

IUU FISHING IN INDONESIA, ARE ASEAN MEMBER STATES RESPONSIBLE FOR?

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ABSTRACT

Illegal, Unreported and Unregulated Fishing (IUUF) has been a problem to Indonesia and perpetrators come from its own neighbors. This paper aims at describing legal frameworks against IUU fishing within Indonesia and Asean level in order to see how far they concern about combating IUU fishing, to find out if Asean Member States are responsible based on international law and to find a potential key vulnerability/s which become defiance in addressing the issue. This is a juridical normative study that use statute approach. Legal materials used are primary and secondary legal material. They are collected by extensive literature research and analysed by analogical reasoning of legal doctrine with deduction reasoning departed from the law of general application. The results show, there are legal frameworks in Indonesia and Asean. Indonesia's concern on IUU Fishing is unquestionable, not only in its waters but also in around the world. It is reflected from the legislations which are in line with the international law regarding the IUU Fishing, and the special court for fisheries cases also from the organizations where it becomes the parties. In Asean, there have been frame works but the key vulnerable is when violation happens it has no procedures and sanctioning which makes difficult to solve the problem. Besides, the frameworks are all in soft laws. However, based on Asean Declaration, RPOA and APSC 2025 every AMS has responsibility to combat IUU fishing at home and manage the fishery so that no fishermen fish beyond its territory illegally, unreportedly and unregulatedly.

Keywords: IUU Fishing, Asean member States, Responsible

1. Introduction

Indonesia as one of the biggest archipelago state has high levels of biodiversity thus it is included in one of Mega Biodiversity. Based on the status of Indonesian Biodiversity published by Indonesian Institute of Sciences in 2011 Indonesia has 1.400 fisheries species. Sustainable potential Indonesian marine fish resources of 6.5 million tons per year spread in the territorial waters of Indonesia and the Indonesian Exclusive Economic Zone waters divided into nine major Indonesian territorial waters. Of all the potential of these resources, in order to maintain the sustainability of fish stocks total allowable catches amounted to 5.12 million tons per year.¹

In the vast waters, illegal, unreported and unregulated (IUU) fishing has been occurring. It is believed driven by economic factors² and has been threatening maritime security from 1990s. In Southeast Asia it is a major threat to maritime and resource security and may be of the order of one third of the reported catch.³

Indonesia often becomes a victim of IUU fishing. It has been happening in Exclusive Economic Zone and territorial waters. Unlike in territorial waters where 95% of IUUF is committed by small scale Indonesian Fishing Fleet and the other 5% is perpetrated by Foreign Fishing Fleet Flying Indonesian Flag, in the EEZ waters it is found mostly foreign fishing fleets are the poachers.⁴ Number of foreign fishing fleet (FFF) are engaged in this activity. Data from Ministry of Marine Affairs and Fisheries for the last 10 years shows in 2005 there were 24 FFF committed IUUF and it continue increased gradually until it reached 124 in 2008. The activity rose slightly to 125 in 2009 and in 2010 there was a significant increase to 159. The most striking point was in 2010 where the practice decreased dramatically to 76, and then it kept dropping slightly to 70 in the next year. A significant decrease to 44 appeared in 2013. In 2014 to 2015 IUU fishing again increased dramatically to 104.⁵ This means that Indonesian waters are still very prone to illegal fishing practices and it is ironic the perpetrators are the neighbors, such as Malaysia, Philippines, Thailand, RRC, Vietnam, Papua New Guinea.⁶

Since the world wide community has recognized perilous hazards of IUU Fishing attempts have been made to halt these hazards by concluding international instruments both binding and non-binding. These include the United Nations Convention on the Law of the Sea 1982 (LOSC), the Agreement to Promote Compliance with International Conservation and Management Measures for

¹ David Setia Maradong, S., Big Potential Fisheries Capture Fiah (Potensi Besar Perikanan Tangkap Indonesia) melalui <http://setkab.go.id/potensi-besar-perikanan-tangkap-indonesia/> accessed on 5 July 12 2016.

