

Legal Reformulation of Illegal Fishing for Strengthening Marine Security Institutions

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ABSTRACT

The two closest countries that have several problems or disputes are Indonesia and Malaysia. One of the disagreements that have arisen between Indonesia and Malaysia concerns the sea or maritime border. Establishing maritime boundaries in accordance with the UN convention on the law of the sea is very important especially for neighboring countries as it will offer a clear understanding of the rights and obligations of each country. Although the existence of predetermined boundaries does not guarantee that the maritime area is safe, the stipulation provides clarity on the sovereignty of the state compared to the continued absence of these boundaries which actually complicates the problem and prolongs disputes such as the rampant impact of widespread illegal fishing and other detrimental activities. Therefore, improving maritime security is very important, especially regarding the institutions and laws that govern it as well as the publications that must be fulfilled after the maritime boundary is agreed as regulated by UNCLOS 1982. Because the lack of knowledge about maritime borders can also make it difficult for people to participate in maritime security. This makes the Indonesian state have to be even more decisive to improve its security at sea to stop and punish adverse actions with agreements and maritime boundaries. In addition, the Indonesian government must be more firm and consistent in enforcing the law against actions that blatantly violate Indonesia's maritime sovereignty.

KEYWORDS: *Illegal Fishing, Legal Reformulation, Marine Institutional System.*

I. INTRODUCTION

The provisions contained in the 1945 Constitution which refers to article 25 concerning state territory have stated that the state of Indonesia is an archipelagic country. That in Indonesia natural resources can be found in abundance, especially in its vast sea area, so that it can be used to support the country's growth. The use of natural resources by the community and the government to advance and achieve community welfare is one of them that comes from the sea. It is widely recognized that the sea area, which constitutes the majority of Indonesia's territory and has strategic importance, is a fundamental resource for the development of a country.

Therefore, in an effort to improve the management of natural resources originating from the sea, including in terms of defense, security, social, cultural, political, and economic aspects, it must be well coordinated or planned, institutionalized with standards and with well-defined policy objectives. The sovereignty of the Republic of Indonesia is demonstrated by their efforts to regulate marine resources.¹

Previously, any country was free to use the sea, but this has not been the case since the UNCLOS 1982 maritime law system was ratified in 1982.² This regulation contains restrictions that prevent any country from using the sea freely which has an impact on the destruction of the natural resources of the sea itself. In addition, its provisions also regulate a number of ways to resolve maritime law conflicts according to the 1982 Convention on the Law of the Sea. Throughout their respective histories, the state of Indonesia and the state of Malaysia have had a poor relationship due to disputes that shape the dynamics of the relationship between the two countries.³ In particular, the two are still unresolved regarding the border issue.⁴

With regard to the disagreements that have arisen between Indonesia and Malaysia, the two countries decided to begin the process of resolving their

¹ Suradi Agung Slamet, "Efektivitas Badan Keamanan Laut Dalam Melaksanakan Fungsi Penegakkan Hukum Di Perairan Laut Indonesia," *Jurnal Papatung* 2(3) (2019): 178-86, <https://doi.org/10.54783/japp.v2i3.29>.

² Elsa Maria, selpiana BR Nababan, and Lenny Husna, "Kasus Penyelesaian Batas Laut Antara Indonesia Dan Malaysia," *Jurnal Cahaya Keadilan* 10(2) (2022): 20-31, <https://doi.org/10.33884/jck.v10i2.6460>.

³ Andre Bagus Irshanto, "Dari Konfrontasi Ke Perdamaian (Hubungan Indonesia-Malaysia 1963-1966)," *Criksetra: Jurnal Pendidikan Sejarah* 8(2) (2019): 96-102, <https://doi.org/10.36706/jc.v8i2.9243>.

⁴ Listianingsih Susanto, Michael Mamentu, and Trilke E. Tulung, "Prospek Penyelesaian Sengketa Tapal Batas Indonesia Malaysia Di Kawasan Sektor Barat Kalimantan-Sarawak," *Jurnal Ilmu Politik* 8(3) (2019): 1-10.

differences through diplomatic negotiation mechanisms. The negotiation stage is an alternative settlement that involves discussions to benefit each other for the parties to the dispute. Granting the right to either party to resolve the matter in a foreign court in the event of a recurrence in the future, this agreement will be in writing and legally enforceable.⁵ In terms of history, it shows that there are many disagreements between Indonesia and Malaysia that have been tried to be resolved through negotiations.

