



Justification of the ship-sinking policy in the territorial jurisdiction of Indonesia

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Abstract. With the water areas covering an expanse of 35,908 square miles, Indonesia, one of the largest maritime countries in the world, has two serious problems: economic inequality and illegal, unreported, and unregulated (IUU) fishing. Considering fish products are marketable commodities in the international business, Indonesia's marine products often become the victim of IUU fishing, which is hugely detrimental to the economic aspects and law enforcement. Indonesia's decision to conduct ship-sinking policy has attracted objections from countries whose vessels have been arrested and detained with proof that they were involved in IUU fishing activity; consequently, their vessels will be diminished and/or sunk deliberately. Such procedures trigger potential conflicts related to Indonesia's reputation as a sovereign country, whether Indonesia should ease penalties that will harm its internal economy or must accommodate the opinion of foreign countries who perceive that policy to be disadvantageous. This paper adopts the writing style of normative law. A review of legal regulations accompanied by theories regarding jurisdiction is carried out to present descriptive-analytic products. The results found that Indonesia should not be bothered over ship-sinking policy protests because Indonesia had clear jurisdiction as the primary attribute in international law. Indonesia has the desire and ability to fully implement its jurisdictional principles since the legal instruments in Indonesia are complete and fully support that policy. The executed procedure is not solely a reactive policy but a ripe thought with goals to achieve. Notwithstanding, the principle of Indonesia's jurisdiction in ship-sinking policy is also supported by international recognition because illegal fishing is deemed as a crime. Therefore, Indonesia's decision to stop the practices of illegal fishing is in line with the jurisdiction and legal instruments recognized by the international community.

Keywords: ship-sinking policy, protest, justification, jurisdiction, IUU fishing.

Introduction. The growing human population increases global fish consumption. According to FAO, if illegal fishing is not correctly managed, fish insecurity will happen in the next few years (Jaelani & Basuki 2014). Furthermore, 17% of the world's fisheries have experienced overfishing due to the increasing practice of illegal fishing in the last few decades (ITS 2016). Indonesia, as one of the world's largest archipelagic countries, has great potential to utilize marine resources in the most effective manner (Mahmudah 2015) yet also becomes the main target of illegal, unreported, and unregulated (IUU) fishing practices.

Although there are policies that regulate IUU fishing (Azhar et al 2019), the practice of those unlawful acts persists. Illegal fishing causes loss of the nation's income due to reduced fish supply as violators often do over-exploitation (Amir 2013). Illegal fishing enterprises, through its disobedience, have the potential harming national's revenues; therefore, member countries of the 2010 Paracas Declaration agreed to fight and tackle illegal fishing practices in the Asia Pacific Region. Illegal fishing is often carried out across countries, and Indonesia is often targeted due to its weak control encompassing vast waters. Violations related to illegal fishing constitute the unavailability of fishing license (SIPI) and fishing boat permit (SIKPI) and when the suspect is caught catching or transporting fish from Indonesian waters to a foreign area (Rohingati 2014). Despite whether or not the crime was committed in the area of Indonesia fisheries

management (WPP), this crime has extensively happened in the exclusive economic zone (EEZ) and the waters of Indonesia (Sosiawan 2015).

Crimes in the form of IUU fishing cause losses in various sectors, therefore the government should do forceful action so that the international community recognizes Indonesia's ability to secure its territory from threats and violations against the sovereignty; moreover, forceful action can drive a deterrent effect against the IUU fishing violators. Indonesian government destroys and sinks vessels used for carrying out IUU fishing by stabbing the hull or exploding the entire ship. Constitutionally, such actions are the government's responsibility in securing national dignity in each region. From the law perspective, Law Number 31 of 2004, as amended in Law Number 45 of 2009 concerning Fisheries, Article 69 paragraph 4, states that a burning/sinking procedure against ships that have committed a crime is judicial. Also, law enforcement against illegal fishing is a juridical implication as a country, ratified in the UN Convention on the Law of the Sea (UNCLOS) on Law Number 17 of 1985, Law Number 6 of 1996 concerning Waters Area, Law Number 32 of 2014 concerning Maritime Affairs, and further stated in Indonesia's vision as the global maritime fulcrum following Presidential Decree Number 16 of 2017 concerning Indonesian Maritime Policy. Those shreds of evidence constitute a series of juridical regulations for justice against illegal fishing vessels, including by sinking violators' vessels.