² Carl Christiam Schmidt (2005) Economic Drivers of Illegal, Unreported and Unregulated (IUU) Fishing, The International Journal of Marine and Coastal Law 20 (2005) 479-508

³ Meryl J Williams (2013) Will New Multilateral Arrangements Help Southesat Asian States Solve Illegal Fishing?, Contemporary Southeast Asia 35:2 258-283 DOI: 10.1355/cs35-2f p.259

⁴ Ida Kusuma, 2014, Indonesia Effort in Commbating IUU Fishing, Talking ASEAN on ASEAN Cooperation on Fisheries Management, Jakarta.

⁵ As cited by Ida Kusuma, Ibid.

⁶ http://djpsdkp.kkp.go.id/index.php/arsip/c/page/5/?category_id=20 at 10 November 2015

Fishing Vessels on the High Seas 1993 (the compliance), the United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (the FSA), the Code of Conduct for Responsible Fisheries 1995 (the Code), the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing 2001 (the IPOA-IUU), and the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing 2009 (the PSMA), Voluntary Guidelines of Flag States Performance 2014. The last tool is believed will be the answer for complaints to many of flag states unable to perform their obligation to keep a log of their registered vessels and data on their authorization to fish, whereas the fleets involved in such activities usually dodge such control action by flag hopping – insistently registering with new flag States to evade detection, which undermines anti-IUU efforts.

This paper aims at describing legal frameworks against IUU fishing within Indonesia and Asean level in order to see how far they concern about combating IUU fishing, to find out if Asean Member States are responsible based on international law and to find a potential key vulnerability/s which become defiance in addressing the issue.

2. Method

This study focuses on legal frameworks that have been in placed both in Indonesia and Asean in overcoming the IUU fishing. This study used juridical normative method with *statute approach* by observing principle of principle *lex superior derogat legi inferiori*, principle *lex specialis derogat legi generali* and *lex posterior derogat legi priori*.⁷ The legal material used are primary and secondary legal material. Legal material collected by extensive literature research using the university's libraries and other resources: reports and publications from Asean study center, previous researches and journals and/or other scientific articles which have any relevant to the legal issue. Analysis of legal materials used analogical reasoning of legal doctrine with deduction reasoning departed from the law of general application, in this case the provisions of the legislation field IUU Fishing.⁸

3 Results and Discussion

3.1 Definition of IUU Fishing

IUU fishing which is adopted by International Plan of Action to Prevent, Deter and Eliminate IUU fishing. According to the plan, illegal fishing refers to:⁹

Fishing 'conducted by national or foreign fishing vessels in maritime waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulation;

conducted by fishing vessels flying the flag of States that are contracting parties to a relevant regional fisheries management organization, but which operate in contravention of the conservation and management measures adopted by that organization and by which those States are bound, or of relevant provisions of the applicable international law;

conducted by fishing vessels in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.'

Unreported fishing refers to activities:

'which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or which have been undertaken in the area of competence of a relevant regional fisheries management organization and have not been reported, or have been misreported, in contravention of the reporting procedures of that organization'.

Unregulated fishing refers to activities:

'conducted in the area of application of a relevant regional fisheries management organization by fishing vessels without nationality, by fishing vessels flying the flag of a State not party to that organization or by any other fishing entity, in a manner that is not consistent with or contravenes the conservation and management measure of that organization; or conducted in areas or for fish stocks in relation to which there are no applicable conservation and management measures by fishing vessels in a manner that is not consistent with State responsibilities for the conservation of living marine resources under international law'.

3.2 Impact of IUU Fishing

IUUF gives negative impacts on the economic, social and ecological attributes of fisheries that affect food security. Based on the world's fisheries report from the FAO in 2014, it is found that IUU fishing has caused 90 percent of the world's fish stock fully or overexploited. The statistics from World Bank illustrates that due to ineffective management of fish stock and IUU fishing there has been loss from US\$ 75 billion and \$125 billion of global output every year. In Indonesia, the bank report says, IUU incurs losses of about \$20 billion in revenues and has affected small scale fishing

⁷ Soerjono Soekanto dan Sri Mamudji, Normative Legal Research A Brief Overview (Penelitian Hukum Normatif Suatu Tinjauan Singkat), Raja Grafindo Persada, Jakarta, 1996, p. 99-101

⁸ Bahder Johan Nasution, 2008. Law Science Research Methods (Metode Penelitian Ilmu Hukum), Bandung: Mandar Maju, p.119.

