

THE JURISDICTION OF INDONESIA
CONCERNING
THE PROTECTION OF ILLEGAL FISHING *SOTHERN BLUEFIN TUNA*
WITHIN INDONESIAN-EXCLUSIVE ECONOMIC ZONE
IN INDIAN OCEAN

THESIS
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By:

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**THE JURISDICTION OF INDONESIA
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THE PROTECTION OF ILLEGAL FISHING SOUTHERN BLUEFIN TUNA
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ABSTRACT

Since Indonesia has giving the opportunity to Foreign Vessels to operate, many violations have coloured fishery on Indonesian-Exclusive Economic Zone. The foreign fisheries company has taking the opportunity to operate fishing vessels, which unregistered their vessels before. Indonesia could exercise its jurisdiction with appropriate manner to combat the illegal fishing within the Indonesian Exclusive Economic Zone, especially for the *Southern Bluefin Tuna* which only known breeding area is in the Indian Ocean, southeast of Java, Indonesia. Illegal fishing refers to activities, which conducted by national or foreign vessels in waters under the jurisdiction of a State, without permission of that State, or in contravention of its laws and regulations. The problem identifications of this research is whether Indonesia has the Jurisdiction concerning the Protection of Illegal Fishing *Southern Bluefin Tuna* within Indonesian-Exclusive Economic Zone in Indian Ocean and what are the measures that should be taken by Indonesian Government concerning the issue. The applied method of the research is Juridical Normative based on Library Research, which is design to obtain two kinds of data, i.e primary and secondary data. The obtained data are then analysed and qualitatively processed. The drawn conclusion based on the result of the research is that first, Indonesia should become a member of regional organization, which concerns tuna fishing. Second, create a fishery management plan for conservation Southern Bluefin Tuna in Indonesian-Exclusive Economic Zone. Last, Indonesia should take action for the law enforcement towards the Illegal Fishing that many happened within Indonesian-Exclusive Economic Zone.

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CHAPTER I

INTRODUCTION

A. Backgrounds

Upon gaining her independence and sovereignty, Indonesia had to enact laws and govern the seas in accordance with the geographic structure of an archipelagic state. This, however, did not mean that the country would bar international passage. The laws were necessary instruments for the unity and national resilience of the country, with a territory that embraces all the islands, and the seas in between.

In view of the country's susceptibility to foreign intervention from the sea and for domestic security reasons, on December 13, 1957, the Indonesian Government issued a declaration on the territorial waters of the Republic. It stated that all the waters surrounding and between the islands in the territory came within Indonesia's sovereignty. It also determined that the country's territorial water limit was 12 nautical miles, measured from a straight baseline drawn from the outermost points of the islands.¹ Since Indonesia declared its Archipelagic State regime in that year, great attention has been given to the development of fisheries.²

¹ www.seamedia.org has been accessed on 24 November 2006

² Hasjim Djalal, 1995. *Indonesia and The Law of The Sea* CSIS, Jakarta. p.16

In the past, archipelagic states like Indonesia have unilaterally determined their 200-mile-Exclusive Economic Zones (EEZ).³ Today such economic zones are confirmed by The 1982 United Nations Convention on the Law of the Sea (UNCLOS 1982)⁴, which was ratified by the Indonesian Government on October 18, 1983, by Act No. 5 of the same year. The Act No.5 Year of 1983 concerning The Indonesian-Exclusive Economic Zone has a juridical realization of extension the main territorial sea concerning the economic situation in management, observation, and conservation.⁵ This is the legal basis of the Indonesian-Exclusive Economic Zone.

Generally, An EEZ means an area beyond zone and adjacent to the territorial sea, where the coastal state has a sovereign rights to exploitation, exploration, management and conservation of the living and non-living resources. This zone has developed out of earlier, more tentative claims, particularly relating to fishing zones,⁶ additionally Indonesia as a coastal state has the exclusive right to fish within its territorial sea in order to exploit the living-resources.

