

# Implementation of Trade Regulations on Fisheries to Prevent Fish Laundry in Indonesia

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## Implementation of Trade Regulations on Fisheries to Prevent Fish Laundry in Indonesia<sup>1</sup>

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### Abstract

Fish laundry or commonly known as fraud of fish origin or theft of fish in trade is to hide the origin and procedure of how fish is caught through unlawful processes such as IUU fishing or fisheries crime. The objective of this study was to answer two questions about: first, to what extent is the implementation of trade regulation in fisheries in order to prevent fish laundry in Indonesia and second, to analyze the shortcomings of Indonesia's trade regulation in fisheries to prevent the penetration of fish laundry into domestic market. This was a normative study, using secondary data with statute approach, conceptual approach, and comparative approach, which was analyzed using descriptive qualitative approach. This study suggested that: first, fishery regulations are still focused on administrative procedures in disclosing the origin of fish, so that these are still less effective in preventing fish laundry. Second, the shortcoming of trade law is that it still prioritizes service function compared to supervision in fisheries, thus reducing the effectiveness of fish laundry monitoring.

Keywords: Fish laundry; IUU fishing; fishery law; trade law; customs law

### Abstrak

Fish laundry atau biasa dikenal sebagai pemalsuan asal usul ikan atau penggelapan ikan dalam perdagangan untuk menyembunyikan darimana dan bagaimana ikan tangkap diperoleh yang biasa melalui proses yang melawan hukum seperti IUU fishing atau kejahatan perikanan. Tujuan penelitian ini untuk menjawab dua pertanyaan mengenai: pertama, sejauhmana pelaksanaan peraturan perdagangan di bidang perikanan diterapkan untuk mencegah fish laundry di Indonesia dan kedua, menganalisa kelemahan peraturan perdagangan Indonesia dibidang perikanan dalam mencegah penetrasi fish laundry masuk ke dalam pasar domestik. Penelitian ini merupakan penelitian normatif, yang menggunakan data sekunder dan menggunakan pendekatan perundang-undangan (statute approach), pendekatan konsep (conceptual approach), serta pendekatan perbandingan (comparative approach), yang dianalisis secara deskriptif kualitatif. Hasil penelitian ini mengemukakan bahwa: pertama, peraturan perundang-undangan di bidang perikanan masih berfokus kepada prosedur administratif dalam pembuktian asal usul ikan, sehingga masih kurang efektif dalam pelaksanaan pencegahan fish laundry. Kedua, kelemahan hukum dalam bidang perdagangan yaitu masih mengutamakan fungsi pelayanan dibanding dengan pengawasan dalam bidang perikanan, sehingga mengurangi efektivitas pengawasan fish laundry.

Kata-kata Kunci: Fish Laundry; IUU fishing; hukum perikanan; hukum kepabeanaan; hukum perdagangan

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## Introduction

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Fish laundry is a part of the Illegal, Unreported and Unregulated (IUU) fishing criminal acts. It is commonly carried out by transshipped stolen fish into the sister vessels and brought into a jurisdiction where the law is less stringent, with aims to create fake documents and laundering the traceability of the stolen fish. Fish laundry can be conducted by involving multi-jurisdictions in order to cover the roots of criminal acts. Therefore, the stolen fish with fake legal documents have the chance to get authorization to penetrate the market with competitive price.

Fish laundry is one of the transnational crimes that can disrupt supply chains in the trading of fishery products. Indonesia is the location where fisheries crime occurs as well as market destination, and also as the transit place to commit the fish laundry before marketed to the third countries.

Fish laundry in Indonesia starts to increase its prevalence due to the increase of fish import from Thailand and Philippines that's flooding the domestic market. In this point, fish laundry is defined as an activity of Indonesian Fisheries Company which gets the fisheries import product from countries that has been given a yellow card or warning from major importing countries of fisheries product. Such circumstances allegedly arose as the impact of the issued regulation concerning moratorium (suspension) of Fisheries Business Licence within the jurisdiction of Republic Indonesia<sup>2</sup> which leads to insufficient fish stock supply for the domestic fisheries industry. The imported fish are suspected as stolen fish of IUU fishing.<sup>3</sup> In addition, the establishments of mega free trade agreement in Asia Pacific, open greater possibility for the stolen fish of IUU fishing to enter the national market through transshipment or by other means of product processing. Fish laundering is very difficult to be detected,<sup>4</sup> due to insufficient scrutiny and governance to prevent the illicit product entering licit market.<sup>5</sup>

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<sup>2</sup> Minister Regulation of Marine Affairs and Fisheries of the Republic of Indonesia Number 56/2014.

<sup>3</sup> "Lawan Fish Laundering, Menteri Susi dapat Dukungan Asosiasi", <http://www.cnnindonesia.com/ekonomi/20150618155318-92-60890/lawan-fish-laundering-menteri-susi-dapat-dukungan-asosiasi/> accessed on 18 June 2015.

<sup>4</sup> "Fish Laundering Places Pirate Fish on Our Plates", <http://www.thefishsite.com/fishnews/19833/fish-laundering-places-pirate-fish-on-our-plates/> accessed on 1 April 2016.

