

# Progressive Justice-Based Prevention Of Illegal Fishing Policy Reform

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## ABSTRACT

The state of Indonesia is a maritime country where the territorial waters in the country of Indonesia are quite extensive. The vast area of these waters makes Indonesia have abundant marine resources including fisheries. It is not uncommon for the Indonesian state to become a target in the criminal act of illegal fishing, the losses caused by this have a huge impact on the state, because it requires a formulation of state loss recovery after the occurrence of illegal fishing. This article used sociological juridical methods tries to explore and analyze and find a way out of the illegal fishing problem. As for the results of the research it was found that the existing sanctions were in the form of sinking foreign ships. Data from the KKP shows that since October 2014 there were 317 ships, with details of Vietnam 142 ships, Philippines 76 ships, Thailand 21 ships, Malaysia 49 ships, Indonesia 21 ships, Papua New Guinea 2 ships, China 1 ship, Belize 1 ship and 4 without a country ship<sup>1</sup>. Basically, the law enforcement mechanism in cases of illegal fishing is not currently able to bring justice to the community, this is due to the enormous value of losses that so far have not been able to be replaced through any existing law enforcement. In its development, vessels which are evidence in the case of illegal fishing should be able to be allocated for the losses that have been incurred, but in reality most vessels which are evidence in the illegal fishing case have been sunk, this is in accordance with the provisions stipulated in Article 69 of the Fisheries Law. This is clearly an action that is also unable to compensate for the losses from illegal fishing.

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<sup>1</sup> Ministry of Marine Affairs and Fisheries Press Release, accessed from <http://kkp.go.id/wpcontent/uploads/2017/04/SP44-TENGSELAMKAN-KAPAL-DI-AMBON-MENTERI-SUSIPERAIRAN-AMBON-HARUS-PUNYA-LAMBANG-KEDAULATAN.pdf>, diakses pada 26 September 2020 pukul 12.30

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**A. Background**

The Unitary State of the Republic of Indonesia (NKRI) is the largest archipelagic country in the world consisting of 17,508 islands and an area of marine waters that reaches 5.8 million km<sup>2</sup> and a coastline of about 108,000 km, which makes Indonesia the second longest beach in the world after Canada<sup>2,3</sup>. In addition, Indonesia has waters covering an area of 6.4 million km<sup>2</sup> consisting of a territorial sea area of 0.29 million km<sup>2</sup>, an area of inland waters and archipelagic waters of 3.11 million km<sup>2</sup>, and an area of Indonesia's EEZ 3.00 million km<sup>2</sup>, Zone Additional waters 0, 27 million km<sup>2</sup>, the area of the continental shelf is 2.8 million km<sup>2</sup>.<sup>3</sup> Indonesia's position itself is located between two oceans and two continents, namely the Indian Ocean and the Pacific Ocean, as well as the Australian Continent and the Asian Continent. With a large and strategic area, Indonesia has a wide variety of potentials and natural resources in various sectors such as agriculture, forestry and marine which consist of large natural and non-living marine resources, where the biological resources consist of the products. High fisheries sector includes capture fisheries, tourism, seaweed cultivation, salt ponds, ecosystem protection, development of minapolitan areas and the fishery industry<sup>4</sup>. Soekarno's natural wealth was once described by Soekarno by quoting the Javanese proverb "Gemah ripah loh jinawi, traditional kerta kerja raharja, subur kang sarwa tinandur, cheap kang sarwa tinuku" namely an ideal social structure, an orderly state, peaceful, prosperous, people. work safely and have fertile land and prosperous natural wealth. At least there are several factors that influence the attitude of countries in paying attention to fishery resources, namely the increasing number of countries as members of the international community, technological advances that allow research, exploration and exploitation, reduced natural resources on land, both living and non-living, the emergence of unilateral claims by states to marine resources contained in the seas near their land areas, as well as the potential marine resources that are expected to be able to support world demand for food, industry, and others, for quite a long time<sup>4</sup>. So that an international legal basis is needed which can later become a guideline for countries in determining their respective

