



The Authority of State Agencies in Illegal Fishing Investigations: Harmonizing Enforcement and Addressing Jurisdictional Overlaps

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Abstract. The location of Indonesia which is between two continents and two oceans makes Indonesia vulnerable to criminal acts in the field of fisheries. This study aims to investigate the authority of state agencies in the investigation stage of illegal fishing crimes in Indonesian territorial waters. Research approach used in this study is through a normative juridical approach or the study of literature and documents aimed at written regulations or other legal materials related to the guarantee of legal certainty for the investigation of illegal fishing crimes in Indonesia. The results showed that for the handling of these criminal acts, legal politics in the formulation of Law No. 31 of 2004 concerning Fisheries stipulates that investigations into fisheries crimes are carried out by Civil Servants of Fisheries Investigators, Investigating Officers of the Indonesian Navy, and Indonesian National Police. The law does not provide strict limitations on the investigative powers of these three agencies, even with Law No. 45 of 2009 as an amendment to Law No. 31 of 2004 also does not clearly regulate the limits of the investigative authority of the three agencies. Therefore, in its implementation there may be overlap of authority. Therefore, it is necessary to harmonize law enforcement in the investigation stage.

Keywords: Criminal Investigation, Criminal Act, Law Enforcement, Illegal Fishing, Jurisdictional Overlaps

Received: August 1, 2023 | Revised: October 1, 2023 | Accepted: December 5, 2023



Abstrak. *Letak Indonesia yang berada di antara dua benua dan dua samudera menjadikan Indonesia rentan terhadap tindak pidana di bidang perikanan. Penelitian ini bertujuan untuk mengetahui kewenangan lembaga negara dalam tahap penyidikan tindak pidana illegal fishing di wilayah perairan Indonesia. Pendekatan penelitian yang digunakan dalam penelitian ini adalah melalui pendekatan yuridis normatif atau studi literatur dan dokumen yang ditujukan pada peraturan tertulis atau bahan hukum lainnya terkait dengan jaminan kepastian hukum dalam penyidikan tindak pidana illegal fishing di Indonesia. Hasil penelitian menunjukkan bahwa untuk penanganan tindak pidana tersebut, politik hukum dalam rumusan Undang-Undang Nomor 31 Tahun 2004 tentang Perikanan mengatur bahwa penyidikan tindak pidana perikanan dilakukan oleh Penyidik Pegawai Negeri Sipil, Penyidik TNI Angkatan Laut, dan Penyidik Perikanan. Kepolisian Negara Republik Indonesia. Undang-undang tidak memberikan batasan tegas mengenai kewenangan penyidikan ketiga lembaga tersebut, bahkan dengan adanya Undang-Undang Nomor 45 Tahun 2009 sebagai perubahan atas UU Nomor 31 Tahun 2004 juga tidak mengatur secara jelas batasan kewenangan penyidikan ketiga lembaga tersebut. Oleh karena itu, dalam pelaksanaannya mungkin terjadi tumpang tindih kewenangan. Oleh karena itu, perlu adanya harmonisasi penegakan hukum pada tahap penyidikan.*

Kata kunci: *Penyidikan Pidana, Tindak Pidana, Penegakan Hukum, Penangkapan Ikan Ilegal, Tumpang Tindih Yurisdiksi*

1. Introduction

Indonesia has become one of the most marine-rich countries in the world. About 75 percent of Indonesia's 5,800,000 km² territory is marine, with 81,000 kilometers of coastline and an Exclusive Economic Zone (EEZ). Indonesia's marine fisheries resources are estimated to reach 6,167,940 tons per year.¹ These marine resources have enormous economic capabilities that can be utilized for the welfare of citizens. Throughout Indonesia's development, the fisheries sector has been counted as an economic commodity that can contribute to the country's foreign exchange generated from capture fisheries, aquaculture, fish processing products, both domestic and foreign markets. Activities in the fisheries sector link many parties, including the government, entrepreneurs (private), and small fishermen (traditional). However, due to Indonesia's cross position between two land masses (Asia and Australia) and two oceans (Pacific and Indian), Indonesia is prone to illegal fishing.² The utilization of marine resources has not been maximized, hampered by the rampant criminal acts in the field of fisheries. The state loses up to 50 trillion IDR per year as a result of criminal acts of fish theft in Indonesian waters. Based on information from the UN Food and Agriculture Organization (FAO), the amount of fish lost due to fish theft in Indonesia reaches approximately 2 tons per year.³

Efforts to tackle illegal fishing have been attempted by passing Law No. 31/2004 on Fisheries, also known as the Fisheries Law, as amended by Law No. 45/2009. This law primarily regulates the management of fisheries to enhance prosperity and justice by maximizing utilization for the benefit of the nation and state, while always adhering to the principles of conserving fishery resources and the environment, and ensuring the sustainability of national fisheries development.⁴

Law No. 31 of 2004 already contains regulations or formulations regarding both criminal offenses in the field of fisheries and criminal procedural law. Criminal offenses in the field of fisheries are regulated in Chapter XV, Articles 84 to 104. Meanwhile, procedural law governing the investigation, prosecution, or

¹ Alexander M. A. Khan et al., "Illegal fishing threatens the sustainability of future tuna commodities in Indonesia," *Marine Policy* 159 (2024): 105938.

² Basil Germond and Antonios D. Mazaris, "Climate change and maritime security," *Marine Policy* 99 (2019): 265.

³ Megan Bailey and U. R. Sumaila, "Destructive fishing and fisheries enforcement in eastern Indonesia," *Marine Ecology Progress Series* 530 (2015): 198.

