



Legal enforcement approach by the Indonesia's Minister of Maritime Affairs and Fisheries (period 2014-2019) in combating illegal fishing in Indonesia: a legal philosophy study

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Abstract. The law enforcement approach carried out by the Minister of Maritime Affairs and Fisheries (period 2014-2019) in combating illegal fishing in Indonesia has drawn world attention. The minister safeguards the wealth of the Indonesian sea in a strict manner. The strategy is to capture foreign crew members who steal fish from Indonesian waters and sank their ships. In fact, this controversial approach has succeeded in drastically reducing the level of illegal fishing in recent years. This paper is intended to analyze the law enforcement approach carried out by the Indonesia's Minister of Maritime Affairs and Fisheries (period 2014-2019) in the study of legal philosophy. The problem raised is how the approach is explained in the sheltering paradigm, as a philosophical thinking tool in law. The study of legal philosophy on this issue is a state of the art in this paper, which has never been studied before. Research shows that the approach in the paradigm of constructivism is a paradigm that guides the approach taken by the minister. The firm strategy in implementing law enforcement on illegal fishing is very much needed in the fight against massive theft committed by foreigners in Indonesian sea.

Key Words: illegal fishing, law enforcement, legal philosophy, the Indonesia's Minister of Maritime Affairs and Fisheries (period 2014-2019), constructivism.

Introduction. The Ministry of Maritime Affairs and Fisheries of the Republic of Indonesia in the era of President Jokowi in 2014 to 2019 received considerable attention from the people of Indonesia and the world. This ministry led by a brave woman in the 2014-2019 leadership period who rarely escapes the attention of the mass media. Courageous actions as Minister of Maritime Affairs and Fisheries are often reported positively in national media and in international media. Since serving as minister, the Ministry of Maritime Affairs and Fisheries issued many popular policies as a form of safeguarding Indonesia's marine wealth.

Several policies of the Ministry of Maritime Affairs and Fisheries during the leadership of the minister which had a large impact include: the issuance of the Minister of Maritime Affairs and Fisheries Regulation No. 56/Permen-KP/2014 concerning Temporary Termination (moratorium) Licensing of Capture Fisheries Business in the Republic of Indonesia's Fisheries Management Area; the issuance of the Minister of Maritime Affairs and Fisheries Regulation No. 57/Permen-KP/2014 which is a revision of Permen KP No. 30/Men/2012 concerning capture fisheries business in Indonesia. Through this regulation there is no more practice of transshipment or unloading of goods in the sea area. According to the Minister, the regulation also avoids various other violation activities, such as smuggling of fuel oil, drugs and other items. Then the issuance of the policy in the form of Minister of Maritime Affairs and Fisheries Regulation No. 1 of 2015 concerning restrictions on catching lobsters, and crabs; and the birth of a policy in the form of Minister of Maritime Affairs Regulation Number 2 of 2015 concerning the Prohibition of the Use of Trawls and Seine Nets in the Fisheries Management Region of Indonesia.

Of the various policies made, the act of combating illegal fishing is explicitly the most highlighted part of the community. The strategy is to catch fish thieves from Indonesian waters and blow up or sink their ships. At least, 516 ships have been submerged in the era of the leadership of the Minister of Maritime Affairs and Fisheries for the 2014-2019 period (Pregiwati 2019). In addition to sinking the ship, the Ministry of Maritime Affairs and Fisheries prevented fish theft through revocation policy 368 Fisheries Business Permit or ships that have not been operational and not extended for more than two years and Fisheries Business Permit for vessels that have not been realized more than two years since they were issued (KKP 2019).

As an appreciation of the policies and steps taken, the Minister of Marine Affairs and Fisheries of Indonesia for the period 2014-2019 received various international awards. One of them is the Leaders for a Living Planet Awards from the World Wide Fund for Nature (WWF) International conservation organization in September 2016. The minister is also one of the 100 World's Best Thinkers according to Foreign Policy magazine. The minister's courage to combat illegal fishing was the reason for this award. The minister also received the Peter Benchley Ocean Awards in the leadership category in May 2017 (Said 2019).