The right and duties a coastal state on its EEZ which has been declare through article 56 and 58 UNCLOS 1982, are totally clear for Indonesia in order to have an exclusive jurisdiction within the Zone. Article 58 lays down the rights and duties of other states in the EEZ. These are basically the high seas freedom of

³ *The Exclusive Economic Zone is a zone extending up to 200 miles from the baseline, within which the coastal State enjoys rights in relation to natural resources and related jurisdictional rights, and third States enjoy the freedom of navigation, overflight by aircraft and the laying of cables and pipelines. The Exclusive Economic Zone hereinafter referred as EEZ*

⁴ *The 1982 United Nations Convention on the Law of The Sea is an EEZ regime, which enumerated in Part V in this Convention. Hereinafter referred as UNCLOS 1982*

⁵ Joko Subagyo, 1993 "Hukum Laut Indonesia", Rineka Cipta Jakarta, p.35

⁶ Malcolm N. Shaw, 2003 "International Law Fifth Edition", Cambridge University Press, London, p. 517. See also O'Connell, "International Law of The Sea", Chapter 14.

navigation, over flight and laying submarine cables and pipelines. It is also provided that in exercising their rights, and performing their duties, states should have due regard to the rights, duties and laws of the coastal state.⁷

Moreover, then Indonesia emphasizes about its Sovereign rights, other rights, Jurisdiction, and Duties through The Act No. 5 Year of 1983, which elaborated in Chapter III. Within Indonesian-Exclusive Economic Zone, the Republic of Indonesia shall have and exercise its sovereign rights to conduct the exploration, exploitation, management and conservation of the living and non-living resources, and also its jurisdiction in connection with the provision under UNCLOS 1982.

Indonesia as developing countries have increased their Fisheries resources in the eastern part of archipelago, and in the 200-mile EEZ, however open a great possibility for expansion especially in Banda Sea, where tuna is abundant. Tuna is also plentiful in waters around Indonesia, from the northern tip of Sumatra to south of Java, all they way to the Timor Sea and The Pacific Ocean north of Irian.

Besides, in the crisis global fisheries there are many foreign ships visiting our territorial sea in order to fish in that fishing zone without permit or have an agreement before with Indonesia, and that is automatically illegal. In term of illegal fishing, until now there is no specific definition and regulation concerning illegal fishing, if it so, then how does the law enforcement with respect to

⁷ Ibid p.519

Indonesian fisheries. If government failed to face this crisis, it may decrease our income for fisheries resources, which estimated into 6,4 million ton every year.⁸

Hence, Indonesia have to concern about the protection of its fisheries and preventing from any kind of measures which is caused illegal fishing especially on Indonesian-Exclusive Economic Zone in Indian Ocean. For the example the *Southern Bluefin Tuna* (SBT) which are lived in Indian Ocean mainly on that zone. The characterization of SBT are large, fast swimming, pelagic fish (ie. living in the open seas). SBT are found throughout the southern hemisphere mainly in waters between 30 and 50 degrees south but only rarely in the eastern Pacific. They commonly grow to 180 cm with a weight of 100 kg. The only known breeding area is in the Indian Ocean, southeast of Java, Indonesia.⁹ SBT lived on specific region in Indonesia such as Bengkulu, Pelabuhan Ratu, Perigi and Sendang Biru (East Java), Benoa (Bali), Sumbawa, and Kupang.¹⁰

According to UNCLOS 1982, *Southern Bluefin Tuna* (*Thunnus Maccoyii*) is one of the species of tuna, which classified into Highly Migratory Species.¹¹ They migrate through such zones. When countries agree under the coastal State and other States whose nationals fish in the region for the highly migratory species listed in Annex I shall cooperate directly or through appropriate international organizations with a view to ensuring conservation and promoting

⁸ Departemen Kelautan dan Perikanan Direktorat Jenderal Perikanan Tangkap. "Pencapaian Pembangunan Perikanan Tangkap Tahun 2001-2005", p. ...

