

## The functions of fisheries harbormaster to prevent illegal, unreported, unregulated (IUU) fishing

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**Abstract.** Indonesia is a marine country that is rich in the diversity of marine resources threatened by the rampant activities of illegal, unreported, and unregulated (IUU) fishing. The position of fisheries harbormaster in a fishing port is critical considering the duties and functions of the fisheries harbormaster indirectly also have an essential role in preventing and overcoming IUU fishing. The enactment of the Law. No. 45 of 2009 on Amendment to Law No. 31 of 2004 on Fisheries and Law No. 17 of 2008 on Shipping states that every fishing vessel that will sail to catch fish and/or transport fish from the port must have a Sailing Approval issued by the harbormaster at the fishing port. This research is a normative (juridical) research by reviewing library materials (literature studies) with data supporting cases of IUU fishing. Through this research, evidence has been obtained that the harbormaster in the fishing port is not only responsible for maintaining the security and safety of the port, but also supports the government's vision of making the sea the nation's future by eradicating IUU fishing from the land before the ship sails.

**Key Words:** marine resources, eradication, IUU fishing, harbormaster, fishing port.

**Introduction.** Indonesia, as a marine country with fisheries as one of the natural resources, proves that a large portion of the fishery port is needed as one of the vanguards of Indonesian fisheries. The duties and functions of the harbormaster at the fishing port are essential in the administrative responsibilities of correspondence for fishing vessels and fish carriers. Also, the harbormaster participated in promoting the safety and security against illegal, unreported, and unregulated (IUU) fishing.

IUU fishing is a broad term of various types and activities of illegal fishing in open areas and national jurisdictions, such as fishing without permit and fishing with false permit. IUU fishing is a significant concern in fisheries management throughout the world (Azhar et al 2019). Illegal fishing is carried out by national vessels on ships that are under the jurisdiction of the country without the permission of the country, or that is contrary to the laws and regulations or carried out by ships that move without taking any necessary assistance and maintenance measures, and is carried out by ships that deny national or international law. Unreported fishing is carried out without ties, not approved or submitted to national authorities, or approved by management organizations that have not been reported. Unregulated fishing is carried out by vessels without prior nationality or using certain flags without discussing the country's fishing policy as well as the conservation policy of the fishing area.

This paper emphasizes the urgent need to combat IUU fishing activities. However, this research will limit the discussion to the function of the fishery port and the prevention of IUU fishing activities in Indonesia.

**Material and Method.** This research was written by reviewing the harbormaster at the fishing port and carried out by the library research. Substantially, a significant change to Law No. 45 of 2009 compared to the previous Law No. 31 of 2004 is the emphasis on the provisions of severe criminal sanctions against foreign vessels, which commits the crime

of theft of fish in the Exclusive Economic Zone of Indonesia. Law No. 45 of 2009 was stipulated due to the weaknesses of the previous law.

This study used the empirical legal research (Jackson & Rosberg 1982) done by examining secondary data and then proceed with researching primary data in the field. The data obtained was then analyzed by using descriptive analytical method (Soemitro 1990).

**Results and Discussion.** Indonesia, as an archipelago (Soemarmi et al 2019) where 70 percent of its territory is ocean, certainly has enormous marine and fisheries resource potential. Potential that must be relied upon to sustain the nation's finances. Ironically, this potential is not utilized properly and maximally and does not contribute to national development. In fact, countries tend to be disadvantaged because of various exploitation practices of marine and fisheries resources that do not respond to or rampant with IUU fishing. The high volume and value of national production fisheries are also not accompanied by an increase in the value of Non-Tax State Revenues (PNBP) supplied from fish and non-fish resources. Where the total PNBP target in the fisheries sector is set in the 2005 APBN State Budget never exceeding 300 billion Rupiahs. The realization of PNBP came from capture fisheries which tend to be stagnant since 2009, which is Rp 150 billion. Related to this, the Ministry of Maritime Affairs and Fisheries seeks to implement various policies to encourage an increase in PNBP in the fisheries sector.