Among them, the problem of migrant workers is resolved through negotiations. Initially, this was done through talks between heads of state, the formation of ministerial-level working groups, and special representatives. This dispute resolution mechanism has also been involved in the conflict over the island of Ligitan, Sipadan. Even so, the International Court of Justice was ultimately responsible for mediating the issue because negotiations ended in failure.⁶

Each party to a dispute will always use conventional means to resolve disputes through this negotiation mechanism. This approach can sometimes take a very long time, for example, it takes more than ten years to negotiate the conflict between Sipadan Island and Ligitan. Because the parties to the dispute remain adamant with their respective opinions, and refute each other's arguments with the other parties during negotiations. This is done as an expression of the sovereign rights of each party to the dispute even though the impact makes it difficult to reach an agreement.⁷

As in the settlement of the territorial boundary with Malaysia, it has been a long time, because Indonesia uses the 1982 Convention on the Law of the Sea in contrast to Malaysia, which in practice is known to use maps made in 1979 so that the two countries in the negotiation process have not been resolved.⁸ Indonesia's argument has always been rejected by Malaysia on the basis of these differences, even though Malaysia has also ratified the 1982 Convention on the Law of the Sea. Legal and historical aspects in border issues refer to the provisions of international law. Of course, it makes it difficult to obtain an

⁵ Rifda Ayu Akmalia, "Implementasi Perjanjian Internasional Dalam Penyelesaian Sengketa Batas Laut Zona Ekonomi Eksklusif Antara Indonesia Dan Vietnam," *Yustisia Tirtayasa : Jurnal Tugas Akhir* 3(1) (2023): 1-12.

⁶ Mahendra Putra Kurnia, "Upaya Yang Dapat Ditempuh Pemerintah Republik Indonesia Dan Malaysia Dalam Menyelesaikan Sengketa Perbatasan Di Laut Sulawesi Ditinjau Dari Perspektif Hukum Laut Internasional," *Risalah Hukum* 1(2) (2005): 10-21, <https://ejournal.fh.unmul.ac.id/index.php/risalah/issue/view/11>.

⁷ Ibid.

⁸ Umami Yusnita, "Penyelesaian Sengketa Batas Laut Antara Indonesia Dan Malaysia Dalam Perspektif Hukum Internasional," *Binamulia Hukum* 7(1) (2018): 99-110, <https://doi.org/10.37893/jbh.v7i1.317>.

agreement because Malaysia uses historical databases in determining its borders.⁹

This negotiation is not binding for the parties involved in the dispute because it is included in the non-jurisdictional settlement method, where the advantage obtained is that the sovereignty of both parties is possible to be maintained even though it takes a long time in the settlement process.

The 1982 Convention on the Law of the Sea or UNCLOS is an international agreement produced at the UNCLOS III Conference produced by the United Nations in 1973-1982. In using the ocean, the provisions of UNCLOS provide clarity to countries regarding their rights and obligations, which are like a reference for countries in doing business and managing natural resources in the sea. The UNCLOS arrangement is broadly inseparable from discussing a country's sovereignty over its maritime domain.

UNCLOS 1982 stipulates that its members will be provided with methods for resolving maritime dispute law. It is contained in the provisions of article 279 of UNCLOS, which means that the countries of the parties to the dispute must resolve any dispute between them by peaceful means.¹⁰ Thus, it can be concluded that all parties to the 1982 UNCLOS are required to use peaceful methods to resolve international problems.¹¹ State jurisdiction, natural resource utilization and management, exploration, exploitation rights are included in the category in the debate on this issue. Thus, it is clear that Indonesia and Malaysia have various options to resolve their differences, by mutual agreement.

In line with that, it is recognized that Indonesia from the marine aspect is also referred to as a country with a large enough archipelago that can bring influence to support national development, certainly putting Indonesia in a strategic position to get a lot of benefits. Of course, in representing the 1945 Constitution, it needs to be used as a guideline that the state in controlling the wealth of natural resources, be it water and so on, must be used only for the welfare of the Indonesian people.¹² One example of Indonesia's natural resources that can be managed and that comes from the sea is fisheries,

⁹ Muhammad Zulfikar, "Pakar Jelaskan Perundingan Indonesia-Malaysia Tidak Kunjung Selesai," *Antaranews*, 2023.

¹⁰ Huala Adolf, *Hukum Penyelesaian Sengketa Internasional* (Jakarta Timur: Sinar Grafika, 2020).

¹¹ Maulidya Yuseini, Dian Rachmawati, and Fransiska Yuardini, "Penyelesaian Sengketa Laut Antara Indonesia Dan Malaysia Di Wilayah Selat Malaka Menurut Hukum Laut Internasional," *Lentera Hukum* 5(3) (2018): 480-89, <https://doi.org/10.19184/ejllh.v5i3.7731>.

