

LAPORAN PENELITIAN

**Implementation of Trade Regulations on Fisheries to
prevent Fish Laundry in Indonesia**



Oleh:

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**Dibiayai dari Sumber Dana DIPA FISIP UNDIP
Tahun Anggaran 2016**

**Program Studi Hubungan Internasional
Fakultas Ilmu Sosial dan Ilmu Politik
Universitas Diponegoro
Semarang
2016**

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1. Judul Penelitian : **Implementation of Trade Regulations on Fisheries to prevent Fish Laundry in Indonesia.**
2. Kategori Tema : Pembangunan manusia dan daya saing bangsa
3. Bidang Ilmu : Hubungan Internasional
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 - b. Nama Anggota Peneliti II : -
6. Lokasi Penelitian : Indonesia
7. Lama Penelitian : 6 (enam) bulan
8. Paket Penelitian Pembinaan : Doktor (Paket 1)
9. Biaya Yang Diperlukan : Rp. 9.600.000,-
10. Sumber Dana : DIPA FISIP UNDIP Tahun Anggaran 2016

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CHAPTER I

Context of the Study

1.1. IUU Fishing as economic crime : a shifting pattern of law enforcement

Indonesia, as others country with unrelieved problems of IUU fishing had experienced to tackling such cases with a criminal law approach. In which criminal sanction is taken against the perpetrators or criminal offenders. Yet, after the embodiment of global trade governance, some countries started to introduce of what its called as trade measures to prevent the fish stolen by IUU fishing penetrated and circulated into their national market. Trade measures applied using an economic approach in which IUU fishing carried out with an aims to meet the market demand of fish with competitive price and generates higher profits. Therefore, IUU fishing is committed by various unlawful acts in order to reduce operational costs and increasing the catch capacity.¹

Market is an entry point of the IUU fishing products to penetrating the global supply chain of foods.² When an illegal fish products circulate in the market its potentially distorting the market competitions of the legal products. Such situation could be worsened by the expansion size of the market due to the establishment of single market, which resulted from the trade regionalism, more specifically free trade agreement. Single market or borderless market is a vulnerable for the increased illicit activities that could leads an economic injury.

¹ See OECD, *Fish Piracy : Combating Illegal, Unreported, and Unregulated Fishing*, (Organisation for Economic Co-Operation and Development, 2004). Also see OECD, *Why Fish Piracy Persists : The Economics of Illegal, Unreported, and Unregulated Fishing*, (Organisation for Economic Co-Operation and Development, 2005).

² See Stopping 'fish laundering' - and other ways to protect oceans, 29th November 2015 < <http://www.dw.com/en/stopping-fish-laundrying-and-other-ways-to-protect-oceans/a-18778828>>

1.2. Fish Laundry

Fish laundry is part of the IUU fishing criminal acts. It is commonly carried out by transshipping 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 covering the roots of criminal acts. Therefore, the stolen fish laundered would be accompanied by the “legal” fake documents having chance to get authorization penetrating the market with competitive price.

In 2004, organized fish laundry of stolen Tuna has been reported by Fisheries Agency of Japan. The fish laundry took a place in Pacific, Atlantic, and Indian Oceans. Japan authorities in their findings discover fish laundering carried out by the owners of Chinese Taipei’s large-scale tuna longline vessels in which cooperate with cargo vessel companies to operate such unlawful conduct. Its believed that fish laundering is widely and constantly conducted to cover up the unlawful catch.³

At the same time as in Indonesia fish laundering activities start to increase its prevalence due to the increase of fish import from Thailand and Philipines that’s flooding the domestic market. In this point, fish laundering defined as activities of Indonesia Fisheries Company that accepted 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 License within the jurisdiction of Republic

³Information paper on fish laundering activities by large-scale tuna longline vessels, Submitted by the delegation of Japan, Preparatory conference for the commission for the conservation and management of highly migratory fish stocks in the western and central pacific, Seventh session WCPFC/PrepCon/DP.34, Pohnpei, Federated States of Micronesia 29 November 2004, <https://www.wcpfc.int/system/files/WCPFC_PrepCon_DP34%28Japan_fish_laundering%29.pdf>

Indonesia⁴ in which leads to the insufficient fish stock supply for the domestic fisheries industry. The imported fish are suspected as stolen fish of IUU fishing.⁵ In addition, the establishments of mega free trade agreement in Asia Pacific, open greater possibility for the stolen fish of IUU fishing entering the national market through transshipment or by other means product processing. Indonesia involved in 8 free trade agreement in goods i.e., 1) ASEAN – Australia – New Zealand; 2) ASEAN – China; 3) ASEAN – India; 4) ASEAN – Japan; 5) ASEAN – Republic of Korea; 6) ASEAN Free Trade Area (AFTA); 7) RCEP; and 8) Japan – Indonesia. Fish laundering is very difficult to be detected⁶, due to insufficient scrutiny and governance to prevent the illicit product entering licit market.⁷

The evidence of fish laundry in Indonesia revealed through the statement of Riza Damanik, Chairman of the Board of Trustees of Unity of Traditional Fishermen (Ketua Dewan Pembina Kesa-tuan Nelayan Tradisional), referring to the annual tuna catches production at amount 800 thousands tons but only 100 thousands were exported abroad. Indonesia tuna fish laundry cause economic injury 21 billions rupiah. Such act are committed to gain more profits from indirect export to third country, for instance European Union. Indonesia tuna catch exported to Thailand and be re-expoted 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.⁸ However, such activities are shifted due to the ban of fish

⁴ Peraturan Menteri Kelautan dan Perikanan Nomor 56 tahun 2014 Tentang Penghentian Sementara (Moratorium) Perizinan Usaha Perikanan Tangkap di Wilayah Pengelolaan Perikanan Negara Republik Indonesia.

⁵ Lawan Fish Laundering, Menteri Susi dapat Dukungan Asosiasi, 18 Juni 2015, <<http://www.cnnindonesia.com/ekonomi/20150618155318-92-60890/lawan-fish-laundering-menteri-susi-dapat-dukungan-asosiasi/>>

⁶ Fish Laundering Places Pirate Fish on Our Plates, 01 April 2013, <<http://www.thefishsite.com/fishnews/19833/fish-laundering-places-pirate-fish-on-our-plates/>>.

⁷ Anastasia Telesetsky, Laundering Fish in the Global Undercurrents: Illegal, Unreported, and Unregulated Fishing, and Transnational Organized Crime, *Ecology Law Quarterly*, Volume 41, Issue 4, Article 3, 6 January 2015, <<http://scholarship.law.berkeley.edu/elq/vol41/iss4/3>>.

⁸ Mafia Ikan Rugikan Negara Rp 100 Triliun Per Tahun Pengawasan & Infrastruktur Lemah, Pemerintah Kewalahan, *Harian Rakyat Merdeka*, Kamis, 25 September 2014 ,

product from Thailand and Philipines issued by European Union. Nowadays, the pattern of fish laundry were shifted, the fish product imported from those countries into Indonesia and get labeled as Indonesia product in order to get authorization to penetrate European Union market. According to the Minister Susi Pudjiastuti fish laundry in Indonesia start rising due to impact of transshipment⁹ prohibitions. Another case suspected as fish laundry in Indonesia is related to the request of some companies owned by foreign investor to get import authorizations of fish from Papua New Guinea, where the imported fish were suspected produced from IUU fishing.¹⁰

Tabel 1.
Produksi Perikanan Tangkap Menurut Provinsi dan Subsektor (ton),
Dari tahun 2004-2013

Provinsi										
	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Aceh	102555	81163	124963	130550	129947	138942	126701	143681	148765	153692
Sumatera Utara	323794	326336	342378	348222	354535	358664	341323	463201	510552	508359
Sumatera Barat	102368	108912	123528	187092	187043	191345	192658	196511	197460	211004
Riau	308304	97782	99194	102090	87917	75520	77102	90503	95609	93279
Jambi	47078	43121	25100	43638	43945	44120	44524	44700	46894	47713
Sumatera Selatan	54041	27831	35485	37790	38653	39735	40877	43800	44092	44764
Bengkulu	27615	38750	40725	42435	57655	44209	44241	39860	44561	50918
Lampung	146863	137728	133551	135214	144859	164552	143813	154484	144485	163107
Kepulauan Bangka Belitung	144006	119845	127274	123202	150496	153222	159421	192474	202565	199243
Kepulauan Riau	-	181118	164493	193556	225439	225469	196633	157506	147310	140597
DKI Jakarta	123869	132024	137570	146240	144718	145970	172422	180198	219836	209733
Jawa Barat	160240	155341	149490	167288	176449	172747	180405	185825	198978	207462
Jawa Tengah	244389	192586	193554	154442	174831	195636	212635	251536	256093	224229
DI Yogyakarta	1444	1773	1731	2629	1939	4239	4239	3954	4094	3396

<<http://www.rmol.co/read/2014/09/25/173453/Mafia-Ikan-Rugikan-Negara-Rp-100-Triliun-Per-Tahun->>

⁹ Peraturan Menteri Kelautan dan Perikanan No. 57/2014 tentang Larangan Transshipment atau Bongkar Muat Ditengah Laut.

¹⁰ Fishing Laundry, Modus Baru Kejahatan Perikanan, Jurnal Maritime, 16 April 2016, <<http://jurnalmaritim.com/2015/04/fishing-laundry-modus-baru-kejahatan-perikanan/>>

Jawa Timur	320691	322292	374620	382877	394262	395510	338918	362624	367922	378329
Banten	53535	58712	57745	61679	55858	57257	57254	57891	59702	58568
Bali	65768	78703	77239	106212	95983	101926	104927	100503	80413	102251
Nusa Tenggara Barat	79450	81610	95148	99554	98980	99221	111886	140170	132781	142190
Nusa Tenggara Timur	96142	124872	97040	101217	97243	117190	90185	102137	66005	103825
Kalimantan Barat	65414	60616	66160	65828	75998	77442	86255	94063	101991	120079
Kalimantan Tengah	46286	45994	48402	48570	48162	47359	52123	46400	54574	66312
Kalimantan Selatan	116254	136520	121496	98684	106484	109330	115555	115688	131074	176691
Kalimantan Timur	93511	99692	90825	95740	92176	93762	115601	102907	105393	107147
Sulawesi Utara	192433	191868	189546	191257	206151	214110	220760	230523	279031	282980
Sulawesi Tengah	87565	92088	96738	116830	139018	148806	140465	145784	196108	259984
Sulawesi Selatan	314678	277433	281939	282535	250138	219417	216459	218819	247173	277896
Sulawesi Tenggara	187658	213610	200689	204195	208304	217515	221412	227356	135446	124549
Gorontalo	34997	37036	48213	49060	62921	66717	72325	75680	84683	91439
Sulawesi Barat	-	38935	46727	66449	68249	70728	71178	72454	42002	45810
Maluku	424736	481848	484406	489249	315409	341966	559000	567953	537262	551812
Maluku Utara	79963	107000	117321	134354	143164	145355	148028	150232	150970	151541
Papua Barat	-	-	100574	101411	99952	106089	116593	117053	120329	121774
Papua	274594	214862	218327	224191	225055	228165	263528	269259	281480	286339
Indonesia	4320241	4408499	4512191	4734280	4701933	4812235	5039446	5345729	5435633	5707012

Sumber : Badan Pusat Statistik, <http://www.bps.go.id>

Since the last decade Indonesia gradually places its deepest concern on the IUU fishing issues, including preventing fish laundering within national market. Some trade regulations has been established to address fish laundering problem, for instance export-import regulations, catch certification (traceability certificate), food safety, hazard analysis and critical control points certification, and trade related measures. The research will be conducted with focus to the implementation of those trade regulations and its contribution to reduce fish laundry in the national market in order to identify the legal deficiency that potential distort national market because of fish laundering.

2. RESEARCH QUESTIONS

- a. To what extent the implementation of trade regulations on fisheries to prevent fish laundry in Indonesia ?
- b. Whether or not Indonesia trade regulations implemented has a legal deficiency that countenances the penetration of fish laundry entering the domestic market?

3. OBJECTIVES OF THE RESEARCH

- a. This research aimed to study implementation of trade regulations on fisheries in preventing fish laundry in Indonesia.
- b. This research also aimed to find out Whether or not Indonesia trade regulation implemented able to deliver a positive contribution toward fish market in Indonesia.

4. SIGNIFICANT 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 addressing IUU Fishing issues and fish laundry.

5. OUTCOME

This research is intended to deliver the outcome of international publication of the reputable international journal indexed by Scopus, Web of Science, Microsoft Academic Research, ISI-Knowledge Thomson, and other indexes as regulated by DIKTI.