The legal politics of the elimination of IUU fishing, in general, can refer to the Fisheries Law, namely Law Number 31 of 2004 on Fisheries, as amended by Law Number 45 of 2009 on Amendments to Law Number 31 of 2004 on Fisheries (hereinafter referred to as Fisheries Law). The Fisheries Law is categorized as the main law that reflects the eradication of IUU fishing politics. Because in the consideration of the Law, it contains the problem of fisheries resources in Indonesian waters both from philosophical, juridical, and sociological aspects. This shows that the legal politics of eradicating IUU fishing is a national law, in general, contained in this Law. Thus the Fisheries Law can be used as a reference and become an umbrella for other laws and regulations that will regulate fisheries resources. General considerations and explanations of this Law imply that the fisheries sector has an important and strategic role in national economic development. Therefore, management of fisheries resources needs to be done as well as possible based on fairness and equality in their use by prioritizing the expansion of employment opportunities and improving living standards for fishermen, fish cultivators, and/or parties related to fisheries activities, as well as preserving fisheries resources and its environment. However, in reality, Law Number 31 Year 2004 regarding Fisheries has not been able to anticipate technological developments and develop legal requirements in the framework of management and potential utilization of fish resources and has not been able to answer the problem.

Therefore it is necessary to make changes to several substances, both concerning aspects of management, bureaucracy, and legal aspects. In a general explanation of Law No. 45/2009, it is stated that the amendment to Law No. 31/2004 on Fisheries emphasizes the developing fisheries problem, including the problem of illegal fisheries. Excessive fishing, fish theft, and other illegal fishing acts, not only cause harm to the state, but also threaten the interests of fishermen and fish farmers, the industrial climate, and national business fisheries. These problems must be resolved seriously so that law enforcement in the fisheries sector becomes very important and strategic to support the development of controlled and sustainable fisheries. Weaknesses in the management aspects of fisheries management include the absence of coordination mechanisms between agencies related to fisheries management. While in the bureaucratic aspects, there are conflicts of interest in fisheries management. Weaknesses in the legal aspects include issues of law enforcement, the formulation of sanctions, and the relative competence or jurisdiction of district courts for criminal violations in the fisheries sector, which occur outside the court's authority in the country.

Fishing vessels must have a Sailing Approval issued by the harbormaster at the Fishery Port. By having Sailing Approval documents, fishing, transportation and other activities of fishing vessels can run safely and comfortably. Issuance of Fishing Sailing

Approval Letter is carried out by the harbormaster of Fisheries based on the Minister of Maritime Affairs and Fisheries Regulation No. 3 of 2013 on portability in fishing ports. The Ministry of Maritime Affairs and Fisheries, and the Ministry of Transportation work together to resolve the problem of lack of fisheries personnel at the fishery port.

Based on Article 1 number 9 of the 2009 Fisheries Law, the definition of Fishing Vessels is "ships, boats or other floating equipment used to conduct fishing, support fishing operations, fish cultivation, fish transportation, fish processing, fisheries training, and fisheries research/exploration". Further explained in Article 34 paragraph (1), fishing vessels based on their functions include:

- a. fishing vessels;
- b. fish processing vessel;
- c. fishing boat;
- d. fishery research/exploration vessels; and
- e. vessels supporting fishing and/or fish farming operations.

According to data released by the Directorate General of Sea Transportation of the Ministry of Transportation in February 2019, 33,052 fishing vessels have been verified and have obtained operation-worthy certificates, as well as for 232,414 fishermen who then obtained a seaman's book as a document that must be owned by fishermen. Meanwhile, the number of fishing vessels based on The Fisheries Management Areas (FMAs) of the Republic of Indonesia issued by the Ministry of Marine Affairs and Fisheries is as depicted in Figure 1.