⁴ Eka, D. Djunarsjah, Kusumadewi, and Gistya Chairuniza, "The effectiveness of Indonesia's fisheries policy to reduce illegal fishing," in *IOP Conference Series: Earth and Environmental Science*, 805 (2021): 012020.

examination during court sessions related to fisheries is conducted in accordance with Law No. 8 of the Year 1981 on Criminal Procedure Law, unless specifically stipulated otherwise.⁵ A special requirement in the investigation stage of criminal acts in the field of fisheries involves coordination among three authorized institutions. According to the stipulations of Article 73, paragraph (1) of the Fisheries Law, investigations into criminal acts in the fisheries management area of the Republic of Indonesia are conducted by Fisheries Civil Servant Investigators (*Penyidik Pegawai Negeri Sipil*/PPNS), Investigators of the Indonesian National Navy, and/or Investigators of the Indonesian National Police.⁶

In Law No. 45 of 2009 concerning the Amendment to Law No. 31 of 2004 on Fisheries, Article 73 has been amended by adding two paragraphs, namely paragraph (2) and paragraph (3). Paragraph (2) of Article 73 states, “Not only are Investigators of the Indonesian National Navy authorized to conduct investigations into criminal acts in the field of fisheries that occur in the Indonesian Exclusive Economic Zone (ZEEI), but also PPNS.” Conversely, paragraph (3) states, “Investigations of criminal offenses in the field of fisheries that occur at fishing ports are preferably carried out by Fisheries Civil Servant Investigators. Investigations of criminal offenses in the field of fisheries can be conducted individually or jointly by fisheries investigators, Investigators of the Indonesian National Navy, and Police Investigators. This requirement is intended to legitimize PPNS, Investigators of the Indonesian National Navy, or Police Investigators to conduct investigations of criminal acts in the field of fisheries that occur in all Fisheries Management Areas of the Republic of Indonesia.

Cases arising in the process of investigating illegal fishing include the formation of a tug of war between interests because each law enforcement officer who is given authority feels entitled to act. Coordination between institutions is very weak, so the process of investigating criminal acts in the fisheries sector is not optimal. Law No. 31 of 2004 does not contain any new provisions expected to address the issue of weak coordination. The positioning of PPNS alongside the Indonesian National Navy and the Police as investigators, and the authorization granted to the Minister to establish a coordination forum for the purpose of regional-level investigations, has not provided a real solution to the issue and may exacerbate conflicts of authority among the three institutions responsible for conducting criminal investigations in the field of fisheries.

In order to secure marine fisheries energy sources from illegal fishing, the government, as an authorized institution, is inherently obligated to carry out law

⁵ Bailey and Sumaila, “Destructive fishing,” 200. See also, Siti Zubaidah, and Hastrie Ainun, “Illegal fishing by foreign vessels against fish resources In Sulawesi Sea Waters, Indonesia,” in *IOP Conference Series: Earth and Environmental Science* 860 (2021): 012098.

⁶ Gohar A. Petrossian, “Preventing illegal, unreported and unregulated (IUU) fishing: A situational approach,” *Biological Conservation* 189 (2015): 41.

enforcement. Government agencies responsible for enforcing fisheries law at sea must set aside their sectoral egos and work together in an integrated manner to build synergy among fisheries law enforcement institutions.⁷ Harmonization of fisheries legislation needs to be pursued to create a more conducive environment for restructuring the management of capture fisheries in Indonesian seas, thereby enhancing welfare for the community at large. Therefore, the focus of this research is on the legal challenges surrounding the investigation of criminal acts in the field of fisheries. In response to the complex issues described, the author aims to explore the investigation process of illegal fishing and the authority of state agencies involved in investigating illegal fishing in Indonesian waters.

2. Research Methods

In accordance with the problem formulation, which aims to analyze guidelines for legal certainty in investigating illegal fishing crimes, this research employs descriptive and qualitative analysis. The research approach used is a normative juridical approach, involving the examination of literature and documents related to written regulations or other legal materials concerning legal certainty in the investigation of illegal fishing crimes in Indonesia. The characteristic of normative juridical research involves examining all written information related to law obtained from various sources and publicly available publications. These sources include statutory regulations, books on legal theory, legal journals or reports, general legal reviews in print media, and other sources of information.

This study explores various legal regulations inseparable from the fields of shipping, fisheries, and maritime law enforcement in Indonesia. Among these legal frameworks, Law No. 31 of 2004 concerning Fisheries is the main framework used. Law No. 31 of 2004 concerning Fisheries holds significant importance by affirming Indonesia's sovereignty over territorial waters and establishing regulations for the use of fish resources. Likewise, Law No. 17 of 2008 concerning Shipping stands out because it outlines the various modes of transportation used via waterways, with Article 6 providing further explanation regarding shipping provisions. Additionally, this regulation also governs law

⁷ Mary Mackay, Britta Denise Hardesty, and Chris Wilcox, "The intersection between illegal fishing, crimes at sea, and social well-being," *Frontiers in Marine Science* 7 (2020): 589000. See also, Ida Kurnia, "Law Enforcement Against Illegal Fishing in Natuna Waters During the Covid-19 Pandemic," *Res Nullius Law Journal* 3, no. 2 (2021): 180.

enforcement measures in the fisheries sector and outlines the role and authority of Fisheries Civil Servant Investigators, thereby fostering clarity and structure in the law enforcement process.

Moreover, the incorporation of international conventions into domestic legislation is crucial, as exemplified by the ratification of the United Nations Convention on the Law of the Sea in 1982 through Law No. 17 of 1985. This ratification grants Indonesia authority over the management of fish resources in its exclusive economic zones and high seas, while requiring compliance with international standards in the management of fish resources. Meanwhile, Presidential Regulation No. 115 of 2015 and Minister of Maritime Affairs and Fisheries Regulation No. 24/permen-kp/2020 affirm the government's commitment to eradicating illegal fishing by forming a special task force and establishing operational procedures.

Additionally, the regulatory landscape includes laws governing the investigative powers of law enforcement agencies. Laws such as Law No. 8 of 1981 concerning Criminal Procedure Law define the scope and authority of investigators, while other laws, such as Law No. 5 of 1983 concerning Exclusive Economic Zones and Law No. 9 of 1985 concerning Fisheries, assign a special investigative role to Indonesian Navy officers in specified maritime areas. These legal provisions, coupled with initiatives aimed at improving coordination between law enforcement agencies, serve as pillars for a robust maritime law enforcement mechanism in Indonesia, essential for ensuring compliance, upholding sovereignty, and combating illegal activities at sea.