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<sup>2</sup> Maria Maya Lestari, Jurnal Selat Oktober 2013 Vol. 1 No. 1: Potensi dan Tantangan Pengelolaan Sumber Daya Kelautan dalam Penciptaan Masyarakat Pesisir yang Siap Menjawab Perkembangan Zaman, page. 1

<sup>3</sup> Annual Report of the Ministry of Marine Affairs and Fisheries, p. 16 accessed from <https://kkp.go.id/artikel/22215-laporan-tahunan-kkp-2019>, on September 26, 2020 at 13:31 <sup>4</sup> Triyono, dkk., 2019, Potensi Sumberdaya Kelautan dan Perikanan WPPNRI 573, Amafrad Press, Jakarta, page. 4

<sup>4</sup> Final Report on the Compilation of a Scientific Framework, Ibid., P. 29.

laws regarding the handling of marine resource management issues that are under the control of a country, supervision and law enforcement. The basis for the utilization of marine natural resources is then outlined in the United Nations Convention on the Law of the Sea 1982 "UNCLOS 1982"), namely Article 193 which states: "States have the sovereign right to exploit their natural resources pursuant to their environmental policies and in accordance with their duty to protect and preserve the marine environment. "

The state basically has the sovereignty to exploit marine resources, however, it still has the obligation to protect the environment to ensure sustainable development. Sustainable development (sustainable development) is a long process in which efforts to make it happen must be outlined through policies (policies), management and technological intervention with the aim of preventing and overcoming conflicts of interest in the use of marine natural resources and ensuring environmental protection. This is confirmed by Chua Thia Eng who stated:<sup>5</sup>

.... this requires a good synchronization between local and central government policies, local capacity to plan and manage coastal resources, availability of financial resources, adequate regulations, law enforcement controls and a sound environmental change monitoring system. Such a combination of efforts will only be obtained and achieved through time, with patience and cooperation between various agencies, both from the government and the private sector and the related sectors. A well-coordinated and adequate effort is required to do things in the right way and at the right time. ....

The 1982 UNCLOS ratification carried out by Indonesia was inseparable from the history and enthusiasm of other countries, namely to fight for Indonesian sovereignty over the sea, protect the right to use the sea and a form of commitment to the sustainable use of marine natural resources. The struggle for sovereignty over the sea is not without basis considering that at the beginning of independence, the regulation regarding Indonesian maritime sovereignty still refers to the rules of the Dutch East Indies colonial heritage. Where one of them was in *Territoriale Zee en*

*Maritieme Kringen Ordonnantie S.1939 - 442* Indonesia's territorial sea boundary

at that time was only 3 nautical miles measured from the coast. The impact was that the waters located between the islands of Indonesia at that time were still an international area (free sea), while the Indonesian sea area with this regulation was only 100,000 km<sup>2</sup>. This condition makes it difficult and unfavorable for Indonesia considering that Indonesia has thousands of islands which are separated from each other by the sea. Departing from this problem, at the beginning of Indonesia's

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<sup>5</sup> Chua Thia Eng, Jurnal 2013: Coastal and ocean governance in the seas of East Asia: PEMSEA's experience, page. 33.

independence, efforts to strengthen the political-security aspects of the region were carried out by the prime minister of Djuanda on December 13, 1957 with the Djuanda Declaration to claim the waters connecting the islands in Indonesia as national territory. In the declaration it said:

Indonesia's geography as an archipelagic country consisting of (thousands) of islands has its own characteristics and features. For territorial integrity and to protect the assets of the Indonesian State, all the islands and seas located between them must be considered as a unified whole. The determination of territorial sea boundaries as contained in "Territoriale Zee en Maritieme Kringen Ordonantie 1939" Stbl.1939 No.442 article 1 paragraph (1) is no longer in accordance with the considerations mentioned above, because it divides the Indonesian mainland into separate parts with territorial itself. Based on these considerations, the Government states that 'all the waters around, between and connecting islands or parts of islands which are included in the mainland of the Republic of Indonesia, regardless of the area or width are reasonable parts of the land area. The Republic of Indonesia and as such constitutes part of the national waters which are under absolute sovereignty over the Republic of Indonesia. Peaceful traffic in these inland waters for foreign ships is guaranteed as long as and only does not conflict with / interfere with the sovereignty and safety of the Indonesian state '. The determination of the territorial sea boundary (which is 12 miles wide) is measured from the line connecting the outer end points of the islands of the State of Indonesia.

