

Reconciling Indonesia's Illegal Fishing Enforcement Policy with Unclos 1982

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Abstract

Indonesia's strategic maritime geography, situated at the confluence of the Pacific and Indian Oceans, endows it with abundant fishery resources while simultaneously exposing its waters to illegal fishing by foreign vessels. Among Indonesia's enforcement responses, the sinking of foreign vessels is the most assertive and the most contested under international law, yet its precise legal foundation is rarely examined as a coherent whole. This study analyzes how the vessel-sinking policy can be reconciled with the enforcement limits imposed by the United Nations Convention on the Law of the Sea (UNCLOS) 1982. The research employs a normative legal method with statute and conceptual approaches, drawing on primary, secondary, and tertiary legal materials analyzed qualitatively. The results show that national law Articles 71A, 73, 74, 77, 85, 93, 94, and 102 of Law Number 45 of 2009 amending Law Number 31 of 2004 on Fisheries provides administrative, monetary, and criminal sanctions, while Articles 60(3) and 73 of UNCLOS 1982 authorize Indonesia to enforce its national law within its jurisdiction subject to flag-state notification through diplomatic channels. The novelty of this study is the construction of a three-layer legality framework Article 69(4) and Article 71A of the Fisheries Law and Supreme Court Circular Number 1 of 2015 demonstrating that vessel sinking operates as a measure against the instrument of the crime rather than the person, thereby remaining within the boundaries of UNCLOS.

Keywords: Illegal Fishing; Law Enforcement; Vessel Sinking; UNCLOS 1982; Indonesian Waters



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INTRODUCTION

Indonesia possesses marine wealth of extraordinary abundance. This condition is reinforced by the country's maritime geography, which places its archipelagic waters at the meeting point of ocean currents flowing between the Pacific and the Indian Oceans, making the region exceptionally rich in fishery resources (Butcher, 2004). The same strategic position, however, opens the door to the theft and

unlawful exploitation of those resources. Illegal, unreported, and unregulated (IUU) fishing has been estimated to account for losses of billions of US dollars annually worldwide, with Southeast Asian waters among the most heavily affected (Agnew et al., 2009), and Indonesian waters have become a persistent target of foreign fishing vessels operating without licenses, with prohibited gear, or in violation of the conditions attached to their permits (Chapsos & Hamilton, 2019; Muhamad, 2012).

Confronting this problem requires a legal architecture that operates simultaneously on two planes. On the national plane, the state must criminalize and sanction illegal fishing within the framework of its fisheries legislation; on the international plane, every enforcement measure against a foreign vessel engages the law of the sea, particularly the United Nations Convention on the Law of the Sea (UNCLOS) 1982, which both grants coastal states sovereign rights over living resources and constrains the manner in which those rights may be enforced (Churchill & Lowe, 1999; Rothwell & Stephens, 2016). The coherence between these two planes is not automatic: a measure that is lawful under national legislation may nonetheless exceed the enforcement limits that UNCLOS imposes, especially in the exclusive economic zone (EEZ), where the coastal state exercises sovereign rights rather than full sovereignty (Tanaka, 2019).

Nowhere is this tension sharper than in Indonesia's policy of sinking foreign vessels caught fishing illegally. The policy has attracted wide regional attention as a deterrent instrument, yet academic discussion has tended to treat it either as a purely domestic criminal-law matter or as a diplomatic controversy, without systematically tracing the full chain of legal authority on which it rests and testing that chain against the specific enforcement provisions of UNCLOS, notably Article 73 with its safeguards of prompt release, the exclusion of imprisonment in the absence of agreement, and the obligation to notify the flag state (Palma et al., 2010; Sodik, 2009). Existing studies of Indonesia's fisheries-law framework have likewise concentrated on licensing and vessel registration rather than on the legality of destruction measures (Sodik, 2009; Erceg, 2006).

This study addresses that gap. Its objectives are, first, to map the regulation of illegal fishing by foreign vessels in Indonesian national law and in international law; and second as the specific novelty pursued in this article to construct and evaluate the layered legal foundation of the vessel-sinking policy, comprising Article 69 paragraph (4) and Article 71A of Law Number 45 of 2009 together with Supreme Court Circular (SEMA) Number 1 of 2015, and to demonstrate how this construction can be reconciled with Articles 60(3) and 73 of UNCLOS 1982. By reading the sinking policy as a measure directed at the instrument of the crime rather than at the person of the offender, the study offers a doctrinal justification that preserves both the deterrent force of the policy and Indonesia's fidelity to its treaty obligations.

RESEARCH METHOD

This research is designed as doctrinal legal scholarship, in which the object of analysis is the law itself its texts, structure, and internal coherence rather than empirical social facts. The design follows the convention of normative legal research commonly employed in studies of fisheries law enforcement and the law of the sea.

Research Design

The study uses the normative (doctrinal) legal research method. The legal problem is formulated as a question of norm coherence: whether the national rules authorizing the sinking of foreign vessels engaged in illegal fishing can be justified within the enforcement limits of international law of the sea.