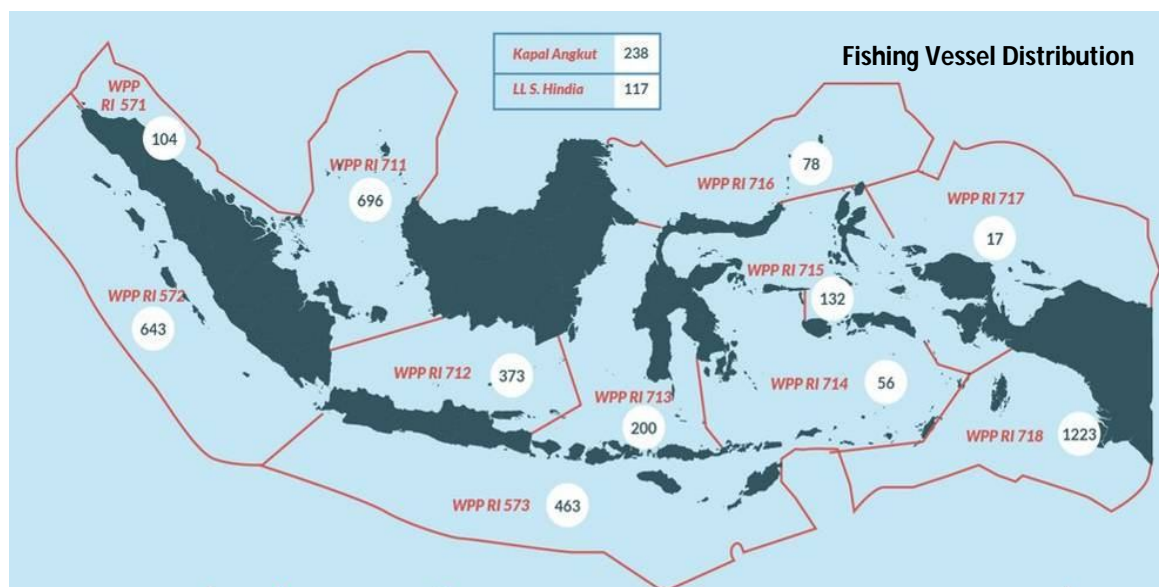


Figure 1. The number of fishing vessels per Minister of Maritime Affairs and Fisheries Regulation in 2015 (Note: WPP (in Indonesian) is equal to FMA) (Source: Directorate General of Capture Fisheries, Ministry of Marine Affairs and Fisheries taken and accessed via <https://tirto.id/fisheries-catch-issue-permits-remain-there-c8oN> on September 4, 2019, at 12:10).

According to the Sailing Approval Letter issued by the Harbormaster at the Fishery Port mentioned in Article 42 paragraph (3) of the 2009 Fisheries Law, to get a Sailing Approval letter, one must meet administrative and technical requirements. On the administrative requirements, according to Minister of Maritime Affairs and Fisheries Regulation Number 3 of 2013 Article 11 paragraph 1, to obtain the Sailing Approval the Captain or the ship-owner/person in charge of the company must submit an application to Harbormaster at the Fishery Port after the fishing vessel is ready to sail, enclosing the following requirements:

- a. Fishing Boat Readiness Declaration Departs from the skipper (Master Sailing Declaration); and
- b. Evidence of fulfillment of fishing vessel obligations, including:
  - (1) proof of payment of port services;

- (2) proof of payment of fish auction fees;
- (3) proof of payment for ship cleaning services;
- (4) customs and excise approval;
- (5) immigration approval;
- (6) health quarantine approval;
- (7) fish quarantine approval;
- (8) fishing vessel operation eligibility;
- (9) ship arrival report receipt;
- (10) report of proof of ship departure;
- (11) sea work agreement or list of master and crew;
- (12) initial sheet fish catching certificate; and
- (13) fishing vessel monitoring assignment letter for vessels that are obliged to receive monitoring.

The technical requirements for the nautical examination will be carried out on the physical ship listed in Minister of Maritime Affairs and Fisheries Regulation Number of 2013 Article 19 paragraph 2, among others:

- a. suitability of fishing gear and fishing aids;
- b. fish hold and type of cooling machine;
- c. barcode sticker;
- d. seaworthiness of fishing vessels and engineering machinery;
- e. pollution prevention equipment;
- f. communication tool;
- g. navigation equipment;
- h. map and equipment;
- i. safety tool;
- j. fire extinguishers; and
- k. fishing boat identification.