6. LITERATURE REVIEW

6.1. State of the Art.

Fish laundry of IUU fishing within legal market is not a new phenomenon in the global trade. There are some research has been made dealing on such problems. In 2014, Anastasia Telesetsky, on her journal “Laundering Fish in the Global Undercurrents: Illegal, Unreported, and Unregulated Fishing and Transnational Organized Crime” argue about 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.¹¹ Bertrand Le Gallic, suggesting about the use of trade measures to prevent the fish of IUU fishing entering the legal market, due to the failure of traditional control.¹² Some measures also aim at reducing the relative difference in revenues between IUU and regular fishing operators by increasing the price of regular catches. The fundamental logic underlying such a measure is that consumers may be willing to provide complying operators with a price premium in order to reward their responsible behaviour. Such measures would require the use of labelling or certification based on a catch document or any other trade tracing document. Such as the use of non-discriminatory trade measures and the extra-territorial application of domestic sanctions. It also suggests that, in general, new forms of governance of the high seas should be considered to improve the effectiveness of the current legal framework.¹³

¹¹ Anastasia Telesetsky, *Laundering Fish in the Global Undercurrents: Illegal, Unreported, and Unregulated Fishing and Transnational Organized Crime*, 2014.

¹² Bertrand Le Gallic, “The use of trade measures against illicit fishing: Economic and legal considerations”, (2008), (64), *Ecological Economics* <www.elsevier.com/locate/ecolecon>.

¹³ Bertrand Le Gallic and Anthony Cox, “*An economic analysis of illegal, unreported and unregulated (IUU) fishing: Key drivers and possible solutions*”, (2006), (30), *Marine Policy* <www.elsevier.com/locate/marpol>.

Kine Mari Karlsen and Petter Olsen, arguing about the importance of traceability in the fish trade to get better documentation of food. 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.¹⁴ In this regard, the traceability often used as an instrument of trade regulation to filter any fish produce from IUU fishing entering the legal market. Anna Cutarelli, et.al, study about the use of DNA Barcoding to prevent commercial frauds in the fish trade. Her study emphasizing about the importance to identify fish species throughout the production cycle also when the product has been already processed.¹⁵

6.2. IUU Fishing and Economic Approach Analysis

A. Economic Analysis of Law

Economic Analysis of Law (EAL) was born under Chicago School. The basic theory of the EAL school was founded by Richard A. Posner. In the early time EAL was used to do an analysis in private law and criminal law. Basically, EAL employ the concept and methods of logic of modern economic to get better understanding of legal problem and supported rationality of legal reasoning.¹⁶

EAL is attempting to analyze systematically the effectiveness of law enforcement toward economic in general sense. Posner identified two important aspect in the EAL, i.e., positive aspect and normative aspect, in which both of these aspects emphasizing the efficiency in a different roles. From the positive aspect EAL consider law as as system to increase economic efficiency. Whilst from the normative aspect its more

¹⁴ Kine Mari Karlsen and Petter Olsen, "Validity of method for analysing critical traceability points", (2011), (22), Food Control, <www.elsevier.com/locate/foodcont>.

¹⁵ 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", (2014), (37), Food Control, <www.elsevier.com/locate/foodcont>.

¹⁶ Mathis, Klaus., Efficiency Instead of Justice? Searching for the Philosophical Foundations of the Economic Analysis of Law, Springer, Switzerland, 2009.

emphasizing that system of law have to be able driven economic efficiency. From the normative aspect, Posner made his postulate that the system of law has its role as a driving force for fair competition within a market. In a certain circumstances, when a market distrortion takes a place and/or does not work as it is, due to the high cost transactions, therefore the law have to take its role as a driving force to form the competitive market.¹⁷

B. Economic Crime in the Contemporer World

Although it is not a new phenomenon, economic crime in the present days often associated with the modern problem of modern society and its economy. There are some characters attached to the economic crime such as rapid change, unclear, conflicting and changeable norms. Global economic integrations in terms of trade have been a driving force for the economic crime to adapt its pattern.¹⁸ Definition of economic crime itself still remains too broad and ambiguous due to its character. In general terms, according to Appelgren and Sjögren, economic crime to be understood as as illegal acts committed within businesses in order to generates economic profits.¹⁹ In the present days economic crime took its form such as tax crimes, offences against account regulations, offences against creditors, bribes, frauds, embezzlement and commercial crime (fish laundry).²⁰ Commercial crime has been introduced in the beginning of 1900s, which refers to forms of violations against norms or bad behavior within legal business activities.²¹ Economic crime is connected in a very broad sense to offences committed within trade and businesses in order to gain economic advantages.²² Violations against tax, customs or trade regulations are often included in

¹⁷ Ibid.

¹⁸ Hans Sjögren and Göran Skogh, *New Perspectives on Economic Crime*, (Edward Elgar Publishing Limited, 2004), p. 127.

¹⁹ Appelgren and Sjögren, 2001, p. 11; Hans Sjögren and Göran Skogh, 2004., *Op. Cit.*, p. 129.

²⁰ Hans Sjögren and Göran Skogh, 2004., *Op. Cit.*, p. 129.

²¹ Weisburd and Waring, 2001, pp. 7–11; Lindgren, 2000, pp. 97–112; Lindgren and Theandersson, 2001, pp. 13–34; Hans Sjögren and Göran Skogh, 2004., *Op. Cit.*, p. 129.

²² Hans Sjögren and Göran Skogh, 2004., *Loc. Cit.*, p. 129.

other categories as ‘crimes against the authorities’ or ‘violations against state regulations’.²³ To sum up economic crime more or less plainly presume economic reasons behind the unlawful acts and the relation with economic or commercial activities.²⁴

Economic crime defined as a crime committed to generates more profits using any other means of legitimate business. In this regards, the crime might harm private nationals, business and/or general society in general.²⁵ Borrowing words Hans Sjögren and Göran Skogh, legal compliance contained two elements those are command and sanctions. To enforce those elements needs the authorities. Law and rules have to fulfill public sense of justice, therefore, it must be both morally and economically justifiable.²⁶

Law enforcement of economic crime is considered difficult to apply due to its character which has rapid change and various pattern followed the global change. Economic crime often takes places in open society, whereas movement of physical and human capital moves easily between inter regions or territories, for instance free market. Thus, it cause the difficulties of its law enforcement due to jurisdiction barriers where crime control still held by national authorities.²⁷

According to Dag Lindström economic crime is not a new phenomenon in society. As his study shown, that economic crime committed by breaching trade regulations had been occurred before 19th century. However the economic crime has been evolved along with the swift changes of taxation systems, legal system, and institutional framework of business activities.²⁸ The potential criminal offender are supposed to

²³ Hans Sjögren and Göran Skogh, 2004., *Op. Cit.*, p. 131.

²⁴ Lindgren, 2000, p. 110; Hans Sjögren and Göran Skogh, 2004., *Op. Cit.*, p. 129.

²⁵ Hans Sjögren and Göran Skogh, 2004., *Op. Cit.*, p. 1.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ Hans Sjögren and Göran Skogh, 2004., *Op. Cit.*, p. 4.

calculate between the illegal profits, the costs of crime, the cost of policing and the costs of punishments.²⁹

Based on the new perspective on economic crime, economic analysis of organized crime put more emphasizing welfare comparison amongst market structure of offences, in this point, monopoly versus competitive supply. Crimes are economic bads, not goods. Due to its smaller output a monopolistic market is more efficient than a perfect competitive one in the presence of bads.³⁰ Aside from monopoly power, transaction costs also considered as the driving factors of economic crime.³¹

Economic crime offenders run their activities within legitimate input and output markets. The economic crime offenders act as an alternative provider of goods and services to the private sector and compete with the government in terms of tax rates and provision of public goods.³² As noted by Gambetta and Reuter, that they may distort legal markets (for example money laundering, control of unions, unfair competition) and create inefficiencies.³³

The economic crimes not only threat to the state, but also against other businesses and against individuals. Conceptually, Appelgren and Sjögren defined economic crimes as a crimes against the economic order, distorting or even destroying the regular mechanisms of the economy and the market.

³⁴

The pattern of economic crime also subjective to the increase of national regulatory regimes interactions within global market. Therefore, its legal harmonization in trade regulations is needed in order driven fair competition and reducing risk of economic crime.³⁵

²⁹ Hans Sjögren and Göran Skogh, 2004., *Loc. Cit.*, p. 4.

³⁰ Buchanan, 1973; Reinganum, 1993; Garoupa, 2000a; Hans Sjögren and Göran Skogh, 2004., *Op. Cit.*, p. 14

³¹ Dick, 1995; Hans Sjögren and Göran Skogh, 2004., *Loc. Cit.*, p. 14.

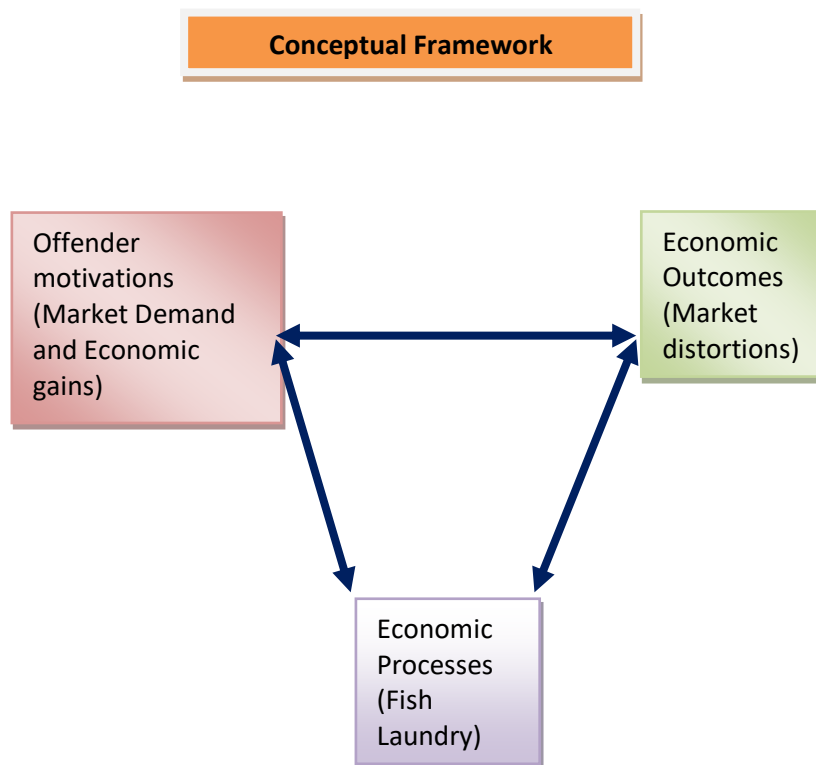
³² Grossman, 1995; Hans Sjögren and Göran Skogh, 2004., *Loc. Cit.*, p. 14

³³ Gambetta and Reuter, 1995; Hans Sjögren and Göran Skogh, 2004., *Loc. Cit.*, p. 14

³⁴ Appelgren and Sjögren, 2001, p. 11; Hans Sjögren and Göran Skogh, 2004., *Op. Cit.*, p. 129.

³⁵ Hans Sjögren and Göran Skogh, 2004., *Op. Cit.*, p. 43.

C. Economic Crime theory



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

According to Mccarthy and Cohen (2002) economic crime has three important aspects consists of offender motivations, economic outcomes, and economic processes. The first aspect, offender motivations, derived from the basic understanding of the economic crime, as a crime or unlawful act committed individually or collectively intended to gain economic profits. In certain circumstance the offender who engage on economic crime are not always aware about their motives and the legal consequences that follow such acts.³⁶

A second aspect avoids difficulties associated with trying to infer motives and focuses on illegal acts that successfully provide offenders with an economic return. However, excluding attempted crimes from analysis limits our

³⁶ Mccarthy, Bill; Cohen, Lawrence E., "Economic Crime: Theory." Encyclopedia of Crime and Justice. 2002. *Encyclopedia.com*. 1 Dec. 2015 <<http://www.encyclopedia.com>>.

understanding; successfully completed offenses may differ in important ways from those that are failures. A variation of this tradition defines economic crime as offenses for which victims incur an economic cost. Typical victims include individuals, groups, or organizations against which the act was directed; however, a much wider group of victims may have been indirectly affected by such crimes. This occurs in cases in which a criminal act subverts or undermines the commercial effectiveness of normative business practices and the negative consequences extend beyond those at whom the specific immediate harm was intended.³⁷

A third aspect contends that the processes that lead to criminal behavior are the same as those that guide consumer behavior in the marketplace. This approach informs most theoretical work on crime offered by economists since the late 1960s. Its most cogent statement is found in Gary Becker's neoclassical or "economic" approach to explaining crime. The remainder of this entry describes this approach and discusses its advantages and weaknesses; reviews other social science perspectives that address some of the shortcomings of the neoclassical approach; and summarizes recent directions in the study of economic crime.³⁸

6.3. CONCEPTUAL AND OPERATIONAL DEFINITIONS

a. Fish Laundry

Fish laundry is an activities to cover up the traceability of fish product produces from activities of IUU fishing in order to penetrate the legal market.

b. Trade regulation in Fisheries

Trade regulations on fisheries means all the laws and regulations prevails govern the fish trade within national market.

c. Legal Deficiency

³⁷ Ibid.

³⁸ Ibid.

Inadequacy within trade regulations implemented potentially provide a loophole to transnational organized crime on laundry fish to penetrate into the domestic market.