The Juanda Declaration was a correction to territorial arrangements, especially in the sea, during the Dutch East Indies era and at the same time a political action intended to guarantee the creation of a territorial unity in Indonesia. Even so, the 1957 Djuanda Declaration, especially in relation to the concept of an archipelago nation, was contested, thanks to a long struggle. This is a manifestation of the state's commitment to the use of marine natural resources in the framework of sustainable development that must be embodied in the politics of Indonesian maritime law. Talking about legal politics, Satjipto Rahardjo defines legal politics itself as a way to achieve certain goals in society<sup>6</sup>. Legal politics itself must be based on Pancasila, where the 5th principle of Pancasila reads "Social justice for all Indonesian people". Which then underlies the objectives of the Indonesian state as stated in the preamble to the 1945 Constitution of the Republic of Indonesia (UD NRI 1945) in the fourth paragraph which states:

... To form an Indonesian state government that protects the entire Indonesian nation and all the blood of Indonesia and to promote public welfare, educate the

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<sup>6</sup> Satjipto Rahardjo, 1981, *Ilmu Hukum*, Citra Aditya Bakti, Bandung, page. 352.

nation's life, and participate in implementing world order based on independence, eternal peace and social justice.

The main foundation regarding the management of marine resources itself when referring to the constitution is rooted in Article 33 paragraph (3) of the 1945 NRI Constitution which states:

- (3) Land and water along with the natural resources contained therein shall be controlled by the state and used for the greatest possible prosperity of the people.  
(4) The national economy shall be carried out based on economic democracy with the principles of togetherness, efficiency with justice, sustainability, environmental insight, independence, and by maintaining a balance between progress and national economic unity.

The formulation of Article 33 paragraph (3) and (4) requires at least two main principles to be affirmed, namely:<sup>7</sup>

- a. Natural resources in the form of land, water and natural resources contained therein in the territory of the Unitary State of the Republic of Indonesia are controlled by the state.
- b. Natural resource management is carried out to create the greatest possible prosperity for all Indonesian people today and for future generations.

Utilization or management of natural resources both in land and water areas is subject to the national jurisdiction of the Republic of Indonesia and is an integral part of national development in the context of realizing a just and prosperous society as mandated in the Preamble to the 1945 Constitution of the Republic of Indonesia.

Rooted in Pancasila, the goal of this Indonesian state Then Indonesia's efforts to protect maritime sovereignty and marine natural resources were realized through the ratification of the 1982 UNCLOS by Indonesia through Law Number 17 of 1985 concerning Ratification of the 1982 UNCLOS (Law 17/1985). Thus the concept of this archipelagic country received international recognition when Indonesia ratified the 1982 UNCLOS which resulted in an increase in the area of Indonesia's oceans to 8.5 million km<sup>2</sup> and opened up opportunities to determine territorial boundaries and jurisdictional authority in the sea which made Indonesia an Archipelagic State (Archipelagic State). which have territorial boundaries and jurisdictional authority over internal waters, archipelagic waters, territorial seas (Territorial Sea), Exclusive Economic Zone (EEZ) where Indonesia has sovereign rights to utilize marine resources that are in the sea, and on the seabed and subsoil, the high sea as well as the continental shelf and the international seabed.<sup>8</sup> The

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<sup>7</sup> Laporan Akhir Penyusunan Kerangka Ilmiah, Op.Cit., page. 53.