During 2018, 106 ships were caught by Task Force 115 in Indonesian territorial waters. The vessels were suspected of carrying out illegal and unlicensed fishing activities. Not only ships from abroad, but there were also several ships from Indonesia that committed these water crimes. Not only foreign ships were stolen, but Indonesian ships also carried out bombings, drugs, and the taking of hammerhead sharks in Raja. The most captured vessels this year came from Indonesia, namely as many as 54 ships. Also, other ships use 38 Vietnamese flags, 8 Malaysia ships, 5 Philippines ships, and one Togo ship. The number of boat catches in 2018 has decreased by 64 percent compared to 2017 with the same surveillance capacity. However, on the other hand, the dominance of Indonesian ships shows the low level of compliance of Indonesian fishing vessels. Task Force 115 noted that there were 16 modus operandi conducted by Indonesian fishing vessels. This was gathered after the Task Force conducted an analysis and evaluation of fishing vessels, the construction of which was carried out in Indonesia, through interviews and field reviews in 11 locations. The following damages were done by many ships:

- a. illegal transshipment;
- b. incorrect fishing report;
- c. tax infallibility;
- d. going to sea without 'SPB' and 'SLO' (permission to sail);
- e. the difference between what is given and what is approved by the ship;
- f. human rights violations;
- g. sea-crews exploitation and no Sea Work Agreement;
- a. the mark-down practice of fishing boat size;
- h. FMA violations and fishing routes;
- i. turn off VMS;
- j. using fuel oil illegally;
- k. do not land the catch at the port stated in SIPI or SIKPI (licenses);
- l. the use of prohibited fishing gear;
- m. the use of FADs without License for Use of FADs (SIPR); and
- n. liar charges.

The duties and functions of harbor masters at the fishing ports are very important in being responsible for creating the safety and security of the sail. It will be stated directly into the existing legislation in Indonesia as follows:

1. Harbor master According to Law No. 17 of 2008 on Shipping: the harbor master at the fishing port was appointed by the minister in charge of shipping affairs. Because in the explanation of Law No. 17 of 2008 on shipping Article 207 paragraph 3 of the general shahbandar (Barus et al 2017) competency requirements also apply to Harbor master at the fishing port. The responsibility of the shahbandar itself is defined in Law No. 17 of 2008 on shipping Article 207 paragraph 1, namely carrying out the function of shipping safety and security which covers the implementation, supervision, and law enforcement in the field of transportation in waters, ports, and marine environmental protection at ports.

2. Harbor master According to Law No. 45 of 2009 on the Amendments on Law 31 of 2004 concerning Fisheries: Article 42 paragraph 2 of Law No. 45 of 2009 on the amendments to Law 31 of 2004 on Fisheries designating porters in fishing ports to supervise and carry out operational safety for fishing vessels and sailing approval for fishing vessels wishing to catch fish or transport fish must have Fishing Boat Sailing Approval issued by Harbor master at the fishing port”.

3. Harbor master According to Law No. 5 of 2014 on the State Civil Apparatus: Article 1 number 3 of Law No. 5 of 2014 on the State Civil Apparatus says that civil servants are Indonesian citizens who meet certain conditions, that appointed as State Civil Apparatus permanently by civil servant development officials to occupy government positions. From this definition, it appears that the shahbandar is a civil servants because Harbor master was appointed by the minister in charge of shipping affairs at the proposal of the Minister of Marine Affairs and Fisheries. Article 11 of Law No. 5 of 2014 also stated that the State Civil Apparatus has to carry out public policies made by the official of human resources according to the provisions of the legislation, provide professional and quality public services, and strengthen the unity and integrity of the Unitary State of the Republic of Indonesia. Thus a Harbor master as a Civil Servant is responsible for carrying out this task (Agus 2013).

