels, temporary immobilization of fishing vessels, confiscation of fishing gear and catches, revocation of permits to catch fish, revocation of the right to obtain New fishing rights.

Confiscation of ships committed when committing violations or crimes is the same as those committed by the Indonesian government. But the difference is, the seizure of ships in Indonesia is done related to legal proceedings. While in the European Fisheries Act confiscation is in the process of licensing fishing vessels in the EU member states. As long as they do not get a permit, the ship is prohibited from conducting fishing operations.

1) For All Ships Processed by Law

Ships that are inspected using the investigation process carried out, which is regulated in countries that are members of the European Union have a different type. But it is very different for sanctions from fisheries regulations in the European Union "The most common types of sanctions imposed in fisheries legislation across the EU are". (Meanwhile, the common types of sanctions often imposed in the Fisheries Act in the European Union are:²⁹

- a. *Warning;*
Warning;
- b. *Suspension or revocation of fishing authorization/ licence;*
Suspension or revocation of fishing authorization/license;
- c. *Temporary ineligibility to hold a fishing authorization/ licence;* Temporary inability to have permission;
- d. *Temporary ineligibility to apply for a fishing authorization/ licence;* Temporary inability to apply for an authorization/fishing license;
- e. *Permanent ineligibility to apply for a fishing authorization/ licence;*
Not getting permanently to apply for a fishing authorization/license;
- f. *Permanent or temporary confiscation of gear, equipment, vessel, catches;*
Permanent or temporary confiscation of ship equipment and catchments;
- g. *Monetary penalty;*
Financially fined;
- h. *Closure of fishing facilities;*
Closure of fishing facilities;
- i. *Repayment of financial aid;*
Repayment of financial aid;
- j. *Loss of fishing quota;*
Loss of fishing quotas; and
- k. *Imprisonment.*
Prison.

The type of prosecution for perpetrators of fish theft from the lightest to the most severe is prison. For the permanent confiscation of the ship and all its equipment is possible. So in the European Union there is also a seizure of ships, although not in the form of extermination as happened in Indonesia. The confiscation of the ship is no longer temporary but permanent so that it can no longer be used.

²⁸ European Parliament, *Illegal Unreported and Unregulated Fishing Sanctions In The EU*, 2014.

²⁹ European Parliament, *Illegal Unreported and Unregulated Fishing Sanctions In The EU*, 2014.

2) **For Ships That Have a Permit But Have Not Obtained Authorization and Report The Catch.**

EU State Regulations have a points system in place for fishing offenders. This points system is enforced and focuses on serious violations, and each ship has a list of penalty points that will be awarded to fishing licensees. The licensee in question is a company or individual fishing. Each country is fully entitled to the establishment of points and is responsible for the sanctions imposed on violators. As a point limit on violations set by the European Union;³⁰

**Table 1: Thresholds points system
(Table 1: Threshold Point System)**

Offence (violation)	Points (points)	Fishing Licence (angler license)
<i>First time</i> First time	18	<i>2 months suspension</i> 2-month suspension
<i>Second time</i> Second	36	<i>4 months suspension</i> 4-month suspension
<i>Thrid time</i> Third	54	<i>8 months suspension</i> Suspension of 8 months
<i>Fourth time</i> Fourth	72	<i>1 year suspension</i> 1-year suspension
<i>Fifth time</i> Fifth	90	<i>permanent suspension</i> permanent suspension

Table 1(one) above describes the threshold of sanctions for violations committed by companies or individuals. Companies or individuals affected by this point must immediately improve themselves so that the points of violation do not increase. The more points he made, the sailor would never be allowed to get a permit to go to sea again.

2. Malaysian Law

Malaysia has a Fisheries Act which includes the conservation, management and development of marine fisheries. Law 317 on Fisheries Act 1985, hereinafter referred to as law of Malaysia Act 317. The State of Malaysia has conducted a policy through by conditioning and amending written laws relating to fisheries.