3. Results and Discussion

3.1. Legal Certainty and Effective Enforcement of Illegal Fishing in Indonesia's Waters

The enactment of Law No. 17 of 2008 concerning Shipping, which focuses on the types of transportation used through waterways as regulated in Article 1 of this law, consists of transportation at sea, river transportation, lakes, and crossing activities. This is further clarified in Article 6 of Law No. 17 of 2008 concerning

Shipping. However, the existence of criminal acts in these provisions applies only to crimes related to commerce, licensing, and transportation activities.⁸

In Indonesian waters, illegal fishing is frequently equated solely with the criminal act of fishing, often referred to as fish theft. The terminology associated with this offense varies significantly and warrants explanation in this study from both theoretical and legal perspectives. Criminal activities within the fisheries sector encompass various unlawful actions.⁹

Illegal fishing, defined as unauthorized or unlawful fishing activities conducted within a country's maritime boundaries, encompasses various illicit practices. These may include individual or group fishing endeavors, including those by foreign vessels, undertaken within territorial waters without the requisite permits or in violation of established laws. Moreover, illegal fishing extends beyond national borders, with activities contravening both domestic legislation and international regulations. Additionally, it involves vessels hoisting flags of countries that are members of regional fisheries management organizations, yet engaging in operational practices that flout organizational management regulations and violate international law.¹⁰

Unreported fishing represents another form of illicit maritime activity. It involves the deliberate failure or inaccurate reporting of fishing outcomes to the competent authority. Furthermore, unreported fishing occurs in zones under the jurisdiction of regional fisheries management organizations, where vessels neglect to report their activities or do so inaccurately, failing to adhere to the established reporting protocols of these organizations.¹¹

Lastly, unregulated fishing denotes fishing activities conducted in areas lacking conservation measures for fish stocks in accordance with international law. This includes fishing efforts in regions under the purview of regional fisheries management organizations by foreign vessels or those flying the flag of a country not affiliated with the relevant organization. Such unregulated practices undermine efforts to sustainably manage marine resources and can lead to

⁸ Ioannis Chapsos and Steve Hamilton, "Illegal fishing and fisheries crime as a transnational organized crime in Indonesia," *Trends in Organized Crime* 22, no. 3 (2019): 258.

⁹ Mansur Armin Bin Ali and Rahmayani Amrullah Rosdian, "Implementation of Fisheries Resources Protection from Illegal Unreported and Unregulated Fishing Practices," *Scholars International Journal of Law, Crime and Justice* 3, no. 11 (2020): 391.

¹⁰ Willow Battista et al., "Behavior change interventions to reduce illegal fishing," *Frontiers in Marine Science* 5 (2018): 406. See also, Ussif R. Sumaila, Jackie Alder, and Heather Keith, "Global scope and economics of illegal fishing," *Marine Policy* 30, no. 6 (2006): 698; Henrik Österblom and Örjan Bodin, "Global cooperation among diverse organizations to reduce illegal fishing in the Southern Ocean," *Conservation biology* 26, no. 4 (2012): 640.

¹¹ Dikdik Mohamad Sodik, "Analysis of IUU Fishing in Indonesia for the Reform of Fisheries Legislative and Institutional Frameworks," *Ocean Yearbook Online* 23, no. 1 (2009): 313.

ecological imbalances and the depletion of fish stocks, impacting both local and global fisheries ecosystems.¹²

Law Enforcement of Illegal Fishing Based on Law No. 31 of 2004 concerning Fisheries, as referenced in the 1945 Constitution of the Republic of Indonesia, holds sovereignty and jurisdiction over Indonesia's territorial waters. It also possesses the authority to establish regulations regarding the utilization of fish resources, encompassing both fishing and fish farming activities, with the goal of enhancing prosperity and justice for the nation and state. This endeavor is pursued while considering the principles of sustainability concerning fish resources and the environment, as well as the sustainable development of national fisheries.¹³

The legal implications of ratifying the 1982 United Nations Convention on the Law of the Sea through Law No. 17 of 1985 grant the Unitary State of the Republic of Indonesia the authority to manage the utilization, conservation, and management of fish resources within its exclusive economic zone and the high seas.¹⁴ These actions are conducted in accordance with international requirements or standards. Fisheries play a significant and strategic role in the national economic development, particularly in expanding employment opportunities, redistributing income, and enhancing the overall standard of living for the nation. This benefits not only small-scale fishermen and fish farmers but also business entities within the fisheries sector, all while ensuring the preservation of the environment and the sustainability of fish resources.¹⁵

The implementation of law enforcement in the fisheries sector is crucial and strategic to support controlled fisheries development in line with the principles of fisheries management, ensuring sustainable development. Therefore, the presence of legal certainty is an essential prerequisite. Law 31 of 2004 on Fisheries offers greater clarity and legal assurance regarding the enforcement of criminal offenses in the fisheries sector, encompassing investigation, prosecution, and court examination. Hence, it is imperative to specifically regulate the authority of

¹² Irfan Ardhani, "Indonesia and The Criminalization of Illegal, Unregulated, and Unreported Fishing at the Global Level," *journal of international relations* 9 no. 2, (2021): 168. See also, Klas Sander et al., "Conceptualizing maritime environmental and natural resources law enforcement— The case of illegal fishing," *Environmental development* 11 (2014): 116.

¹³ Mansur Juned, Galby Rifqi Samhudi, and Rahmat Aming Lasim, "The Impact Indonesia's Sinking of Illegal Fishing Ships on Major Southeast Asia Countries," *International Journal of Multicultural and Multireligious Understanding* 6, no. 2 (2019): 65.

¹⁴ Belardo Prasetya Mega Jaya et al., "Republic of Indonesia Sovereign Right in North Natuna Sea according to United Nations Convention on the Law of the Sea 1982," *Australian Journal of Maritime & Ocean Affairs* (2023): 7.