4. Harbor master according to Minister of Transportation Regulation No. 82 of 2014 on Sailing Approval: Article 1 of the Minister of Marine Affairs and Fisheries Regulation No. 3 of 2013 stated that the Harbor master at the fishing port is a government official who is specifically stationed at the fishing port for administrative management and carrying out the function of maintaining the security of shipping, one of which is by issuing sailing approval letters for fishing vessels. In the Minister of Transportation Regulation No. 82 of 2014 on Procedure for Issuance of Sailing Approval Letter Article 2 paragraph 3, for fishing vessels, Sailing Approval Letter is issued by the Harbor master at the fishing port.

***IUU fishing in international law.*** UNCLOS is inadequate to address IUU fishing problems, and FAO has recognized that IUU fishing is the biggest threat to fish stocks. Babu (2015) uses a broad definition of IUU fishing as "various fishing activities that do not comply with national, regional or international fisheries conservation or management laws or actions". However, there is no universally accepted definition regarding IUU fishing to date. Regardless of whether there are international instruments that differentiate the rights and obligations of coastal states and flag states to combat IUU fishing activities, there is not even an adequate definition.

A. The 1982 UNCLOS: In IUU fishing and handling other specific issues, UNCLOS is considered as the most constructive international agreement even though it is ineffective in handling these issues. Regarding IUU fishing activities that have not been properly managed, Babu (2015) identified a significant problem; first, its inadequate governance of the conservation and exploitation of fisheries resources; and, secondly, its inadequate ability to enforce flag State control and responsibility.

B. The International Plan of Action to Prevent, Deter and Eliminate IUU Fishing (IPOA-IUU): The FAO adopted the IPOA-IUU in 2012, on the ground that the current IUU fishing condition undermines the conservation and management of living natural resources. It

emphasizes the obligations of both flag and coastal States to meet UNCLOS objectives. In international action on provisions to prevent, hinder, and eliminate IUU fishing activities, FAO has committed to developing its plan. The IPOA-IUU covers three activities; illegal fishing, unreported fishing, and unregulated fishing, with each category, explained as follows:

- first, illegal fishing refers to activities: "Conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations"; "Conducted by vessels flying the flag of States that are parties to a relevant regional management organization but operate in contravention of the conservation and management measures adopted by that organization, and by which the States bound, or relevant provisions of the applicable international law"; or "In violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization";

- second, unreported fishing refers to fishing activities: "Which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations"; or "Undertaken in the area of competence of a relevant regional fisheries management organization which have not been reported or have been misreported, in contravention of the reporting procedures of that organization";

- third, unregulated fishing refers to fishing activities: "In the area of application of a relevant regional fisheries management organization that is conducted by vessels without nationality, or by those flying the flag of a State not a party to that organization, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization", or "In areas of fish stocks to which there are no applicable conservation or management measures and where such activities conducted in a manner inconsistent with State responsibility for the conservation of living marine resources under international law".

The three types of activities above are categorized to include a variety of wrong and illegal fishing activities. Activities that violate national and international obligations become a reference for "illegal" fishing. At the same time, fishing activities that have not been reported or are wrongly reported according to national law or regional fisheries management are "not reported". Conversely, activities carried out in areas outside the scope of regional fisheries management organizations, or carried out contrary to the principles of conservation and management of international law are "not regulated".

### ***International cases***

#### **A. Illegal Fishing on Lake Victoria**

"Lake Victoria is an essential source of freshwater fish, contributing significantly to the economies of Kenya, Tanzania, and Uganda and the livelihoods and nutrition of three million people. Nile perch, introduced in the 1950s, became the most important species in the lake, decimating the endemic fish and creating a lucrative commercial fishery. Over-fishing and the use of destructive fishing gear have reduced the stock of more extensive, legal-sized Nile perch<sup>1</sup>, resulting in the illegal trade of undersized fish. The Chinese market for dried swim bladders has removed spawners from the stock, further affecting its ability to recover. The Lake Victoria Fisheries Organization (LVFO) was formed in 1994, but IUU fishing continues to have a severe impact on Nile perch<sup>2</sup>, reducing its biomass from 2.3 million tonnes in 1999 to less than 300 000 tonnes in 2008. Current estimates of illegal fishing in Lake Victoria vary from 40% to 60%, amongst the highest rates in the world".