¹² Peraturan Perundang-undangan, *Pasal 33 Ayat (3) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945* (Jakarta : Republik Indonesia, 1945).

although the application in the management of natural resources is still considered less than optimal so that its management needs to be improved again.¹³

The major obstacles experienced by archipelagic countries are directly comparable/correlated with the size of the vast Indonesian archipelago, so it is important to be the main focus to overcome. It should be mentioned that Indonesia, as an archipelagic country, may face threats in the current era of globalization because of potential problems or threats that can come from violations of the law, one of which is illegal fishing and other violations in the maritime sphere.¹⁴

The absence of physical sovereignty and security in the maritime border area leads one to this conclusion. Thus, to provide safe and controlled maritime conditions, measures to maintain sovereignty and enforce the law at sea are necessary. According to the 1945 Constitution on State Territory, Indonesia is an archipelagic country. Therefore, in accordance with the above provisions, Indonesia as an archipelagic country, of course, regarding its maritime boundaries, its guidelines refer to the provisions of the 1982 Convention on the Law of the Sea and in the ratification of the convention it is marked by the presence of Law 17/1985. Due to the existence of the International Law of the Sea (HLI), Indonesia is burdened with a lot of work in defining this HLI for its own interests, regulating relatively congested international sea traffic, and negotiating maritime boundary agreements with neighboring countries in order to preserve the sovereign territory of the Republic of Indonesia.¹⁵

Territorial border conflicts arise between the two countries as they carry out their international maritime law mandates. There are many examples of violations of the law in border areas, such as foreign nationals who take natural resources illegally, namely illegal fishing and this is due to one of them because the sea border is not clearly differentiated. The maritime boundary dispute is one of Indonesia's conflicts with neighboring countries, namely Malaysia. The two countries were then urged by Jokowi to accelerate border talks in other

¹³ Yulia A. Hasan, *Hukum Laut: Konservasi Sumber Daya Ikan di Indonesia* (Jakarta Timur: Kencana Prenada Media Group, 2020).

¹⁴ Klisliani Serpin, Dewa Gede Sudika Mangku, and Ratna Artha Windari, "Penyelesaian Sengketa Antara Indonesia Dan Malaysia Terkait Pengklaiman Blok Ambalat Ditinjau Dari Hukum Internasional," *Jurusan Ilmu Hukum* 1(2) (2018): 120-32, <https://doi.org/10.23887/jatayu.v1i2.28724>.

¹⁵ Achmad, "Faktor-Faktor Yang Mempengaruhi Penegakkan Hukum Batas Wilayah Laut Di Indonesia," *Serambi Hu* 4(2) (2010): 1-10, <https://www.neliti.com/publications/529566/faktor-faktor-yang-mempengaruhi-penegakkan-hukum-batas-wilayah-laut-di-indonesia>.

areas.¹⁶ At this point, the dispute over the maritime boundary between the two countries has entered the stage of obtaining an agreement from negotiations after dozens of years.

It is realized that Indonesia's illegal fishing activities have a negative effect on the country because it causes losses both in the social and economic fields. In addition, marine ecosystems can be harmed by illegal fishing. Therefore, major efforts are needed to end illegal fishing, with strong policies and institutional collaboration being the first step in this process. The aim is to prevent and overcome fisheries crimes effectively and efficiently and ensure that the return of state losses is maximized, for which cooperation between related institutions is needed.

In addition to accelerating the resolution of maritime boundary conflicts so that they do not prolong and so that the Indonesian state has clear sea boundaries, it is also important for the government to improve the legal framework related to fisheries to combat fisheries-related crimes. Law enforcement in realizing marine security is still considered to be less than optimal and needs serious handling, which is the basis for thinking for improvements in legal provisions regarding fisheries. Because criminal crimes in the field of fisheries (illegal fishing) actually include more than just people, also corporations are seen as taking part in these actions and are considered to have supported illegal fishing methods, so the criminal liability must be comprehensive to anyone involved behind it, not just individuals or administrators on board as perpetrators of illegal fishing.

The research method in this writing is included in Legal Research which refers to the explanation given by Peter Mahmud Marzuki. In legal research, it is described about the processes that are passed so that the determination of principles and rules emerges as an answer in responding to legal problems. This type of research aims to find solutions to the legal problems or issues being studied, and includes normative research. The focus of this research is on marine security institutions and especially on legal rules regarding fisheries that lead to the creation of Indonesia's maritime security, with the application of the approach referring to the legislative approach, conceptual approach.¹⁷ Some legal materials are collected through literature studies, regulations, journals and

¹⁶ Ardito Ramadhan, "Setelah 18 Tahun, Indonesia-Malaysia Selesaikan Negosiasi Batas Laut," Kompas.com, 25 April, <https://nasional.kompas.com/read/2023/06/08/13385861/setelah-18-tahun-indonesia-malaysia-selesaikan-negosiasi-batas-laut>.

¹⁷ Peter Mahmud Marzuki, *Penelitian Hukum*.

internet news. Next is the process of drawing conclusions from the legal materials obtained and the results obtained from the research.

II. METHODOLOGY

This research is a type of research that uses a normative juridical research type. The sources of legal materials used are primary legal materials and secondary legal materials. The main primary legal material is UNCLOS. The problem approaches used are the statute approach, conceptual approach, and case approach. The method of collecting legal materials is carried out by library research using the processing of legal materials by identification and classification. Furthermore, it is analyzed qualitatively descriptive in inductive elaboration.