6.4. RESEARCH METHODS

a. Research Approach

Related to the statement of the problem above, this research is normative research. A research, which uses secondary data and 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 juridical normative approach method.

b. Data Classification

The data used in this research are secondary data. Secondary data are data in the form of documents and archives related to the problems. The purpose of this kind of data is to identify the data systematically in order to answer the problems. Secondary data will divided into primary legal materials, secondary legal materials, and tertiary legal materials.

c. Data Collection

Secondary data will be collected through library research document study, by collecting, learning and understanding the Acts, Government Regulations, and Government Regulation in lieu of legislation, Presidential Decree, Minister Decree, text books, articles, law journals and other documents related to the object of study.

d. Data Analysis

The data collection in a descriptive way, by selecting related data to the problem, which will be researched further to achieve a descriptive analysis. The data will be collected, managed and used to answer the problem. The method to analyzing the data is qualitative. Its mean that the

data achieved is not the form of numbers and statistic. By combining both method, descriptive and qualitative, the actual data analysis used is qualitative descriptive, in which data related to the problem are explained in a descriptive and qualitative method, by picturing existing realities with existing laws and regulations related to the problem. The steps are defined as follows:

- 1) Classification of the data collection based on the problems of the research.
- 2) Systematization of data classification.
- 3) Systematized data is then being analyzed in order to draw conclusions.

2. Ethical Consideration

To ensure ethical consideration, this research will also take into account the issue of confidentiality and informed consent of respondents. The data collection gained, will be kept in confidentiality and in case of publication of names of respondent, an approval will be sought. The respondent may refuse to have his/her name mentioned, and thus shall be referred to as anonymous. In regard to informed consent, the respondent shall be informed of the purpose and outline of the research in the beginning phase, after this an approval/consent shall be sought from the respondent for interview. Consent may be given in written or in oral forms. After the completion of the research, the participant/respondents involved in this research may be given the summary should he/she wish to.

CHAPTER II

Supply Chains Risk and Trans-National Organized Crimes

1. Governance on Fisheries Supply Chains

One of the important aspects in tackling fish laundering is the control of fisheries supply chains. Therefore, it will explained how fisheries supply chains works, before moving on to IUU fishing as the risks that come with uncontrolled fisheries supply chains, and its correlation with fish laundering. Knapp, Roheim and Anderson (2007) explain four simplified fisheries supply chains. 1.) The harvesting nation exports the fish to the consuming nation directly 2.) The fish undergo primary process in harvesting nation, then it is exported to consuming nation 3.) The fish undergo primary and secondary process in harvesting nation, then it is exported to consuming nation 4.) The fish is exported to third country to be processed, and then it is re-exported to the consuming nation¹. By those definition, it concludes that fisheries supply chains is a complex process and there are many actors such as fisherman, wholesaler and port officer who are involved in it. This process also takes place in at least two or more nations which make it more prone to the risk of transnational crime, such as IUU fishing.

Transshipment, as part of fisheries supply chains, occurs when a refrigerated cargo ship collects the consignment from numerous fishing vessels, and this process can be done either at sea or port²³. When

¹ Cathy A. Roheim (2008), *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, pg. 4.

² Teale N. Phelps Bondaroff, Wietse van der Werf, Tuesday Reitano, (2015). *The Illegal Fishing And Organized Crime Nexus: Illegal Fishing As Transnational Organized Crime*, Global Initiative Against Transnational Organized Crime and The Black Fish, http://theblackfish.org/Fishing_Crime.pdf, pg.24

³Environmental Justice Foundation (2013), *Transshipment At Sea, The Need for A Ban in West Africa*,

transshipment occurs, it is very difficult for flag or coastal state to monitor how, by whom and where transferred fish was caught⁴. Therefore, this process allows the mixing of legal and illegal fish and indirectly facilitate the laundering of IUU fish⁵⁶.

Stop Illegal Fishing, an African non-profit organisation argues that one of the most major missing links in fisheries supply chains, or how IUU fish find its way to legal market in particular is caused by transshipment at sea⁷. Based on previous explanation, it conclude that one of the most important aspects to avoid fish laundering 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*. The purpose of traceability is to record chains of events and places a product has gone through⁸. Not only that, traceability is done as a response to legal requirement safety, and to make sure that informations about environmental and social aspect of the product can be traced back⁹.

1.1. Supply Chains risk

This sub charter describe the definition of supply chain management, before moving on to external and internal factor that can jeopardize supply chain, and then discuss about some impact of disturbance in supply chain. Supply chain is the complex processes of producing, distributing, operating and financing a product that involves various actors, such as: manufacturers, suppliers,

http://ejfoundation.org/sites/default/files/public/ejf_transshipments_at_sea_web_0.pdf, pg. 2.

⁴Environmental Justice Foundation (2013), Op.Cit., pg. 2.

⁵ Teale N. Phelps Bondaroff, Wietse van der Werf, Tuesday Reitano, (2015), Op.Cit., pg.24.

⁶ Environmental Justice Foundation (2013), Op.Cit., pg. 2.

⁷ Stop Illegal Fishing (2016). Transshipment, <http://stopillegalfishing.com/issues/transshipment/>.

⁸ United Nations Environment Programme (UNEP) (2009), The Role of Supply Chains in Addressing The Global Seafood Crisis, pg, 33.

⁹ United Nations Environment Programme (UNEP) (2009), Op.Cit., pg, 33

transporters, retailers, and customers¹⁰. The goal of supply chain is to make sure that the producers can fulfill customer's request¹¹. By those definitions, it argues that it is important to understand some factors that can disturb the supply chains.¹²

There are two main factors that may jeopardize the flow of goods from producer to customers, which are: external and internal. Donald Walters (2007) argues that external factors refer to some events that come from outside. However, Merna and Smith (1999) classified some factors that can be considered as external factors, such as: natural, political, and economy¹³. Natural refers to any types of natural disaster, such as: hurricanes, earthquake, floods, tsunami. Political refers to events like war, governments instability, new legislation, and custom barriers. Meanwhile, economy refers to the broad economic environment, such as: inflation, currency exchange rates, and taxes¹⁴.

Internal factors refer to things that appear in normal operations. However, Merna and Smith (1999) classified some factors that can be considered as internal factors, such as: management, organizations and operations¹⁵. Management is related to risks that arise from their knowledge, skills, experience decisions. Meanwhile, organizations is related to risks that arise from how the organization works, such as: the structure, disputes, types of interactions, and communication flows. Operation is related to risks that arise from the nature activities in the organizations, such as: technology, complexity, and type of process.

However, Donald Walters (2007) also argues that "the risks only really materialize when some harmful events really occur"¹⁶. Internal and external factors can lead to various consequences, some are minor things, such as: producers are forced to find alternative materials because of the lack of raw materials, or late deliveries that can cause producers to halt the producing

¹⁰ Sunil Chopra and Peter Meindl (2007). Supply Chain Management: Strategy, Planning and Operation, pg.3

¹¹ Sunil Chopra and Peter Meindl (2007), Op.Cit., pg.3

¹² Ayers, James B (2001). Making Supply Chain Management Work: Design, Implementation, Partnership, Technology and Profit, pg. 5

¹³ Donald Walters (2007). Supply Chain Risk Management : Vulnerability and Resilience in Logistics, Kogan Page Limited, pg. 100-101.

¹⁴ Donald Walters (2007), Op.Cit., pg. 12.

¹⁵ Donald Walters (2007), Op.Cit., pg. 100-101.

¹⁶ Donald Walters (2007), Op.Cit., pg. 12.

activities¹⁷. Internal and external factors can also cause more serious consequence, such as: the destruction of entire supply chains, and this may prompt the trading partner to reconsider their trading relationship¹⁸.

In terms of fish supply chains, Thorpe and Bennett (2004) states that:

“A fish supply chain can be generally described as a set of interdependent fishers, agents, processors, distributors and wholesalers/retailers/food services, who work together to supply a fish derived product to the consumer¹⁹”.

United Nations Environment Programme, in their report emphasized that fish supply chains in each countries are different, and these differences are related to each country's socio-economic, environmental conditions and culture²⁰. However, there are other factors that can affect fish supply chains, such as: the way the fish is processed (smoking, salting), and the destination of the fish that's being traded (domestic or export)²¹.

Obviously, there are some external and internal risks that can affect fisheries supply chain. One of some external risks is crime, such as: IUU fishing. Environmental Justice Foundation states that IUU fishing has caused fishing stock worldwide to reach tipping point, and it is estimated that the annual losses related to IUU fishing is US\$10-US\$23.5 approximately²². Moreover, World Wild Fund has done a comprehensive research about IUU fishing and its impact on worldwide fish stock. The research shows that 54% of fish stock can be classified at high risk, and 32% of fish stock are classified at moderate risk²³.

1.2. Traceability

¹⁷ Donald Walters (2007), Op.Cit., pg. 7

¹⁸ Donald Walters (2007), Op.Cit., pg. 14.

¹⁹ Thorpe and Bennett (2004) in United Nations Environment Programme (UNEP) (2009), The Role of Supply Chains in Addressing The Global Seafood Crisis, pg. 33

²⁰ United Nations Environment Programme (UNEP) (2009), Op.Cit., pg. 33

²¹ United Nations Environment Programme (UNEP) (2009), Op.Cit., pg. 33

²² Environmental Justice Foundation, <http://ejfoundation.org/campaigns/oceans/item/ending-pirate-fishing>. Accessed 31-08-2016 at 11.29

²³ World Wild Fund (2015). Illegal Fishing, Which Fish Species Are At Highest Risk From Illegal and Unreported Fishing?, pg.3

Traceability is basically the ability to trace back the history of the product, during production, processing and distribution phases, including: origin of material and parts, specific components, where the product is distributed, and the location of the product after delivery²⁴. One of the most important aspects in traceability is transparency, consumers or any stakeholders who are involved need to know what is happening in other stage of supply chains²⁵. In terms of fisheries supply chains, Norpact 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 weight²⁶.

Its concludes that one of the most important functions of traceability is to make sure that the fish was caught legally, and traceability also indirectly lessen the possibility of illegal fish to be mixed with legal fish. CSB-system AG states some important reasons as to why traceability has to be done, such as: ensure the transparency of the flowing goods, which can boost the producer's confidence and to comply with European Union's regulations regarding food safety²⁷

In the past few years, developed countries have made regulations to ensure their food safety by implementing the concept of traceability. European Union has incorporated traceability in Regulation (EC) 178/2002. This regulation emphasizes the importance of food safety and one of some ways to ensure food safety is by implementing traceability, as stated in article 28 and 29²⁸. Traceability is also one of the most important components in ensuring sustainable supply chains, which is consistent with European Union's visions of Sustainable

²⁴ Codex Alimentarius (2004) and International Standardization Organization in Cathy A. Roheim (2008), 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, pg. 5-6.

²⁵ United Nations Environment Programme (UNEP) (2009), Op.Cit., pg. 45-46

²⁶ Norpac Fisheries Export (2011), Accountability, Responsibility, Traceability, and Sustainability, Accessed 30/08/2016. 15.00

²⁷ CSB-group. Secure and Effective Traceability in Fish Industry and Fish Trade. Accessed 30/08/2016. 16.13.

²⁸ Official Journal of The European Communities. Regulation (EC) No. 178/2002 of the European Parliament and of the council of 28 January 2002.

Development²⁹. Not only European Union, United States also shows their effort to tackle IUU fishing and seafood fraud by making recommendation and timeframe to implement traceability³⁰.

Despite the efforts by developed countries to uphold traceability system, Roheim (2008) argues that traceability is not mandatory in all nations. However, traceability system is necessary in countries that use country-of-origin-labelling (COOL)^{31,32}. In developed countries such as United States and European Union, it is also compulsory to adopt Hazard Analysis and Critical Control Point, a methodology that requires the workers to identify critical control point along the supply chains³³. To ensure the compliance of HACCP system, it is important for the workers to use the traceability system in both direction³⁴

It believed that traceability is one of the most crucial ways in tackling IUU fishing, or fish laundering in particular. By implementing traceability, the sellers, and all stakeholders who are involved in fish supply chain should be able to trace back ‘the history’ of the fish. 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 availability of fish stock in the world.

1.3. Chain of Custody (CoC)

The concept of chain of custody is basically same with traceability, i.e the companies who are involved in fisheries supply chain, such as: vessel groups,

²⁹ United Nations Environment Programme (UNEP) (2009), Op.Cit., pg. 7-8. See also European Commission: Environment (2015) <http://ec.europa.eu/environment/eussd/>,

³⁰ Presidential Task Force on Combating IUU Fishing and Seafood Fraud. Pg 36.

³¹ Cathy A. Roheim (2008), 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, pg. 17.

³² In 2005, United States enacted a labeling law that required grocery stores, warehouse stores, supermarket to notify their costumers about informations regarding the origin of the food. In terms of seafood, customers should know whether the fish was hatched, farm-raised, harvested, etc. See <https://www.ams.usda.gov/rules-regulations/cool> for more informations regarding this law.

³³ United Nations Environment Programme (UNEP) (2009), Op.Cit., pg. 44-45

³⁴ United Nations Environment Programme (UNEP) (2009), Op.Cit., pg. 44-45

canners, distributors, etc are able to trace back all the phases in the fish supply chain, so they can gain customer's trust³⁵. In order to do that, those companies need to get specific certificate from entities that provide Chain of Custody certificate, such as: Alaska Seafood Management Industry (ASMI), and Marine Stewardship Council (MSC). MSC emphasized the products are recorded since the products come in, processed, packaged, and the products come out, by doing that, it will be impossible for IUU fish to make its way to the supply chains³⁶.