The law enforcement approach taken by the minister as a representation of the policy of the Ministry of Maritime Affairs and Fisheries can be scientifically explored through the study of legal philosophy. Every policy is certainly born from a process that is not simple thinking, it takes a good understanding to its nature to be able to understand the reality or problems that occur, so that the right solution can be made. Such deep thinking activities are thought processes that fall into philosophy. So, it can be said that every policy that is born by someone is based on the basis of thinking that he believes. We call this the paradigm. Paradigm is a part of philosophy which is the basis of every human being in thinking, acting and doing something in his life.

Stated briefly, a paradigm is the set of common beliefs and agreements shared between scientists about how problems should be understood and addressed (Kuhn 1962). One way to set up new foundation of thought for developing knowledge is through the adoption of paradigmatic analysis into the realm of philosophy, including philosophy of law. Paradigm may be viewed as a set of basic beliefs (or metaphysics) that deals with ultimates or first principles (Indarti 2016).

This research is intended to analyze the approach of law enforcement carried out by the minister in the study of legal philosophy, namely through paradigms as new tools in legal philosophy. The study of legal philosophy is needed to explain about the minister's philosophical vision which makes it different from other personalities. The different paradigms adopted by one person compared to others will naturally give rise to different thoughts, attitudes, and actions. This is what makes this research different from previous studies. Other studies pay more attention to how the Ministry of Maritime Affairs and Fisheries policies in the study of law. As a state of the art, this research starts with an understanding of the study of legal philosophy, specifically the paradigm that guides the birth of policies within the Ministry of Maritime Affairs and Fisheries. Therefore, the problem examined in this research is how the study of legal philosophy through the study of paradigms can explain the policies that were born by the Minister of Marine Affairs and Fisheries of Indonesia for the period 2014-2019?

Material and Method. In this study, researchers used secondary data as research material. This study used performance reports of the Ministry of Maritime Affairs and Fisheries as secondary data. This study also used the research results that have been done before, performance data that was officially released by the Ministry of Maritime Affairs and Fisheries, research journals, and literature books. In addition, the source of legal materials in the form of laws and regulations is also used as material in this study. Therefore, this study applied data collection method in the form of a literature study.

The research tradition (which talks about the researcher's point of view on the object of research) of this study used a qualitative tradition. This concerns the researcher's strategic position with regard to the tradition that will lead the researcher into the research. According to Taylor et al (2016), qualitative research is a research

procedure that produces descriptive data in the form of written or oral words from people and observable behavior.

After determining the research tradition used, the researchers used the legal constructivism approach which is in the relative constructivist realm. This means that adherents of this approach interpret reality in relative terms according to mental constructions and based on social or individual experiences subjectively, so that reality is local and specific.

Based on the ideas of the paradigms of Guba & Lincoln (2005), in this study, researchers used the constructivist paradigm as the 'analysis tools'. The answer to the ontological question of the constructivism paradigm is relativism. Here relativism is understood as multiple and varied realities, based on individual, local and specific social experiences, is a 'mental construction'/human intellect, form and content pass away to adherents/holders, can change to be more informed and/or sophisticated; humanist (Indarti 2010).

Transactional/subjective is the answer to the question of the epistemology of the constructivism paradigm concerning the nature of the relationship or relationship between individuals or groups of people with the environment or everything that is outside of themselves, including what can be known about this. Transactional/subjective epistemology interactively positions adherents/holders and related observation/investigation objects; the findings are 'mediated' by the values held by all related parties; fusion between ontology and epistemology (Guba & Lincoln 2005).

The way in which individuals or groups of people (of course including researchers) get answers to what they want to know - called methodological questions - is answered by constructivism with 'hermeneutical/dialectical methodology'. This method understands that construction is traced through interactions between and among adherents/holders and objects of observation/investigation; with hermeneutical techniques and dialectical exchange the 'construction' is 'interpreted', and compared; the aim is to distill consensus 'construction' or 'resultant construction' (Indarti 2010).

The strategy adopted in this research is to trace the paradigm of the Minister of Marine Affairs and Fisheries of Indonesia for the period 2014-2019 who was identified through the policies that were born, attitudes, and actions so as to reflect consistency in the paradigm adopted. Legal philosophy research with a paradigmatic study model becomes very important in understanding the dynamics of legal reality, in this case the policies of the minister, in order to understand the philosophical vision that underlies the birth of the policy.