<sup>5</sup> Anastasia Telesetsky, "Laudering Fish in the Global Undercurrents: Illegal, Unreported, and Unregulated Fishing, and Transnational Organized Crime", *Ecology Law Quarterly*, Volume 41, Issue 4, Article 3 <http://scholarship.law.berkeley.edu/elq/vol41/iss4/3> accessed on 6 January 2016

The evidence of fish laundry in Indonesia is revealed through the statement of Riza Damanik, Chairman of the Board of Trustees of Unity of Traditional Fishermen, referring to the annual tuna catches production at amount 800 thousand tons but only 100 thousands were exported abroad. Indonesian tuna fish laundry cause economic injury as much as 21 billion rupiah. Such acts are committed to gain more profits from indirect export to third country, for instance European Union. Indonesia tuna catch exported to Thailand and is re-exported to European Union, which aimed to circumvent the taxes. Whereas the taxes imposed to import product Indonesia is higher compare to product imported from Thailand.<sup>6</sup> However, such activities are shifted due to the ban of fish product from Thailand and Philippines issued by European Union. Nowadays, the fish laundry pattern was shifted, the fish product imported from those countries into Indonesia and get labelled as Indonesian product in order to get authorization to penetrate European Union market. According to the Minister Susi Pudjiastuti, fish laundry in Indonesia starts to rise due to impact of transshipment<sup>7</sup> prohibitions. Another case suspected as fish laundry in Indonesia is related to the request of some companies owned by foreign investors to get import authorizations of fish from Papua New Guinea, where the imported fish were suspected produced from IUU fishing.<sup>8</sup>

Fish laundry of IUU fishing within legal market is not a new phenomenon in the global trade. Some researches start to discuss this problems. In 2014, Anastasia Telesetsky, on her journal "Laundering Fish in the Global Undercurrents: Illegal, Unreported, and Unregulated Fishing and Transnational Organized Crime" argues that the failure of states to respond to the growing **illegal, unreported, and unregulated fishing** crisis is a lack of effective governance by both vertical and government networks, while in contrast, transnational criminal networks have functional and flexible governance networks that permit them to respond nimbly to changes in government enforcement.<sup>9</sup> Bertrand Le Gallic, suggests the use of

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<sup>6</sup> "Mafia Ikan Rugikan Negara Rp 100 Tiliun Per Tahun Pengawasan & Infrastruktur Lemah, Pemerintah Kewalahan, Harian Rakyat Merdeka", <http://www.rmol.co/read/2014/09/25/173453/Mafia-Ikan-Rugikan-Negara-Rp-100-Tiliun-Per-Tahun-> accessed on 25 September 2016.

<sup>7</sup> Minister Regulation of Marine Affairs and Fisheries of the Republic of Indonesia Number 56/2014.

<sup>8</sup> "Fishing Laundry, Modus Baru Kejahatan Perikanan", <http://jurnalmaritim.com/2015/04/fishing-laundry-modus-baru-kejahatan-perikanan/> accessed on 16 April 2016.

<sup>9</sup> Anastasia Telesetsky, *Op.Cit*

trade measures to prevent the fish of IUU fishing entering the legal market, due to the failure of traditional control.<sup>10</sup>

Kine Mari Karlsen and Petter Olsen, argue the importance of traceability in the fish trade to get better documentation. Critical Traceability Points (CTP) in food supply chains is crucial to trace the history, application or location of an entity by means of recorded identifications.<sup>11</sup> In this regard, the traceability often used as an instrument of trade regulation to filter any fish produced from IUU fishing to enter the legal market. Anna Cutarelli, et.al, study the use of DNA Barcoding to prevent commercial frauds in the fish trade. This research emphasizes on the importance of fish species identification cycle and when the product has been already processed.<sup>12</sup>

Most of the researches about the fisheries crime still focuses on the law enforcement of IUU fishing, impact of IUU fishing, prevention effort and eradication of IUU fishing, and political law handling IUU fishing. The researches about fish laundry is rarely found because the term fish laundry has just been proclaimed by the Minister Susi Pudjiastuti to respond the raising of fish from IUU fishing in the supply chains trade.<sup>13</sup> The research on the negative impact of IUU Fishing in Indonesia, written by Dina Sunyowati,<sup>14</sup> analyzes the impact of IUU fishing from economic, social, environmental / ecological, and political aspects. Then Abdul Qodir Jaelani and Udiyo Basuki, discuss about IUU fishing: preventing and combating illegal fishing in building Indonesian maritime axis. Abdul Qodir Jaelani and Udiyo Basuki highlighted the effectiveness of applicable legislation

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<sup>10</sup> Bertrand Le Gallic, "The Use of Trade Measures Against Illicit Fishing: Economic and Legal Considerations", *Ecological Economics* Volume 64 February 2008

<sup>11</sup> Kine Mari Karlsen and Petter Olsen, "Validity of Method For Analysing Critical Traceability Points", *Food Control*, Volume 22 August 2011

<sup>12</sup> Anna Cutarelli, Maria Grazia Amoroso, Antonella De Roma, Santa Girardi, Giorgio Galiero, Achille Guarino, and Federica Corrado, "Italian Market Fish Species Identification And Commercial Frauds Revealing by DNA Sequencing", *Food Control*, Volume 37 March 2014

<sup>13</sup> See Republika online, "Ada Mafia Fish Laundry di Indonesia", <http://republika.co.id/berita/ekonomi/bisnis-global/14/09/21/nc8vwj-ada-mafia-fish-laundry-di-indonesia>. See also "Kementerian KP Siapkan Sertifikasi Anti-Fish Laundry", <http://industri.bisnis.com/read/20160621/99/559849/kementerian-kp-siapkan-sertifikasi-anti-fish-laundry>. See also "Cegah Fish Laundry, KKP Wajibkan Sertifikat Tangkap untuk Impor", <http://www.mongabay.co.id/2016/07/05/cegah-fish-laundry-kkp-wajibkan-sertifikat-tangkap-untuk-impot/>. See also "Susi Terapkan Sertifikasi Cegah Fish Laundry", <http://moneter.co.id/42515/susi-terapkan-sertifikasi-cegah-fish-laundry>. See also "Bali waspadai 'fish laundry' impor tuna", <http://www.kabarbisnis.com/read/2847653/bali-waspada--fish-laundry--impor-tuna>, accessed on 25 June 2017.