<sup>8</sup> Ibid., page. 9

expansion of Indonesia's territorial waters is certainly beneficial from an economic aspect because it has added to land the potential for very important natural resources that need to be utilized for the benefit of national economic development. After the ratification of UNCLOS 1982, Indonesia felt that the use of marine natural resources was relatively successful, although when compared to the area and potential it had, it was actually not comparable. In the 1998s period, the contribution of Gross Domestic Product (GDP) from the marine sector to National GDP was still relatively low, namely around \$ 2.1 billion or 20.06%<sup>67</sup> although this figure has increased compared to the previous year such as in 1995 where the marine sector's contribution to national GDP at that time was still around 12.38%.<sup>9</sup> Even so, the contribution of the marine sector to national GDP is still behind when compared to other countries such as China and Japan which, although they have smaller water areas, are able to utilize marine natural resources up to half the total value of their GDP.

Indonesia's current marine wealth when referring to data released by the Ministry of Marine Affairs and Fisheries (KKP) is very diverse, including renewable natural resources (fisheries, coral reefs, mangroves, seaweed and

biotechnology products) as well as non-renewable natural resources (oil and natural gas), tin, iron ore, bauxite, and others), marine energy (such as tides, waves, wind, Ocean Thermal Energy Conversion (OTEC), as well as marine environmental services and small islands for tourism, marine transportation, and source of biodiversity and nuftah plasma.<sup>10</sup> In the marine fishery sector itself in Indonesia covers 37% of fish species in the world, some of which have high economic value. Furthermore, the KKP stated that the sustainable potential of Indonesian marine fish resources is estimated at 12.54 million tons per years which are scattered in Indonesian territorial waters and Indonesian EEZ waters where of all the potential resources, the amount of catch is in 10.03 million tons per year or about 80 percent of the sustainable potential, and only 6.42 million tons were utilized in 2017 or only 63.99% of the allowed catch, while the total capture fishery production (in sea and lake) is 6.89 million tonnes.<sup>11</sup> Fishing activities have also been increasing since the 1980s. In addition to marine fish resources, Indonesia also has the potential for cultivated fishery land reaching 17.91 million ha which includes 2.8 million ha (15.8%) of freshwater cultivation land, 2.96 million ha (16.5%) of brackish water cultivation land (16.5%) and marine cultivation land. 12.12 million ha (67.7%).<sup>12</sup> The large water area

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<sup>9</sup> Loc.cit.,

<sup>10</sup> CTF Annual Report, Op.cit., P. 17

<sup>11</sup> Ibid.,

<sup>12</sup> Loc. cit.,

potential, which is two-thirds of the land area, must be managed on an independent and sustainable basis. This is because marine natural resources have a very significant economic value and meaning, even the potential of this natural resource can become the backbone in the process of realizing the existence of continuity and sustainability of life in society, nation and state. Nevertheless, the activities of utilizing natural resources to build the national economy need to consider the existence of sustainable development for human survival, which is realized by the need to prevent exploitation and massive exploration or those carried out with actions aimed at or having an impact on the depletion of natural resources and environmental destruction. Efforts to achieve this require policy instruments that favor the marine sector. In 2014 the National Planning Agency ("Bappenas") argued that large waters contained large resources, but on the other hand there were many entrances that could threaten the sustainable

management of marine resources, especially capture fisheries, such as the following:<sup>13</sup>

1. Illegal, unreported and unregulated (IUU) fishing is still rampant.
2. Symptoms of over fishing or overfishing in several Indonesian coastal waters due to the exploitation of fish resources, which are generally still open and have not implemented full restrictions.
3. There is still the use of destructive fishing gears.
4. The monitoring system for the utilization of fish resources is still weak and ineffective.

Efforts to manage fishery resources in a sustainable manner are carried out through an ecosystem approach, which is to consider the living environment of the fish and its breeding cycle which is based on a code of ethics that has been mutually agreed upon and obeyed. The Code of Conduct for Responsible Fisheries (CCRF) itself has been introduced by FAO since 1995, namely as a code of ethics with an ecosystem-based fisheries management approach.

The threat of management of marine natural resources which will be discussed in this paper is illegal fishing which is rife in the Indonesian seas. Illegal fishing is an action that is included in the IUU fishing action group which consists of 3 elements, namely "illegal", "unreported", "unregulated" in the implementation of fishing.