Based on previous explanation, chain of custody seems to be an effective way to curb IUU fishing, and maintain the reputation of fish distributor at the same time. However, Roheim (2008) argues that chain of custody has its own shortcomings. First, she states that CoC certification has to start at level of the catch, not the landing³⁷. In order to do this, some sophisticated equipments are needed, such as: vessel monitoring system, radio frequency identification, and bar code identification³⁸. Second, she also states that it is difficult for artisan fisheries in developing countries to implement CoC because they do not have specific tools to record their catch, or even they lack the incentives to do so³⁹.

1.4. The role of Organized Crime in the Fish Laundry

Transnational Organized Crime (TOC) has some definitions based on its characteristic and its operations, however the definitions has been continuing to develop along with the development of emerging global crimes conduct. Therefore the United Nations Convention against Transnational Organized Crime (UNTOC) do not lay down exact definition regarding organized crime with the purpose to allow for broader applicability of the Convention to the new types and pattern of crimes that committed in the scope national, regional, and global. In a

³⁵ Alaska Seafood Management Industry, <http://www.alaskaseafood.org/rfm-certification/chain-of-custody/standard/> and The Marine Stewardship Council, <https://www.msc.org/dokumentit/toimitusketjun-sertifiointi>. Accessed 30-08-2016 at 23.10

³⁶ Cathy A. Roheim (2008), Op.Cit., pg. 12-13.

³⁷ Cathy A. Roheim (2008), Op.Cit., pg. 17.

³⁸ Cathy A. Roheim (2008), Op.Cit., pg. 17.

³⁹ Cathy A. Roheim (2008), Op.Cit., pg. 17.

way it could drive further development of cooperation in combating organized crimes. UNTOC had characterized organized crime as a “structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.”⁴⁰ A “grave” crime is can be characterized in the penal code by threat of sanction at least four years of imprisonment or a “more serious penalty”.⁴¹ While in the Article 3(2) of the UNTOC explains a requirement for a crime to be categorized as transnational organized crime in nature if:⁴²

1. It is committed in more than one State;
2. It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
3. It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State;
4. Or it is committed in one State but has substantial effects in another State.

Criminologist Jay Albanese giving a more broader definition of transnational organized crime by three categories illegal activities that somehow transcend international borders; transnationally mobile criminal organizations – respectively, criminal organizations with a presence in more than one country; and the extension of illegal governance across international borders.” Thus he divide transnational organized crime into three broad categories the “provision of illicit goods, illicit services, and infiltration of business or government affecting multiple countries.” In additions, Jay Albanese and Philip Reichel stated about

⁴⁰ United Nations Interregional Crime and Justice Research Institute (UNICRI) (2016), *Illicit Pesticides, Organized Crime and Supply Chain Integrity*, pg. 29. See also UNDOC, *Fisheries Crimes*, https://www.unodc.org/documents/about-unodc/Campaigns/Fisheries/focus_sheet_PRINT.pdf. See also Teale N. Phelps Bondaroff, Wietse van der Werf, Tuesday Reitano, (2015). *The Illegal Fishing And Organized Crime Nexus: Illegal Fishing As Transnational Organized Crime*, Global Initiative Against Transnational Organized Crime and The Black Fish, http://theblackfish.org/Fishing_Crime.pdf, pg. 40.

⁴¹ UNDOC, *Fisheries Crimes*, https://www.unodc.org/documents/about-unodc/Campaigns/Fisheries/focus_sheet_PRINT.pdf.

⁴² Teale N. Phelps Bondaroff, Wietse van der Werf, Tuesday Reitano, (2015), *Op.Cit.*, pg. 40.

how such transnational organized crime operated, “as continuing criminal enterprises that rationally work to profit from illicit activities...[whose] continuing existence is maintained through the use of force, threats, monopoly control, and/ or corruption of public officials.”⁴³ Therefore, transnational organized crimes cannot be effectively conducting by a lone offender or by those who are not organized due to its scope and activities.⁴⁴ While the Annual European Union Organised Crime Situation Report expands definition of transnational organized crime, with characteristics required:⁴⁵

- a. Collaboration of more than 2 people;
- b. Each with own appointed tasks;
- c. For a prolonged or indefinite period of time (refers to the stability and (potential) durability);
- d. Using some form of discipline and control;
- e. Suspected of the commission of serious criminal offences;
- f. Operating at an international level;
- g. Using violence or other means suitable for intimidation;
- h. Using commercial or businesslike structures;
- i. Engaged in money laundering;
- j. Exerting influence on politics, the media, public administration, judicial authorities or the economy;

As stated by the UNTOC that the definition of transnational organized crime is “to obtain, directly or indirectly, a financial or other material benefit” or even power, in this regards, economic power such as monopoly or market control. According to World Development 2009 the global value of revenue generated from organized crime to be \$1.3 trillion. In the same years United Nations Office on Drugs and Crime (UNODC) estimate earning of organized crime reached up to \$870 billion, or the equivalent to 1.5% of global gross domestic product (GDP). Thus, the International Monetary Fund approximations that 2 to 5% of the world’s GDP is in the form of illegal income, with a 2% value being equivalent to the total

⁴³ Teale N. Phelps Bondaroff, Wietse van der Werf, Tuesday Reitano, (2015) , Op.Cit., pg. 40.

⁴⁴ Teale N. Phelps Bondaroff, Wietse van der Werf, Tuesday Reitano, (2015) , Op.Cit., pg. 40.

⁴⁵ Teale N. Phelps Bondaroff, Wietse van der Werf, Tuesday Reitano, (2015) , Op.Cit., pg. 40.

economy of Spain. Those numbers estimations do not regularly include IUU fishing and related crimes conduct, in such case, the numbers would be estimated significantly higher.⁴⁶

According to United Nations Interregional Crime and Justice Research Institute (UNICRI) transnational organized crime operate their unlawful activities within criminal market economy, and exploit opportunities to commit lucrative fraud, counterfeiting and related offenses against consumers, public authorities and legitimate businesses. TOC has abilities to be flexible and adjustable to respond a rapidly opportunities that ensued from political, economic, or legislative changes. In this point, including free trade agreements and free trade zones (FTZs), differential regulations (rules of origin) and product pricing schemes between jurisdictions, and market growth potential.⁴⁷

The linkage between 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, stated that “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.” 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 .⁴⁸

⁴⁶ Teale N. Phelps Bondaroff, Wietse van der Werf, Tuesday Reitano, (2015), Op.Cit., pg. 41.

⁴⁷ United Nations Interregional Crime and Justice Research Institute (UNICRI) (2016), Op.Cit., pg. 29.

⁴⁸ Teale N. Phelps Bondaroff, Wietse van der Werf, Tuesday Reitano, (2015), Op.Cit, pg.38.

As noted by Europol (2015) there were a changing dynamic in the structure of organized crime, which migrating from traditional hierarchical groups to a more fragmented, and operate their unlawful activities in the global criminal market in which involving flexible networks of criminal entrepreneurs and enterprises organize to exploit market opportunities. To support their activities globally TOC start to increase the use of digital technologies to facilitate and conduct illicit trade. Transit to markets (as component ingredients or finished products) and distribution to consumers are both essential to a profitable trade in illicit for fisheries product especially from IUU fishing activities. TOC operate their unlawful activities to laundry fish produced from IUU fishing by avoiding official scrutiny from regulatory and enforcement actions. To ensure their activities are secure TOC establishes shell companies or specific vehicle company, falsification of paperwork, rerouting shipments, and re-labelling product.⁴⁹ TOC has extensive transportation, assembly/ labeling, and distribution capabilities and capacities spread over multiple geographic locations in order to response any changing on regulation, supervisions, and inspections.⁵⁰

1.5. Fish laundry related crimes

The term transnational speak of activities of a cross-border nature. It is used as a replacement for the ‘global nature’, where it is giving a highlight that the type of activities and the actors engaged are consisting from multi-nations. Due to the fact some international fishing operations are conducting within global scope by involving many actors with multiple jurisdictions.⁵¹

IUU fishing and fish laundry is part of the fisheries crime which cause multiple damage to the economic, culture, and environment. According to the

⁴⁹ United Nations Interregional Crime and Justice Research Institute (UNICRI) (2016), Op.Cit., pg. 29 – 31.

⁵⁰ United Nations Interregional Crime and Justice Research Institute (UNICRI) (2016), Op.Cit., pg. 31.

⁵¹ Teale N. Phelps Bondaroff, Wietse van der Werf, Tuesday Reitano, (2015), Op.Cit., pg. 40.

study conducted by UNODC on transnational criminal activities in the fishing industry, there were some findings⁵²:

1. Fishers trafficked for the purpose of forced labour on board fishing vessels are severely abused;
2. There is frequency of child trafficking in the fishing industry;
3. Transnational organised criminal groups are engaged in marine living resource crimes in relation to high value, low volume species such as abalone;
4. Some transnational fishing operators launder illegally caught fish through transshipments at sea and fraudulent catch documentation;
5. Fishing licensing and control system is vulnerable to corruption;
6. Fishing vessels are used for the purpose of smuggling of migrants, illicit traffic in drugs (primarily cocaine), illicit traffic in weapons, and acts of terrorism; and
7. Fishers are often recruited by organised criminal groups due to their skills and knowledge of the sea and are seldom masterminds behind organised criminal activities involving the fishing industry or fishing vessels.

UNODC defined fisheries crime as an illegal concept referring to a range of illegal activities in the fisheries sectors that in nature committed transnational and organized, includes activities illegal fishing, document fraud, drug trafficking, and money laundering. Criminal conduct in the fisheries part are frequently viewed as synonymous with illicit angling, which many States do not indicted as criminal offenses, but instead as a fisheries administration concern, therefore mostly its sentencing by administrative punishments.⁵³

According to Mary Ann Palma-Robles, there are some factors that make the fishing industries are vulnerable to transnational organized crime include the global reach of fishing vessels, inadequency monitoring of fishing vessels, lack of

⁵² Mary Ann Palma-Robles, Fisheries Crime: Bridging The Conceptual Gap and Practical Response, Center for International Maritime Security, JULY 30, 2014, <http://cimsec.org/fisheries-crime-bridging-conceptual-gap-practical-response/12338>.

⁵³ Bringing to light the perfect storm of illegal activities in the fishing sector, <http://www.unodc.org/unodc/about-unodc/campaigns/fisheriescrime.html>.

transparency on the identity of beneficial owners of vessels, continuous decline of global stocks, poor socio-economic conditions of fishers and fishing communities, lack of effective flag and port State jurisdiction, corruption, and inadequate international regulation on the safety of fishing vessels and working conditions of fishers. Due to the elusive nature of illicit activities of fisheries crimes it cause difficulty to find out its accuracy number.⁵⁴

The divergent views between illegal fishing and transnational crime were first raised up at the 9th meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (UNICOPOLOS) and at the meeting of the Conference of Parties to the UN Convention Against Transnational Organised Crime in 2008. Eventhough some meetings have recognised the possible correlation between those views, the guidance about the legal characterisation has not been made yet. But there is one clear thing, illegal fishing is controlled under the auspices of Food and Agriculture Organization (FAO) and on the other hand, transnational crime is somehow regulated under UNODC. There might come out dilemma whether it's a maritime security threat or fishing vessel control still the issue if there're cocaine trafficked by a fishing vessel.⁵⁵

Marry Ann questioned if fisheries crime is a transnational crime or an organised crime or a crime against nature (environmental crime) or even actually all of those. She mentioned that fisheries-related crime does not included in UNCTOC but there is also Vienna Convention which states that a crime is transnational in nature so it also could be appliable to fisheries. She also mentioned some categories how to decide if it's been organised such as the continuity of using force, threats, monopoly, control and/or corruption in the activities of trafficking people in the fishing industries or even just slightly corruption in fishing vessel licensing. Whilst fisheries crime as transnational environmental crime or sometimes also called as eco-crime has not been explicitly established in international law but a certain behaviour has been defined in some

⁵⁴ Mary Ann Palma-Robles, 2014.

⁵⁵ Mary Ann Palma-Robles, 2014.

existing literature as harmful or or potentially harmful to the environment which might include illegal capture and trade of high value species involving organised criminal groups in fisheries.⁵⁶

Rather than keep arguing whether fisheries crime is both a transnational organised crime and transnational crime, Mary Ann emphasized the importance of a clear distinction between fisheries and environmental law and transnational criminal law, especially in identification context. She mentioned Australian legislation, The New South Wales Fisheries Management Act (1994), as an example which defines “trafficking in fish” and controls the indictable species, the quantity of fish, the minimum year of imprisonment and also additional penalty for certain offences. She also mentioned that some criminologists generally suggests that organized crime is systematic criminal activity “which is more likely to target the vulnerable and most valuable species, [and to] escalate... not only the seriousness of illegal activity but also its effect, through an increase in criminal activity generally, such as environmental offences, theft, fraud, quarantine violation, tax evasion, and serious crime against people, including murder.”⁵⁷

Amanda Cabrejo de Roux stated that the legal definition of fisheries in international law has to be distinguished from the legal concept of illegal, unreported and unregulated fishing. She also mentioned that the term “fisheries crime” appeared in the topic of the Fish Crime Symposium in Cape Town. Despite of the fact that the term has been appeared, the offences included are still hard to be detected and prosecuted as they are may committed in secrecy and accross national borders or on the high seas. Those offences are severe cases of illegal fishing, related offences from document fraud, to corruption and tax evasion and human trafficking in the fisheries sectors.⁵⁸

Regarding to the broad view of illegal fishing, fisheries and practitioners need to entice the police, judiciary, customs, tax, port, security and labour

⁵⁶ Mary Ann Palma-Robles, 2014.