The Indonesian government's firm action through ship-sinking policy has met criticism from countries where the ship originated. Some countries that expressed opposition to the policy were China, followed by other ASEAN countries such as Thailand, Vietnam, and especially Malaysia as Indonesia's most adjacent neighbor. The idea of a ship-sinking policy against violators is legitimate because Indonesia has full authority as a sovereign country. However, from the understanding that Indonesia is always having a close relationship with other countries in many aspects, any policy and implementation must consider the objections raised by other countries concerning. Accordingly, it is necessary to investigate the ship-sinking policy carried out by the Indonesian government through the jurisdiction principles of the Republic of Indonesia.

This paper aims to provide an analysis of arguments related to juridical issues and the cross-perspectives upon the ship-sinking policy against illegal foreign vessels. All illegal activities done within the jurisdiction of Indonesia have been regulated in a certain way because Indonesia is a sovereign country and obliged to protect all territories judicially.

Material and Method

Description of the study. This study uses normative research methods to provide solutions upon legal problems that arise, as previously described in the background (Susanti & Efendi 2014). The research paradigm is post-positivism since the legal problems are used to measure the coverage-power of legal decisions/policies taken by Government Authorities. The internal factors that lead to decision-making in any country can no longer be seen based on the authority/desire; besides, other aspects such as the interests of other countries are also taken into account. Post-positivism is a correction to the positivism paradigm, seeking to reduce the weaknesses of the legalistic view that is impracticable to be used as a guide in this dynamic world. Besides, the use of this paradigm still emphasizes the need for anticipation and control over the law (Guba 1990). In this paper, the argument taken is in the form of justification for Indonesia's jurisdiction. Later, the argument will be constructed using a sort of relevant legal materials using related theories; critical perspectives in writing are carried out by involving other relevant sources. In brief, this study aims to find harmony between facts and/or theories related to the application of the ship-sinking policy against illegal foreign vessels (Hanson 2003).

Data analysis. All legal materials needed were analyzed using a qualitative approach called descriptive-analysis techniques. The authors examine the legal problems that have been found based on the problems as mentioned above, identify legal facts, eliminate

irrelevance, and resolve existing legal problems by strengthening legal products by describing concepts and theories related to actual problems. After finding suitable arguments, the author uses drawn-conclusions to illustrate all juridical opinions or arguments.

State of the art. Any study should exhibit dynamism as science is always progressing and advancing, and changes from time to time. Modern science is enlightenment and brings novelty that will display the dynamics of science, showing the use of rationalism and the rationalism itself (Suteki & Taufani 2018). Besides, this study has a distinguishing element that shows the revival of ideas. Related research but different from this article is the publication from the international perspective proposed by Juned et al (2019). Their paper only reviewed the perspective from international relations and emphasized the aspect of countries' responses affected by ship-sinking policies performed by Indonesia. Also, a study that discussed the formal law enforcement process in Indonesia, specifically related to law enforcement through illegal fishing courts, has already been conducted (Hikmah 2013). In another article, there is a discussion concerning technical issues related to the patrolling activity for securing the seas area and reducing IUU fishing activities in Indonesia (Petrossian 2015). In this paper, the authors will focus on the problem from the theoretical field by discussing the ship-sinking policy and Indonesian jurisdiction/authority in enforcing the law in all sovereign territories. Within the theory of jurisdictional framework, investigation and analysis are carried out to show justification that the current decision made by the Indonesian government is legitimate; practicing ship-sinking policy is a right step and should not be intervened by any country.