<sup>14</sup> Presented at the National Seminar on "Role and Efforts of Law Enforcement and Stakeholders in Handling and Eradication of IUU Fishing in Indonesian Border Areas, cooperation between the Ministry of Foreign Affairs of the Republic of Indonesia and Airlangga University Surabaya, 22 September 2014.

related to IUU fishing which is still less effective than the many cases of IUU fishing and economic losses incurred.<sup>15</sup>

Mawardi Khairi analyzed the politics of government law in handling of criminal acts of fishing (illegal fishing) in Indonesia. Kahiri highlighted the changes and legal developments in the field of IUU fishing, especially in the Era of President Jokowi. The finding of this research is the politics of fishery in the era of President Jokowi increasingly shows that illegal fishing is an extraordinary crime that requires cooperation law enforcement between government agencies as stated in Presidential Regulation No. 115 Year 2015 on Task Force Eradication Illegal Fishing.<sup>16</sup> Then Moch Iqbal's Research on *Illegal Fishing as a Corporate Crime is a Criminal Law breakthrough in prosecuting Illegal Fishing Crime*, which can be found in his analysis that it takes the cooperation of law enforcement apparatus in applying maximum sanction to Illegal Fishing perpetrators, as well as to ensnare corporations that become the main actors behind it.<sup>17</sup> Then Usmawadi Amir writes on Law Enforcement IUU Fishing According to UNCLOS 1982 (Case Study: Volga Case), which finds in his analysis that ITLOS (International Tribunal Law of the Sea) as a dispute resolution forum for IUU fishing cases involving other countries.<sup>18</sup>

### Research Statement

*First*, to what extent does the implementation of trade regulations on fisheries prevent fish laundry in Indonesia? *Second*, whether the fishery-related trade regulations applied in Indonesia have legal deficiencies to combat the penetration of fish laundering which entering into the domestic market?

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<sup>15</sup> Abdul Qodir Jaelani, et.al., "Illegal Unreported and Unregulated (IUU) Fishing: Upaya Mencegah dan Memberantas Illegal Fishing dalam Membangun Poros Maritim Indonesia", *Jurnal Supremasi Hukum*, Vol.3, No. 1, Juni 2014.

<sup>16</sup> Mawardi Khairi, "Politik Hukum Pemerintah Dalam Penanganan Tindak Pidana Perikanan (Illegal Fishing) Di Indonesia", *Jurnal Hukum Fiat Justisia*, Volume 10 Issue 2, April-June 2016: pp. 221-412, ISSN: 1978-5186, e-ISSN: 2477-6238.

<sup>17</sup> Moch. Iqbal, "Illegal Fishing sebagai Kejahatan Korporasi suatu terobosan Hukum Pidana dalam mengadili Kejahatan Illegal Fishing", *Jurnal Hukum dan Peradilan*, Volume 1, Nomor 3, November 2012, ISSN : 2303-3274.

<sup>18</sup> Amir Usmawadi, "Penegakan Hukum IUU Fishing Menurut UNCLOS 1982 (Studi Kasus: Volga Case)", *Jurnal Opinio Juris*, Volume 12, Januari - April 2013.

### **Objectives of the Research**

This research aimed to study to what extent the implementation of trade regulations on fisheries to prevent fish laundry in Indonesia and to find out whether or not Indonesia trade regulation implemented has a legal deficiency that countenances the penetration of fish laundry entering the domestic market.

### **Significance of the Research**

This research intended to deliver contributions in academic and practical spheres, wherein the information presented can be a reference for further research or used by stakeholders to formulate measures in addressing IUU Fishing issues and fish laundry Indonesia.

### **Research Methods**

Related to the statement of the problem above, this research is a normative research. This research uses <sup>21</sup> secondary data, which consist of primary, secondary, and tertiary legal materials by systematically identify legal norms and legal views. The purpose is to understand and to answer the object of study by using statute approach. Data is analyzed qualitatively, by analyzing existing laws and regulations related to the problem.

### **Research Result and Discussion**

#### **The Implementation of Trade Regulations to Prevent Fish Laundry in Indonesia**

The trade sector is a crime-prone sector. The process of production, distribution and marketing prone become the crime target. Crimes that often happen in fisheries' products are the crimes that are included in IUU fishing criteria. The international community seeks to prevent and mitigate those crimes through international trade regulations and national regulations. The international order agreed on IPOA-IUU Fishing (International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing) as a solution. IPOA-IUU fishing is set to inhibit all actions against IUU fishing.<sup>19</sup> The IPOA-IUU Fishing explains many things about IUU fishing activities and international fisheries

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<sup>19</sup> FAO Corporate Document Repository, "IPOA- International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing", Rome, 2001, <http://www.fao.org/3/a-y1224e.pdf>, accessed on 28 Agustus 2016.

market set by the WTO agreements. Every country must implement the measures which have been designed by the IPOA-IUU fishing, including cooperation among countries and implementation of WTO agreements. Surely, IPOA-IUU fishing indirectly affects the system of export and import of fish in a country.