III. DISCUSSION I

Institutional Problems and Indonesia's Maritime Security Policy

Currently, Indonesia's maritime security is still sectoral. There must be an organization/institution with a different and strong legal framework to prevent overlapping regulations. Indonesia is rich in maritime resources. The size of Indonesia's vast waterways is not in line with efforts to protect maritime territory from illegal activities. There are several violations, including illegal fishing.¹⁸

Regarding the issue of maritime borders, it has attracted the attention and discussion of a number of groups recently, including the government, the media, and the public. The government has implemented policies related to borders and of course in its implementation must be implemented optimally. Then it can be done by reviewing the policies implemented as a form of evaluation of the policies implemented as well as improvements in management at the border to encourage defense, security, welfare and the environment that are maintained so that they are always overcome that often arise conflicts or problems in general are at the border.

This is due to the fact that the development that has been carried out so far has not produced the anticipated results. Since the border location serves as an

¹⁸ Tofan Hermawan and Rudi Sutanto, "Strategi Pertahanan Laut Indonesia Dalam Analisa Ancaman Dan Kekuatan Laut," *Jurnal Education And Development* 10(2) (2022): 366–72, <https://journal.ipts.ac.id/index.php/ED/issue/view/130>.

entry point into another country, it is therefore quite easy for military or civilian vessels to violate national borders and other unlawful acts occur.¹⁹ The most important factor in securing a country's borders is its national security even so, Indonesia is an archipelagic country with sea and land boundaries with its neighbors.

Important factors that support the revival of maritime state discourse, including those related to security, are due to Indonesia's inadequate maritime defense system, as evidenced by the country's unexplored maritime economic potential. Because maritime trade routes are becoming increasingly vital due to global changes, also regarding security issues are very important for Indonesia to maintain its maritime sovereignty and the safety of international logistics ships passing through Indonesian waters.

This situation draws attention to the fact that Indonesia's defense strategy is still too focused on land while it is not optimizing policy progress at sea. Even so, it should be recognized that Indonesia as a representative of a large archipelagic country that has an important role, including in international shipping.²⁰

The influence of security management is linked to the fundamentals of security defense, in which foreign fishermen constantly violate the country's sovereignty over the country's borders, especially when neighboring countries seek to steal Indonesia's economic resources, such as fisheries. In a clear view of the boundaries, this is a serious threat to a country that upholds the principles of the archipelagic state.²¹

With the great potential of the sea, Indonesia is expected to be able to realize maritime security defense to minimize the problems faced. Many issues must be immediately addressed in Indonesia's maritime realm because it is an effort to maintain state sovereignty so that it is not violated and harmed by

¹⁹ Muhammad Fachri, "Upaya Pemerintah Dalam Mengurangi Pelanggaran Tapal Batas Indonesia-Malaysia (Studi Kasus Kabupaten Nunukan)," *El-Iqtishady* 2(1) (2020): 55-63, <https://journal.uin-alauddin.ac.id/index.php/iqthisadi/article/view/13868/8800>.

²⁰ Yudi Listiyono, Lukman Yudho Prakoso, and Dohar Sianturi, "Strategi Pertahanan Laut Dalam Pengamanan Alur Laut Kepulauan Indonesia Untuk Mewujudkan Keamanan Maritim Dan Mempertahankan Kedaulatan Indonesia," *Jurnal Education And Development* 10(2) (2022): 320-34.

²¹ Anthoni Sugianto, Dafri Agussalim, and Armaidly Armawi, "Penanganan Keamanan Maritim Perbatasan Wilayah Laut Dan Dampaknya Pada Aspek Pertahanan Keamanan (Studi Di Wilayah Kabupaten Natuna, Provinsi Kepulauan Riau)," *Jurnal Lembaga Ketahanan Nasional Republik Indonesia* 9(2) (2021): 120-28.

other countries, especially the challenge of maintaining strategic straits from external disturbances, including the Straits of Malacca, Sunda, Lombok, and Ombai-Wetar.²²

National policies and tactics related to law enforcement at sea, in the form of search and rescue, fisheries and environmental protection without exception are closely related to maritime security handling. The enforcement of laws regarding the jurisdiction of countries and territorial boundaries is significant, and it is very necessary to enforce their ownership as outlined in the 1982 UNCLOS.

The level of maritime security and countermeasures has not been fully incorporated into the functions performed in accordance with the authorities on the issues mentioned above. Therefore, it is believed that the established maritime security institutions or agencies will be able to solve the shortcomings in law enforcement, security, and safety functions with the policies in place. Furthermore, the discussion on the current marine policy needs to be improved again, including the role of institutions so that they are well coordinated.²³

In the provisions of article 13 paragraph 2, Law 32/2014 on marine affairs contains provisions for formulation and policies on marine development, which include; regarding marine natural resources, human resources and their development, institutions, welfare, maritime culture and security defense along with marine protection. In line with that, optimization in security and protection must be realized as soon as possible.