¹⁵ Budy P. Resosudarmo and Ellisa Kosadi, "Illegal Fishing War: An Environmental Policy during the Jokowi Era?," *Journal of Southeast Asian Economies* 35, no. 3 (2018): 371.

investigators, public prosecutors, and judges in handling such criminal offenses. In fulfilling their duties and authority in investigation, prosecution, and court examination, besides adhering to the procedural law outlined in Law No. 8 of 1981 concerning the Criminal Procedure Code, this law also includes separate procedural regulations as special provisions.

Investigation in the Indonesian criminal justice system is defined as a series of actions by investigators, conducted in accordance with the provisions of the law, to seek and collect evidence to illuminate criminal acts and identify suspects.¹⁶ Article 6, paragraph (1) of Law No. 8 of 1981 concerning Criminal Procedure Law stipulates that investigators are state police officers and certain civil servants (*Penyidik Pegawai Negeri Sipil/PPNS*) vested with special authority by law. Article 72 of the Fisheries Law states, "Investigation in cases of criminal acts in the field of fisheries shall be conducted according to the applicable procedural law, unless otherwise specified in this Law."¹⁷

Investigators are law enforcement agencies that play a crucial role in establishing an integrated criminal justice system,¹⁸ with authority derived from three sources: Attribution, Delegation, and Mandate.¹⁹ Consequently, the authorization granted to the three fisheries law enforcement agencies to enforce fisheries law, as outlined in Law No. 31 of 2004 on Fisheries, falls under Attribution Authority. Legally, these three fisheries law enforcement agencies possess equal authority to establish regulatory legal frameworks in executing their duties to enforce fisheries law.²⁰

Law No. 31 of 2004 lacks clear regulations on the division of authority and does not establish a definite working mechanism. Consequently, the three agencies assert equal authority in enforcing fisheries law without system integration in implementation. However, following the enactment of Law No. 45

¹⁶ Yanti Amelia Lewerissa, "Impersonating Fishermen: Illegal Fishing and The Entry of Illegal Immigrants as Transnational Crime," *Journal of Indonesia Legal Studies* 3, (2018): 275

¹⁷ Zaki Mubarak Busro, "Burning and/or Sinking Foreign Fishing Vessels Conducting Illegal Fishing in Indonesia," *Asia-Pacific Journal of Ocean Law and Policy* 2 no. 1, (2017): 176.

¹⁸ Dirham Dirhamsyah, Saiful Umam, and Zainal Arifin, "Maritime Law Enforcement: Indonesia's Experience Against Illegal Fishing," *International Journal Ocean & Coastal Management* 229, (2022): 106306.

¹⁹ Joseph Christensen, "Illegal, Unreported and Unregulated Fishing in Historical Perspective," *International Journal Perspectives on Oceans Past* 1, (2016): 136.

²⁰ Syeti Agria Ningrum, Elyta Elyta, and Uly Nuzulian, "Indonesian Foreign Policy in the Case of Illegal Fishing of Vietnamese Fishermen in the Natuna Islands on the Border of Indonesia and Vietnam in 2014-2021," *Journal of Business Management and Economic Development* 2 no.1, (2024): 206.

of 2009, amending Law No. 31 of 2004 concerning Fisheries, the delineation of investigation authority areas for Fisheries Civil Servant Investigators has been reinforced. Article 73 of the Fisheries Law underwent changes, incorporating two additional paragraphs, namely paragraph (2) and paragraph (3). Paragraph (2) of Article 73 specifies, “In addition to Navy investigators, Fisheries Civil Servant Investigators are authorized to investigate criminal acts in the field of fisheries occurring in the Indonesian Exclusive Economic Zone (EEZ).” Meanwhile, paragraph (3) states, “Investigation of criminal offenses in the field of fisheries occurring at fishing ports is preferably conducted by Fisheries Civil Servant Investigators.” These provisions highlight the authority of Fisheries Civil Servant Investigators to conduct investigations in both the EEZ and fishing ports.²¹

In terms of combating illegal fishing, regulations have been established to enforce the law and support efforts to eradicate illegal fishing in Indonesia. Firstly, Presidential Regulation No. 115 of 2015 established a task force dedicated to eradicating illegal fishing. This task force was created to enhance law enforcement against violations and crimes in the fisheries sector, particularly illegal fishing. Additionally, in addition to Presidential Regulation No. 115, there is Regulation of the Minister of Maritime Affairs and Fisheries No. 24/permen- kp/2020, which outlines the organization and operational procedures of the task force for eradicating illegal fishing. Article 4, paragraph (1) delineates the responsibilities of the task force, which include investigation, prosecution of cases, and the implementation of court decisions. When addressing criminal offenses in the fisheries sector, investigators who are members of the task force include investigators from the Indonesian National Police, investigators from Navy officers, and investigators who are civil servants specializing in fisheries.²²

In addition to the three authorized institutions, there is also an authorized institution called Maritime Security Agency (*Badan Keamanan Laut/Bakamla*), established to address the issue of illegal fishing. Article 60 of Law No. 32 of 2014 concerning Marine Affairs regulates the establishment of the Maritime Security Agency. The Bakamla is a non-ministerial government agency under the President, tasked primarily with conducting security and safety patrols in Indonesian territorial waters and jurisdictional areas. Essentially, Bakamla represents a revitalization of Maritime Security Coordination Agency (*Badan Koordinasi Keamanan Laut/Bakorkamla*), with strengthened authority, designated to

²¹ Fauzan Fauzan, Kamarulnizam Abdullah, and Mohammad Zaki Ahmad, “Border security problems in the waters of the Natuna Islands: Between national boundaries and illegal fishing,” *AEGIS: Journal of International Relations* 3, no.2 (2019): 23.