The trade of marine fisheries is regulated by several laws and regulations, i.e. fisheries law, trade law, and customs law. The fisheries law identifies two laws and one ministerial regulation that indirectly regulate the fish laundry, but they provide a regulatory space for the prevention and repression of such actions. The Law Number 31 of 2004 concerning Fisheries *jo*. The Law Number 45 of 2009, Article 1 paragraph 1 states that fisheries is about the activities related to the management and utilization of the fish resources and the environment, from pre-production, production, processing, and marketing in the fisheries business system. Furthermore, fisheries business system, covering four processes level namely preproduction, production, processing, and marketing.<sup>20</sup>

The pre-production process becomes the most important point to ensure that the commodities are not obtained from unlawful acts such as IUU fishing or the acts related to fisheries crimes. Therefore, the government have the obligation to facilitate the fish trade by providing the domestic and foreign fish market service.<sup>21</sup> The government also has a duty to control and supervise, to ensure the establishment of a healthy fishery business climate (fair business practices) based on the laws and regulations. The supervision of the fisheries trade is governed by Law Number 16 of 1992 concerning Animal Quarantine, Fish and Plants. This law aims to supervise and control every export product of import in the field of fisheries in and out of the territory of the Republic of Indonesia (export-import activities).<sup>22</sup>

The quality control and fisheries safety are regulated in the Minister Regulation of Marine Affairs and Fisheries of the Republic of Indonesia Number 15 of 2011. The aim of the regulation is to control the quality and safety of the fishery products that enter to the territory of Indonesia, protecting the consumers, and harmonizing with international regimes.

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<sup>20</sup> See Article 23 paragraph 9 Law Number 45 of 2009 on Fishery.

<sup>21</sup> See Article 23 paragraph 10 Law Number 45 of 2009 on Fishery

<sup>22</sup> See Article 3 Law Number 16 of 1992 on Animals and Plants Quarantine

This Ministerial Regulation subsequently regulates technical and administrative matters in fisheries trade such as the regulation of Producer Importer Identification Number hereinafter called as *Angka Pengenal Importir Produsen* (API-P), General Importer Identification Number hereinafter called as *Angka Pengenal Importir Umum* (API-U), and Health Certificate. Producer Importer Identity Number or API-P is the identity number of producer importer issued by the Director of Foreign Trade at the Ministry of Trade to importers importing goods to be used by itself and/or for supporting production process and not to be traded or transferred to other party.<sup>23</sup> General Importer Identification Number or API-U is the identity number of general importer issued by the Director General of Foreign Trade at the Ministry of Trade to importers, importing goods to be used by itself and/or for supporting production process and not to be traded or transferred to other party.<sup>24</sup>

The Importer's Identity Number is in line with the Law Number 7 of 2014 concerning Trade, where in Article 45 paragraph 1 stated that the import of goods may only be conducted by importers who have the identification number based on the Minister's Decree. Furthermore, the importer shall have full responsibility for the imported goods, so that the irresponsible importers shall be subject to administrative sanctions in the form of revocation of licenses, approvals, acknowledgments and/or stipulations in the field of Trade.<sup>25</sup>

The certificate is divided into two types, namely Health Certificate of Quarantine and Health Certificate of Quality. Health Certificate of Fish Quarantine is an official document signed by a Quarantine Officer or an authorized official in the country of origin or transit stating that the carrier media listed therein is not infected by fish quarantine pests and diseases and / or fish pests and diseases required.<sup>26</sup> Health Certificate of Quality is an official document signed by an

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<sup>23</sup>See Article 1 paragraph 1 Minister Regulation of Marine Affairs and Fisheries of the Republic of Indonesia Number 15 of 2011 on Quality Control and Security of Fishery Products Entering the territory of the Republic of Indonesia

<sup>24</sup>See Article 1 paragraph 2, *Ibid*

<sup>25</sup>See Article 46 Law Number 7 of 2014 on Trade

<sup>26</sup>See Article 1 paragraph 9 Minister Regulation of Marine Affairs and Fisheries of the Republic of Indonesia Number 15 of 2011 on Quality Control and Security of Fishery Products Entering the territory of the Republic of Indonesia

authorized official / authority in the country of origin stating that the fishery product is safe for human consumption purposes.<sup>27</sup>

The evidence of attached document is used for traceability of fishery products that will enter the domestic market and to ensure that the product is not part of fish laundry activities. Trade law also regulates the standard of exported or imported goods, i.e. technical or standardized requirements, including procedures and methods prepared by the consensus of all concerned parties/governments/international decisions with regard to safety, security, health, the environment, the development of science and technology, experience, as well as developments in the present and future to gain the greatest benefit.<sup>28</sup> The scope of this Ministerial Regulations are the requirements and procedure to import fishery products, checking of fishery products, importing of fishery products as hand luggage, and re-importing of fishery products.<sup>29</sup> In order to regulate the import of fishery products to Indonesian territory and avoiding the unlawful fishery import, it regulates that only importers who already have API-P, API-U or institutions/institutions have been granted permission that can conduct import activities.<sup>30</sup>

The importer only can import the fishery products for the purposes as regulated in this Ministerial Regulation, i.e.:<sup>31</sup>

- a. Fish Processing Units raw to produce products of canned industry and fibre powder;
- b. Fish Processing Units raw materials to be re-exported and not be traded domestically in the territory of the Republic of Indonesia;
- c. Raw materials of traditional processing of dried fishery;
- d. Raw material fortification / enrichment of certain foods;
- e. Consumption of hotel and restaurant; and/or
- f. For modern market.

Furthermore, the importers or institutions that will import fishery products into the territory of the Republic of Indonesia should obtain Import Permit of Fishery Products from the Director General.<sup>32</sup> In order to possess the Fishery

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<sup>27</sup>See Article 1 paragraph 10, *Ibid*

<sup>28</sup>See Article 1 paragraph 8 Law Number 7 of 2014 on Trade

<sup>29</sup>See Article 2 Minister Regulation of Marine Affairs and Fisheries of the Republic of Indonesia Number 15 of 2011 on Quality Control and Security of Fishery Products Entering the territory of the Republic of Indonesia

<sup>30</sup>See Article 3 *Ibid*

<sup>31</sup>See Article 4 *Ibid*

<sup>32</sup>See Article 6 paragraph 1 *Ibid*

Products Import Permit, the importer or agency / institution shall file an application to the Director General, containing:<sup>33</sup>

- a. purpose and objectives;
- b. scientific name and trade name;
- c. type (10 digit HS Code);
- d. amount / volume and specification;
- e. country of origin;
- f. means of transportation;
- g. place of entry / place of designation;
- h. import schedule; and
- i. source of raw materials of fishery products.