⁹ Article 2 to 4, IUU Regulation, and Article 3, International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing

communities. In decade between 2003 and 2013, the number of Indonesian fishing households dropped to 800,000 from 1.6 million.¹⁰

Studies conducted by the UNODC identify the fisheries industry as vulnerable to international organized crime.¹¹ According to the organization, the use of fishing vessels is associated with illegal activities such as drug trafficking (especially during transshipments), human trafficking (especially smuggling migrants), arms trafficking and terrorism. In addition, the ILO, UNIAP and UNICEF have expressed concerns about poor and/or forced labor conditions on board fishing vessels.

Last year in Indonesia, a human trafficking and slavery case invited international attention. Reported by the Associated Press, thousands of migrant fishermen, mostly from Myanmar, Cambodia and Laos, were enlisted in Thailand and brought to Indonesia to work for now-closed fishing company Pusaka Benjina Resources. The fishermen were tortured and locked up in prison-like cells.¹² The seafarers being subject to unsafe working conditions, excessive working hours and low salaries (about one fifth of the local minimum wage). They were threatened with abandonment in port without pay in case they object to their working conditions.

IUU fishing depletes fish stocks, which will have an economic impact on the resources available for all stakeholders involved. Legal fisheries in particular suffer from such activities as depleted fish stocks may lead to increased costs and consequently to lower revenue and ultimately unemployment. This in turn may promote illegality as fishermen may consider breaking the rules in order to survive. Bearing in mind that both legal and illegal catch may end up on the same market, it is necessary to restrict IUU fish access to markets in order to create an equal playing field and avoid unfair competition.

IUU fishing is generally considered an environmental crime. It severely damages ecosystems, and affects society as a whole. Quantification of this damage is complicated, as the crimes often occur far from sight and assessment of fish stocks is based on estimates. However, this does not imply that the problem is not significant. Once critical levels have been reached, the consequences of IUU fishing become painfully visible. IUU fishing jeopardizes the achievement of management goals and the sustainability of fisheries. When assessing fish stocks, estimates are highly dependent on reported data on catch and effort. If catch is not reported accurately, the estimates may be distorted. Consequently, established fishing quotas may be inaccurate, resulting in further depletion of stocks. An evident response to such threats is further restriction of legal fishing. However, such restrictions can also exacerbate illegal fishing.

3.3 Legal Frameworks to Address IUU Fishing in Indonesia

To address IUU fishing in its waters Indonesia has done endeavors which are in line with international legal frame work.¹³ First, Indonesia corresponded national legislations with international frame work by reviewing and revitalizing Fisheries Act.¹⁴ Also, it joint Regional Fisheries Management Organizations like Indian Ocean Tuna Commision (IOTC),¹⁵ The **Commission for the Conservation of Southern Bluefin Tuna (CCSBT)**,¹⁶ Western & Central Pacific Fisheries Commission (WCPFC).¹⁷ Furthermore, Indonesia is among few states established Regional Plan of Action into National Plan of Action to promote responsible fishing practices including combating IUU fishing.¹⁸ In addition, Indonesia actively involved in the Regional and International Forum, including the International Monitoring, Control, and Surveillance [IMCS], Network Implement the EC regulation. Moreover, Indonesia has signed an agreement with Australian authorities to combat IUU Fishing and to promote sustainable fisheries governance across the region especially in the eastern water-around the borders of Papua New Guinea and East Timor, through a joint patrol.¹⁹

Derivation regulation from Fisehries Act on IUU fishing are set out in:

¹⁰ Pandaya, The Jakarta Post, New Accord to Help Curb Illegal Fishing, 13 July 2016 available at: <http://www.thejakartapost.com/news/2016/07/13/new-accord-help-curb-illegal-fishing.html>, accessed onn 15 July 2016.