As the rule was made with the Federal Constitutional Parliament in making laws. This Law applies in the fishing waters of Malaysia and the Federation with respect to the Federal territory of Malaysia Kuala Lumpur and Labuan Island.

The application for a permit is a must in carrying out activities in Malaysian territorial waters or that do not yet have permission from the Director General is a violation. It is called an offence for fishing but not having a permit or contrary to the conditions and/or directions written in Article 8 of the Law of Malaysia Act 317 stating that:

"Any person who undertakes any fishing activity, operates, or allows to be operated, in Malaysian fisheries waters any local fishing vessel for the purpose of fishing"

Any person who conducts fishing activities, operates, or allows to be operated, in the fishing waters of Malaysia every local fishing vessel for fishing purposes.

a. *"without a valid licence issued under this Part"*

Without a license issued under this rule;

b. *"in contravention of any condition in the licence issued in respect of such vessel; or"*

Contrary to any conditions in the license issued in connection with the ship; or

Foreigncatchers in law of Malaysia Act 317 who conduct, in Porigin 15 in accordance with paragraph (2), foreign vessels carrying out fishing without the permission of the Malaysian government. Permits granted by the Malaysian government will be included on a list that usually has a time of implementation. As stated also in Article 15 paragraph 2 of the Law of Malaysia Act 317 states:

³⁰ European Parliament, *Illegal Unreported and Unregulated Fishing Sanctions In The EU*, 2014.

"No foreign fishing vessel shall load or unload any fish, fuel or supplies or tranship any fish in Malaysian fisheries waters without the written approval of the Director General."
No foreign fishing vessel will load or unload any fish, fuel or supplies or transport any fish in Malaysian fishing waters without the written consent of the Director-General.

Malaysia still allows fishing in Malaysian waters by foreign-flagged vessels, as long as it is licensed and granted permission. For this permit there is a payment of money that must be given to the Malaysian government. The regulations on licensing are only for a few things stated in Article 19 paragraph 1 of the Law of Malaysia Act 317, namely:

1. (a) *Any application to the Director General for a permit to be issued in respect of a foreign fishing vessel to fish in Malaysian fisheries waters shall be made through a Malaysian agent who shall undertake legal and financial responsibility for the activities to be carried out by such vessel.*

Any application to the Director-General for a permit to be issued in connection with a foreign fishing vessel to fish in Malaysian fishing waters shall be made through a Malaysian agent who will perform legal and financial responsibility for the activities to be carried out. Done by the ship.

- (b) *Notwithstanding paragraph (1)(a), the Director General may require the payment of such sum of money as he may specify by way of security for the activities to be carried out by such vessel.*

Even if there is paragraph (1)(a), the Director General may request payment of some money because he can determine by means of security for the activities to be carried out by the ship.

Very different from the Indonesian government which does not allow any government or any ship to fish in Indonesian territorial waters. Foreign countries or foreign-flagged vessels are only allowed to make purchases from Indonesian fishermen. Purchases are made at ports in Indonesia or exported to countries that request purchases by sending. It is not allowed to make the purchase of fish in the middle of the sea by fishermen because it would be a presumption that there has been illegal fishing.

2. *Subject to section 21, any permit issued under this section shall be valid for a maximum period of one year and shall be subject to such conditions, and the payment of such sum of money, as the Director General*

Subject to section 21, any permits issued under this section are valid for a maximum period of one year and shall be subject to such provisions, and the payment of such amount of money, as the Director-General has

3. *may specify, in addition to the payment of such sum of money as may be required under paragraph (1)(b) and such fees as may be prescribed in regulations made under this Act.*

Subject to article 21, any permits issued under this section shall apply for a maximum period of one year and shall be subject to such provisions, and the payment of such amount of money, as determined by the Director-General, in addition to the payment of any amount of money that may be required under paragraph (1)(b) and costs as specified in the regulations made under this Act.