Result and Discussion. Fishery products are one of the best-selling commodities in the world (FAO 2014) and extraordinary in demand. The high selling value of fishery products is always the reason why IUU fishing cases increase; these acts are illegal because the act of stealing is always contrary to any law. As one of the largest archipelagic countries in the world, Indonesia unavoidably possesses a challenging task in guarding its territorial waters (Ussama 2003), primarily due to 63% of its territory is the sea and it borders with ten other countries. The protection of maritime territories is the domain of law and gives status to the urgency of law. A safe maritime area provides good social feedback apart from law enforcement itself.

Sovereignty is the highest power of the government that determines the laws in a country (Zulkifli 2012). The Indonesian Constitution contained in the 1945 Constitution of the Republic of Indonesia has clearly stated that Indonesian leaders must protect all citizens and areas. This responsibility includes a commitment to participate in carrying out world peace order since Indonesia wants and can maintain its sovereignty. Sovereignty is not just covering territories but also on how people can be sovereign and standing for themselves. Economic sovereignty as a maritime country is essential because many people depend on the fisheries and maritime sectors. The presence of a constitutional platform as the supreme law confirms that Indonesia has everything needed to handle and maintain national sovereignty.

The law prohibits and sees IUU fishing as a criminal act, and sanctions for rule-breakers should be applied. The decision towards restriction originates from wrong behavior (a condition or event caused by people's behavior), while criminal threats are conducted by a person who caused the issue (Moeljatno 1984). The IUU fishing in the area of Indonesia is harming both directly and indirectly. The loss caused by illegal fishing is not only injuring the livelihoods of fishers but also disrupting the stability of sea security. Countries that do not have enough sea territory often find difficulty in meeting their internal needs; consequently, they often perform IUU fishing in Indonesian territory. Some countries whose ships were punished often protested; seeing ships as assets, they hoped those vessels would not be destroyed as what has been stipulated in the policy adopted by the current Indonesian government.

Policymaking by a sovereign government is a logical decision in solving a problem or realizing the desired goal. Every policy can affect people's lives, and community

participation is deemed necessary in the entire policymaking process; the formulation, implementation, and policy evaluation (Abidin 2006). Policies are divided into three levels: general policies are serving as guidelines for both positive and negative implementation covering the entire region or concerned country; implementation policy describes the general policy; and at the central level, technical policies (i.e., operational policies) are under implementation policies. Law enforcement is an effort to prevent and overcome crime and improve social welfare in the community. Therefore, any effort taken to protect the community must pay attention and anticipate the fulfillment of social policies where the community can benefit from (Arief 2001).

From the above explanation, Indonesia's decision to enforce the law through judicial procedures can be understood as social policy implementation supporting the community; explosion and sinking policies are useful in minimizing the potential abuse upon illegal vessels. Social policy is one of law enforcement's products. The formation of law enforcement must consider the social policy as it connects the country's authority and community yet not limited to the law alone. Therefore, foreign nationals under Indonesian territory must obey Indonesian law.

The criminal justice policy has three meanings: in the strict sense, the policy is the principle and method that forms a response to the criminals; broadly, law enforcement officials including the court and police have a full capacity; and in a broader sense, policies are carried out through laws and official bodies aim in enforcing the fundamental norms within society (Soedarto 1986). The ship-sinking policy against illegal fishing by foreign vessels is controlled by the provisions of Article 69 paragraph (1) and paragraph (4) of Law Number 45 of 2009, amended to Law Number 31 of 2004 concerning Fisheries, which regulates: (1) The supervisory vessel functions to conduct supervision and law enforcement in the territory of the Republic of Indonesia; and (4) In carrying out the functions referred to in paragraph (1), fisheries investigators and/or supervisors can take extraordinary measures by burning and/or sinking the foreign-flagged vessels based on objective evidence.

In the Elucidation of Article 69 paragraph (4), the definition of "sufficient preliminary evidence" is preliminary evidence for suspecting criminal violations by foreign-flagged vessels; do not have SIPI, SIKPI, and catch and/or transport fish when accessing the fisheries management area of Indonesia. Referring to Article 76A of Law Number 45 of 2009, objects and/or tools used in fishery crimes and/or can be confiscated for the government or destroyed after obtaining approval from the Chair of the District Court. The court's decision has permanent legal force (*inkracht*) as stipulated in the Criminal Procedure Code of the Republic of Indonesia (KUHAP).