¹¹ UNODC (2011). Transnational organized crime in the fishing industry Available from: <https://www.unodc.org/unodc/en/human-trafficking/2011/issue-paper-transnational-organized-crime-in-the-fishing-industry.htm>, accessed January 2016

¹² Robin McDowell, Margie Mason and Martha Mendoza, March 25 2015, AP Investigation: Slaves may have caught the fish you bought available at: <http://www.ap.org/explore/seafood-from-slaves/ap-investigation-slaves-may-have-caught-the-fish-you-bought.html> accessed April 24 2015.

¹³ International Legal framework are UNCLOS' 1982 Law of the Sea Convention, FAO, Compliance Agreement, 1993; FAO, Fish Stocks Agreement, 1995; FAO, Code of Conduct for Responsible Fisheries [CCRF], 1995; FAO, International Plan of Action (IPOA) to Prevent, Deter, and Eliminate IUU Fishing.

¹⁴ Act no. 31 of 2004: Fisheries, as amended by Act no. 45 of 2009 and Act Law no. 27 year 2007: Coastal and Small Island Management, as amended by Act no. 1 of 2014

¹⁵ Indonesia ratified the agreement for the Establishment of IOTC on 5 March 2007 by President Regulation Number 9 of 2007

¹⁶ Indonesia ratified the Convention by President Regulation Number of 2007 on Ratification of Convention for the Conservation of Southern Bluefin Tuna

¹⁷ Indonesia entered WCPFC in October 2013

¹⁸ RPOA IUU was adopted by ASEAN in 2007 and Indonesia implemented it within its NPOA through Ministry Regulation No. 50 Year 2012 on NPOA-IUU

¹⁹ <http://www.transformasi.org/en/knowledge-center-menu/news/marine-and-fisheries/1250-indonesia-australia-on-joint-sea-patrol-to-combat-illegal-fishing> at 15 December 2015

1. Regulation of the Minister of Marine and Fisheries (RMMF) No. 10 of 2015 concerning Amendment to the RMMF No. 56 /RMMF/ 2014 on Moratorium on Licensing of Fisheries Business in Regional Fisheries Management (RFM) of Republic of Indonesia;
2. RMMF No. 04 of 2015 on Fishing Prohibition on RFM 714 (Banda Sea);
3. RMMF No. 02 of 2015 on Prohibition on Using *Trawls* and *Seine Nets* on RFM of republic of Indonesia;
4. RMMF No. 01 of 2015 on tentang Lobster (*Panulirus spp*), Crabs (*Scylla spp*), and Rajungan (*Portunus pelagicus spp*) catching;
5. RMMF No. 57 of 2014 on Second Amandement of RMMF No. 30 of 2012 on Fisheries Bussiness on RFM of republic of Indonesia;
6. RMMF No. 56 of 2014 on Moratorium of Fisheries Bussiness on RFM of republic of Indonesia;
7. Letter of Minister of Manire and fisheries No. B.622.MEN/KP/XI/2014 on Request to all Governors and Regents / Mayors to manage resources sustainably;

Indonesian seriousness combat IUU fishing can also be seen from the trial fisheries were established as a special court in 10 region where the most IUU fishing Occurs. Fisheries court is the Special Court in the General Courts are authorized to investigate, hear and decide criminal acts in the field of fisheries. It was founded based on Act No. 31 of 2004 on Fisheries. There are 10 fisheries court so fa r in Indonesia . The first four courts were founded in 2004, in North Jakarta, Medan court, Pontianak court, Bitung and Tual court. In 2010 two second Fisheries courts were founded based on Presidential Decree No.15 of 2010, in Tanjung Pinang and Ranai. And in 2014, based on Presidential Decree No. 6 of 2014 Fisheries Courts were founded in Sorong and Merauke.

Therefore, it is clear that Indonesia is really concern about cracking IUU fishing at home and other regions of the world.