Policy Implications: LVFO decisions remain ineffective unless they are adopted in national legislation, implemented and enforced; failure to enforce a decision in one or more member states leads to inconsistency within the LVFO area; A licensing scheme is needed to limit fisheries access, protect the livelihoods of long-time resident fishers and control the influx of migrant fishers. A licensing scheme would also fund MCS operations<sup>5</sup> and assist in providing fisheries and intelligence data for management purposes; A significant increase in sanctions, including increased compounding of sanctions, is

required so that all those involved in IUU fishing are seen to be brought to justice and sanctioned at a meaningful level (Pringle 2005).

B. A case that occurred in Sierra Leone, namely a violation in the form of fishing that violated the IUU. This violation occurred in IEZ by Kum Woong 101. This is prohibited for industrial ships and Kum Woong 101 who do not have observers on board; this is a separate violation. This violation under Guinea law, shipping goods by sea is prohibited in EE Guinea when Kum Woong 101 transits to Guinea, where it is transferred to Holland Klipper. The owner of Kum Woong 101, who is based in Busan, explained that the catch was transported from the catch for six months in Guinea to Bissau, not Sierra Leone. but the owner and manager of Holland Klipper, Sea Green, "stated that the shipment of goods was carried out legally because they had received the necessary authorization". However, because the agreement only applies at the Port of Conakry and transshipment is carried out more than 90 miles from the coast of Guinea, the Holland Klipper transshipment violates the authorization provisions and also the Guinean Law. Besides, the European Union (EU) Regulation on illegal fishing, Not Reported and Regulated (IUU), (EC) No. 1005/2008, states that "Fishing vessels flying the flags of Member States will not be permitted to send at sea from three fishing vessels from countries outside Community waters," unless "registered as a carrier under the auspices of the regional fisheries management organization (RFMO). "He believes that Holland Klipper also violated EU regulations regarding IUU Fishing; this is because Holland Klipper is included in the definition of "fishing vessels" established by the Regulation, which is marked by the Member States, and is transferred from South Korean flagged vessels outside of Community water, outside the RFMO auspices.

Policy implications, what is needed is "a system and regulatory framework that enhances the ability to raise fish and limit illegal fish imports in our modern global market". This is the same as the EU IUU and various other national and regional actions, including RFMO; Fast and efficient communication, especially between governments, requires an improved system to be designed to operate based on caution in the face of the principle of uncertain needs to ensure that only the fish market is legal; Regional ratification and implementation need to be done. "Continental and international agreements on fisheries-related issues, in particular the Port State Action Agreement, need to be held to facilitate national action to combat illegal fishing". A policy framework needs to be designed to operate based on prudence in dealing with the uncertainty principle, it is necessary to ensure that only legal fish reach the market to ensure effective information sharing and collaboration. This can be done through regional networks such as the FISH-I Africa network; Corruption of illegal fishing activities must be stopped; The political will to combat the illegality chain, a form of fishing to sell fish, must be supported nationally, regionally, and internationally (EJF 2013).

**Conclusions.** This research concluded that the Issuance of Sailing Bonds conducted by Harbormaster must comply with applicable regulations because the shahbandar bears the responsibility contained in the Minister of Marine Affairs and Fisheries Regulation Number 3 of 2013 on the Harbormaster in the fishing port where to obtain the Sailing Agreement the fishing vessel must fulfill the administrative requirements and requirements technically nautically. Harbormaster fisheries are expected to be the vanguard of the Indonesian nation to prevent the occurrence of IUU Fishing.

Furthermore, the media must remain involved in all subsequent stages of the case to ensure a fair resolution to raise awareness of the systemic and fundamental causes of illegal fishing, and to encourage action or reform. The government involved must take appropriate legal steps to be bound by the Port State Action Agreement if they have not yet done so.

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