²² Rendi Prayuda, “Strategi Indonesia dalam implementasi konsep Blue Economy terhadap pemberdayaan masyarakat pesisir di era masyarakat ekonomi Asean,” *Indonesian Journal of International Relations* 3, no. 2 (2019): 49.

serve as the central command for law enforcement in Indonesian territorial waters, as stipulated in Article 63. This stands in contrast to Bakorkamla, which merely coordinates with relevant agencies.

The establishment of Bakamla will shift the paradigm of maritime law enforcement from a multi-agency, multi-task approach to a single agency, multi-task approach, fostering effectiveness, efficiency, and genuine law enforcement. Such centralization concepts, exemplified by Bakamla, have been implemented by several countries, including the Malaysia Maritime Enforcement Agency (MMEA), Japan Coast Guard (JCG), United States Coast Guard (USCG), and Indian Coast Guard (ICG).²³ The establishment of the Maritime Security Agency, as outlined in Law No. 32 of 2014 concerning Marine Affairs, however, cannot serve as a comprehensive solution to address fisheries law enforcement at sea. This is evident in Presidential Regulation No. 178 of 2014 concerning the Maritime Security Agency (*Badan Keamanan Laut/Bakamla*). Bakamla's formation was not based on being a government institution regulated by law. Its mandate solely entails conducting security and safety patrols in Indonesian territorial waters and jurisdictional areas, without specific focus on the criminal act of illegal fishing. Furthermore, Bakamla's authority is not stipulated in Law No. 45 of 2009 concerning Fisheries as an investigative body. Consequently, Bakamla's existence does not influence the enforcement of illegal fishing laws within national jurisdictional waters.

Maritime Security Agency (*Badan Keamanan Laut/Bakamla*) responsibilities include immediate pursuits, halting, inspecting, apprehending, transporting, and handing over ships to relevant agencies for further legal proceedings, as well as integrating security and safety information systems in Indonesian territorial waters²⁴. From this mandate, it is evident that the focus lies primarily on shipping laws and general security. If Bakamla were to be involved in illegal fishing cases, it would only prolong the chain of command and control, as it is not regulated in Law No. 45 of 2009 concerning fisheries. Therefore, the subsequent process must be transferred to authorized agencies, namely Fisheries investigators, Police, and Navy. Based on the establishment of Bakamla, it is evident that it cannot offer solutions to harmonize the implementation of fisheries law enforcement within national jurisdictional waters.

²³ Aryuni Yuliantiningsih et al., "From Illegal, Unreported and Unregulated Fishing to Transnational Organised Crime in Fishery from an Indonesian Perspective," *Journal ASEAN International Law*, (2022): 486

²⁴ Ioannis Chapsos, Juliette Koning, and Math Noortmann, "Involving local fishing communities in policy making: Addressing Illegal fishing in Indonesia," *Marine Policy* 109 (2019): 103710.

3.2. Addressing Legal Conflicts and Enhancing Coordination in Fisheries Law Enforcement

The presence of three investigative agencies with equal status and authority in probing criminal activities in the fisheries sector leads to overlapping investigations.²⁵ Fisheries investigators, authorized to conduct investigations in the State Fisheries Management Area of the Republic of Indonesia, cover the largest portion of the area, including the Exclusive Economic Zone (EEZ) and Indonesian Waters, as well as Fishing Ports. In contrast, Police Investigators cover the narrowest part of the area, focusing solely on Indonesian waters.²⁶ Based on the agreement regarding the division of criminal investigation areas outlined above, within Indonesian Waters, all three investigators (Fisheries Civil Servant Investigators or *Penyidik Pegawai Negeri Sipil*/PPNS, Navy Investigator, and Police Investigator) can probe criminal activities in the fisheries sector. However, in the EEZ, Navy Investigators and Fisheries investigators are tasked with investigating such criminal acts.²⁷ This situation presents a potential conflict of authority among the three investigative agencies. It is considered a conflict of authority because all three agencies are empowered to handle the same case independently, without any integrated system in implementation. This means that each agency has the authority to conduct investigations and submit the examination minutes to the public prosecutor, without a clear division of authority or a defined workflow mechanism.²⁸

So, if an illegal fishing crime occurs in an area of Indonesia where several agencies are authorized to conduct investigations, it can lead to confusion regarding which agency will take on the investigation task, as all three agencies have the authority. Therefore, there is a need for clear guidelines stipulating when an agency has the right to conduct an investigation, and when other agencies do not have that right, particularly in areas where multiple agencies hold investigative authority. Despite the presence of the Task Force for the Eradication of Illegal Fishing, which is tasked with conducting investigations, it remains unclear whether the authorized investigative agencies collaborate as a group or team.

²⁵ Mochtar Kusuma Atmadja, "Sovereign rights over Indonesian natural resources: An archipelagic concept of rational and sustainable resource management," *International Journal Marine Policy* 15 no. 6, (1991): 386.

²⁶ Diane Erceg, "Deterring IUU fishing through state control over nationals," *International Journal Marine Policy* 30 no.2, (2006): 175.

²⁷ Arie Afriansyah, "Indonesia's Practice in Combatting Illegal Fishing: 2015–2016," *Journal Asian Yearbook of International Law* 22, (2016): 287.

²⁸ Bambang Kusuma et al., "Establishment of Indonesian Maritime Power: Regulation of Transnational Organized Crime on Illegal, Unreported, and Unregulated (IUU) Fishing," *International Journal of Criminal Justice Science* 16, (2021): 128.