In its development, activities that can be categorized as illegal fishing include, among others, activities carried out by domestic or foreign (foreign) vessels in waters that are under the jurisdiction of a country, these activities are

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<sup>13</sup> Ibid., page 6

carried out without permission from that country, or are against the regulations. the laws in force in that country which is conducted. exit by vessels flying the flags of countries that are parties to the relevant regional fisheries management organizations but operating in contravention of the conservation and management measures adopted by these organizations and which are binding on these countries, or the relevant provisions of applicable international law , and acts in violation of national law or international obligations, including by countries with whom they cooperate.

regional fisheries management organizations. Illegal fishing is an action that is fought by many countries and is even a big problem in the world. The FAO says that the impact of these actions is causing fish stocks around the world to rapidly deplete. In 2005, half of the world's fisheries are considered to be fully exploited, a quarter are not fully exploited, so a quarter of the world's fisheries are overexploited, depleted, or recovered. In fact, over the last 20 years, the proportion of overexploited fisheries has reached 25% of which illegal fishing is a significant contributor to this problem. The commitment to eradicate illegal fishing itself is contained in the CCRF, where basically illegal fishing itself violates the general principles of the CCRF regarding the state's obligation to protect aquatic ecosystems, namely:

6.1 States and users of living water resources must conserve aquatic ecosystems. The right to fish comes with the obligation to do so responsibly to ensure the effective conservation and management of living water resources.

6.2 States should prevent overfishing and overfishing capacity and should implement management measures to ensure that fishing effort is proportionate to the productive capacity of fishery resources and their sustainable use. States should take steps to rehabilitate the population as far as possible and when appropriate.

Apart from that, the FAO specifically regulates illegal fishing in the CCRF where FAO states:

Flag States should take enforcement action with respect to fishing vessels entitled to fly their flags which they believe violate applicable conservation and management measures, if necessary make such violations an offense under applicable national law. The sanctions that apply in respect of violations must be severe enough to be effective in securing compliance and to prevent violations wherever they occur and must deprive offenders of the benefits that offenders derive from their illegal activities. Such sanctions can, for serious violations, include provisions to refuse, revoke or suspend fishing licenses.

Illegal fishing in Indonesia also causes losses to the state. Illegal fishing cases are still rife and not yet fully resolved due to the inadequate efforts made by Indonesia in dealing with the problem of illegal fishing in Indonesia's EEZ, for example due to the lack of supervision, especially in border areas. One of the steps to combat illegal fishing by Indonesia is by sinking foreign vessels. Data from the KKP shows that since October 2014 there were 317 ships, with details of Vietnam 142 ships, Philippines 76 ships, Thailand 21 ships, Malaysia 49 ships, Indonesia 21 ships, Papua New Guinea 2 ships, China 1 ship, Belize 1 ship and 4 without a country ship.<sup>14</sup> When referring to the provisions of Article 69 of the Fisheries Law, this act of drowning is categorized as a special action based on sufficient preliminary evidence. This then becomes a question, is this repressive step apart from realizing legal certainty, whether it has realized the value of justice also by considering the impact caused by this illegal fishing act.

### **B. Problem Formulation**

The issues that will be discussed in this paper are related to the current Indonesian illegal fishing policy which has not been able to recover losses due to the illegal fishing

### **C. The method used**

The method used in writing this article is the sociological juridical method where legal issues are examined from the aspects of *das sein* and *das sollen*.

### **D. Discussion**

#### **1. Weaknesses in Indonesia's Current Combating Illegal Fishing Policy**

Research conducted in 2018 in the Natuna waters alone shows that after taking radar data in the EEZ, it was found that the total alleged illegal fishing vessels detected during the monitoring period in May-December 2016 were 280 vessels.<sup>15</sup> Illegal fishing cases in Indonesia are not only carried out by perpetrators with foreign flags, but it is also found that the

mode of using the Indonesian flag is carried out by the perpetrators so that they can freely commit fishing in Indonesian waters, as well as by