Subsequently the fishery products that will enter into the territory of the Republic of Indonesia shall be inspected by the Quarantine Officer to know the completeness, validity, and correctness of the documents. The documents are declared valid if issued by the authorized institution and declared true if there is conformity between the contents of the document with the type, quantity, shape, and size of fishery products entered into the territory of the Republic of Indonesia. In examining the truth of the documents, the Quarantine Officer performs a physical inspection of the fishery products in the customs area. Documents examination shall be conducted within a period of 3 (three) working days. Based on the result of documents inspection, Quarantine Official issues the Letter of Approval of Carrier Media Spending from the Entry Point or Letter of Disclaimer, if the document is declared incomplete, invalid and/or incorrect.<sup>34</sup>

The import of fishery products that have obtained the Approval Letter of Carrier Media from the Entry Point, is excluded from the customs area for fish quarantine in the quarantine installation in order to detect quarantine fish pest, disease and quality testing in an accredited laboratory to guarantee its quality and safety. Fish quarantine measures and quality assays shall be carried out by sampling by the Quarantine Officer within a maximum of 1 x 24 (one time and twenty four) hours, since entry into the fish quarantine installation. The fish quarantine shall be conducted within 3 (three) working days and the quality test shall be conducted within a maximum period of 10 (ten) working days.

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<sup>33</sup>See Article 6 paragraph 2 *Ibid*

<sup>34</sup>See Article 11 *Ibid*

Sampling for physical examination of the amount is determined as follows for a country having a cooperative agreement in the form of Mutual Recognition Arrangement (MRA) or Memorandum of Understanding (MoU) or similar agreement, sampling is randomly done 1% (one percent) of the product lot. In the case of a country which does not have a cooperative agreement in the form of MRA or MoU or similar agreement, but has equivalent quality with Indonesia, sampling is randomly 5% (five percent) of the product lot. And for a country that has not had any cooperation agreement in the form of MRA or MoU or similar agreement, and has no equivalent quality with Indonesia, sampling is randomly made 10% (ten percent) of the product lot.<sup>35</sup>

Re-import of fishery products originating from Indonesia that are partially or wholly rejected by the importing country/destination country for not fulfilling the quality requirements and food safety of the destination country, shall be examined by the Quarantine Officer within a period of 1 (one) day. The documents examined include the Health Certificate of Fish Quarantine and/or the Health Certificate of Quality from the authorized institution and letter of rejection from the destination country. Based on the examination result, the Quarantine Officer can destroy the fishery product if the document and result of physical inspection are declared incomplete, unauthorized, and/or incorrect. Subsequently, the re-import of fishery products originating from Indonesia that are partially or wholly rejected by the importing country/destination country because they do not fulfill any requirements at the time of expenditure, not reported, not pass the inspection and place of expenditure, and/or no fulfill the requirements of the document, then the fishery product is subject to destruction action.<sup>36</sup> The supervision should be conducted to ensure the fishery products are used and/or utilized in accordance with the provisions of the laws and regulations.<sup>37</sup>

The Law Number 17 of 2006 on Amendment to Law Number 10 of 1995 concerning Customs regulates some very important matters relating to the trade of fish and fish products from and into the territory of the Republic of Indonesia.

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<sup>35</sup>See Article 12-15 *Ibid*

<sup>36</sup>See Article 17 *Ibid*

<sup>37</sup>See Article 19 *Ibid*

Customs is anything related to the control over the traffic of goods entering or leaving the customs area and the collection of import duties and export duties.<sup>38</sup> The customs territory shall be the territory of the Republic of Indonesia covering the territorial land, water and air space thereon, as well as certain places in the Exclusive Economic Zone and the continental shelf in which the Law of Customs applies.<sup>39</sup> One of the purposes of customs arrangement is to support the smooth flow of goods and increase the effectiveness of control over the traffic of goods entering or leaving the Indonesian customs area and the traffic of certain goods within the Indonesian customs area, as well as to optimize smuggling prevention and prosecution, need a clearer arrangement in the implementation of customs. This law defines import as the activity of entering goods into customs areas,<sup>40</sup> therefore the import duties are due.<sup>41</sup> While export is defined as the activity of take goods out from customs area,<sup>42</sup> so that goods which have been loaded on means of transportation to be taken out from customs territory shall be considered exported and treated as export goods.<sup>43</sup> So that goods entered into the definition of exported goods are subject to export duty.<sup>44</sup>

The purpose of the export duty is to fulfill the domestic needs, to protect the sustainability of natural resources, to anticipate the significantly price ricing of certain export commodities in the international market, to maintain the stability of certain commodity prices in the country.<sup>45</sup>

The task of customs is integrated the duties of ministries and related agencies that have authority on imported and exported goods, in case of fish laundry; the authorized institution is the Ministry of Marine Affairs and Fisheries. Fish Quarantine Agency, Quality Control and Security of Fishery Products is a body under the Ministry of Maritime Affairs and Fisheries who have full authority in determining whether fish or fishery products can be granted permission to exit or enter the territory of Indonesia in accordance with the provisions of the Act.