Additionally, it is ambiguous whether investigation duties will adhere to territorial divisions as outlined by the law.²⁹

To resolve legal conflicts of authority in fisheries law enforcement, steps must be taken to revise the Fisheries Law. The law should include a clear division of authority, along with a definite work mechanism, and integrate a fisheries law enforcement system. Additionally, the law should regulate supervision in fisheries law enforcement to prevent conflicts of authority. A coordination mechanism is necessary to carry out the duties and authorities of each investigator, thereby creating an accountable investigation mechanism. With such a mechanism in place, the duties and authorities of the three investigating agencies will not overlap, and it will actually enhance the overall performance of investigators. Consequently, the objective of Law No. 31 of 2004 to minimize criminal acts in the field of fisheries can be achieved. If fisheries law enforcement agencies operate independently without any system integration, it can create opportunities for corruption and may lead to abuse of authority and arbitrary actions by the three fisheries law enforcement agencies. Therefore, establishing clarity in fisheries law enforcement is crucial to reducing illegal fishing cases in Indonesia and protecting the interests of the people.³⁰ Various efforts can be undertaken to address the issue of illegal fishing in Indonesia.³¹

The first step is the harmonization of illegal fishing enforcement in Indonesia. This term is relevant in the legal field as law requires harmony to ensure benefits for all levels of society. The plurality of the legal system in Indonesia poses the potential for disharmony, as numerous types of laws and regulations issued by various agencies may lack coordination. Law enforcement officials face various challenges in the marine and fisheries sector, including illegal fishing, falsification of fishing vessel permit documents, transshipment, landing fish outside permitted ports, employing crew members who do not meet regulations, and issues arising after court proceedings, such as the auctioning of seized loot and the repatriation of foreign crew members. Therefore, the implementation of technical meetings is considered crucial to enhance harmonization among law enforcement officials,

²⁹ Ifesinachi Okafor Yarwood, "Illegal, unreported and unregulated fishing, and the complexities of the sustainable development goals (SDGs) for countries in the Gulf of Guinea," *International Journal Marine Policy* 99, (2019): 418.

³⁰ Muhammad Insan Tarigan, "Implementation of countermeasures effort of illegal fishing in Indonesia (case study on sinking the FV Viking vessel)," *Journal of Indonesian Legal Studies* 3, no. 01 (2018): 135.

³¹ Abdul Halim et al., "Developing a functional definition of small-scale fisheries in support of marine capture fisheries management in Indonesia," *Marine Policy* 100 (2019): 241.

facilitating the handling and resolution of marine and fisheries crimes in a timely and accountable manner.³²

Efforts to harmonize laws and regulations also create the possibility for the public or interested parties to conduct tests by filing requests or lawsuits. Another issue that poses a challenge for the Indonesian people in law enforcement efforts at sea is the overlapping primary duties and functions of each law enforcement officer at sea. This can be observed in the numerous laws and regulations that assign authority to different law enforcement agencies for carrying out law enforcement in Indonesian sea areas, including the Law on Customs, the Law on Fisheries, the Law on the Navy, and the Law on the National Police. This lack of harmonization generates its own set of problems, particularly concerning the extent to which each law enforcer fulfills their duties and responsibilities.³³

Regarding the overlapping legal and institutional arrangements at sea, the Indonesian Marine Council conducted an assessment in 2009, focusing on tasks such as synchronizing and harmonizing applicable laws and regulations that overlap, compiling existing laws and regulations, and assembling all legal regulations at sea to facilitate law enforcement and create a database of applicable legal regulations. The enactment of Law No. 32 of 2014 concerning Marine Affairs represents a legislative effort to synergize policies related to the marine sector and promote cross-sectoral coordination in managing the sea and its resources harmoniously.

From the description, it becomes apparent that there is a philosophical, historical, sociological, and juridical necessity to organize fisheries within a national legal system, taking into account existing laws and regulations as well as applicable international law. Given the juridical reality of weak coordination and integration among law enforcement agencies at sea, there has been a proposal to centralize the implementation of law enforcement under a single agency as a unified command. Unified command entails more than mere coordination; it involves having a single decision-maker overseeing each existing law enforcement officer. This approach is deemed necessary because law enforcement at sea possesses unique characteristics and operates within a distinct scope dictated by the legal frameworks applicable in maritime areas.³⁴

³² Adam Leonardo and Nowar Deeb, "Illegal, Unreported and Unregulated (IUU) Fishing in Indonesia: Problems and Solutions," *IOP Conference Series: Earth and Environmental Science* 1081 no.1, (2022): 211.

³³ Joko Susanto and Ali Masyhar, "Law enforcement on fisheries crime after the enactment of Law Number 45 of 2009: A normative analysis," *Journal of Law and Legal Reform* 1, no. 1 (2020): 110.

³⁴ Ardi Hendharto, "Understanding IUU fishing as transnational organized crime with special example of Benjina case," *Kajian* 23, no. 2 (2020): 98.

Meanwhile, disharmony in fisheries law enforcement is evident in the lack of coordination among fisheries investigation officers' operational sectors at sea. Patrol boats from the three agencies (the National Police, Fisheries, and the Indonesian Navy) are often found operating in the same sectors, or certain sectors lack the presence of any patrol boat from the three agencies. This indicates that the level of coordination between agencies in supervising capture fisheries activities is lacking in harmony and coordination. Additionally, there is disharmony in fisheries law enforcement regarding equipment and fleet capabilities, including ships and aircraft. This disharmony extends to the division of operating sectors, equipment capabilities, conflicts in laws and regulations governing law enforcement agencies, and the lack of fisheries courts in provinces with unbalanced or overlapping sea areas.

For instance, Navy warships, primarily tasked with defense functions, are also assigned maritime security duties, including fisheries enforcement. However, the number of Maritime Patrol Aircraft (MPA) owned by the Indonesian Navy falls far short of the ideal number required for effective patrol duties. The limited number of real MPA aircraft is further strained by other operational functions, rendering them ineffective in surveilling fishing vessels suspected of violating the law. Similarly, police patrol boats do not exclusively handle fisheries cases but rather address various criminal cases at sea requiring police presence, thereby hampering the optimal handling of illegal fishing activities that jeopardize state interests.