Qualitative data analysis in this study consisted of three activities that occurred simultaneously, namely: data reduction, data presentation, and drawing conclusions/verification. Data reduction is the process of selecting, focusing on simplifying, abstracting, and transforming "rough" data that arises from written records in the field. The data presentation in question is a collection of arranged information that gives the possibility of drawing conclusions. The conclusion drawing itself is only part of the whole configuration activity (Soemitro 1990).

Results and Discussion

The Minister of Marine Affairs and Fisheries (for the period 2014-2019) of Indonesia's policy in combating illegal fishing. Various policies made by the Minister of Marine Affairs and Fisheries of Indonesia for the period 2014-2019 received a lot of positive appreciation from the community. Among the many policies, efforts to combat illegal fishing are explicitly one of the most highlighted in the world. Follow-up from illegal fishing or also referred to as illegal, unreported and unregulated (IUU) fishing is done to build a deterrent effect for anyone doing illegal fishing. IUU fishing is a broad term of the various types and dimensions of illegal fishing activities in open sea areas and in national jurisdictions such as fishing and fishing aspects (FAO 2019).

The Ministry of Maritime Affairs and Fisheries considers that IUU fishing is a big threat to Indonesia, and again Indonesia is being targeted because Indonesian waters have more than 3000 species of fish, making Indonesia one of the most species-rich

environments in the world (Dirhamsyah 2012). Therefore, the strategy of the Ministry of Maritime Affairs and Fisheries is to catch fish thieves from Indonesian waters and blow up or sink their ships.

Based on data from the Ministry of Maritime Affairs and Fisheries, vessels that have been fishing illegally and have sunk were as many as 516 vessels during October 2014-May 2019 as shown in Figure 1. Of these, most were from Vietnam with 294 ships, followed by the Philippines 92 ships in second and third position from Malaysia with 76 ships. In maintaining the integrity of the territories and fish populations in Indonesian waters, the Ministry of Maritime Affairs and Fisheries under the leadership of the minister (for the 2014-2019 period) cracked down on vessels that conduct illegal fishing.

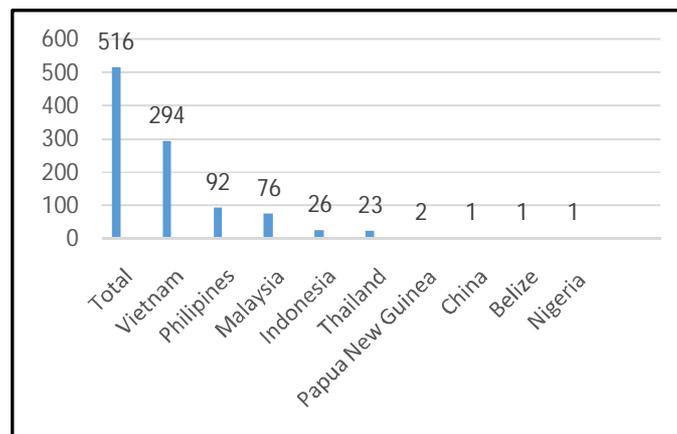


Figure 1. Number of illegal fishing vessels in Indonesia that have been drowned (period October 2014 - May 2019).

This sinking activity is a form of implementing law enforcement against IUU fishing perpetrators as mandated by the Indonesian Fisheries Law. Drowned ships are ships that have received a court decision with legally binding (inkracht). Therefore, the sinking that was carried out was solely in the context of carrying out court decisions and carried out by the Prosecutor, supported by Task Force 115. Task Force 115 was a task force under the direct command of the Minister of Marine Affairs and Fisheries of Indonesia for the period 2014-2019 who assumed the oversight and enforcement functions of a number of violations occurring at Indonesian sea.

In juridical normative, government policy through the Ministry of Maritime Affairs and Fisheries does not violate the applicable provisions. The act according to the study does not violate national provisions (Law No. 45 of 2009 concerning Amendments to Law No. 31 of 2004 concerning Fisheries and Law No. 6 of 1996 concerning Indonesian Waters) or international provisions (United Nations Convention on the Law of the Sea or UNCLOS). Based on the results of legal identification, there is no article that prohibits the sinking of fishing vessels, although there are options for giving/auctioned. National and international provisions expressly authorize the government's action to sink ships for illegal fishing (Putri et al 2017).