3.4 Legal Frameworks to Address IUU Fishing in Asean

- 3.4.1 Regional Plan of Action to Promote Responsible Fishing Practices including Combating IUU Fishing in the Region
In 2007 Regional Plan of Action was set up with members consisting of the 10 ASEAN members plus Australia. The plans reaffirm what have been in International Plan of Action on IUU Fishing.

The plans main point provide:

1. Coastal States through their flag State responsibilities in the region are at the forefront in implementing sustainable fishing practices and combating illegal fishing. To address this need: all coastal States, relevant flag States and fishing entities operating in the region should actively cooperate in ensuring that fishing vessels entitled to fly their flags do not undermine the effectiveness of conservation and management measures, including engagement in or supporting illegal fishing.
2. Port States play a key role in combating illegal and unreported fishing in the region, given the need to land catch and support fishing activities. In this regard, regional countries and fishing entities need to develop measures to regulate fishing vessels accessing their ports for transshipping and/or landing catch and collect and exchange relevant data. To address this need, countries should consider: adopting port State measures, where appropriate, based on the FAO 'Model Scheme on Port State Measures to Combat IUU Fishing.
3. Regional market measures In order to minimize unreported and illegal catches, countries should collaborate to implement regional market measures to identify and to track fish catches at all points in the marketing chain in a consistent way with existing international trade laws.
4. As a priority, countries in the region should standardize catch and landing documentation throughout the region and implement catch documentation or trade certification schemes for high value product.
5. In addition, countries should work with organizations such as INFOFISH to produce regular and timely market reports allowing trade flows to be analyzed.
6. Countries should check trade discrepancies regarding export of fish and fish product and take appropriate action and, as a minimum, report these discrepancies to the flag State.

3.4.2 Asean Political-Security Community (APSC)

On 1 March 2009 at the 14th ASEAN Summit the ASEAN Leaders have agreed to establish the ASEAN Political-Security Community (APSC) and have adopted the blueprint as well. One of cooperation therein is overcome transnational crimes including illegal fishing. Align and consolidate the agenda and priorities of relevant ASEAN Sectoral Bodies under the APSC Pillar with those of the ASEAN Community Vision 2025 and the APSC Blueprint 2025;

3.4.3 Asean Guidelines For Preventing The Entry of Fish and Fishery Products form IUU Fishing Activities into Supply Chain

The Guidelines was adopted on 25 September 2014. It provides:

1. Managing Fishing Activities within a ASEAN Member States
2. Regulating Transshipment and Landing of Fish / Catch across Borders
3. Preventing Poaching in the EEZs of ASEAN Member States
4. Controlling Illegal Fishing and Trading Practices of Live Reef Food Fish, Reef-based Ornamentals and Endangered Aquatic Species
5. Strengthening the Management of Fishing in the High Seas and RFMO Areas
7. These Guidelines should be reviewed regularly when necessary as proposed

From the three framework they are in the form of soft law which means no binding force to AMS. What is miss in the plan is the procedures and sanctioning measures following up on IUU fishing violations and other measures that can be taken against this issue. This is the key vulnerable of why IUU fishing occurs severly in Indonesia. The frame work should be complemented by principles of dispute settlement.

3.5 IUU Fishing in Indonesia and AMS Responsibility

Eventhough Indonesia has done great effort in attacking IUU fishing, still it flourishes Indonesia waters. Admitting the lack of resources to support such efforts, Indonesia initiates collaboration with neighbors such Australia to do joint patrol. Yet, it is not easy to guard the vast waters. Base of marine and fisheries resources of Bitung admitted number of fishing fleets grow each year. In 2015, there were 32 fishing fleets caught. This year so far, there have already been the same number which means there is no deterrent effect in poaching in Indonesia water. This reflects the government of The Philippines do not act decisively just like Indonesia's does in against IUU fishing.