The meaning of the sea as a weapon of national defense has expanded. As an archipelagic country, the sea serves a number of vital purposes, including as transportation, defense and security, national unification, and the potential for economic growth of the maritime sector. Therefore, it makes perfect sense to view marine protection as marine defense. The country will have more obligations to enforce maritime security. Asking for help from all relevant sectors, cases involving maritime crimes, smuggling, transnational crimes,

²² Desi Albert Mamahit, "Mewujudkan Sistem Pertahanan Dan Keamanan Laut Dalam Pencapaian Visi Poros Maritim Dunia Dan Tantangan Lima Tahun Kedua Dalam Rangka Percepatan Dan Penguatan Implementasi Indonesia Sebagai Negara Maritim Dan Poros Maritim Dunia," *Jurnal Maritim Indonesia* 8(1) (2020): 60–72.

²³ Mamahit.

piracy, armed foreign fishermen, theft or damage to natural resources, can be tackled and prevented.²⁴

The 2015 Indonesian Defense White Paper (BPPI) highlights the development path of the Indonesian Navy, which is less than ideal for naval warfare and instead emphasizes the achievement of security through efforts to uphold peace and resolve conflicts. The Navy is unable to create and designate the ideal force for naval combat operations because it lacks the autonomy of bureaucrats when making maritime defense policy. When the Navy is used as a political instrument, its independence is weakened, making it less effective in carrying out its combat duties. The Navy must begin to improve its naval warfare capabilities to prepare for this.²⁵

The paradigm that emerged is that the Indonesian Navy is responsible for all maritime security affairs, the National Police is in charge of enforcing maritime laws and regulations, and the KKP is in charge of managing fisheries affairs. Even so, there are many other types of problems that arise in the sea, varying in size and shape. The parties involved in their maritime industry share the same concept that the sea must be free and there should be no threat of violence, no danger to navigation, no danger to marine resources, and no danger of violating the law at sea. Therefore, to achieve national security and development in the maritime sector, synergy between the institutions is needed.²⁶

For the purpose of being on alert for maritime security, all law enforcement and security agencies must collaborate and work together. Overcoming the limitations of the main security system tools in the form of patrol boats, early detection technology, and communication tools as well as improving the regulations in place is very important in terms of law enforcement at sea.

A more comprehensive Fisheries Law must be drafted and harmonized by the Government and the House of Representatives. Improve the Fisheries Law

²⁴ Muhammad Nizar Kherid and Aminah, "Integrasi Konsep Konservasi Laut Menjadi Pertahanan Laut Dalam Penegakan Hukum Laut Perspektif Biosentrisme," *Law Reform* 15(2) (2019): 262–72.

²⁵ Widya Setiabudi Sumadinata, "Membangun Kebijakan Pertahanan Maritim Indonesia: Telaah Kritis Fungsi Keamanan Laut Tentara Nasional Indonesia Angkatan Laut," *IJD* 4(2) (2022): 725–32.

²⁶ Putra Perdana Ahmad Saifulloh and Charles Simabura, "Penataan Lembaga Pengamanan Dan Penegakan Hukum Laut Berdasarkan Cita Hukum Pancasila," *Jurnal Rechtsvinding* 12(3) (2023): 393–402.

while addressing current problems and obstacles. The field of maritime security is covered by many entities. In Indonesia, several Ministries/Institutions (K/L) are responsible for enforcing maritime security and safety rules. Therefore, marine safety is substandard due to these circumstances. This is due to the fact that each ministry and institution has different policies, infrastructure, plans from each other. This means that it is not in control or a cohesive system.

Thirteen Indonesian law enforcement agencies are assigned to maritime patrols, six of which already have a fleet to support their operations. Among them are the National Police, the Director General of Hubla of the Ministry of Transportation, Bakamla, the Indonesian Navy, the Director General of PSDKP KKP and the Director General of Customs of the Ministry of Finance. Meanwhile, the Attorney General's Office, the Ministry of Health, the Ministry of Law and Human Rights, the Ministry of Tourism and Creative Economy, the Ministry of Energy and Mineral Resources, the Ministry of Environment and Forestry, and the Ministry of Agriculture are among the seven law enforcement agencies at sea that lack patrol boats or fleets.²⁷

In addition to the institutions mentioned earlier, Law 45/2009 on fisheries has several shortcomings that require improvement in terms of regulations related to the establishment of criminal sanctions and corporate accountability which should be imposed comprehensively for anyone involved. These disadvantages include:²⁸ First, compared to other criminal prohibitions, the criminal sanction of fines has not been able to prevent them from committing fisheries-related crimes. The Fisheries Law does not have a minimum or minimum limit for its criminal penalties, so those who catch fish illegally are likely to not be able to pay it and eventually become unclear. Resulting in the absence of a deterrent effect on all violators. In addition, this Law does not define criminal penalties that can be applied to corporate actors as a whole.

Second, criminal rules related to fisheries can only apply to subjects or actors involved in direct illegal fishing or fishing vessels. This fisheries law has not regulated the arrest of the perpetrators as a whole involved such as from

²⁷ Christina Aryani, "Mendorong Lahirnya RUU Keamanan Laut Dalam Penguatan Sistem Keamanan Laut Nasional," *Jurnal Pembangunan Hukum Indonesia* 3(2) (2021): 160-73.