⁵⁷ Teale N. Phelps Bondaroff, Wietse van der Werf, Tuesday Reitano, (2015), Op.Cit., pg.37. See also Mary Ann Palma-Robles, 2014.

⁵⁸ The Conversation, Amanda Cabrejo le Roux, PhD Candidate in Law , Université Paris 1 Panthéon-Sorbonne, Why it’s so hard to fight fisheries crime, 4 November 2015, <http://theconversation.com/why-its-so-hard-to-fight-fisheries-crime-49837>.

authorities to muster and share information, intelligence and knowledge and to integrate the resources of investigation. By investigating these crimes, they also need to identify the benefits, potential and options of international mutual support in order to intercept and prosecute the perpetrators or the individual controlling them.⁵⁹

Indonesia has exacerbated efforts to persuade support through bilateral cooperation with some of UN members sharing a common understanding of how to combat fisheries crime. Those efforts made due to the urgency in Indonesia which has encountered several fishing vessel involved in transnational organised criminal groups which were also linked in money laundering, bribery, drug trafficking, human trafficking, tax fraud, custom-related crime and even enslavement.⁶⁰

Below is the 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 concrete actions to prevent fisheries crime and fisheries-related crimes in an effective way, which is through enhanced international cooperation on capacity building to implement international instruments,”⁶¹

At international level, international community has developed strategies to rein in the fisheries crime by adopting the Fish Stock Agreement in 1995. While at national level, in Indonesia, the supervision such as port state control, flag state control and enforcement has been implemented and also ensuring fish stock sustainability by applying ecosystem approaches.⁶²

As fisheries crime involves more than one country, Rachmat said that to persuade world leaders to acknowledge it as transnational organised crime would

⁵⁹ <http://www.fishcrime.info/fishcrime/>

⁶⁰ The Jakarta Post, Susi ups ante in fight against fisheries crime at UN, Tue, May 24 2016, <http://www.thejakartapost.com/news/2016/05/24/susi-ups-ante-fight-against-fisheries-crime-un.html>.

⁶¹ The Jakarta Post, Susi ups ante in fight against fisheries crime at UN, Tue, May 24 2016, <http://www.thejakartapost.com/news/2016/05/24/susi-ups-ante-fight-against-fisheries-crime-un.html>.

⁶² Ibid.

take a long time. So, for the same reason, UNTOC should be urgently categorises it as elements of transnational organised crime. Noted by “the concerns about possible connections between international organized crime and illegal fishing in certain regions of the world”, UN Resolution 64/72 on sustainable fisheries in the December 4, 2009 was highlighted the link between the IUU fishing and organized criminal syndicates⁶³

Economic crimes is also included in fisheries crime when it related to chain from the marine habitat through to the final consume product. Thus, derived from multi-faceted transnational elements such as the nationality of the fishers, the flag of the vessel, the waters in which the fisheries takes place, the port where the vessel docks or where the catch is landed, from a jurisdictional perspective, fisheries crimes is important when it comes to law enforcement efforts. Moreover, ranshipment of marine resources, illegal fishing, corruption, money laundering, document, tax and custom fraud are also might engage the criminals in fisheries.⁶⁴

Based on the UNODC documents about fisheries crime, the coordinated criminal law enforcement response against fisheries crime is often lacking due to the insufficient attention by the international community which is because it is not precisely well understood as a crime. Those who both commit predicate offences on the water and those who profit from such transnational organised criminal activities should be more focused by ensuring their activities cease, their assets seized, their paid taxes, and the suitable stringent penalties they’re imposed.⁶⁵

1.5.1. Money Laundering

Teale N mentioned about IUU fishers will often adopt businesslike structures for their operations and even systematically violating the law because they keep pursuing on the profit. Thus, IUU fishers employ a range of laundering strategies by using front companies and other various business practices to hide

⁶³ Ibid.

⁶⁴ UNDOC, Fisheries Crimes, https://www.unodc.org/documents/about-unodc/Campaigns/Fisheries/focus_sheet_PRINT.pdf.

⁶⁵ Ibid.

their income or profits and facilitates their illegal activities such as illicit catches, smuggling drugs or even people.

Ranging from criminal fishing to tax crimes, money laundering, corruption, document fraud, and trafficking in persons, drugs and arms, fisheries crime undoubtedly has significant damaging effects on ecological, social and economical. It could deplete valuable fish stocks which also threatens the long-term marine sustainability and food security, and while illegal operators benefit from a competitive advantage, they might also push law-abiding businesses out of the market.⁶⁶

The key elements of fisheries crime are corruption and other financial crimes, such as large-scale tax evasion and money-laundering. Thus, to identify those who profit from fisheries crime, financial investigation is needed. But the detailed data about this crime is still limited and in its infancy. And also, there are just a few illustrative examples such as avoidance of import duty by disguising the origin of the fish concerned as one method of tax evasion in the fishing sector.

To improve intelligence-led domestic and cross-border cooperative law enforcement efforts against fisheries crime, there are the Global Programme for Combating Wildlife and Forest Crime, the Maritime Crime Programme, the Global Programme on Money Laundering and the Container Control Programme which can enhance their information with INTERPOL (with its Fisheries Crime Working Group), OECD (tax offences) and FAO (legal reform).⁶⁷

Money laundering in the fishing industry goes on many stages where illicit funds can be invested in infrastructure or in operations and even in the cash sales of fish at port which are harder to trace because the crew members can likewise be paid in cash. As fisheries crime can be included as environmental crimes, it is also engaged as the third most common predicate of money laundering in the Pacific which were found on The Solomon Island's 2008 report on Financial Crime & Money Laundering Risk Assessment.

⁶⁶ UNDOC, Fisheries Crimes, https://www.unodc.org/documents/about-unodc/Campaigns/Fisheries/focus_sheet_PRINT.pdf.

⁶⁷ Ibid

1.5.2. Corruptions

Cathy A Roheim (2008) wrote that inadequate national laws or insufficient funds for implementation is one of many factors which facilitate the pervasive nature of IUU fishing more often. The other factors which happen in many cases are the weak port state controls, weak trade measures and costly technology. In IUU fisheries or in the supply chain for IUU fish, there is also found bribery and corruption which done when government officials to be forged or altered in order to allow entry of illegally-caught product as the contrary and smuggled it by bribing the officials.

Cathy mentioned that there is supply chain management, through catch and trade documentation schemes and trade-related measures, under the regional fisheries management organisations (RFMOs). This approach has stated that due to high costs of surveillance, inadequate laws or weak enforcement against corruption is easily happening.⁶⁸ Teale N (2015), stated that the misuse of public office or the abuse of power for private gain, and crimes relating to embezzlement and fraud, nepotism, bribery, extortion and influence peddling is defined as corruption.⁶⁹ She also note that the exerting power over low level officials is often means as bribery. It can be easily found when IUU fishers seeking license or port willing to allow them to offload their illicit catches.⁷⁰

Teale also mentioned that those kinds of corruption and bribing are widespread so it can be seen from every stage of IUU fishing supply chain. Either to obtain fishing licenses or to overlook fishing in the absence of a license, some officials need to be bribed, for example the 301 charges of bribery of fisheries inspectors in the South Africa-based fishing company Hout Bay Fishing Industries. Below are the lists of the costs and harms of corruption written by Jay Albanese:⁷¹

1. Undermines democracy and good governance,

⁶⁸ Cathy A. Roheim (2008), Op.Cit., pg. 2-3.

⁶⁹ Teale N. Phelps Bondaroff, Wietse van der Werf, Tuesday Reitano, (2015), Op.Cit, pg. 50.

⁷⁰ Teale N. Phelps Bondaroff, Wietse van der Werf, Tuesday Reitano, (2015), Op.Cit., pg. 41.

⁷¹ Teale N. Phelps Bondaroff, Wietse van der Werf, Tuesday Reitano, (2015), Op.Cit., pg. 50.

2. Causes unequal provision of public services,
3. Subverts the rule of law,
4. Erodes government institutional capacity,
5. Undermines economic development,
6. Increases the cost of private business,
7. Undermines the legitimacy of government.

As a mitigator of organised crime, corruption is intertwined with other types such as smuggling and human trafficking, and the same when it is carried out in the fisheries sector. By doing corruption in this sector, they may enable many things. Starting from smuggling of illegal cargo, illicitly caught fish and even trafficking in persons. It also meddles with the origin of the flag used in a ship. Some criminals might exploit the unwillingness or inability of the States where ships are registered in exercising their criminal jurisdiction over the vessels when the latter engage in fisheries crime.⁷²

Based on UNODC, particularly less developed and unstable countries are easily affected when the criminals in fisheries crime are perpetuating its weak institutions, government functions and its lack of culture of transparency. These are not small effects but great effects in impacting food security, poverty levels and the financing of long-term development. Frauds on taxes on profit or earnings, customs duties, VAT and social security are also mentioned as the widespread vulnerability to tax crime in the fisheries sector.⁷³

Many African and Asian coastal states have criminalised illegal fishing within their EEZ in order to more effectively prosecute fisheries crime and also another related sector such as corruption, money-laundering and document fraud. By focusing on targeting the key individuals who are the real beneficiaries of those criminal activities, cooperative law enforcement efforts must be enhanced to address fisheries crime in all its various-related sectors.⁷⁴

⁷² UNODC, Fisheries Crimes, https://www.unodc.org/documents/about-unodc/Campaigns/Fisheries/focus_sheet_PRINT.pdf.

⁷³ Ibid.

⁷⁴ Ibid.

Law enforcement need to adopt an integrated approach to fisheries crime by targeting diverse crime types in the fishing industry such as illegal fishing, corruption, custom fraud, trafficking, forced labor, hijacking and piracy so that it can also avoid the tunnel vision initiatives. Because of the many violations which will only be detected at ports, border crossings, or in the review as the part of international trade, the evidence most likely can be seen by representatives of customs, health and other border agencies that are not usually familiar with the nature and modus operandi of fisheries crime.⁷⁵

Appears as a contributing factors of fisheries crime, corruption cited took several forms, affected different countries in many different ways and must be taken into account in any course of action.⁷⁶

There are three forms of corruption. As a significant issue for all types of law enforcement in many countries where pay is low and/or sporadic and personnel are poorly trained and equipped for their jobs, there's bribery of field-level law enforcement officers as the first form which may occur unsolicited if a violation has been identified on board a vessel or in a port facility, or it may be solicited by the officer to avoid an inspection altogether. Then the second form is the issuance of fishing licenses which may occur at middle or high levels of fisheries authorities. Due to the lack of transparency of license lists in most countries, it's hard to evaluate the possible results in the issuance of more fishing licenses than are sustainable for certain waters.⁷⁷ The last form pertains to investigations and fines for illegal activities under the purview of fisheries administrations. The forms of corruption alleged are merely facets of universal corruption which affects all regions and all levels of society and also undermines political, social and economic stability and may be closely linked to organized criminal activities.⁷⁸

⁷⁵ INTERPOL Environmental Security Sub-Directorate (ENS), Project Scale : Study On Fisheries Crime In The West African Coastal Region, September 2014, pg. 9-10.

⁷⁶ INTERPOL Environmental Security Sub-Directorate (ENS), Project Scale : Study On Fisheries Crime In The West African Coastal Region, September 2014, pg. 25.

⁷⁷ Ibid.

⁷⁸ INTERPOL Environmental Security Sub-Directorate (ENS), 2014, Op.Cit., pg. 26.

In order to prevent and combat IUU fishing, Indonesia established a Task Force in 2014. Since that year, there are 96 IUU fishing vessels sunk by Indonesia. Then, an official ‘analysis and Evaluation’ (aNEV) of ex-foreign fishing vessel was undertaken to crack down on illegal activity in 2015 which discovered 769 of the ex-foreign vessels had engaged in a serious violation and 363 an average violation; and also 15 business-, 245 fishing-, and 31 reefer licences were revoked and 35 fishing- and 26 reefer licenses were suspended and still others received warnings. Indonesia must have a better understanding to eliminate the patterns of illegal activity such as employment of foreign crews, flag hopping of vessels, smuggling of gas, forced labour, and deactivation of VMS. The current law enforcement agencies in Indonesia, police, navy, maritime and fisheries ministry, are still lacking on the coordination and the ability to detect, respond and to punish which furthermore getting harder because of the corruption within the bureaucratic and judiciary systems.⁷⁹

That is important for the Indonesian authorities to take a multidisciplinary legal or multi-door approach because of the broad activities involved such as overfishing, tax fraud, money laundering, forced labour, human trafficking and human smuggling.⁸⁰

1.5.3. Tax Crime

In West Africa, fisheries crime has a component called customs fraud which impacts tax revenues, enables illegal fishing, and poses a risk to public health. The custom regulations generally requires country of origin and customs commodity

⁷⁹ Stop Illegal Fishing and PescaDOLUS (2016): Record of The First International Symposium on FishCRIME. Stop Illegal Fishing: Gaborone, Botswana, Printed by the Norwegian Ministry of Trade, Industry and Fishing: Oslo, Norway (Record of The First International Symposium on FishCRIME, Cape Town International Convention Centre, South Africa, 12th to 13th October 2015). Prepared by Mirabel Bausinger, Shannon Cosentino-Roush, Sandy Davies, Sally Frankcom, Kosakosa Mukosa, Mark Ssemakula all of Stop Illegal Fishing and Emma Witbooi of PescaDOLUS. All photographs by Per Erik Bergh unless otherwise noted, pg. 20.