The sinking of fishing vessels carried out so far has provided enormous benefits for the country if calculated both in terms of resources and business. In terms of resources, it is noted that Indonesia's marine biomass has increased in recent years. "Indonesia's marine biomass grew 300% compared to before. More fertile, more fish, bigger in size. It also has a positive business impact where there has been an increase in the value of exports and the exchange rate of fishermen over the past four years", said the Minister (Pregiwati 2019).

In addition to sinking the ship, the Ministry of Maritime Affairs and Fisheries prevented fish theft through revocation policy 368 Fisheries Business Permit for ships that have not been operational and not extended for more than two years and Fisheries Business Permit for vessels that have not been realized more than two years since they were issued (KKP 2019). Through the Directorate General of Capture Fisheries, the

Ministry of Maritime Affairs and Fisheries revoked 137 Fisheries Business Permit with an allocation of 463 vessels for vessels that had not been operational or that had not been extended for more than two years. For information, this Fisheries Business Permit was originally intended for foreign-made (ex-foreign) ships which are now banned from operating. The Ministry of Maritime Affairs and Fisheries also revoked 231 Fisheries Business Permit with an allocation of 240 units, for ships that were not realized more than two years since the Fisheries Business Permit was issued (KKP 2019). This is as the data shown in Figure 2.

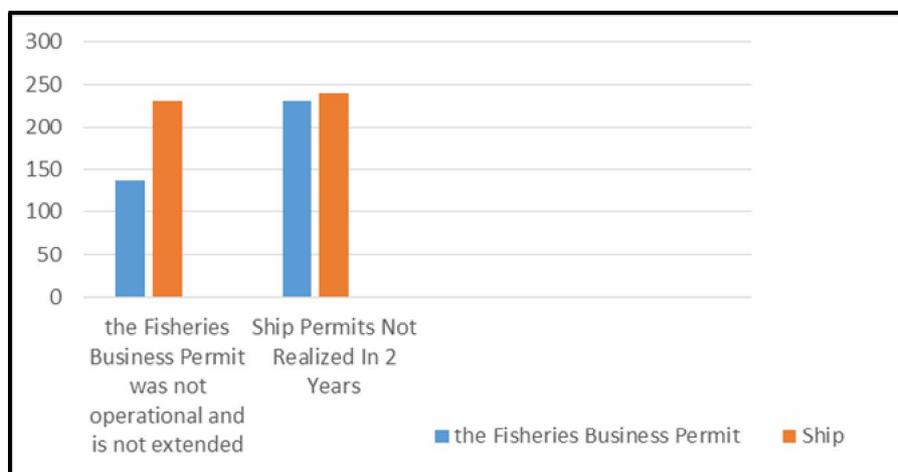


Figure 2. Fisheries business permit and ship allocation ordered by the Ministry of Maritime Affairs and Fisheries (March, 2019).

The various policies of the Minister of Marine Affairs and Fisheries of Indonesia for the period 2014-2019 basically showed a serious and strict effort in maintaining the sovereignty of the Indonesian people from various acts of crime that occurred in Indonesian waters, especially those carried out by other countries. The law enforcement policy carried out by the Minister shows its determination, both at the policy level and the implementation of law enforcement.

Paradigmatic study in explaining the approach to law enforcement by the Minister of Marine Affairs and Fisheries of Indonesia for the period 2014-2019.

Philosophy which is a translation of the word 'philosophie' can be interpreted as 'love for science', 'love for wisdom or wisdom friends', or 'love for wisdom, that is wisdom of life' (Huijbers 2010). Meanwhile, legal philosophy is better understood as part of philosophy, especially moral philosophy or ethics, than part of legal science. Therefore, philosophy of law can be seen as a philosophy of good and bad morality. At the same time, philosophy of law is also seen as a philosophy about justice as well as about injustice (Rasyidi 1988).

Meanwhile, paradigms are part of philosophy. The paradigm is the main philosophy, parent, or 'umbrella' as confirmed by Denzin & Lincoln (1994) in the sense of a paradigm, namely: "A paradigm is a main philosophical system, a parent, or 'umbrella' that is built from a specific ontology, epistemology, and methodology, each of which consists of a 'set' of basic beliefs or worldview that cannot be exchanged easily [with a basic belief or worldview from ontology, epistemology, and other paradigm methodologies]. The paradigm presents a certain 'basic' system or set of beliefs relating to the first or main principles, which binds its adherents to certain world-views, along with the ways in which the 'world' must be understood and studied, and which is always guide every thought, attitude, word, and deeds of its adherents".