Regarding IUU fishing practice by foreign fishing fleets, there are some international environmental law principles to be recalled. *First*, Principle of sovereignty over natural resources and the responsibility not to cause damage to the environment of other states or to areas beyond national jurisdiction. This principles is set out in Principle 21 of the Stockholm Declaration. First, this principle allows states within limits established by international law to conduct or authorize such activities as they choose within their territories, including activities which may adverse effects on their own environment. Second, responsibility not to cause environmental damage. This principle has been accepted as an obligation by all state; without prejudice to its applications on case by case basis. This is principle is widely recognized to reflect a rule of customary international law. Placing international limits on the right of states in respect of activities carried out within their territory or under their jurisdiction.²⁰

Second, Good neighborliness principle. Article 74 of United Nation (UN) charter states the importance of *good neighborliness* in economic, social and trading,²¹including collaboration in the field of environment. This principle comes from international customary law *sic utere tio et alienum non laedas*.²² This principle is reflected in various international treaties, the decision of the International Justice and state practice. Urgency cooperation in environmental protection explicitly in the text are non-binding, starting from Principle 24 of the Stockholm Declaration. In Principle 27 of the Stockholm Declaration stated that such cooperation must also be established between States with the society within the framework of good faith. Rio Declaration also stressed the importance of cooperation in Principle 5 and Principle 27 which emphasizes the good faith and the development of international law within the framework of sustainable development. The setting principle of this cooperation is binding in several international agreements, in particular cooperation marine protection stipulated in Article 187 of UNCLOS which states that States should cooperate globally and regionally, directly or through competent international organizations in formulating and explaining the provisions, standard -Standard and recommended practices internationally and procedures consistent with this Convention for the purpose of protection and preservation of the marine environment, taking into account regional characteristics typical.

Actually, this principle is already contained in the Declaration of ASEAN and also a framework to address IUU in ASEAN, it's just that this principle is not elaborated in more detail about the rights, obligations and responsibilities of each member of ASEAN. The absence of a clear rules governing such will lead to conflict intra ASEAN countries. Meanwhile, according to adherents of Legal Realism is one of the characters John Rawls. John Rawls (A Theory of Justice, 1971) believes there needs to be a balance between private interests and the common good. How does the size of the balance that must be given, it is called justice.²³ Furthermore, Rawls said that an adequate theory of justice should be established by the contract approach, in which the principles of justice are chosen as the handle together is truly the result of a mutual agreement of all persons who are free, rational, and equal.

In relation to the practice of IUU fishing in Indonesia by other states, it shows an imbalance in the pursuit of profit, where the perpetrator take the fish by taking the property of another person and it places an injustice to a nation that become the victim IUU Fishing. Good society according to Rawls is a society that is able to be perceived as an institution of social partnership in which each party trying to contribute and mutually promote each other.²⁴

What is more, IUUF practice is a violation of the sovereignty of a country. Jean Bodin said that sovereignty is absolute and supreme power that resides in a country. More broadly, sovereignty is the highest authority in the final stages in making decisions .²⁵ Sovereignty can also be interpreted as the highest authority in the state administration, the intention is what and who makes the final decision in the state.²⁶ Understanding that such a notion of internal sovereignty which includes jurisdiction

²⁰ Sands, Philippe. 1995. Principles of International Environmental Law I. New York: Manchester University Press. P. 198

²¹ Members of the United Nations also agree that their policy in respect of the territories to which this Chapter applies... must be based on the general principle of good-neighborliness. due account being taken of the interests and well-being of the rest of the world. in social. economic. and commercial matters. UN Charter 1945

²² Sands, Philippe. *Op Cit*. P. 249

²³ *Ibid*. P. 142

²⁴ *Ibid*. P. 23.

²⁵ Soehino. 2010. Contitutional Law: Development on Regulating the Implentation of Public Election in Indonesia (Hukum Tata Negara: Perkembangan Pengaturan Pelaksanaan Pemilihan Umum di Indonesia).Yogyakarta. BPF. P. 71.