⁸⁰ Ibid.

code, which are vital to determine the applicable import tariffs, import regimes and the application of food hygiene regulations, and also the details of the exporter, importer and value. To make sure that all applicable national laws and regulations are being followed, the governments need to determine which agencies may need to review or inspect the shipment. The manipulation of the declaration may help obfuscate illegal fishing by listing a different species that has a less regulated status or listing contents as an entirely non-fish related product. While the accuracy of the declaration may impact the amount of revenue that governments collect through tariffs. The manipulation in the customs system may pose risks to human health, because they may result in consignments not being properly inspected or reviewed by health inspectors in consumer markets. These two types of fraud may both use false customs and health documentation to disguise the country of origin or the real identity and flag of the vessel that caught the fish which are often accompanied by misleading labelling on the packaging of the import, or an outer wrapper that shows a false species declaration and an inner label that is accurate.⁸¹

Because of the use of mothership and illegal transshipment evade typical border controls that would allow national authorities to ensure compliance with fishery, tax and health organisations, then it also constitute as a type of custom fraud. So, it is important to highlight that the modus operandi of transshipment is intentionally designed to avoid oversight from competent authorities in the coastal state in addition to being a frequently more cost-effective way of conducting fishing operations. To define activities that may be violations of custom laws, this kind of single reefer which might receive shipments from vessels operating in several coastal states without any of those coastal states being aware of the fishing operations, especially in a region with severely limited patrol and investigative capacity, requires extensive cooperation between law enforcement.⁸²

There is a partnership of international organizations cooperating to prevent the illegal trade in environmentally-sensitive commodities such as toxic chemical

⁸¹ INTERPOL Environmental Security Sub-Directorate (ENS), 2014, Op.Cit., pg. 26.

⁸² INTERPOL Environmental Security Sub-Directorate (ENS), 2014, Op.Cit., pg. 27.

products, hazardous wastes and endangered species called as The Green Customs Initiative which is designed complement and enhance existing customs training efforts under the respective agreements. To enhance the capacity of customs and border protection personnel to detect and prevent illegal trade in environmentally-sensitive commodities covered by the relevant conventions and multilateral environmental agreements (MEAs) is the objective of this initiatives.⁸³

There are some species threatened with extinction and mostly international trade prohibited in Appendix I and some species which 'may become threatened with extinction trade' is not controlled' in Appendix II of CITES.⁸⁴ Legal fishers may also seek to increase profits by engaging in a range of sometimes highly sophisticated tax crimes.⁸⁵

Tax Crime in the Fisheries Sector report lists practices such as the evasion of import and export duties on fish and fish products transported across national borders, fraudulent claims for value-added tax (VAT) repayments, failure to account for income tax on the profits from fishing activity, evasion of income tax and social security contributions and false claims for social security benefits by fishers and their families.⁸⁶

Other tax evasion practices included the use of front companies in multiple jurisdictions and with untraceable ownership structures. Some commercial registries offer 'package deals' to vessel owners which reported by OECD.⁸⁷ The process involves the false registering owner for instance bearer by another company. It is incredibly difficult for law enforcement to trace or identify the actual owners of a vessel engaged in IUU fishing.

Underreporting or misreporting catches allows fishers to evade import duties and taxes on their profit and can also serve as a mean of evading taxes as much as it also evade quotas and other regulations. There is a method used to

⁸³ INTERPOL Environmental Security Sub-Directorate (ENS), 2014, Op.Cit., pg. 34.

⁸⁴ Ibid.

⁸⁵ Teale N. Phelps Bondaroff, Wietse van der Werf, Tuesday Reitano, (2015), Op.Cit., pg.28.

⁸⁶ Ibid.

⁸⁷ Ibid.

reduce the recorded value of sales called as re-invoicing and there;s another method when all of the paperwork will suggest that the fish or fish products are being sold to what is in fact an intermediary located in an offshore jurisdiction at a discount to their real value.⁸⁸

While the majority of the profit of fraud sill be retained offshore, there’s still a small profit arised in th eefishing company book. To reduce taxes, their’s also a simple method such as inaccurately describing products.⁸⁹ The Green Customs Initiative further supports international efforts to detect, deter and counter the illegal trade in illicit marine products by developing a guidebook to MEAs and conducts national, regional and sub-regional workshops and also by informing customs and border patrol officers on the legal restrictions and requirements for importation of CITES regulated marine species.⁹⁰

1.6. ASEAN Legal Framework on Fish Laundry

ASEAN Member States (AMS) has requested SEAFDEC, since 2011, to come-up with the guidelines to prevent the entry of fish and fishery products, in order to combat IUU fishing. Based on the circumstances surrounding fishery and trading industry in the each country, the implementation for those guidelines is different. So, in order to ensure the formulating effective and practical national plans, the appropriate strategies and measures of this Guidelines should be introduced and promoted more.⁹¹

In regards, some AMS are still facing some of these difficulties:

- The lack necessary legal framework for implementation of some part of the Guidelines.
- Without legal framework, the country is lacking enforcement power.

⁸⁸ Ibid.

⁸⁹ Ibid

⁹⁰ INTERPOL Environmental Security Sub-Directorate (ENS), 2014, Op.Cit., pg. 34.

⁹¹ The Stakeholders Consultation on Regional Cooperation in Sustainable Fisheries Development Towards the ASEAN Economic Community: 1-2 March 2016 Bangkok Hotel Lotus Sukhumvit, Thailand, pg. 10.

- The lack of technical guidance and assistance or lack of human/financial resources to follow the statement of the Guidelines such as monitor fishing/trading activities covered in a very wide range of activities.
- Unawareness of the benefits and advantages of having traceability system in their operations by the stakeholders who averse to change and are reluctant implement traceability system.

SEAFDEC guidelines would take into consideration the relevant international trade-related measures that prohibit the marketing of fish and fish products derived through unsustainable means and from unsustainable sources to prevent the entry of fish and fishery products from IUU fishing activities into the supply chain of the inter- and intra-regional as well as international fishery trade system. In this regard, SEAFDEC/MFRDMD in cooperation with the Secretariat had conducted series of consultative meetings involving all SEAFDEC Member Countries especially with Singapore as the ASEAN Lead Country of the program, experts from national and regional organizations to identify issues of IUU fishing activities that occur in the Southeast Asian waters. Thus, for the more advanced progress of the ASEAN Guidelines, the AMSs have been intensified to:

1. Manage Fishing Activities within a Country,
2. Regulate Transshipment and Landing of Fish / Catch across Borders,
3. Prevent Poaching in the EEZs of Other Countries,
4. Control Illegal Fishing and Trading Practices of Live Reef Food Fish (LRFF), Reef-based Ornamentals and Endangered Aquatic Species, and
5. Strengthen the Management of Fishing in the High Seas and RFMO Areas.⁹²

The goals of the Guidelines is intended to provide tools for the ASEAN Member States (AMSs) to ensure that fish and fishery products from the region

⁹² Asean Guidelines For Preventing The Entry Of Fish And Fishery Products From Iuu Fishing Activities Into The Supply Chain, ISBN 978-983-9114-65-2, SEAFDEC/MFRDMD/SP/29, The preparation of this document is supported by the Japanese Trust Fund to SEAFDEC, 2015, Southeast Asian Fisheries Development Center Marine Fishery Resources Development And Management Department Taman Perikanan Chendering, 21080 Kuala Terengganu.

entering the global supply chain do not come from IUU fishing activities and also to enhance the credibility of the region's fish and fishery products. While the specific objectives of the Guidelines are:⁹³

- a. To introduce strategies and recommend appropriate measures for the AMSs to prevent the entry of IUU fish and fishery products into the supply chain;⁹⁴
- b. To provide guidance for the AMSs to develop, strengthen and implement effective fisheries management for responsible and sustainable fisheries; and⁹⁵
- c. To promote regional collaboration among the AMSs in strengthening monitoring, control and surveillance systems of fish and fishery products entering in the supply chain.

The goal and objectives could be achieved through the promotion of good fisheries governance with the active participation of all stakeholders in decision-making processes and assuming the responsibilities for sustainable use of fishery resources, and an appropriate catch documentation scheme in place.⁹⁶ The Guidelines is applicable to all marine and inland catch of small-scale/artisanal and large-scale/commercial fisheries, and is intended to be regional and international in scope but with specific focus on the needs of the AMSs.⁹⁷ Voluntary and non-legally binding in nature, the Guidelines provides guidance for the AMSs to strengthen their national efforts in preventing the entry of IUU fish and fishery products into the supply chain.⁹⁸ The Guidelines is directed to the AMSs, sub-regional, regional and international organizations, as well as inter-governmental organizations (IGOs). The Guidelines would also be useful for research and academic institutions, private sector, nongovernmental organizations (NGOs), and

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ ASEAN Guidelines For Preventing The Entry Of Fish And Fishery Products From IUU Fishing Activities Into The Supply Chain, ISBN 978-983-9114-65-2, SEAFDEC/MFRDMD/SP/29.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Ibid.

other stakeholders.⁹⁹ The Guidelines takes into consideration many forms of illegal, unreported and unregulated (IUU) fishing that occur in the Southeast Asian region, such as illegal fishing activities within a country; unauthorized transshipment and landing of fish/catch across borders; poaching in the EEZs of other countries; illegal fishing and trading practices of live reef food fish, reef-based ornamentals, and endangered aquatic species; and IUU fishing in the high seas and RFMO areas.¹⁰⁰

⁹⁹Ibid.

¹⁰⁰ Ibid

CHAPTER III

The implementation of trade regulations on fisheries in preventing fish laundry in Indonesia

1. Implementation Legal and Institutional Frameworks of trade regulations on fisheries

1.1. Legal Frameworks : Fisheries Trade Regulations

The trade sector is very vulnerable to crime. The process of production, distribution and marketing can be targets of crime. Crimes that often happened in fisheries' products are the crimes that 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 fishing¹. The IPOA-IUU Fishing explain many things about IUU fishing activities and international fisheries 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 affect the system of export and import of fish in a country.

Indonesia, as the country of law, will certainly implement the IPOA-IUU fishing associated with international law. Through several decisions by the Minister of Marine and Fisheries, the IPOA-IUU fishing is adopted and implemented. The system similarity in many countries will facilitate exporters and importers of fishery. IPOA-IUU fishing is important because Indonesia have sea which is vast and rich but particularly vulnerable of transnational crimes related to

¹ FAO Corporate Document Repository . "IPOA- International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing"<<http://www.fao.org/docrep/003/y1224e/y1224e00.htm>>, diakses 28 Agustus 2016.

fishery such as theft, forgery of documents and many else. Indonesia has adopted and implemented the European Commission Regulation No. 1005/2008 of the Catch Certification Scheme. Security working group (SHTI) will be established through Ministerial Decree No. KEP.46/MEN/2009. Indonesia also conducted socialization, training and application of the relevant parties in 22 Indonesian ports. The result is an action plan implementation of "trade information scheme" (tuna trading), CITES (rare species of fish trading), and Certificate of Origin to get Export Exit Permit and Catch Certificate (SHTI)². Indonesian trade regulations included in export, import, distribution and marketing must conform to the regulations³. In addition, Indonesia also has a padded guard from Customs, BKIPM, Department of CTF and more. All these actions are expected to complicate the range of crimes in IUU fishing which is growing in Indonesia. But it is unfortunate that Indonesia indicated as the place of fish laundering from the result of IUU fishing from other countries or called as fish laundry.