Of the many experts who try to offer an understanding of the following paradigm classification, the authors tended to adopt the opinion of Guba & Lincoln (2005) which is more comprehensive and systematic, solid, and rational. They, who are basically more inclined to the global understanding of the paradigm, differentiate the paradigm based on their respective answers to 3 (three) 'fundamental questions' concerning (Indarti 2010): (a) the form and nature of reality, along with what can be known about this [referred to

as the 'ontological question']; (b) the nature of relationships or relationships between individuals or groups of people and the environment or everything that exists outside of themselves, including what can be known about this [referred to as 'epistemological' questions, which also includes 'axiological' questions]; (c) the way in which individuals or groups of people [of course including researchers] get answers to what they want to know [are called 'methodological' questions].

In the context of the understanding of a paradigm that is both more systematic and concise, and rational, Guba & Lincoln (2005) offer 4 (four) main paradigms. The four paradigms are: positivism; postpositivism; critical theory et al; and constructivism [d / h naturalistic inquiry]. The four paradigms are distinguished from each other through responses to 3 (three) fundamental questions; which includes 'ontological', 'epistemological' and 'methodological' questions. The following are the 'Basic Belief Sets' of the four main paradigms offered by Guba & Lincoln (2005) (Indarti 2010) (Table 1):

Table 1

Basic belief set of 4 (four) main paradigms

Question	<i>Positivism</i>	<i>Postpositivism</i>	<i>Critical Theory</i>	Constructivism
Ontology	Naive Realism: external reality, objective, real, and understandable.	Critical Realism: external, objective, and real realities that are understood imperfectly.	Historical Realism: 'virtual' realities formed by social, political, cultural, economic, ethnic and 'gender' factors.	Relativism: multiple & diverse realities, based on social-individual, local and specific experiences.
Epistemology	Dualists/ Objectivists: the researcher and the object of investigation are two independent entities; free value.	Modification of Dualists/ Objectivists: dualism recedes and objectivity becomes the determining criterion; external objectivity.	Transactional/ Subjectivist: researchers and related investigation objects interactively; the findings are 'mediated' by values held by all parties.	Transactional/ Subjectivist: researchers and related investigation objects interactively; the findings are 'created'/'constructed' together.
Methodology	Experimental/ Manipulative: empirical testing and verification of research questions and hypotheses; manipulation and control of opposite conditions; mainly quantitative methods.	Modification Experimental/ Manipulative: falsification by means of critical multipism or modification of 'triangulation'; utilization of qualitative techniques: a more natural setting, more situational information, and an emic perspective.	Dialogical/ Dialectical: there is a 'dialogue' between the researcher and the object of investigation, dialectical: transforming foolishness and misunderstanding into awareness to break down.	Hermeneutical / Dialectical: 'Construction' is traced through interactions between the researcher and the object of investigation; the 'construction' hermeneutical and dialectical exchange techniques are interpreted; goal: distillation/ consensus/ resultant.

Based on Table 2, the authors will conduct a paradigmatic study of the legal approach taken by the Minister of Fisheries and Maritime Affairs for the 2014-2019 period in eradicating illegal fishing in Indonesia. This next description is the author's analysis in a paradigmatic study to see the basic set of beliefs of the minister in carrying out his actions.

The implementation of the foreign and ex-foreign vessel sinking policies undertaken by the Ministry of Maritime Affairs and Fisheries in the context of combating illegal fishing is a top down policy pattern. The model is shown by several indicators, namely certainty of support of laws and regulations, high commitment of the President and Minister's policy elite, effective instructional and coordinating patterns, high budget support, and high-performance Task Force 115 bureaucracy support. The implementation of the foreign vessel sinking policy of illegal fishing with a top-down pattern is very strong because in its implementation it is clear how strong instructions or commands, executions, real changes, and tight controls (Nasirin & Hermawan 2017).