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<sup>38</sup>See Article 1 paragraph 1 Law Number 17 of 2006 on Customs

<sup>39</sup>See Article 1 paragraph 2 *Ibid*

<sup>40</sup>See Article 1 paragraph 13 *Ibid*

<sup>41</sup>See Article 2 paragraph 1 *Ibid*

<sup>42</sup>See Article 1 paragraph 14 *Ibid*

<sup>43</sup>See Article 2 paragraph 2 *Ibid*

<sup>44</sup>See Article 2A paragraph 1 *Ibid*

<sup>45</sup>See Article 2A paragraph 2 *Ibid*

As discussed above, fish laundry can be concluded as the part of fisheries crime and considered as a transnational crime. Therefore customs play an important role as a frontier border to prevent and combat the transnational crimes, which specifically regulated in Article 64A paragraphs 1 and 2. It stated that the goods are evidence-based initiation allegedly related to acts of terrorism and/or transnational crime can be undergone legally by the Customs Officers. Therefore, the supervision in goods traffic among countries is very important. In the case of fish laundry, it is important to prevent fish from fishery crime or IUU fishing to enter into the domestic market through import or into the international market through export. Customs inspection of imported goods includes document research and physical inspection of goods.<sup>46</sup>

In the border area, the Customs Officer only able to supervise the goods movements by scrutinizing supply chain movements because many hindrances like complexity of goods transport. Therefore, to anticipate the illegal actions, the pattern of fish laundry prevention is shifting into the risk management. This crimes are hardly to be detected, because movement of goods within supply chains are laundered by hiding the original nature of goods and the ownership of goods. For instance the use of third party services, such as freight forwarder companies, to deliver the goods abroads by hiding the true consignees. This circumstances could hamper the Government Authority to investigate the history of company or individual that could have allegedly been suspended for illegal actions or non compliance history.<sup>47</sup> Therefore, Directorate General of Customs cooperate with the government institution such as Financial Transaction Reporting and Analyzing Center, Directorate General of Taxation, and State Police take the action to eradicate cross-border trade crimes.

Currently there are several laws and regulations about cross-border trade crimes, e.g. Law Number 17 of 2006 on Customs, <sup>15</sup> Article 64 paragraph (1) Indonesian Civil Code and Article 3 Law Number 8 of 2010 on Money Laundering Crime. Further, the Minister of Finance also said that the enforcement of the Law

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<sup>46</sup> See Article 3 *Ibid*

<sup>47</sup> *Loc.cit.*

of Penalty for violations of trade facilitation provided by the government is also part of President Joko Widodo's instructions in order to prevent goods smuggling through cross-border trade <sup>29</sup> in order to protect the interests of national industries and protecting the public security from any threats.<sup>48</sup>

Customs, needs to manage its risks. This requires the systematic application of management procedures designed to reduce those risks to ensure that its objectives are achieved as efficiently and effectively as possible. Such procedures include the identification, analysis, evaluation, treatment, monitoring, and review of risks that may affect the achievement of these objectives.<sup>49</sup> Customs activities are divided into three fields; Customs authorities, Customs Organization, and Customs administrative. Customs administration, have to prevent the smuggling, controlling the contraband, managing the compliance, licensing and differentiate criminal requirements. Consequently, traders should comply the laws, as well as the customs organization. Therefore, the customs administrations can achieve ideal stability between change facilitation and regulatory control.<sup>50</sup>

The approach of customs organizations is how to transfer operational and compliance risk to the exporter's government and assuming that export governments are within the high-quality position to understand the companies in their own countries. It can guarantee the creation of best legitimate goods into the stream of trade. Although this is a good step to have an effect on risk transfer, the export screening by other governments cannot be relied upon as the only supply of domestic border protection.

Customs officers are authorized to conduct physical inspection of imported or export goods before or after customs notification is submitted.<sup>51</sup> The imported and exported goods can get the approval by the customs office after those has been declared completely fulfill the requirements and the result of inspection of goods

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<sup>48</sup> "Bea Cukai Bongkar 3 Kasus Penyelundupan Tekstil, Ini Rinciannya, <http://bisnis.liputan6.com/read/2939830/bea-cukai-bongkar-3-kasus-penyelundupan-tekstil-ini-rinciannya>". See also "Bea Cukai: Penindakan Pelanggaran Ekspor Tekstil Meningkat", <https://ekbis.sindonews.com/read/1202125/34/bea-cukai-penindakan-pelanggaran-ekspor-tekstil-meningkat-1493799853>, accessed on 3 May 2016.

<sup>49</sup> David Widdowson, "Managing Risk In The Customs Context", article in Luc De Wulf and Jose B. Sokol (Ed), *Customs Modernization Handbook*, The World Bank, Washington DC, 2005, p. 92

<sup>50</sup> David Widdowson..., *Ibid*

<sup>51</sup>See Article 82A paragraph 1 Law Number 17 of 2006 on Customs

indicates conformity.<sup>52</sup> However, if the importer or exporter has not fulfilled customs duties in accordance with the applicable regulations, the customs officials are authorized to refuse to provide customs services.<sup>53</sup> Delay approval of import or export may be granted if customs notification does not meet the requirements.<sup>54</sup> Customs inspection can be done at the time of loading, departure and/or discharge at the destination.<sup>55</sup>

From the description of the analysis of laws and regulations on fish trade can be concluded that the completeness of the documents and scientific examination is only used for quarantine purposes and quality assurance and not for the purpose of traceability. Traceability still rests on the accompanying document from the certificate and country of origin. So the implementation of trade regulations of fisheries in order to combat the fish laundry is still limited in administrative procedures. The weakness of trade regulations, particularly on customs law tend to prioritize services rather than controlling goods flow is one of the deficiencies in the prevailing regulations.<sup>56</sup>

### **The Legal Deficiency that Countenances the Penetration of Fish Laundry Entering the Domestic Market**

The trade regulations related to fishery are merely limited to administrative procedures with less scientific support such as health certificates, capture certificates, and certificates of origin. So it has not provided a system using technological support and scientific evidence to prove that the imported and exported fish conform with the law. The rising demand for fishery products in the market causes the actors use various ways to penetrate the fish into domestic and international markets. Fish laundry as an economic crime has 3 important aspects: offender motivations, economic outcomes, and economic processes. Fish laundry is