1.1.1. Regulation of Fisheries Import

Import means the activities of the entry of goods into the customs area of the Republic of Indonesia⁴. In this case, the incoming goods are fish. Each item has a different treatment according to the regulation of imports so that the import can be processed quickly and secure so that the regulation was efficiently designed from the requirements document, shipping, fisheries inspection of documents and physical goods, reporting the realization of activities to monitoring the marketing of fishery products. The entry of goods into the territory of Indonesia through several categories of paths are provided, named by the red line, green line, priority line, priority partner line and VVIP line. An overview on this track is that some kind of stuffs, the track records of the company and the brands

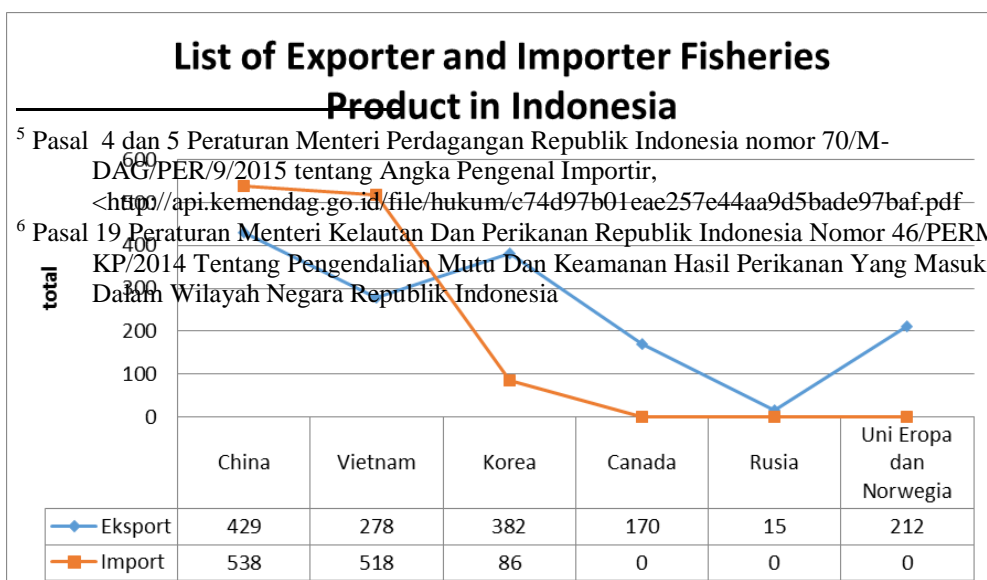
² Keputusan Menteri Kelautan Dan Perikanan Republik Indonesia Nomor KEP.50/MEN/2012 Tentang Rencana Aksi Nasional Pencegahan Dan Penanggulangan Illegal, Unreported, And Unregulated Fishing Tahun 2012-2016.

³ Pasal 1 Peraturan Menteri Kelautan Dan Perikanan Republik Indonesia Nomor PER.19/MEN/2010 Tentang Pengendalian Sistem Jaminan Mutu Dan Keamanan Hasil Perikanan.

⁴ Undang-Undang No. 17 Tahun 2006

determine the path and requirements which must be completed. Fishery products typically enter through the red and green lines because of the high risk.

In order to maintain the quality control and the security of fish revenues, Indonesia has made Regulation of the Minister of Marine and Fisheries of the Republic of Indonesia Number 46 / PERMEN-KP / 2014 about Quality Control and Safety of Fishery product which come into Indonesian Territory. In article 3, 4 and 5 described actor who can legally enter the fishery and the destination of imported fish. Fish that fed into Indonesian territory carried out by importers who have API-P (Importer Identification Number or Angka Pengenal Impotitir Produsen), API-U (General Importer Identification Number or Angka Pengenal Importir Umum) and representatives of countries. Fish imported by importers will be used for their respective purposes. API-P is importing fish for the purpose of production as raw material or supplementary material. API-U is importing goods for the purpose of being re-import⁵. Imported fish is not arbitrary approved. Destination entry of fishery products must have a goal set by the government of Indonesia, which is the raw material for UPI that will be auctioned, re-exported, **pemindangan**, fortified / enrichment of the certain foods and of course consumption in restaurants, hotels, modern market. While fish from neighboring countries can be used also for the promotion of sea in Indonesia. When the fishery products shipped to the destination, then the importers may apply for import with the requirements. The imported fish allowed entry without Entry Permit Fishery Products is only 25 kg or reach the greatest value of Rp. 1.500.000,00⁶. Once all requirements have been passed, the next stage is the departure of the fish to the sea port, airport, and border controls.



Diolah dari <http://www.bkipm.kkp.go.id/bkipmnew/upi>

After the fishery products are entering the customs area of Indonesia, those products will be immediately inspected by quarantine officers. Examination is carried out on physical documents and fishery products, whether the whole document requirements have been completed according goods carried. Finished with examination, soon will be published an Expenditure Approval Letter Carrier of Points of Entry (Surat Persetujuan Pengeluaran Media Pembawa) or destruction of the fishery when it found an error in the examination⁷. When successfully obtained the approval letter, the fishery products soon will be delivered and used

⁷ Pasal 20 ayat 1-4 Peraturan Menteri Kelautan Dan Perikanan Republik Indonesia Nomor 46/PERMEN-KP/2014 Tentang Pengendalian Mutu Dan Keamanan Hasil Perikanan Yang Masuk Ke Dalam Wilayah Negara Republik Indonesia.

in accordance with the original purpose. But the task is not over because the importers have to report the import realization to the Director General and Head of the Agency with a copy of the Provincial Office. If this report is not collected, then they will be given a sanction in the form of written warnings, freezing up to revocation Entry Permit Fishery Products. Warning valid for a period of seven days. If document has not completed, the penalties increase to freezing Fishery Products Importation Permit for a month. The heaviest sanction is revocation of license if up to one month of the license suspension someone does not collect reports realization. In addition, to ensure imported fish used in accordance with article 4, then there is a supervisor in charge of overseeing the results of imported fish market⁸.

The entry of IUU fishing proves that the existing regulations are still weak. Many UPI Indonesia imported fish from Thailand and the Philippines who have been convicted of illegal fishing in Indonesian's sea⁹. Its also leads to the weakness of the regulatory system which cannot prevent imports of fishery in IUU fishing. By viewing the checking performance of quarantine officer, it is very susceptible to falsification of documents for the validity of the document which is made only by a certificate from their home country. Although there has been coordination with the government of the country of origin through certificate of origin (CoO) sample but there is a possibility that the certificate can be forged by importers or agents of the state of origin who were less selective. With the advancement in printing technology, it is possible to do forgery. Meanwhile, Indonesia quarantine officer checks documents only at a day and for the creation of good service course examination conducted by the process as soon as possible. Even for the sake of ease of service for importers and exporters of the Government of Indonesia to follow up with the Minister of Marine and Fisheries

⁸ Pasal 21 ayat 1 dan 2, pasal 22 ayat 1-4, pasal 23 1 dan 2 Peraturan Menteri Kelautan Dan Perikanan Republik Indonesia Nomor 46/PERMEN-KP/2014 Tentang Pengendalian Mutu Dan Keamanan Hasil Perikanan Yang Masuk Ke Dalam Wilayah Negara Republik Indonesia

⁹ CNN Indonesia, Lawan Fish Laundering, Menteri Susi dapat Dukungan Asosiasi, Kamis, 18/06/2015 15:53, <<http://m.cnnindonesia.com/ekonomi/20150618155318-92-60890/lawan-fish-laundering-menteri-susi-dapat-dukkungan-asosiasi/>>

No. KEP.76 / MEN / 2008 on the Implementation of Electronic System in respect to Indonesia National Single Window (INSW) in the Ministry of Maritime Affairs and Fisheries. INSW are simply the electronic system that helps the process of entry and inspection of documents to become easier. For the importers and the clerk does not have to come face to face directly then they was specifically designed the Standard Operating Procedures (POS) and Service Level Arrangement (SLA). INSW is highly efficient but there is a gap that becomes an opportunity of documents falsification. In the event of a violation, there will be subject who got sanctions in the form of a temporary restraining Letter (KI-D4), rejection letter (KI-D5), Letter of extermination (KI-D7) to Letter Carrier expense approvals from the entry point (KI-D15)¹⁰.

1.1.2. Regulation of Fisheries Export

The influence of EU regulations is very influential on Indonesian export regulations. After the EU declares war against IUU fishing by tightening the regulations, it was also affecting WTO agreements and RFMOs¹¹. So that the State of Indonesia as an exporter of fishery products to the EU must abide by these rules. Based on the European Council (EC) Regulation No. 1005/2008 of 29 September 2008 establishing a Community System to Prevent, Deter and Eliminate Illegal, unreported and unregulated fishing then passed Regulation the Minister of Marine and Fisheries of the Republic of Indonesia Number PER.13 / MEN / 2012 on Catch Certifications.

Catch Certifications be important to have as proof of fishery products free from activities Illegal, Unreported, and Unregulated (IUU) Fishing. Additionally, Catch Certifications aims to facilitate trade activities of fish through a good way to avoid the crime and safeguarding natural resources. Catch Certifications loaded in the initial sheet that contains data contains information of fish catches. Catch

¹⁰ Keputusan Menteri Kelautan Dan Perikanan Republik Indonesia Nomor KEP.50/MEN/2012 Tentang Rencana Aksi Nasional Pencegahan Dan Penanggulangan Illegal, Unreported, And Unregulated Fishing Tahun 2012-2016.

¹¹ Keputusan Menteri Kelautan Dan Perikanan Republik Indonesia Nomor KEP.50/MEN/2012 Tentang Rencana Aksi Nasional Pencegahan Dan Penanggulangan Illegal, Unreported, And Unregulated Fishing Tahun 2012-2016.

Certifications -sheet derivative contains the same information as the documents accompanying the fishery products are marketed to the European Union. Catch Certifications - simplified sheet issued to catch fish from the fishing vessel sizes up to 20 (twenty) GT. On the import sheet describes fish raw material originating from other countries recorded on Catch Certificate to the European Union. Catch Certifications also include the Certificate of Fish Debarkation that strengthens the catch is not the result of IUU fishing¹². The competent authority for issuing Catch Certifications can be done by a fishing port which is a Ministry Fisheries Technical Unit.¹³

1.2. Institutionals Frameworks

1.2.1. BKPIM

The Indonesian government through Presidential Regulation No. 24¹⁴ of 2010 established the Agency for Fish Quarantine, Quality Control and Safety of Fishery Products¹⁵ or Badan Karantina Ikan, pengendali Mutu dan Keamanan Hasil Perikanan (BKIMP). The current international trade governed by the WTO, which places great emphasis on the free market. This puts pressure on its own for domestic trade. The traders should be able to compete and comply with international regulations. One that should be applied is that the quality of products, especially agriculture and fisheries. Therefore, quarantine and food safety system into demands that must be met in order for the goods to be exported. Government through legislation, the decision of the ministry continues to encourage exporters and importers to be able to compete by applying strict regulation. In addition the state is required to eliminate the obstacles that make the trade system of old. Then be made to the electronic system within the framework

¹² Pasal 2 dan 4 Peraturan Menteri Kelautan Dan Perikanan Republik Indonesia Nomor PER.13/MEN/2012 TENTANG Sertifikasi Hasil Tangkapan Ikan

¹³ Pasal 2 ayat 1 Peraturan Menteri Kelautan Dan Perikanan Republik Indonesia Nomor PER.32/MEN/2012 Tentang Jenis, Penerbitan, Dan Bentuk Dokumen Tindakan Karantina Ikan

¹⁴ Pasal 364 dan 365, Peraturan Presiden Republik Indonesia Nomor 24 Tahun 2010 Tentang Kedudukan, Tugas, Dan Fungsi Kementerian Negara Serta Susunan Organisasi, Tugas, Dan Fungsi Eselon I Kementerian Negara.

¹⁵ <http://www.bkipm.kkp.go.id/bkipmnew/profil>

of the National Single Window (NSW) and the Agency Formation of Fish Quarantine and Quality Control and Safety of Fishery. Other countries also formed the same institution as Australia: AQIS (Australian Quarantine Inspection Service), Korea: NFIS (National Fisheries Products Inspection Service), China: AQSIQ (Administration of Quality Supervision Inspection and Quarantine).

1.2.2. Customs Office

Along with the development of transportation technology, including humans increasingly facilitated in obtaining the necessities of life. Trade between countries is made easy by means of sea transport, air and land. The dividing line between countries is fading with the free market. A country is extremely necessary to maintain sovereignty of any goods in and out. regulation is needed to regulate and supervise the export and import. Based on the Law of the Republic of Indonesia Number 17 2006 article 1, the custom is everything related to the monitoring of the lintasbarang yangmasuk and exit the area pabean and collection of import duties and export duties. Customs area is an area that still makes the sovereignty of Indonesia such as land, water and the space air¹⁶. However, items that are not allowed through illegal entrance.

The first function is to protect the public from dangerous goods. Often there are hazardous goods which can cause harm to consumers. In the fishery vulnerable to the darting fish that are not worth eating or infectious diseases to humans. Before the goods are released there will be a physical examination as well as the health of the food product. Second, to protect the domestic industry from any unfair competition. Incoming goods will ditanyakan purpose, for example fishery products. Imports are allowed to membanguin domestic economy. Third carry out the task entrusted to other agencies. Based on interviews Source: <http://www.bkipm.kkp.go.id/bkipmnew/upi> that the rules made the customs of many surrogate such as the TNI, POLICE, Ministry of Home Affairs and others. Last function taking contributions from exports and

¹⁶ Pasal 1 ayat 2 Undang-Undang Republik Indonesia Nomor 17 Tahun 2006 Tentang Perubahan Atas Undang-Undang Nomor 10 Tahun 1995 Tentang Kepabeanan.

imports for state benefits. DJBC role increasingly extends to the economy, which claims to provide services to the general public characterized save time, save cost, safety and simple. This service is based on the experience that the revenue collection and law enforcement that dominant made goods obstructed, causing High Cost Economy and the price of goods to be expensive in the market.