Research Approach

Two approaches are combined. The statute approach examines the relevant legislation in force, principally Law Number 31 of 2004 on Fisheries as amended by Law Number 45 of 2009, SEMA Number 1 of 2015, and UNCLOS 1982 as ratified by Indonesia. The conceptual approach interrogates the doctrines underlying enforcement at sea sovereignty and sovereign rights, flag-state and coastal-state jurisdiction, and the distinction between measures against persons and measures against

instruments of crime in order to construct the analytical framework against which the statutory provisions are tested.

Legal Materials

Three categories of legal materials are used. Primary materials consist of binding instruments: the Fisheries Law and its amendment, SEMA Number 1 of 2015, and UNCLOS 1982. Secondary materials consist of scholarly commentary on fisheries enforcement and the law of the sea, including treatises and journal literature. Tertiary materials, such as legal dictionaries and encyclopedias, are consulted to clarify terminology.

Data Analysis Technique

The materials are analyzed qualitatively through a prescriptive-doctrinal procedure: the relevant provisions are inventoried and systematized; their meaning is established through grammatical and systematic interpretation; the national and international norms are then juxtaposed to identify points of convergence and potential conflict; and, finally, a doctrinal construction is formulated that resolves the apparent tension. Conclusions are drawn deductively from the norms so systematized.

RESULTS AND DISCUSSION

Regulation of Illegal Fishing by Foreign Vessels in Indonesian National Law

Indonesian national law regulates illegal fishing by foreign vessels principally through Law Number 45 of 2009 amending Law Number 31 of 2004 on Fisheries. The provisions relevant to foreign-vessel enforcement are distributed across Articles 71A, 73, 74, 77, 85, 93, 94, and 102, and operate on three levels: institutional provisions establishing the fisheries courts and the investigative apparatus; substantive offences defining the prohibited conduct; and sanctioning provisions ranging from administrative measures and fines to imprisonment. Table 1 systematizes these layers.

Table 1. Enforcement Architecture of the Fisheries Law against Foreign Vessels

Layer	Key Provisions	Enforcement Content
Institutional	Arts. 71A, 73, 74, 77	Jurisdiction of the fisheries courts over fisheries crimes in Indonesian waters; designation and authority of fisheries investigators (civil servant investigators, naval officers, police) and the conduct of investigation and prosecution
Substantive offences	Arts. 85, 93, 94	Criminalization of fishing with prohibited gear and of operating foreign fishing vessels without or in breach of the required licenses in Indonesian fisheries-management waters
Sanctions and limits	Art. 102	Administrative measures, fines, and imprisonment; imprisonment excluded for offences in the EEZ absent an agreement with the flag state, mirroring UNCLOS Art. 73(3)

Two features of this architecture deserve emphasis. First, the sanctioning regime is deliberately graduated: administrative action, monetary penalty, and criminal punishment are available in ascending order of severity, allowing the response to be proportioned to the gravity of the violation. Second, Article 102 internalizes an international-law limit into national legislation by excluding imprisonment for offences committed in the EEZ in the absence of an agreement with the flag state. The national statute thus already anticipates the constraint of UNCLOS Article 73(3), an anticipation that becomes analytically important when the legality of the sinking policy is assessed below.

Enforcement Authority and Its Limits under UNCLOS 1982

On the international plane, Indonesia's authority to act against foreign vessels rests on Articles 60(3) and 73 of UNCLOS 1982. Article 73(1) authorizes the coastal state, in the exercise of its sovereign rights over living resources in the EEZ, to take such measures including boarding, inspection, arrest, and judicial proceedings as may be necessary to ensure compliance with its laws. That authority, however, is bounded by three safeguards: arrested vessels and crews must be promptly released upon the posting of reasonable bond (Art. 73(2)); penalties for EEZ fisheries violations may not include imprisonment in the absence of agreement (Art. 73(3)); and the coastal state must promptly notify the flag state, through appropriate diplomatic channels, of the action taken and of any penalties imposed (Art. 73(4)). Table 2 juxtaposes the national and international layers.

Table 2. Correspondence between National Enforcement Rules and UNCLOS 1982

Dimension	National Law (Law 45/2009)	UNCLOS 1982
Basis of authority	Sovereignty in territorial and archipelagic waters; sovereign rights in the EEZ implemented through the Fisheries Law	Arts. 56, 60(3), 73(1): coastal-state measures necessary to ensure compliance
Custodial limits	Art. 102: no imprisonment for EEZ offences absent flag-state agreement	Art. 73(3): identical exclusion of imprisonment
Procedural duty	Enforcement communicated through official channels	Art. 73(4): prompt notification of the flag state through appropriate diplomatic channels
Special measures	Art. 69(4) jo. Art. 71A: burning and/or sinking of foreign vessels on adequate preliminary evidence; SEMA 1/2015 on vessels as evidence	Art. 73(1): measures 'necessary to ensure compliance'; safeguards attach to persons and detained vessels

Reconciling the Vessel-Sinking Policy with UNCLOS: A Three-Layer Legality Construction

The analytical core of this study is the legality of the vessel-sinking policy, which rests on a chain of three mutually reinforcing instruments. The first layer is Article 69 paragraph (4) of the Fisheries Law, which empowers fisheries inspectors and investigators to take the special measure of burning and/or sinking foreign-flagged fishing vessels on the basis of adequate preliminary evidence. The second layer is Article 71A, which channels the ensuing criminal process into the specialized fisheries courts, ensuring that the special measure remains embedded in a judicial framework rather than operating as a purely executive act. The third layer is SEMA Number 1 of 2015, by which the Supreme Court provides guidance on the treatment of vessels as evidence in fisheries criminal cases, subjecting their destruction to judicial oversight. Read together, the three layers convert what might appear to be a summary executive sanction into a judicially supervised enforcement measure with a defined evidentiary threshold.