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<sup>52</sup>See Article 85 paragraph 1 *Ibid*

<sup>53</sup>See Article 85 paragraf 3 *Ibid*

<sup>54</sup>See Article 85 paragraph 2 *Ibid*

<sup>55</sup>See Article 85A *Ibid*

<sup>56</sup> See "Kementrian KP Siapkan Sertifikasi Anti-Fish Laundry" <http://industri.bisnis.com/read/20160621/99/559849/kementerian-kp-siapkan-sertifikasi-anti-fish-laundry>, see also "Ada Mafia Fish Laundry di Indonesia" <http://republika.co.id/berita/ekonomi/bisnis-global/14/09/21/nc8vwj-ada-mafia-fish-laundry-di-indonesia>, see also "Cegah Fish Laundry, KKP Wajibkan Sertifikat Tangkap untuk Impor" <http://www.mongabay.co.id/2016/07/05/cegah-fish-laundry-kkp-wajibkan-sertifikat-tangkap-untuk-impot/> accessed on 27 July 2017.

an economic process used by principals to be able to enter their products into supply chains. On the other hand, supply chain is a series involving many stakeholders, economic operators, and regulation. So in the fish laundry process based on several international documents mentioning its relation with transnational crime.

The linkage between Transnational Organized Crimes (TOC) syndicates and IUU fishing was mentioned in several international meetings and resolutions related to Fisheries. By December 4, 2009 in the United Nations General Assembly Resolution 64/72 on Sustainable Fisheries, where it “[n]otes the concerns about possible connections between international organized crime and illegal fishing in certain regions of the world, and encourages states, including through the appropriate international forums and organizations, to study the causes and methods of and contributing factors to illegal fishing to increase knowledge and understanding of those possible connections, and to make the findings publicly available, bearing in mind the distinct legal regimes and remedies under international law applicable to illegal fishing and international organized crime.”<sup>2</sup> The United Nations Open ended Informal Consultative Process on Oceans and the Law of the Sea (UNICPOLOS) and at the meeting of the Conference of Parties to the UN Convention against Transnational Organised Crime in 2008 also highlight the link of the TOC syndicates and Fisheries Crimes.<sup>57</sup>

Indonesia has exacerbated efforts to persuade support through bilateral cooperation with some of United Nations members sharing a common understanding of how to combat fisheries crime. Those efforts have been encountered some fishing vessel involved in transnational organised criminal groups which were also linked to money laundering, bribery, drug trafficking, human trafficking, tax fraud, custom-related crime and even enslavement.<sup>58</sup> Indonesian Ambassador to Austria Rachmat Budiman, the alternate head of the delegation, said in the side event on transnational organized fisheries crime co-hosted by Indonesia, Norway and the UNODC: “Nations [...] need to take effective

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<sup>57</sup>Teale N. Phelps Bondaroff, Wietse van der Werf, Tuesday Reitano, *Op.Cit*, p.38.

<sup>58</sup> The Jakarta Post, “Susi Ups Ante in Fight Against Fisheries Crime at UN” <http://www.thejakartapost.com/news/2016/05/24/susi-ups-ante-fight-against-fisheries-crime-un.html>. at May 24 2016.

concrete actions to prevent fisheries crime and fisheries-related crimes, which is through enhanced international cooperation on capacity building to implement international instruments".<sup>59</sup>

One of the important aspect in tackling fish laundering is fisheries supply chains control. Knapp, Roheim and Anderson explain four simplified fisheries supply chains<sup>60</sup> 1) the harvesting nation exports the fish to the consuming nation directly, 2) it may be exported after only primary processing occurs within the foreign harvesting nation, 3) it may be exported after both primary and secondary processing occur within the foreign harvesting nation, 4) the fish may be exported to the third country to be processed, and then it is re-exported to the consuming nation. By those definitions, it is concluded that fisheries supply chains is a complex process and there are many actors involved, such as fishermen, wholesalers and port officers. The process takes place in two or more nations which make it more prone to the risk of transnational crime, such as IUU fishing.

The supervision of the Indonesian fish trade supply chain has implemented the form of tightening arrangements of supervision and also regulates the requirements for importers. These requirements include the Importer Identity Number issued by the Ministry of Trade. If import goods are industrial raw materials, importers have to get Importer Identity Number for Producer/Manufacturer. In this regard, importer is a fishery processing unit that implements the <sup>20</sup> quality assurance system (Hazard Analysis and Critical Control Points/HACCP). Then if the import goods are purposed to distribute, importers have to get General Importer Identity Number. In addition, imported products must meet SNI quality standards, accompanied by health certificates, original certificate from producing countries, fulfill proper labeling rules and must enter through government-designated ports. This is also in line with Article 4 of <sup>1</sup> Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number PER.15/MEN/2011, where fishery products entering into the

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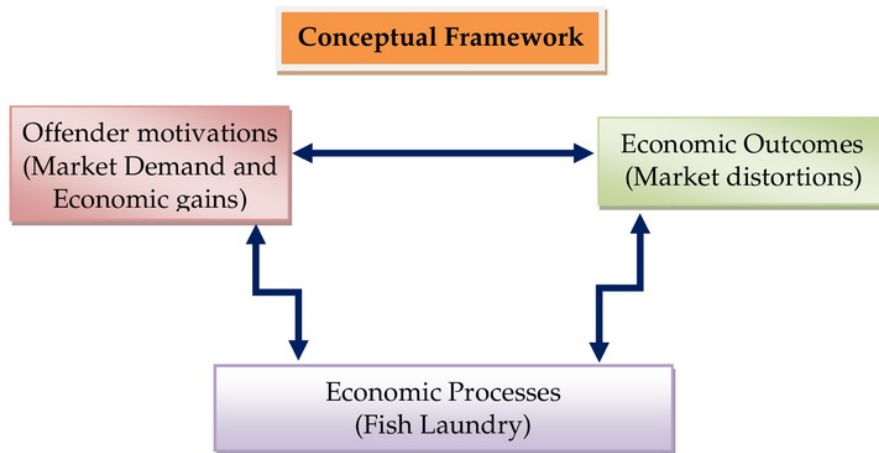
<sup>59</sup>*Ibid.* <sup>7</sup>