Laws related to the ship-sinking policy against foreign vessels carrying out illegal fishing are also narrated in Law Number 8 of 1981 (KUHAP), Article 38, Article 45, and Article 38. Article 38: (1) Confiscation can only be carried out by investigators with the permission of the chairman of the local district court; (2) In a situation where it is urgent to take a decision (when the investigator must act immediately, and it is impossible to obtain permission in advance), without reducing the provisions of paragraph (1), the investigator can confiscate movable objects only. Investigators must immediately report to the head of the local district court for approval.

In Article 45 (1), confiscated objects that can be quickly damaged or dangerous (it is impossible to keep them until the court decision is made/has not been granted permanent legal force/the cost of storing is too high), with the approval of the defendant or his attorney, the following procedures can be taken: a. If the case is still under the investigator or the public prosecutor, the object can be sold at auction or can be secured by the investigator/public prosecutor (witnessed by the defendant or his lawyer); b. If the case is under court, the object can be secured or sold by the public prosecutor with the permission of the judges listening to the case (witnessed by the defendant or his lawyer); (2) The results of auctions of relevant objects in the form of money are used as proof; (3) Parts and small objects as referred to in paragraph (1) must be set apart; (4) Confiscated objects which are prohibited or prohibited from being circulated, excluding the provisions as referred to in paragraph (1), can be confiscated for the benefit of the government or to be destroyed.

Referring to the provision issued by the International Plan of Action (IPOA) initiated by FAO (1995) in applying the Code of Conduct for Responsible Fisheries (CCRF), the definition of illegal fishing is explained as follows: (1) Fishing activities carried out by foreign countries or vessels in waters that do not have jurisdiction, without permission from the country where the catch was performed, or jurisdiction that is contrary to the laws and regulations of such country; (2) Fishing activities carried out by fishing vessels in one of the countries that are members of the Regional Fisheries Management Organization (RFMO), but the operation of the ship is contrary to the conservation and fisheries management measures adopted by the RFMO; (3) Fishing activities that oppose the law of a country or international provisions, including rules set by RFMO member countries.

From the concept and understanding of IPOA, illegal fishing includes: (1) Illegal fishing is a fishing activity in territorial waters or EEZ of a country without permission from the concerned country; (2) Unregulated fishing is a fishing activity in territorial waters or EEZ that does not comply with the rules in the concerned country; (3) Unreported fishing is fishing in territorial waters or EEZ without making reports to the concerned country, both the data of ship operational and catches.

Within Indonesia's jurisdiction, there are four types of illegal fishing: fishing without permission; fishing using false licenses; fishing using prohibited fishing gear; and fishing with gear types that are not following the written permit. While the category of unreported fishing is a fishing activity that does not report actual catch, falsify catch data, and bring the catch to other countries (transaction in the middle of the sea.)

Catch activities categorized as a catch without rules: (1) Catching in an area that has not implemented preservation and correct management provisions. In this case, fishing activities are carried out in methods that are not following the country's responsibility for the preservation and management of fish resources based on international law; (2) Carried out under the fisheries management area by vessels without citizenship or vessels with the flag of a non-member of the organization; done inappropriately or contrary to the concepts of preservation and proper organizational management.

Illegal fishing based on Law Number 31 of 2004 concerning Fisheries, as amended by Law Number 45 of 2009, is a sort of crime as regulated in Article 103 paragraph (1) and a violation as regulated in Article 103 paragraph (2). All types of crimes, both the crimes and violations in the fisheries law, are called illegal fishing.