4. *Where there is a breach of any condition of the permit issued in respect of a foreign fishing vessel*

Where there is a violation of the conditions of the permit issued in connection with a foreign fishing vessel

- (a) *its owner and master shall each be guilty of an offence and liable to a fine not exceeding one hundred thousand ringgit each; and the owner and his master shall each be guilty of violations and subject to fines of not exceeding one hundred thousand ringgit each; and*
- (b) *every member of the crew of that vessel shall also be guilty of an offence and liable to a fine not exceeding five thousand ringgit each. Each member of the crew will also be guilty of violations and fined no more than five thousand ringgit each.*

The Malaysian government does not dispute about foreign vessels that have been licensed for 1 year. If there is a violation of the permit, it will be fined as specified in the Malaysian Fisheries Act.

Violations under Article 25 of the Law of Malaysia Act 317 state:

"Any person who contravenes or fails to comply with any provision of this act shall be guilty of an offence and where no special penalty is provided in relation thereto, such person shall be liable".

Any person who violates or fails to comply with the statutory provisions of this act shall be guilty of an offence and if no specific penalty is given in relation to it, that person shall be held liable."

a) *Where the vessel concerned is a foreign fishing vessel or the person concerned is a foreign national, to a fine not exceeding one million ringgit each in the case of the owner or master, and one hundred thousand ringgit in the case of every member of the crew;*

If the vessel in question is a foreign fishing vessel or the person concerned is a foreign national, for fines that each do not exceed one million ringgit for the owner or master, and one hundred thousand ringgit for each member;

Foreign ship owners who are foreign nationals will be given a fine of 1 million Ringgit, while for each crew will be charged 100,000 (one hundred thousand) Ringgit if caught not taking care of the extension of the permit specifically.

There are no sanctions or penalties in the form of ship culling in the Malaysian Fisheries Act. Arrangements for foreign-flagged vessels entering Malaysian territory are only required to be granted permission and payment of permits.

Adanya the politics of Indonesian fisheries law that has now been carried out very effectively, then countries that will steal fish in Indonesian territory will think twice - three times. Countries that have legal rules related to illegal fishing do not have the rule of law as owned by Indonesia, only limited to permanent confiscation and fines.

The sinking of the ship that has been done so far turns out to have consequences for the sovereignty of the nation that can also be maintained. Illegal fishing crimes can begin to be filed as transnational criminal crimes. Thus further strengthening Indonesia's maritime sovereignty.

A. TO THE CONCLUSION

1. To enforce the law to eradicate illegal fishing, especially in the territorial sea of the State of Indonesia, in the EEZ, Pemerintah Indonesia jointly made regulations on the Task Force aimed at minimizing crime in Indonesian marine waters, and preserving fish farming. The sinking of foreign-flagged vessels that violate Indonesian territorial waters is part of Indonesia's penance laws. The process that must be carried out against foreign ships that will be sunk has a verdict issued by the Court. Not only will be drowned because it was caught stealing fish in the Indonesian sea area. Although in Indonesian law allows it to be done in accordance with the Fisheries Law Article 69 Paragraph (4) which states in carrying out the function as referred to in paragraph (1) investigators and / or fisheries supervisors can take special measures in the form of burning and / or sinking foreign-flagged fishing vessels based on sufficient preliminary evidence. However, the legal system in Indonesia still applies the principle of presumption of innocence for foreign ships caught fishing in Indonesian territorial waters.
2. Adanya the politics of Indonesian fisheries law that has now been carried out very effectively, then countries that will steal fish in Indonesian territory will think twice - three times. Countries that have legal rules related to illegal fishing do not have rules not yet as owned by Indonesia, only limited to permanent confiscation and fines only. The sinking of the ship that has been done so far has no effect that positif for the sovereignty of the nation that can also be maintained.

B. SUGGESTION

1. The implementation of the decision to carry out the extermination in the form of sinking ships carried out by the current government has been in accordance with the rules. The government should be more committed by staying consistent with implementing positive regulations in Indonesia and according to procedures.
2. Establishing the act of fish theft in the territory of a country is a transnational criminal crime, especially in Southeast Asia, in order to help ASEAN member states, by issuing and passing fisheries regulations. sea in the ASEAN region.

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