<sup>60</sup>Cathy A. Roheim, "Seafood Supply Chain Management: Methods to Prevent Illegally-Caught Product Entry into the Marketplace", *Paper Prepared for IUCN World Conservation Union-US for the Project PROFISH Law Enforcement, Corruption and Fisheries Work*, 2008 p. 4

territory of the Republic of Indonesia carried out by the importer may only be used for certain industrial activities such as fishery processing unit raw materials which produce the final product in the form of canning and flour industry, fishery processing unit raw materials to re-export and not to be traded within the territory of the Republic of Indonesia, traditional processing raw materials, certain fortified / enriched food ingredients, hotels and restaurants consumption purposes, and/or the needs of the modern market. It aims to control the supply chain of imported fishery products and prevent fish laundry by market access restrictions.

There are three aspects that could motivate economic crime, namely offender motivations, economic outcomes, and economic processes. In this case the control of the supply chain through tightening trade rules and regulations related to the requirements of allotment and fishery distribution while maintaining the business climate and fair market competition could have positive impact in preventing fish laundry through trade.

Figure 1.<sup>61</sup>



The most important aspects to avoid fish laundry is the ability to manage supply chains, or seafood supply chains in particular. There are various ways to control seafood supply chains, and one of them is traceability. United Nations Environment Programme emphasized the importance of traceability. Traceability's

<sup>61</sup>Cited from the McCarthy, Bill; Cohen, Lawrence E., "Economic Crime: Theory." *Encyclopedia of Crime and Justice*. 2002. *Encyclopedia.com*. 1 Dec. 2015

purpose is to record chains of events and places a product has gone through.<sup>62</sup> Not only that, traceability is conducted as a response to legal safety requirement, and to make sure that information about environmental and social aspect of the product can be traced back.<sup>63</sup>

Traceability is basically the ability to trace back the history of the product, during production, processing and distribution phases, including material and parts' origin, specific components, where the product is distributed, and the product's location after delivery.<sup>64</sup> One of the most important aspects in traceability are transparency; consumers or any stakeholders who are involved need to know what is happening in other stage of supply chains.<sup>65</sup> In terms of fisheries supply chains, Norpac Export has developed an advanced traceability system in their product to allow customers and fisheries managers to trace back the history of each fish, such as where it comes from, when it was unloaded, its species and its weight.<sup>66</sup>

Related to traceability, fish origin, in this case the Indonesian government has made arrangements in Article 5 Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number PER.15/MEN/2011 where any fishery products entering into the territory of the Republic of Indonesia shall meet the quality and safety requirements fishery products and attach with Health Certificate related to Fish Quarantine and Health Certificate related to Quality from authorized institution in country of origin, Certificate of Origin (CoO) from the authorized institution of the country of origin, label of information and food advertisements. It is also accompanied with accredited laboratory test results from country of origin which stating that the fishery product is free from microbiological contamination, residues, contaminants, and other hazardous chemicals, and has a complete weight of 95% (ninety-five percent) for frozen products, in accordance

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<sup>62</sup> United Nations Environment Programme, *The Role of Supply Chains in Addressing The Global Seafood Crisis*, UNEP, 2009, p, 33.

<sup>63</sup> *Ibid*

<sup>64</sup> Cathy A. Roheim..., *Op. Cit*, p. 5-6.

<sup>65</sup> United Nations Environment Programme, ..., *Op.Cit*, p. 45-46

<sup>66</sup> "Accountability, Responsibility, Traceability, and Sustainability" <http://www.norpacexport.com/about/arts> accessed on 30 August 2016

with quality requirements and the safety of fishery products and the provisions of legislation.

Traceability is one of the most crucial way in combating IUU fishing, or fish laundry in particular. By implementing traceability, the sellers, and all stakeholders who are involved in fish supply chain should be able to trace back the fish 'history'. Therefore, producers/sellers are determined to avoid catching fish from illegal resources. If traceability is implemented effectively, the seamless fish supply chain will be maintained, consequently, it will ensure the fish stock availability in the world.

### Conclusions

The conclusion of the *first* question in this study is that the implementation of trade regulations on fisheries is still less effective to prevent fish laundry because it only emphasizes on administrative procedures and lack of scientific procedures as supporters in determining the traceability of fishery products. The legal and regulatory tools in Indonesia have not been comprehensively regulating post-IUU fishing crime, in this case fish laundry, but from the economic crime process that exists in the supply chain of fish. Protecting fish supply chains and fish markets from fish laundry threats have to be carried out in a comprehensive and coordinated manner in order to equate the risk management in every related institution. *Second question* is answered by identifying a legal deficiency within the trade regulations in Indonesia where it is still focusing on services rather than scrutiny. Thus, it reduces the effectiveness of the scrutiny function. The falsification of documents and certificates indicates loophole in the supply chains, where the inspection and verification merely based on the document rather than scientific evidence. Some developed countries have developed technology to monitor the traceability of fish through DNA information. Therefore, Indonesia should improve on their scientific digitalization on trade facilitation procedure to ensure security and scrutiny of supply, in this point to combat fish laundry entering domestic market.

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