The law enforcement approach undertaken by the Minister of Maritime Affairs and Fisheries for the period 2014-2019 shows a top-down pattern as seen in the law enforcement that is being carried out strictly against the perpetrators of IUU fishing. In this identification, a top down pattern in law enforcement can be seen. This is a feature of the positivism paradigm. In addition, this pattern is consistent with the understanding in the ontology, epistemology, and methodology of the positivism paradigm. However, on many occasions it was seen that the Minister had a lot of dialogues with fishermen, relevant stakeholders, and the wider community related to marine and fisheries issues. This shows that the minister has a concern to know the dynamics of the problems that occur in the field directly and solve them by promoting dialogue between parties and guided by applicable regulations, as an agreement. Several dialogues conducted by the minister to the public who were researchers gathered from various reports in the mass media in 2019, including:

Table 2

Several Dialogues of Minister Susi with the Community (2019)

<i>Time</i>	<i>Dialogue and problems</i>
February 4, 2019	Dialogue with the fishermen of Karanggongso Beach, Tasikmadu Village, Watulimo District, Trenggalek on the issue of building a pioneering commercial port.
March 6, 2019	Dialogue with 150 Indonesian citizens in the United Arab Emirates organized by the Indonesian Embassy in Abu Dhabi discussed issues of marine and fisheries in Indonesia.
April 4, 2019	Dialogue with fishermen and fishermen from Muncar, Banyuwangi, East Java about the boat licensing process.
July, 2019	Dialogue with the fishermen in Anambas Islands Regency about the lack of supporting fisheries infrastructure in the local area.

Based on Table 2, it can be seen that in his actions to safeguard Indonesian fisheries and seas, the minister always makes dialogue efforts as a way to solve the problems that occur. In the research conducted by Stevani & Widayatmoko (2017) on the personality and communication of the minister in forming personal branding, the minister was an extrovert, where the minister was an open, honest, welcoming and friendly person; has a high level of friendliness; has a high awareness of discipline and responsibility; and has good self control.

Through dialogue patterns as is often done by the minister, the true paradigm that guides her is the constructivism paradigm. Although on the other hand, the minister's firmness is often seen as the implementation of the positivism paradigm, but that actually is related to the perspective of the minister who sees normative regulations and policies she made as a form of agreement. As such, this remains in harmony with the constructivism paradigm.

Ontology of constructivism paradigm is relativism. In this case, reality is diverse and diverse, based on one's social-individual experience, in this case the minister, local and specific, in accordance with the context of each reality. Through the approach to law enforcement carried out by the minister, it can be seen that the law enforced strictly by the minister and the Ministry of Maritime Affairs and Fisheries is our national agreement on how the protection of Indonesia's marine assets should be given. The sinking of ships is a technique chosen specifically by the Ministry of Maritime Affairs and Fisheries to preserve the marine environment.

Epistemologically, the constructivism paradigm embraces the nature of the transactional/subjectivist relationship, whereas methodologically, hermeneutical/dialectical becomes the choice of method used. In this case, the subjectivity of the minister is decisive in the success of the policies made. Whereas the choice of method for dialogue to reach agreement or listen to each other related parties for a joint solution is an embodiment of the methodology of the constructivism paradigm as adopted by the minister.

In the constructivism paradigm, agreement is a law that is guided because it is contextual, democratic and humanist. Therefore, the policies made by the Minister is actually the result of indirect agreements with all related parties. The minister paid attention to the input, proposals, and interests of Indonesian local fishermen, in order to ensure the welfare of their lives as fishermen and protect the economic interests of the nation from fish theft by foreign parties.

Conclusions. The authors can conclude that the paradigm that guides the approach in policies and approaches taken by the minister of Marine Affairs and Fisheries of Indonesia for the period 2014-2019 is the constructivism paradigm. In the policy she made, the minister always puts forward dialogue with various stakeholders while at the same time being firm on law enforcement to eradicate illegal fishing in Indonesian waters. In this context, the minister views that regulations regarding illegal fishing are our national agreement on how the protection of Indonesia's marine resources should be realized. Understanding the constructivism paradigm as 'the way of life' shown by the Minister is something that is important to be understood as a study of legal philosophy. By knowing the minister's philosophical vision, we can understand the basis of her policies and approach to law enforcement, according to her paradigm responsibly.

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