⁹ www.ccsbt.org has been accessed on 24 November 2006. This is a website of Commission for The Conservation of Southern Bluefin Tuna

¹⁰ Luky Adrianto, 2005 "Implementasi Code of Conduct For Responsible Fisheries Dalam Perspektif Negara Berkembang" in Responsible Fisheries, Indonesian Journal of International Law Vol 2 Centre for International Law Studies, p. 464

¹¹ Annex I, UNCLOS 1982

CHAPTER IV

CLOSING REMARKS

A. SUMMARY

1. Indonesia has jurisdiction over its territorial sea, and also have exclusive jurisdiction within their EEZ. It emphasizes in UNCLOS 1982 where the coastal state shall have exclusive jurisdiction over such artificial islands, installations and structures, including jurisdiction with regard to customs, fiscal, health, safety and immigration laws and regulations. Under general principle of law, every state has exclusive jurisdiction within its own territory. Indonesia has a domestic jurisdiction; the Government may exercise the jurisdiction concerning any circumstances within its territory to give protection of illegal fishing SBT within Indonesian-Exclusive Economic Zone. Currently, Illegal fishing known as Illegal, Unreported, unregulated Fishing (IUU fishing). Indonesia a State Jurisdiction, because Indonesia has strong sovereignty to freely conduct various activities with appropriate manner as long as not interfere with international law. Based on the research, there are no support data regarding to Illegal fishing SBT on Indonesian-Exclusive Economic Zone in The Department of Marine and Fisheries as an institution, which handle for fisheries capture. It means that Indonesia has no Jurisdiction to protect the IUU fishing SBT within the Indonesian-Exclusive Economic Zone. Because Jurisdiction will

exercise when there is an action over the territory, such as Indonesia have a jurisdiction to arrest the foreign fishing vessels that indicates IUU fishing. But, logically many foreign vessels, which entered in Indonesian Exclusive Economic Zone, absolutely, they capture the costly fish like tuna or SBT, which today usually searched by foreign fishermen. The writer assumed that there are many IUU fishing SBT that happened in Indonesian-Exclusive Economic Zone. The main factor could arise to answer this problem is that the lacking of law enforcement within the Indonesian-Exclusive Economic Zone. In the last, Indonesia could exercise its jurisdiction with appropriate manner to combat the IUU fishing within the Indonesian-Exclusive Economic Zone, especially for SBT which our concerns today. More, it is necessary to built a *good governance, transparency, and accountability* for development management fisheries in Indonesia.

2. The Measures that should be taken by Indonesian government to protect the SBT from IUU fishing within Indonesian-Exclusive Economic Zone in Indian Ocean are: a) Indonesia should become a member in the regional organizations which are concerned with tuna fishing such as IOTC and CCSBT. Today, Indonesia through the Department of Marine and Fisheries and Department of Foreign Affairs has intended to join the Commission. Now, it is only about the coordination between both institutions to run and prepare for it. That has been shown a *political will* from Indonesia to face either SBT concerns or IUU fishing to achieve a

good management for responsible fisheries. b) Create a fishery management plan for conservation SBT in Indonesian-Exclusive Economic Zone; the government should concerns about the deterioration of the SBT stock for the sustainable fishery of SBT within Indonesian-Exclusive Economic Zone. To solve this, the SBT management plan should be made by the government immediately in order to recovery of SBT stock and if the management plan has already done, so that the government could handle easily according to a plan. c) Law enforcement towards the illegal fishing in Indonesian Exclusive Economic Zone needs a good cooperation and coordination between the Navy and other related institutions together to overcome the Illegal fishing in Indonesian-Exclusive Economic Zone by way of Monitoring, Controlling, and Surveillance (MCS). The government is obliged to continuously guide, enhance, and control the apparatus at sea.

B. SUGGESTION

1. In order to prevent, deter, and eliminate Illegal fishing SBT or even IUU fishing, Indonesia through the Department of Marine and Fisheries cooperate with Department of Foreign Affairs, should immediately join the regional organizations with concerns of Tuna fishing (IOTC or CCSBT), the main regional forum for SBT is CCSBT, which concerns to recovery SBT stock. Indonesia has targeted to join this Commission in 2007.

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