²⁸ Kadek Intan Rahayu, Dewa Gede Sudika Mangku, and Ni Putu Rai Yulianti, "Pertanggungjawaban Pidana Terhadap Pelaku Penangkapan Ikan Secara Ilegal (Illegal Fishing) Ditinjau Dari Undang-Undang No 45 Tahun 2009 Tentang Perikanan," *E-Journal Komunitas Yustisia Universitas Pendidikan Ganesha Jurusan Ilmu Hukum* 2(2) (2019): 150-65, <https://doi.org/10.23887/jatayu.v2i2.28780>.

ship owners, corporations, officials involved in the illegal practice, so it is likely that the mastermind of the problem will take action again.

The third reason is that the infrastructure and facilities in question are inadequate, where the vessels used by Indonesian law enforcement in the fisheries sector to track and inspect individuals who carry out illegal fishing are considered insufficient because most of them operate large, more sophisticated vessels so that the authorities should balance it to be able to overcome it by arresting anyone who violates maritime sovereignty Indonesia.

IV. DISCUSSION II

Reformulation of Strengthening Indonesia's Maritime Security Against Illegal Fishing Perpetrators by Corporations

Illegal fishing in Indonesia can be attributed to a number of factors, including the large demand for fish from both domestic and foreign markets, which may be caused by reduced fish stocks abroad. In addition, the weakening of the legal provisions that govern is also a factor in illegal fishing activities. Illegal fishing perpetrators continue to fish illegally without fear of facing consequences for their actions, which apart from the lack of optimal rules can also arise from the lack of implementation of rules and supervision of the security of the sea area.

The Fisheries Law regulates the fisheries industry that has violated the law. The fact that such regulations exist and serves as a basis for resolving legal issues related to illegal acts in fishing. UNCLOS 1982 is an international law related to marine affairs which was later adopted by this fisheries law. The Fisheries Law has stipulated a number of activities related to illegal fishing, including the management of fishery resources, property violations, and the use of vessels with fishing gear that do not meet the requirements.

Illegal fishing is clearly a crime and violators will certainly be subject to sanctions or consequences for their actions. And at this point, the law is required to act as a means of preventing and controlling behaviors that can harm the sustainability of the management of fish resources and the marine environment. The legal function has benefits that are binding or coercive in

accordance with the provisions mentioned in article 33 of the 1945 Constitution and the provisions of the Fisheries Law.²⁹

In addition, national law and international law must synergize with each other, especially when it comes to Indonesia's fisheries and marine sectors. The 1982 Convention on the Law of the Sea or UNCLOS, is a piece of international law that regulates the enforcement of general laws within a country's territorial waters and exclusive economic zones (EEZs), but does not specifically address illegal fishing. In the EEZ according to UNCLOS which is the right and authority of coastal states, it includes: 1) Exploitation, exploration of resources in the sea; 2) Making and implementing laws and regulations on resource exploitation and exploration; 3) Construction of artificial islands and others; and 4) Scientific research on marine.³⁰

In the provisions of UNCLOS 1982, article 2 states that if there is a violation of the regulations of the coastal state within the territorial scope or waters of a country, the coastal state has the right to enforce the law on violations of ships that clearly interfere with and endanger the security of the sea in a country. Criminal jurisdiction cannot be applied if the aforementioned requirements are not met, as stated in Article 27 paragraph 1.³¹

Previously, corporations were not considered subjects of criminal law. However, when the legislation was being developed, parliamentarians took into account the fact that people sometimes act outside or through organizations covered by civil law, as well as the fact that corporations sometimes act within that organization so that there is a change in the arrangement that corporations are subject to criminal law. According to the Fisheries Law, Article 1 number 14 states in this Law that every person in question is an individual or corporation, corporations are also recognized as the subject of criminal acts in the fisheries sector, corporations can be held

²⁹ Ayu Efridadewi and Wan Jefrizal, "Penenggelaman Kapal Illegal Fishing Di Wilayah Indonesia Dalam Perspektif Hukum Internasional," *Jurnal Selat* 4(2) (2017): 260-272, <https://www.neliti.com/id/publications/235519/penenggelaman-kapal-illegal-fishing-di-wilayah-indonesia-dalam-perspektif-hukum>.

³⁰ Asiyah Jamilah and Hari Sutra Disemadi, "Penegakan Hukum Illegal Fishing Dalam Perspektif UNCLOS 1982," *Mulawarman Law Review* 5(1) (2020): 29-46, <https://doi.org/10.30872/mulrev.v5i1.311>.

³¹ Ibid.

criminally liable because corporations are the subject of criminal activities in the fisheries sector.³²

Since 1985, corporations have been the subject of criminal acts in the fisheries sector, initially through the updated Law 9/1985 on Fisheries, the law does not mention who can be held legally accountable for crimes committed. When criminal activities occur in the fishing industry, the parties behind them (corporations) are almost never dealt with and on the contrary, the only people brought to justice are only limited to the crew of the ship, the captain.³³

Three forms of criminal liability against corporations can be interpreted including: (1) the management as the perpetrator and the corporation that bears the burden, (2) the corporation as the perpetrator and the manager who bears the burden, (3) the corporation as the perpetrator and at the same time the one who bears the burden for the action.