The international community, along with their tight-relationships, has always agreed to resolve existing problems peacefully. International law, with one of its integral elements, perceives that jurisdiction is considered as sovereignty. However, the difference is somehow thin. The jurisdiction is broader because its dimensions can cross national borders, but sovereignty tends to be inward. In terms of general laws, jurisdiction is defined as the ability of a country to use its authority over all people and anything within its territory (Wexler 1997). Also, jurisdiction means the court's authority hears and decides cases to seek decisions (Garner 2004). Jurisdiction is closely related to sovereignty because it is often defined as "the authority of a country participates in the development of international law" where sovereign countries are required to change their sovereignty by adopting law and establishing law following public practices or legal interests (Ryngaert 2015). Harris (1991) said jurisdiction means the power of the country under international law regulating individuals and objects through national law, both in prescriptive and enforcement methods (Irawan 2018).

The jurisdiction in international law is often associated with the criminal law rather than the civil legal problem; civil affairs enter international civil law, except when conflicting rules occur; and sanctions used are from the criminal law field (Wallace 2002). Besides, international law in no way regulates the implementation of jurisdiction by/for the subject from an international law perspective because the jurisdiction is still under propriety and discretionary of a country authority. Jurisdiction can be said to be the main feature of sovereignty, where the exercise of authority will create or stop legal products. Obligations that arise are limited to their territory, and it will become more complicated when dealing with constitutional law and the conflicts of international law (Shaw 2008).

Several theories regarding jurisdiction have been established; for example, Legendre (1997) stated that jurisdiction is related to the implementation of the law that applies to a person. Meanwhile, according to McVeigh (2007) and Cormack (2007), and jurisdiction from critical legal studies is a political problem between power and sovereignty (Mussawir 2011). Also, there is a slight difference in the viewpoints between McVeigh's and Cormack's: Cormack stated that jurisdiction issues are often not addressed because the problem is indeed the legal and technical conditions during the formation of the law; while McVeigh stated that jurisdiction is related to the juridical use and its social application. Furthermore, McVeigh (2007) said that jurisdiction is not only a matter of how to make decisions and who has authority/how to apply them, but it is also a matter of eligibility and conduct of the jurisdiction's implementation. However, both of them consider that jurisdiction in critical thinking is not only about the legal process but also how to apply jurisdiction as a whole.

Practically, jurisdiction is divided into 3 (three) parts, the legislative, executive, and judiciary bodies. As explained earlier, jurisdiction is often associated with criminal cases when it comes to international law. Based on the above theoretical explanation, several common principles are carried out: 1. The territorial principle is emphasizing aspects of inward sovereignty that cannot be interfered with to enforce the law and maintain territory; 2. The principle of nationality is a country running jurisdiction over its citizens who violate the law in the territory of another country, and this principle is considered as the fundamental basis of jurisdiction; 3. The principle of passive personality is the ability for the country to use its jurisdiction over other citizens who violate the law where it may endanger the concerned citizens within the concerned country; 4. The principle of protection is where the country has the right to apply its jurisdiction against foreigners/aliens (whose identity is not clear) if they are found to be disrupting the stability of the country. The lacking definition of this system gives the potential abuse of authority in the enforcement because its definition relies on the vital interests of a country; 5. The principle of universality is used when every country in the world can apply its jurisdiction based on the type of crime, categorized as an international crime by all countries such as high seas crime.

Law enforcement against criminals must operate through several steps and is seen as efforts or rational means to obtain a set of pursuits and lead criminal proceedings. The function of authority in the criminal law policy includes the formation of authority/legislative policy, application authority/judicial policy, and execution authority/executive policy. Arief (1998) stated that the distribution of authority is based on three stages of concretization or functionalization/operationalization: first is determining/formulating criminal law conducted by legislators (legislative policy stage); the second stage is the application of criminal law by law enforcement officials or the court (the applicative/judicial/judicial policy stage); the third is the criminal implementation stage by the criminal execution apparatus (the executive/administrative policy stage.)