This construction is what allows the policy to be reconciled with UNCLOS. The safeguards of Article 73 attach to persons and to the detention of vessels pending proceedings: prompt release upon bond, the exclusion of imprisonment, and flag-state notification are all protections oriented toward the offender and the flag state, not guarantees of impunity for the instrument of the crime. The sinking measure, by contrast, is directed at the vessel as the *instrumentum delicti* the physical means by which the offence is committed while the crew remain subject to the ordinary, UNCLOS-compliant regime: they are processed under a law that itself excludes imprisonment for EEZ offences absent agreement (Art. 102), and the flag state is formally informed through diplomatic channels of the action taken and any penalties imposed, precisely as Article 73(4) requires. The distinction between measures against persons and measures against instruments is therefore not a rhetorical device but the doctrinal hinge on which the compatibility of the policy turns (Rothwell & Stephens, 2016; Tanaka, 2019).

The geographical differentiation of Indonesian waters reinforces the construction. In internal waters, archipelagic waters, and the territorial sea, Indonesia exercises full sovereignty, and the enforcement limits of Article 73 which is an EEZ provision—do not constrain the choice of lawful national measures; the relevant international-law discipline is instead the general requirement of

reasonableness and proportionality in enforcement. In the EEZ, where Article 73 does apply, the three-layer construction ensures that the measure remains within the formula of Article 73(1) measures 'necessary to ensure compliance' given the documented failure of lighter sanctions to deter repeat incursions into Indonesian fishing grounds (Petrossian, 2015; Erceg, 2006). Deterrence-oriented situational analysis supports this necessity argument: removing the vessel permanently eliminates the capital asset that makes repeated illegal operation profitable, a mechanism that fines alone have failed to achieve (Petrossian, 2015).

Placed against the prior literature, the contribution of this study becomes clear. Earlier work on Indonesia's framework concentrated on licensing and registration as preventive instruments (Sodik, 2009), on the transnational-crime dimension of fisheries offences (Chapsos & Hamilton, 2019), or on the international policy framework against IUU fishing in general (Palma et al., 2010). What those studies leave open and what this article supplies is a systematic doctrinal demonstration that the most controversial Indonesian enforcement measure is not an anomaly standing outside the law of the sea but the terminal point of a coherent normative chain that begins in UNCLOS Article 73(1), passes through Articles 69(4), 71A, and 102 of the national Fisheries Law, and is completed by the judicial oversight of SEMA 1/2015. The novelty of this research is precisely this three-layer legality framework and the person-instrument distinction on which it rests.

The implication for enforcement practice follows directly. The legitimacy of the sinking policy is conditional, not absolute: it holds only so long as each layer of the chain is respected in the individual case adequate preliminary evidence at the moment of the special measure, judicial process before the fisheries courts, treatment of the vessel consistent with SEMA 1/2015, custodial treatment of the crew consistent with Article 102, and timely diplomatic notification of the flag state. Where any link is skipped, the measure loses the very construction that shields it from the charge of violating UNCLOS. Institutionalizing a standard operating procedure that tracks these five checkpoints is therefore the practical corollary of the doctrinal finding.

CONCLUSION

The regulation of illegal fishing by foreign vessels in Indonesian waters operates on two coherent planes. Nationally, Articles 71A, 73, 74, 77, 85, 93, 94, and 102 of Law Number 45 of 2009 amending Law Number 31 of 2004 on Fisheries establish a graduated enforcement architecture of administrative measures, fines, and criminal sanctions administered through specialized fisheries courts. Internationally, Articles 60(3) and 73 of UNCLOS 1982 authorize Indonesia to apply that national law to foreign fishing vessels within its jurisdiction, subject to the safeguards of prompt release, the exclusion of imprisonment for EEZ offences absent agreement, and formal notification of the flag state through appropriate diplomatic channels.

Within this framework, the vessel-sinking policy is lawful by virtue of a three-layer construction Article 69 paragraph (4) and Article 71A of the Fisheries Law completed by SEMA Number 1 of 2015 which directs the measure at the vessel as the instrument of the crime while the persons involved remain under the UNCLOS-compliant regime of the national statute. The legitimacy of the policy is accordingly conditional on faithful observance of each layer in every individual case. It is recommended that enforcement agencies codify the evidentiary, judicial, custodial, and diplomatic checkpoints identified in this study into a binding standard operating procedure, and that future research test the framework empirically against post-2015 enforcement practice and the responses of the flag states concerned.

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CONFLICTS OF INTEREST

The authors declare no conflict of interest

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