Furthermore, some fishing vessels operated by the Directorate General of Capture of the Ministry of Fisheries possess limited patrol capabilities (Class PC 36 Ship Patrol) and lack the ability to navigate beyond certain territories and distances. This highlights the inadequacy of Fisheries investigators to conduct investigations into illegal fishing activities extending to the Exclusive Economic Zone (EEZ), as stipulated in Article 73 of Law No. 45 of 2009 concerning Fisheries.³⁵

The conflict arises from the divergence in norms and regulations governing law enforcement agencies, compounded by the absence of fisheries courts in provinces with limited sea areas such as Medan, Batam, Jakarta, Aru, and Pontianak. In these areas, potential fisheries violations are left unresolved due to the lack of dedicated fisheries courts. Consequently, legal matters concerning fisheries are addressed in local district courts instead. However, the human resource capabilities of prosecutors and judges often fall short in handling illegal

³⁵ Chapsos, Koning, and Noortmann, "Involving local fishing...", 103712.

fishing cases, resulting in minor criminal verdicts. Such outcomes fail to uphold justice and deter other illegal fishing activities effectively.³⁶

Ineffective regulatory measures further exacerbate the issue of illegal fishing. The enactment of Law No. 32 of 2014 aimed to address legislative challenges in the fisheries sector. However, the establishment of the Maritime Security Agency (Bakamla) through Presidential Regulation No. 178 of 2014 did little to streamline the bureaucratic process in combating illegal fishing. Bakamla's primary focus remains on maritime security and Search and Rescue (SAR) assistance at sea, as outlined in Article 2 of the regulation. Consequently, Bakamla lacks the authority to combat illegal fishing effectively. Moreover, the hierarchical principle dictates that lower statutory provisions cannot supersede higher statutory provisions (*lex inferiori derogat legi superior*). As Article 73 of Law No. 45 of 2009 on Fisheries does not delineate Bakamla's authority as a fisheries investigator, Bakamla cannot be relied upon to harmonize the efforts of fisheries law enforcement officials or offer solutions to tackle illegal fishing.³⁷

The effectiveness of cooperation among fisheries law enforcement agencies through coordination forums is lacking. The Coordination Forum, as mandated by Article 73 of Law No. 45 of 2009 concerning Fisheries, has not been effectively implemented at both central and regional levels. This breakdown in communication and coordination exacerbates sectoral egos within the agencies. Therefore, the Ministry of Fisheries, National Police, and Navy, which are tasked with combating illegal fishing, need to recognize this issue at both central and regional levels, in coordination with the Ministry of Home Affairs and provincial, regency, and city governments. This collaborative effort aligns with the provisions outlined in Article 18 of Law No. 32 of 2004 concerning Regional Government. The Coordination Forum serves as a platform for communication and collaboration, facilitating information exchange, assistance in case resolution, discussions on case studies, joint exercises, patrols, and more. Its effective implementation can significantly enhance inter-agency cooperation in combating illegal fishing activities.

The next step is to improve coordination between law enforcement agencies as part of partnership building efforts. The authorization of other institutions to participate in the investigation process has a juridical basis, as outlined in both the Criminal Procedure Code and Law No. 2 of 2002 concerning the National Police. Article 6, paragraph (1) of the Criminal Procedure Code and Article 3, paragraph (1) of Law No. 2 of 2002 concerning the National Police of the Republic of

³⁶ Divya A. Varkey et al., "Illegal, unreported and unregulated fisheries catch in Raja Ampat Regency, Eastern Indonesia," *International Journal Marine Policy* 34, (2010): 83.

³⁷ Siti Awaliyah et al., "Enforcement of Illegal Fishing Laws that was Done by Foreign Ships in the Indonesian Sea Region, Viewed from International Sea Law," *International Journal of Criminology and Sociology* 9, (2020): 25.

Indonesia establish this authority. Many other institutions have also been granted the authority to conduct investigations as an implementation of these laws.

For instance, the Prosecutor's Office is granted authority as stated in Article 30, paragraph (1), letter d of Law No. 16 of 2004 concerning the Prosecutor's Office, which specifies that in the criminal field, the prosecutor's office has the duty and authority to investigate certain crimes as defined by law. Navy officers are authorized as investigators according to Article 14, paragraph (1) of Law No. 5 of 1983 concerning Exclusive Economic Zones, particularly in Article 14, paragraph (1), which designates law enforcement officials in the investigation field within the Indonesian Exclusive Economic Zone as Indonesian Navy Officers appointed by the Commander of the Armed Forces of the Republic of Indonesia. Additionally, Law No. 9 of 1985 concerning Fisheries, Article 31, paragraph (1), also designates Indonesian Navy officers as investigators in criminal acts within the Exclusive Economic Zone area. In addition, Customs and Excise officials are empowered as investigators based on Article 112, paragraph (1) of Law No. 10 of 1995 concerning Customs.

In light of the existing gaps in law enforcement coordination among agencies in Indonesia, it becomes imperative to formulate comprehensive policies aimed at fostering synergistic collaboration among law enforcement institutions. Such policies should prioritize the enhancement of human resources, inter-agency coordination, and the refinement of legal frameworks pertinent to law enforcement.³⁸ This multifaceted approach, characterized by partnership building, is essential for addressing the complexities of modern law enforcement and ensuring effective governance.³⁹

To achieve this goal, concerted efforts must be made by key state institutions, including the Coordinating Ministry of Maritime Affairs, Ministry of Fisheries, National Police, Prosecutor's Office, Supreme Court, and Navy. These efforts should focus on elevating the professionalism of law enforcement officers through advanced training and formal education, fostering seamless coordination mechanisms to facilitate unified operational control, and advocating for the creation or enhancement of laws and regulations governing law enforcement.

³⁸ Evan A. Laksmana, "Remodelling Indonesia's Maritime Law Enforcement Architecture," *Contemporary Southeast Asia* 44, no. 1 (2022): 127. See also. Joanna Vince, Britta Denise Hardesty, and Chris Wilcox, "Progress and challenges in eliminating illegal fishing," *Fish and Fisheries* 22, no. 3 (2021): 523; Hadyu Ikrami and Leonardo Bernard, "Indonesia's maritime governance: law, institutions and cooperation," *The Korean Journal of International and Comparative Law* 6, no. 2 (2018): 138.