The concept used in the Fisheries Law is that the corporation is the perpetrator, and the management is the one who bears the responsibility for the act of illegal fishing. By mentioning that the corporation as a subject cannot be subject to criminal liability, it is possible that it cannot provide a deterrent effect and for the perpetrator will continue to repeat it. This actually causes its own weakness in suppressing these harmful actions, because of the disparity between the penalties obtained and the losses arising from the corporate actions in question so that law enforcement in realizing maritime security is less than optimal.

In addition, there is no guarantee that the Company or corporation that commits the crime will not commit another crime in the future simply by imposing a criminal penalty on the management. Since corporations have grown to such an extent that it has become clear that the establishment of a board of directors as criminally accountable actors alone is not enough to end illegal fishing activities, corporations as perpetrators of criminal crimes must also be prosecuted.

³² Moeh Roem Sutrisno, Ilham Abbas, and Baharuddin Badaru, "Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Di Bidang Perikanan," *Journal of Lex Generalis* 1(7) (2020): 1044–1059, <https://doi.org/10.52103/jlg.v1i7.304>.

³³ Muhammad Fatahillah Akbar, "Koherensi Pengaturan Illegal, Unreported, And Unregulated Fishing Di Indonesia," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 8(2) (2019): 245–264, <http://dx.doi.org/10.33331/rechtsvinding.v8i2.319>.

The Fisheries Law is actually a less than optimal policy in Indonesia's efforts to stop and tackle illegal fishing practices because corporations cannot be held accountable for their fisheries violations. Another implication is that society's sense of justice is harmed by the difference between the crime committed and the punishment given. If the management is the only one facing criminal charges, there is still a possibility that the company can continue its illegal fishing operations, and continue to make greater profits in the future. Thus, the management and the corporation are both perpetrators and each must be subject to appropriate corporate criminal liability.

V. CONCLUSION

Due to a number of disputes or conflicts that have occurred, especially regarding Indonesia's maritime boundary with Malaysia, both marine security institutions and law enforcement in the fisheries sector in border areas have not run optimally. From the institutional side, there are so many organizations/institutions that are in charge of enforcing that it is feared that there is overlap and that the performance is not optimal, then the facilities and infrastructure are considered inadequate for strengthening marine security. From the policy, it is also considered not optimal plus illegal fishing is increasingly rampant.

As such, it is the obligation of Indonesia and Malaysia to consistently resolve their differences in accordance with the 1982 KHL, which they have ratified. And speed up the negotiation process so that details of the next agreed maritime boundary can be released immediately. Synergy between institutions is united through one-stop coordination, especially the TNI, within ministries and other government agencies. The consequences for violators must be in accordance with the actions taken, which means that in addition to punishing administrators who are involved in illegal fishing, those behind them, namely the responsible corporations, must also be prosecuted.

REFERENCES

- Achmad. "Faktor-Faktor Yang Mempengaruhi Penegakkan Hukum Batas Wilayah Laut Di Indonesia." *Serambi Hu* 4(2) (2010): 1-10.
- Adolf, Huala. *Hukum Penyelesaian Sengketa Internasional*. Jakarta Timur: Sinar Grafika, 2020.

- Akmaliya, Rifda Ayu. "Implementasi Perjanjian Internasional Dalam Penyelesaian Sengketa Batas Laut Zona Ekonomi Eksklusif Antara Indonesia Dan Vietnam." *Yustisia Tirtayasa: Jurnal Tugas Akhir* 3(1) (2023): 1-12.
- Aryani, Christina. "Mendorong Lahirnya RUU Keamanan Laut Dalam Penguatan Sistem Keamanan Laut Nasional." *Jurnal Pembangunan Hukum Indonesia* 3(2) (2021): 160-73.
- Fachri, Muhammad. "Upaya Pemerintah Dalam Mengurangi Pelanggaran Tapal Batas Indonesia-Malaysia (Studi Kasus Kabupaten Nunukan)." *El-Iqtishady* 2(1) (2020): 55-63.
- Hermawan, Tofan, and Rudi Sutanto. "Strategi Pertahanan Laut Indonesia Dalam Analisa Ancaman Dan Kekuatan Laut." *Jurnal Education And Development* 10(2) (2022): 366-72.
- Irshanto, Andre Bagus. "Dari Konfrontasi Ke Perdamaian (Hubungan Indonesia-Malaysia 1963-1966)." *Criksetra: Jurnal Pendidikan Sejarah* 8(2) (2019): 96-102.
- Kherid, Muhammad Nizar, and Aminah. "Integrasi Konsep Konservasi Laut Menjadi Pertahanan Laut Dalam Penegakan Hukum Laut Perspektif Biosentrisme." *Law Reform* 15(2) (2019): 262-72.
- Kurnia, Mahendra Putra. "Upaya Yang Dapat Ditempuh Pemerintah Republik Indonesia Dan Malaysia Dalam Menyelesaikan Sengketa Perbatasan Di Laut Sulawesi Ditinjau Dari Perspektif Hukum Laut Internasional." *Risalah Hukum* 1(2) (2005): 10-21.
- Listiyono, Yudi, Lukman Yudho Prakoso, and Dohar Sianturi. "Strategi Pertahanan Laut Dalam Pengamanan Alur Laut Kepulauan Indonesia Untuk Mewujudkan Keamanan Maritim Dan Mempertahankan Kedaulatan Indonesia." *Jurnal Education And Development* 10(2) (2022): 320-34.
- Mamahit, Desi Albert. "Mewujudkan Sistem Pertahanan Dan Keamanan Laut Dalam Pencapaian Visi Poros Maritim Dunia Dan Tantangan Lima Tahun Kedua Dalam Rangka Percepatan Dan Penguatan Implementasi Indonesia Sebagai Negara Maritim Dan Poros Maritim Dunia." *Jurnal Maritim Indonesia* 8(1) (2020): 60-72.
- Maria, Elsa, selpiana BR Nababan, and Lenny Husna. "Kasus Penyelesaian Batas Laut Antara Indonesia Dan Malaysia." *Jurnal Cahaya Keadilan* 10(2)