The decision of the Indonesian government to implement a ship-sinking policy against foreign vessels that have been proved to be conducting illegal fishing activities in the Indonesian jurisdiction is the right and obligation of the government in protecting the territory from threats. The violation of illegal fishing is a threat to Indonesia's sovereignty in economic aspects; furthermore, it is a big problem for Indonesia to actualize the aspiration as the world's maritime fulcrum. Law enforcement efforts through ship-sinking policy can be said to be very repressive in order to provide a deterrent effect against IUU fishing criminals. However, based on the above theoretical findings, one of the critical attributes of law enforcement is depicted from the government's role in the community besides providing a psychological deterrent effect against violators. The repressive action of the Indonesian government is also a symbol that Indonesia can carry out national sovereignty and security. In terms of foreign policy, Indonesia has a bargaining position due to its ability to maintain sovereignty.

Jurisdiction is an attribute of a sovereign country that can be considered as a differentiator or evidence of a country's ability to deal with other nations. Although the requirements to become a sovereign nation are already fulfilled by Indonesia, as one of

the largest archipelagic countries in the world, Indonesia must continue showing its sovereignty. Sea, as an uninhabited area by humans, needs protection; and such acts represent an effort in maintaining territorial integrity. The policy to protect marine areas from the threat is as important as the efforts of the country in securing its territory from other countries' military threats. Since the function and goal of a country are to protect all territories, protection needs to be done for gaining economic sovereignty and avoiding the potential loss of marine resources.

Protests by countries against Indonesia's strategy in ship-sinking policy are highly irrelevant in any aspect or perspective because law enforcement of a country cannot be intervened by other countries or parties whatsoever. Even though there is a judgment saying that one country should understand the conditions of other countries when it comes to modern era collaboration, Indonesia and its complexities must continue to carry out its mandate and constitution in a reasonable way. Correspondingly, Indonesian jurisdiction also needs to be respected if there was an international conflict between some other nations. Seeing IUU fishing has received serious attention from many organizations world-wide, the theory of universality jurisdiction can be seen as one of the arguments to decline all objections argued by countries that perceive the strict maritime policy of Indonesia to be disadvantageous.

Responsibility is defined as the ability to be responsible for losses from any action. There are two main aspects of responsibility: the responsibility is imposed on individuals or a country (a violation of legal norms, especially from the perspective of international law.) As a basic principle in international law, country accountability arises naturally from the international legal system between the principle of sovereignty and equality (rights). If a country acts against the law of another country, accountability arises between the two, including the possibility of compensation. The accountability dimension is still inclusive and depends on what accountability is required by a particular legal issue. Responsibility is functioning as a country character so that the law can be more meaningful in preventing losses from a careless constitution that causes chaos, leading the government to be in charge of stopping the loophole so that the rules can run adequately (Mangesti & Tanya 2014).

Thus, as a sovereign maritime country, Indonesia has the right to function jurisdiction in enforcing the law upon its territory without any intervention from outsiders. The freedom of a country to apply its law is an epitome of capability in maintaining sovereignty. By making compromises upon violations that endanger the country's economy, especially in fisheries sectors, the law is failing to embrace citizens. Moreover, awful law shows that a country has failed to maintain its status as an independent country. Since Indonesia has reliable attributes to carry out governance towards its people, the authorities must continue dumping and stopping crimes either with or without assistance from any single foreign country. The application of jurisdiction is vital to maintain the effectiveness of laws; thus, Indonesia has the power to cast off all interruptions compromising the country's sovereignty.

Conclusions. Indonesia has clear and legal jurisdiction for practicing the ship-sinking policy against foreign vessels that have been proved to be conducting IUU fishing activities in the Indonesian territory. The aspect that strengthens Indonesia's legal system in practicing this policy is not merely a reactive response but is an urgency to protect nation-wide sea areas. Although IUU fishing is recognized as a crime by many countries, the idea that justice wins over one crime cannot be functioning if the desire and ability to suppress violations are unavailable. Indonesia, ruling as a sovereign nation, is considered capable of carrying out robust sovereignty. Therefore, the ship-sinking policy should progress further and is anticipated to straightforwardly stand out despite objections from countries perceiving that Indonesia's maritime policy to be disadvantageous and intimidating.

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