³⁹ Ade Maman Suherman, Aryuni Yuliantiningsih, and Noer Indriati, "Indonesian Ocean Policy: Paradigm Shift in Strengthening Ocean Governance," *Journal of East Asia and International Law* 13 (2020): 362. See also, Buddy Suseto, Zarina Othman, and Farizal Mohd Razalli, "The need to reform Indonesia's maritime strategy: A review," *Indonesian Journal of Geography* 50, no. 2 (2018): 78.

Furthermore, collaboration with academic institutions can provide valuable insights for refining legal frameworks, thereby promoting legal certainty and advancing the overall effectiveness of law enforcement initiatives.

To implement the predefined strategy effectively, seamless collaboration and coordination among various governmental bodies are imperative. This includes entities such as the Coordinating Ministry of Maritime Affairs, Ministry of Fisheries, National Police, Prosecutor's Office, Supreme Court, and Navy. These agencies must collectively undertake a series of strategic initiatives aimed at harmonizing their efforts and integrating their operations in combatting illegal fishing activities.

Key initiatives include providing opportunities for joint education and training among law enforcement officials from different agencies, including Fisheries investigators, Police, Navy, the Prosecutor's Office, and the Fisheries Court. These sessions should focus on enhancing their skills, knowledge, and mutual understanding of handling fisheries-related criminal cases through case studies and shared experiences. Collaborating with universities to offer formal education and training programs can further augment the expertise of investigating officers involved in combating illegal fishing, ensuring they are well-equipped to address the challenges effectively.⁴⁰

Moreover, it is essential to establish mechanisms for joint supervision to oversee the performance of each agency and prevent potential abuses of authority by fisheries law enforcement officials. This supervisory institution should monitor the activities of supervisors, investigators, prosecutors, and judges to maintain accountability and integrity within the law enforcement process. Additionally, efforts should be made to streamline community services, integrate operational control mechanisms, and develop information and technology networks to facilitate data sharing and enhance the efficiency of enforcement efforts. These measures collectively aim to strengthen coordination and collaboration among fisheries law enforcement agencies, fostering a cohesive approach in addressing illegal fishing activities from investigation to legal proceedings.⁴¹

Lastly, it is important to consider the factors related to facilities and infrastructure. The infrastructure for securing the domestic market, particularly at fishing ports, and the equipment used for defense in sea waters, such as ships and aircraft, need significant improvement. The existing security infrastructure is inadequate considering the vast expanse of sea that requires protection from illegal fishing activities. The ratio between the fleet of ships owned by Fisheries

⁴⁰ Muhamad Arif and Yandry Kurniawan, "Strategic culture and Indonesian maritime security," *Asia & the Pacific Policy Studies* 5, no. 1 (2018): 80.

⁴¹ Dikdik Mohamad Sodik, "The outermost small islands of the Indonesian archipelago: A legal analysis," *The International Journal of Marine and Coastal Law* 33, no. 4 (2018): 711.

investigators, Water Police, and the Indonesian Navy does not align with the size and number of ports. Similar disparities are observed in the fleet of the Directorate of Air and Water Police. It is evident that regions highly susceptible to illegal fishing, such as the Arafuru and Natuna Seas, exceed the capacity of current law enforcement personnel. In today's context, foreign fishing vessels possess greater resilience, which places considerable strain on customs and security authorities tasked with monitoring vulnerable ports and regions.⁴²

The resources required by fisheries law enforcement agencies extend beyond patrol vessels capable of navigating Indonesian territorial waters. They also necessitate vessels equipped with weaponry capable of immobilizing non-compliant fishing vessels or those engaged in unlawful activities. Furthermore, integrated navigation and control information systems are indispensable, seamlessly connected to a central command center. Equally crucial are aircraft with adept maneuverability at varying altitudes, such as medium-class propeller aircraft or seaplanes, to effectively monitor activities above sea level.⁴³

4. Conclusion

The results revealed that investigators, as law enforcement agencies, play a crucial role in enforcing criminal laws within the fisheries sector. Article 73, paragraph (1) of Law No. 31 of 2004 regarding Fisheries stipulates that investigations into fisheries-related criminal activities are conducted by Fisheries Civil Servant Investigators, Navy Officers, and Indonesian National Police Officers. However, the law lacks clear regulations regarding the division of authority and operational mechanisms. Consequently, within Indonesian waters, all three investigators (Fisheries Civil Servant Investigators or *Penyidik Pegawai Negeri Sipil*/PPNS, Navy Investigators, and Police Investigators) can investigate criminal acts in the fisheries domain. Even with the existence of Law No. 45 of 2009, amending Law No. 31 of 2004, clarity regarding the division of investigative authority among the three authorized agencies to investigate illegal fishing offenses is absent.

To address legal conflicts of authority in fisheries law enforcement, steps must be taken to amend Law No. 45 of 2009, which serves as an amendment to Law No. 31 of 2004 concerning Fisheries. The revised law should establish a clear division of authority, delineating when each agency is entitled to conduct

⁴² Rika Kurniaty, "The implementation of vessel-sinking policy as an effort to protect Indonesian fishery resources and territorial waters," in *IOP Conference Series: Earth and Environmental Science* 137 no. 1, (2017): 012040.

⁴³ Bertrand Le Gallic and Anthony Cox, "An economic analysis of illegal, unreported and unregulated (IUU) fishing: Key drivers and possible solutions," *Marine Policy* 30, no. 6 (2006): 692.

investigations. Additionally, it should include a definite operational mechanism and integrate an overarching fisheries law enforcement system. The law should also regulate supervision in fisheries law enforcement to prevent conflicts of authority.

A coordination mechanism is essential to ensure accountability in carrying out the duties and authorities of each investigator. With such a mechanism in place, overlapping duties and authorities among the three investigating agencies can be mitigated, thereby enhancing the overall performance of investigators. Thus, the objectives of Law No. 45 of 2009, aimed at minimizing criminal acts within the fisheries sector as an amendment to Law No. 31 of 2004, can be effectively achieved.

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