(2022): 20–31.

Peraturan Perundang-undangan. *Pasal 33 Ayat (3) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*. Jakarta : Republik Indonesia, 1945.

Peter Mahmud Marzuki. *Penelitian Hukum*. Jakarta: Kencana, 2019.

Rahayu, Kadek Intan, Dewa Gede Sudika Mangku, and Ni Putu Rai Yulianti. "Pertanggungjawaban Pidana Terhadap Pelaku Penangkapan Ikan Secara Ilegal (Illegal Fishing) Ditinjau Dari Undang-Undang No 45 Tahun 2009 Tentang Perikanan." *E-Journal Komunitas Yustisia Universitas Pendidikan Ganesha Jurusan Ilmu Hukum* 2(2) (2019): 150–65.

Ramadhan, Ardito. "Setelah 18 Tahun, Indonesia-Malaysia Selesaikan Negosiasi Batas Laut." *Kompas.com*, 2023.

Saifulloh, Putra Perdana Ahmad, and Charles Simabura. "Penataan Lembaga Pengamanan Dan Penegakan Hukum Laut Berdasarkan Cita Hukum Pancasila." *Jurnal Rechtsvinding* 12(3) (2023): 393–402.

Serpin, Klisliani, Dewa Gede Sudika Mangku, and Ratna Artha Windari. "Penyelesaian Sengketa Antara Indonesia Dan Malaysia Terkait Pengklaiman Blok Ambalat Ditinjau Dari Hukum Internasional." *Jurusan Ilmu Hukum* 1(2) (2018): 120–32.

Slamet, Suradi Agung. "Efektivitas Badan Keamanan Laut Dalam Melaksanakan Fungsi Penegakkan Hukum Di Perairan Laut Indonesia." *Jurnal Papatung* 2(3) (2019): 178–86.

Sugianto, Anthoni, Dafri Agussalim, and Armaidy Armawi. "Penanganan Keamanan Maritim Perbatasan Wilayah Laut Dan Dampaknya Pada Aspek Pertahanan Keamanan (Studi Di Wilayah Kabupaten Natuna, Provinsi Kepulauan Riau)." *Jurnal Lembaga Ketahanan Nasional Republik Indonesia* 9(2) (2021): 120–28.

Sumadinata, Widya Setiabudi. "Membangun Kebijakan Pertahanan Maritim Indonesia: Telaah Kritis Fungsi Keamanan Laut Tentara Nasional Indonesia Angkatan Laut." *IJD* 4(2) (2022): 725–32.

Susanto, Listianingsih, Michael Mamentu, and Trilke E. Tulung. "Prospek Penyelesaian Sengketa Tapal Batas Indonesia Malaysia Di Kawasan Sektor Barat Kalimantan-Sarawak." *Jurnal Ilmu Politik* 8(3) (2019): 1–10.

Yuseini, Maulidya, Dian Rachmawati, and Fransiska Yuardini. "Penyelesaian Sengketa Laut Antara Indonesia Dan Malaysia Di Wilayah Selat Malaka

- Menurut Hukum Laut Internasional." *Lentera Hukum* 5(3) (2018): 480–89.
- Yusnita, Umami. "Penyelesaian Sengketa Batas Laut Antara Indonesia Dan Malaysia Dalam Perspektif Hukum Internasional." *Binamulia Hukum* 7(1) (2018): 99–110.
- Zulfikar, Muhammad. "Pakar Jelaskan Perundingan Indonesia-Malaysia Tidak Kunjung Selesai." *Antaranews*, 2023.