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<sup>14</sup> Press Release of the Ministry of Marine Affairs and Fisheries, accessed from <http://kkp.go.id/wpcontent/uploads/2017/04/SP44-TENGGELAMKAN-KAPAL-DI-AMBON-MINERI-SUSIPERAIRAN-AMBON-HARUS-PUNYA-LAMBANG-KEDAULATAN.pdf>, accessed on 26 September 2020 at 12.30

<sup>15</sup> Dendy Mahabrur and Jejen Jenhar Hidayat, Proceedings of the IV 2018 National Seminar on Marine and Fisheries Tunjungan-Surabaya 05 September 2018: Analisis Kerugian Ekonomi akibat Illegal Fishing di Zona Ekonomi Eksklusif Perairan Natuna, page. 266.

cooperating with Indonesian ship operators or turning foreign ships into exforeign ships with Indonesia. Broadly speaking, the weaknesses that cause this problem can be categorized into 7 (seven) weaknesses, namely:<sup>16</sup>

- a. The world's fish demand (demand) is increasing, but on the other hand, the world's fish supply is decreasing. As a result, there was an overdemand which prompted the world's fishing fleets to hunt fish everywhere by legal or illegal means.
- b. The disparity in the price of whole fresh fish in other countries compared to Indonesia is quite high, so that there is still a surplus of income.
- c. The fishing ground in other countries has started to run out, while in Indonesia it is still promising, even though they have to maintain the supply of fish for their consumption and must maintain the processing production in the country to survive.
- d. The Indonesian sea is very wide and open, on the other hand, the ability of supervision, especially the national surveillance fleet (surveillance vessels), is still very limited compared to the need to monitor vulnerable areas.
- e. The fisheries management system in the form of a licensing system is currently open (open access), the restrictions are only limited to fishing gears (input restriction).
- f. There are still limited facilities and infrastructure for supervision and human resources for supervision, especially in terms of quantity that is not yet comparable to the wide coverage of the sea area that must be supervised.
- g. Perceptions and collaborative steps of law enforcement officials in handling fishery criminal cases are still not solid, especially in terms of understanding legal actions, and commitment to operation of surveillance vessels in the EEZ.

As a result, Indonesia experiences disruption in the management of sustainable fisheries use as well as economic losses due to reduced catches, fish scarcity, as well as social losses to Indonesian fishermen operating legally. loss of social and economic opportunities for fishermen who operate legally. Research in the Natuna area states that illegal fishing that occurs in the Natuna waters alone causes Indonesia to lose 19,162 tons of fish or the total value of economic losses reaching IDR 2,989,296,154,794 (2.98 trillion rupiah). On a national scale, FAO notes that the annual loss suffered by Indonesia is estimated at USD 3.125 million or Rp. 30 trillion.<sup>17</sup> In

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<sup>16</sup> R. Dahuri, dalam Ibid., page. 267.

<sup>17</sup> Ibid., page. 268.

addition to economic losses, the activities of foreign fishermen who carry out illegal fishing catch fish in Indonesian seas on a large scale and have the potential to destroy fish habitats in the sea, such as fishing using fishing gear that violates the provisions of legislation in Indonesia. The legal basis for law enforcement in illegal fishing cases itself is rooted in fishing regulation made possible by statutory regulations, this can be seen in Article 1 point 5 of the Law of the Republic of Indonesia No. 45 of 2009 in conjunction with Law No. 31 of 2004 concerning Fisheries (Fisheries Law).