²⁶ Jimly Asshiddiqie. 2007. Principles of Indonesia Contitutional Law Pasca Reformation (Pokok-Pokok Hukum Tata Negara Indonesia Pasca Reformasi). BIP. Jakarta. P.143.

legislative, executive and judicial branches to its activities and subjects of law in the region.²⁷ In addition to internal sovereignty, sovereignty also includes external relations, namely the state in its capacity as a subject of international law vis-à-vis other countries or other legal subject, which in turn creates rights and obligations.²⁸

Sovereignty is a primary characteristic of a country has been a key principle in international law, including sovereignty over natural resources. Recognition of sovereignty over natural resources was first set out in UN General Assembly Resolution No. 1803 of 1962 on Permanent Sovereignty on Natural Resources. The resolution states that the right of every nation and every country on the permanent sovereignty over their natural wealth and natural resources must be implemented within the framework of the development interests of the country and the welfare of its people. Further stated that the exploration, development, and regulation as well as imports of foreign capital must be in accordance with the rules and conditions of the state and nation. Permanent sovereignty reflects the inherent right and the state-owned major to control the exploitation and use of natural resources, with due regard to the interests of its citizens. The principle was then accommodated in Principle 21 of the Stockholm Declaration which states that countries under the UN Charter and the principles of international law, sovereign to exploit natural resources and the responsibility to ensure that activities within the jurisdiction or control do not cause environmental damage to other states or to the area beyond national jurisdiction of a country. The addition of the principle of the responsibility to not cause damage to the environment another country derived from customary international law, namely the principle *sic tuo ut alienum utere non laedas* (users of property rights not to cause harm to others). The formulation is then complemented by Principle 2 of the Rio Declaration in 1992 that add a phrase "based on environmental policy and the development of the country". The addition of this phrase gives an obligation for the state to keep attention to environmental sustainability in the implementation of sovereignty. Recognition of the sovereignty of the obligations subject to international law is also contained in Article 2 paragraph (3) of UNCLOS which states that sovereignty over the territorial sea carried out subject to the provisions of this Convention and other rules of international law. Article 193 of UNCLOS requires the implementation of the country's sovereignty over the exploitation of natural resources should be in accordance with the environmental policy without forgetting the liability protection and preservation of the marine environment. This principle is recognized in various international treaties, however, there is a major obstacle to international law regarding the sovereignty of nations, treaties successfully formulated often do not include compliance and enforcement procedures are sufficient.

Practice IUUF happened between ASEAN member is not in accordance with the concept of justice and sovereignty. The concept of fisheries as a common heritage bore collective responsibility (Common Responsibility). Shared responsibility is an obligation borne by two or more countries to protect the wealth of the environment (environmental resources), take action in accordance with the characteristics and nature, physical location and benefit from the wealth of history that environment.²⁹ Natural resources as part of the environmental wealth is meant here is the natural wealth is owned by the state, or the natural resources that are shared, or the subject of a legal interest shared or not owned by any one country.³⁰ Collective responsibility can be applied to the wealth that is not owned by any country or to the natural resources that are under the exclusive jurisdiction of a State.³¹

As a country which united on historical experience and the challenges faced together, ASEAN member countries should live in an atmosphere of harmony and peace. Also in Bangkok Declaration mentioned requirements to become a member of Asean is the state should implement and respect the principles and objectives contained in the Bangkok Declaration includes other agreements made within the framework of Asean. In fact the framework to address the IUUF been there, but the elements of justice as defined by Aristotle and Rawls have not seen. To that end, in overcoming IUUF, it is necessary to implement the principles of good neighborliness in the form of agreement (treaty) so as to be fair to all members of Asean.

4. Conclusion

In conclusion, there are legal frameworks in Indonesia and Asean. Indonesia's concern on IUU Fishing is unquestionable, not only in its waters but also in around the world. It is reflected from the legislations which are in line with the international law regarding the IUU Fishing, and the special court for fisheries cases also from the organizations where it becomes the parties. In Asean, there have been frame works but the key vulnerable is when violation happens it has no procedures and sanctioning which makes difficult to solve the problem. Besides, the frameworks are all in soft laws. However, based on Asean Declaration, RPOA and APSC 2025 every AMS has responsibility to combat IUU fishing at home and manage the fishery so that no fishermen fish beyond its territory illegally, unreported and unregulated.

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³¹ Ibid

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