The Fisheries Law then regulates preventive steps to prevent illegal fishing through the obligation to have a Fishing Permit (SIPI) in Article 27 of the Fisheries Law, which must have SIPI, among others, everyone who owns and / or operates fishing vessels with Indonesian flags used to carry out fishing activities. fishing in the fisheries management area of the Republic of Indonesia and / or the high seas, any person who owns and / or operates fishing vessels with foreign flags used to catch fish on the ZEEI, Anyone who operates fishing vessels with foreign flags on the ZEEI. Actions that damage the marine ecosystem by not complying with the provisions of this law are crimes and are prohibited according to the legal provisions which are the legal sanctions contained in Article 93 and Article 97 of the Fisheries Law. One of the steps to combat illegal fishing by Indonesia is by sinking foreign vessels. Data from the KKP shows that since October 2014 there were 317 ships, with details of Vietnam 142 ships, Philippines 76 ships, Thailand 21 ships, Malaysia 49 ships, Indonesia 21 ships, Papua New Guinea 2 ships, China 1 ship, Belize 1 ship and 4 without a country ship.<sup>18</sup> Basically, the law enforcement mechanism in cases of illegal fishing is not currently able to bring justice to the community, this is due to the enormous value of losses that so far have not been able to be replaced through any existing law enforcement. In its development, vessels which are evidence in the case of illegal fishing should be able to be allocated for the losses that have been incurred, but in reality, most vessels which is evidence in the illegal fishing case have been sunk, this is in accordance with the provisions stipulated in Article 69 of the Fisheries Law. This is clearly an action that is also unable to compensate for the losses from illegal fishing.

## 2.Reconstruction of Progressive Justice-Based Combating Illegal Fishing Policies

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<sup>18</sup> Press Release of the Ministry of Marine Affairs and Fisheries, accessed from [http://kkp.go.id/wpcontent/uploads/2017/04/SP44-TENGGELAMKAN-KAPAL-DI-AMBON-MINERI-SUSIPERAIRAN-AMBON-HARUS-PUNYA -LAMBANG-KEDAULATAN.pdf](http://kkp.go.id/wpcontent/uploads/2017/04/SP44-TENGGELAMKAN-KAPAL-DI-AMBON-MINERI-SUSIPERAIRAN-AMBON-HARUS-PUNYA-LAMBANG-KEDAULATAN.pdf), accessed on 26 September 2020 at 12.30

In its development, every criminal sanction has a purpose, Wirjono Prodjodikoro stated that, the purpose of criminal law is to fulfill a sense of justice. There are several purposes of criminal law, namely:<sup>19</sup>

- a. Community orderly maintenance.
- b. Protection of citizens from crimes, unjustifiable harm or harm committed by others;
- c. Re-socializing (resocializing) lawbreakers;
- d. Maintain or maintain the integrity of certain basic views regarding social justice, human dignity and individual justice.

In line with the above view Barda Nawawi Arief firmly states that:<sup>20</sup>

The national legal system in addition to being able to support national development and the needs of international relations, must also be sourced from and not neglect the values and aspirations that live and develop in society, the values that live in that society can be sourced or extracted from those values. customary law values or religious law values.

So it is clear that the purpose of punitive sanctions is not merely to punish the perpetrator and his actions, but also to recover losses due to violations of the law. In order to realize legal improvements or legal reconstruction of illegal fishing, material and non-material losses need to be considered in the implementation of existing sanctions, so that vessels carrying out illegal fishing can be confiscated and auctioned to finance losses that have been incurred so that reconstruction is necessary in Article 69 paragraph (4) of the Fisheries Law and adding paragraph (5) of Article 69 of the Fisheries Law so that it becomes:

- (4) In carrying out the functions as intended in paragraph (1), fisheries investigators and / or supervisors can confiscate ships for evidence.
- (5) In order to recover losses arising from the criminal act of illegal fishing, the government can auction off the ship's evidence as referred to in paragraph (4).

## **E. Conclusion**

1. There needs to be a clearer regulation regarding the recovery of state losses in the realm of application;

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<sup>19</sup> Wirjono Prodjodikoro, 1981, *Asas Asas Hukum Pidana*, Eresco, Bandung, h.16.

<sup>20</sup> Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum*, Citra Aditya Bakti, Bandung, 1998, page. 117.

2. There is a need for tighter supervision related to the operation of foreign fishing boats in Indonesia;
3. It is necessary to regulate the rules related to the auction of vessels which are evidence of illegal fishing for the recovery of state economic losses.

#### **F. Suggestions**

1. There needs to be tighter supervision by law enforcers in marine and coastal areas in terms of monitoring the occurrence of actions that have the potential to result in illegal fishing;
2. It is necessary to change the ship sinking system which is the evidence in the case of illegal fishing to a system that is more capable of using the evidence to recover losses due to illegal fishing.

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