Directorate General of Customs and Excise is responsible to the Minister of Finance and chaired by the Director General of Customs and Excise. Directorate General of Customs and Excise has the task of organizing the formulation and implementation of policies in the field of monitoring, enforcement, service and revenue optimization countries in the field of customs and excise in accordance with the provisions of the legislation¹⁷.

1.2.3. INSW

The Indonesian National Single Window (INSW) is Indonesia's national system that allows a single submission of data and information, single and synchronous processing of data and information, and the creation of single decision-making for custom release and clearance of cargoes.¹⁸

The urgency of the establishment of INSW involves some aspects relating to economics, law, politics, and socio-culture. Regarding economics, INSW has been designed based on the efficiency principle to reduce the high cost economy of trade, specifically transaction costs. Relating to the legal aspects, INSW is expected to be able to provide legal certainty on providing services for cross-border trade procedures. To guarantee legal certainty the proper implementation of good governance principles within INSW is needed. The adherence of good governance principles is most likely to eradicate corruption. INSW is also regarded as the reform of public services on foreign trade services.¹⁹

¹⁷ <http://www.beacukai.go.id/>

¹⁸ Article 1 paragraph 2 President Regulation No. 10/2008 (dalam Ika Riswanti Putranti, 2016. *The European Union's Generalised System of Preferences : A Better Trade Facilitation for Beneficiary Country?*, European Press Academic Publishing Florence, Italy, pg. 669-672).

¹⁹ INSW Preparation Team, *Indonesia National Single Window*, Submitted by : Indonesia, 2009/SCCP/SWWG/WKSP4/016, Asia-Pacific Economic Cooperation, Single Window Working Group Capacity, Building Workshop 4 Singapore 6-8 April 2009 (dalam Ika

From the political aspect, INSW plays a strategic (important) role for Indonesian economic operators, especially for those whose are located faraway from the public service facilities. Politically, implementation of INSW brings the public service closer to people. It also delivers public service equally to the people. In this regard, the portal of INSW is expected to be an effective media to deliver information related to cross border trade to stakeholders and economic operators.²⁰ The INSW Portal is defined as a system that performs the integration of information related to the handling of customs documents and expenditures, which ensures data security and information also integrating information flow and processes between internal systems automatically, which includes the system of customs, licensing, ports/airports, and other systems related to the handling of customs clearance documents and the release of goods.²¹

With regard to the socio-cultural aspect, it is believed that INSW can change government agencies culture and attitude by migrating manually handled public services into e-trade services. ICT application in the INSW minimises bribery and rent seeking behaviour in the services and licence system of foreign trade.²²

Related to this aspect two theories prevail. The first theory is “*social changes as causes of legal changes*”. Vago writes that the law could respond to social changes over decades or even centuries. He takes an example from the industrial revolution, where changes induced by the invention of the steam engine or the advent of electricity were gradual enough to make legal responses valid for a generation. In terms of INSW, the establishment of the INSW regime is

Riswanti Putranti, 2016. *The European Union’s Generalised System of Preferences : A Better Trade Facilitation for Beneficiary Country?*, European Press Academic Publishing Florence, Italy, pg. 669-672).

²⁰See *Ibid.*

²¹ See Article 1 paragraph 3 President Regulation No. 10/2008 (dalam Ika Riswanti Putranti, 2016. *The European Union’s Generalised System of Preferences : A Better Trade Facilitation for Beneficiary Country?*, European Press Academic Publishing Florence, Italy, pg. 669-676)

²²See INSW Preparation Team (dalam Ika Riswanti Putranti, 2016. *The European Union’s Generalised System of Preferences : A Better Trade Facilitation for Beneficiary Country?*, European Press Academic Publishing Florence, Italy, pg. 669-676)

analogous to making social changes in the bureaucracy attitudes that tend to corrupt.²³

In the words of Loth and Ernst “[...] *technological changes leading to legal changes abound [...]*”.²⁴ According to Vago “[...] *many sociologists and legal scholars argue that technology is one of the great moving forces for change in law [...]*”.²⁵ Thus Miller notes that law is influenced by technology in at least three ways:²⁶

“[...] the most obvious is technology’s contribution to the refinement of the legal technique by providing instruments to be used in applying law. A second, no less significant, is technology’s effect on the process of formulating and applying law as a result of the changes technology fosters in the social and intellectual climate in which the legal process is executed. Finally, technology affects the substance of law by presenting new problems and new conditions with which law must deal [...] (Stove, quoted by Miller, 1979:14)”.

The implementation of INSW is considered as part of public service reform by migrating manually handled services into automation services using ICT. The development of ICT has transformed information society and its demanding changes on public service delivery. Therefore, the establishment of acts on e-government would be very urgent in the near future. Quoted from Vago, “[...] *change in law may be induced by a voluntarily and gradual shift in community value and attitudes [...]*” and “[...] *change in social conditions, technology,*

²³See Vago, Steven., *Law and Society*, Third Edition, Prentice Hall, Englewood Cliffs, New Jersey, 1991, p. 217 (dalam Ika Riswanti Putranti, 2016. *The European Union’s Generalised System of Preferences : A Better Trade Facilitation for Beneficiary Country?*, European Press Academic Publishing Florence, Italy, pg. 669-676).

²⁴See Loth and Ernst, 1972; Vago, Steven., 1991, *Op. Cit.*, p. 218 (dalam Ika Riswanti Putranti, 2016. *The European Union’s Generalised System of Preferences : A Better Trade Facilitation for Beneficiary Country?*, European Press Academic Publishing Florence, Italy, pg. 669-676).

²⁵See Vago, Steven., 1991, *Loc. Cit.*, p. 218 (dalam Ika Riswanti Putranti, 2016. *The European Union’s Generalised System of Preferences : A Better Trade Facilitation for Beneficiary Country?*, European Press Academic Publishing Florence, Italy, pg. 669-676).

²⁶See Miller, 1979: 4-14; Vago, Steven., 1991, *Loc. Cit.*, p. 218 (dalam Ika Riswanti Putranti, 2016. *The European Union’s Generalised System of Preferences : A Better Trade Facilitation for Beneficiary Country?*, European Press Academic Publishing Florence, Italy, pg. 669-676).

knowledge, values, and attitudes, then, may induce legal change [...]”. In this regard, *“the law is reactive and follows social changes”* and *“changes in law are one of many responses to social change”*. The legal response depends on the political will of the authority and whether it is responsive to meet the demands of social change or not. In addition, the legal response needs a back up from sovereignty to operate its norms effectively. Therefore, a new law in response to a new social or technological problem is expected to provide a solution to those problems.²⁷ In this respect, the INSW regime is the response to the problem of ineffective bureaucracy, low transparency, high cost economy and other related problems in foreign trade procedures.

The second theory places law as a tool of social challenge, which means that enactment and implementation of laws have been used intentionally to induce social changes in society. Since Romans times, major ages of social changes and mobility have usually involved great use of law and of litigation.²⁸ According to Aron, law is an important tools of social change.²⁹

Joel B. Grossman and Mary H. Grossman consider law as a desirable, necessary, and a highly efficient means of inducing change, preferable to other instruments of change.³⁰ While, the famous article, “Law and Social Change”, written by Dror, argues that *“[...] law plays an important indirect role in social change by shaping social institutions, which in turn have a direct impact on society [...]”*.³¹ In this regard, the establishment of the INSW regime is expected

²⁷See Vago, Steven., 1991, *Op. Cit.*, pp. 217-219 (dalam Ika Riswanti Putranti, 2016. The European Union’s Generalised System of Preferences : A Better Trade Facilitation for Beneficiary Country?, European Press Academic Publishing Florence, Italy, pg. 669-676).

²⁸See Vago, Steven., 1991, *Op. Cit.*, p. 219 (dalam Ika Riswanti Putranti, 2016. The European Union’s Generalised System of Preferences : A Better Trade Facilitation for Beneficiary Country?, European Press Academic Publishing Florence, Italy, pg. 669-676)

²⁹See Aron, 1989;85-114; Vago, Steven., Vago, Steven., 1991, *Op. Cit.*, p. 220 (dalam Ika Riswanti Putranti, 2016. The European Union’s Generalised System of Preferences : A Better Trade Facilitation for Beneficiary Country?, European Press Academic Publishing Florence, Italy, pg. 669-676).

³⁰See Joel B. Grossman and Mary H. Grossman, 1972, *Op. Cit.*, p. 2; Vago, Steven., 1991, *Loc. Cit.*, pp. 217-219 (dalam Ika Riswanti Putranti, 2016. The European Union’s Generalised System of Preferences : A Better Trade Facilitation for Beneficiary Country?, European Press Academic Publishing Florence, Italy, pg. 669-676).

³¹See Dror, 1968;673; Vago, Steven., 1991, *Loc. Cit.*, pp. 217-219 (dalam Ika Riswanti Putranti, 2016. The European Union’s Generalised System of Preferences : A Better Trade

to shape trade institutions to boost foreign trade and increase economic growth of society.

The electronic system³² application in the framework of INSW is regulated by President Regulation No. 10/2008 in order to provide legal certainty and protection from any fraud or system irregularities in the electronic procedures of customs and licences related to export and import.³³ This regulation is also used as the guidance for the development and implementation of the INSW system.³⁴ The Regulation states clearly the spirit of establishment of INSW which is designed to enhance national competitiveness, to facilitate trade in the global competition, to guarantee flow of the export-import goods and to reduce transaction costs.

Each National Single Window has its own scheme of line ministries or government agencies involved in the system. Stakeholders in the INSW consist of government agencies and users (economic operators). There are eight government agencies that engage in the INSW, i.e, Ministry of Trade, Food and Drug Agency, Fishery Quarantine, Plant and Animal Quarantine, Ministry of Health, Ministry of Industry, Nuclear Energy Regulatory Agency, and Directorate General of Post and Telecommunication. While economic operators cover all importers, customs brokers and selected exporters. According to the regulation, these stakeholders are also included as the users of INSW.³⁵ The users of INSW would be granted access to the INSW portal.

Facilitation for Beneficiary Country?, European Press Academic Publishing Florence, Italy, pg. 669-676).

³²See According Article 1 paragraph 1 President Regulation No. 10/2008, “[...] electronic system defined as a system to collect, to prepare, to store, to process, to analyze, and to disseminate information electronically [...]” (dalam Ika Riswanti Putranti, 2016. The European Union’s Generalised System of Preferences : A Better Trade Facilitation for Beneficiary Country?, European Press Academic Publishing Florence, Italy, pg. 669-676).

³³ See Article 2 paragraph 2 President Regulation No. 10/2008. See also See Article 3 paragraph 1 President Regulation No. 10/2008. The handling of customs documents and licensing services related to export activities and/or imports carried out through INSW (dalam Ika Riswanti Putranti, 2016. The European Union’s Generalised System of Preferences : A Better Trade Facilitation for Beneficiary Country?, European Press Academic Publishing Florence, Italy, pg. 669-676).

³⁴ See Article 2 paragraph 2 President Regulation No. 10/2008 (dalam Ika Riswanti Putranti, 2016. The European Union’s Generalised System of Preferences : A Better Trade Facilitation for Beneficiary Country?, European Press Academic Publishing Florence, Italy, pg. 669-676).

³⁵ See Article 1 paragraph 10 President Regulation No. 10/2008. The users of INSW covering the government agency that issued licence related to export/import, Directorate General of

In agreement with its purpose to simplify the formalities and procedures on export and import, therefore, INSW has the motto of “consistency, transparency, simplicity, and efficiency”. The features and facilities that are provided by INSW must be able to translate such motto into practice of public services. For that reason, the system of INSW must provide features and facilities, covering:

1. *Tracking and tracing of documents.*
2. *Compatibility with the ASW system.* The communication facility with the ASEAN Single Window (ASW) system.
3. *Network Security.* Related to electronic transactions from/to INSW portal.
4. *Log Audit Trail.* Function to record the details of transaction e.g. uploading, downloading, cancelling, editing, deleting and submitting/transmitting information
5. *Uploading and Downloading.* Function on INSW system and allocated for smart clients to update the regulations and to table references.
6. *Data Extraction, Transformation, Loading.* This facility is used to process the data automatically to records in the database portal.

Audit trails that result from the electronic security process system function as a tracking system towards progress of the process in the INSW.³⁶ Through the audit trail, traders (exporters/importers) can control their document process remotely by using the ICT interface, anytime and anywhere. The electronic data exchange in the INSW is categorised as a legal conduct.³⁷ Therefore, all the processes and procedures of the INSW system have to ensure legal certainty to avoid any legal fraud that might cause losses for the parties concerned.³⁸

Customs, traders (exporters/importers), shipping agencies, and Service Provider of Customs and Clearance (dalam Ika Riswanti Putranti, 2016. *The European Union’s Generalised System of Preferences : A Better Trade Facilitation for Beneficiary Country?*, European Press Academic Publishing Florence, Italy, pg. 669-676).

³⁶ See Article 1 paragraph 9 President Regulation No. 10/2008 (dalam Ika Riswanti Putranti, 2016. *The European Union’s Generalised System of Preferences : A Better Trade Facilitation for Beneficiary Country?*, European Press Academic Publishing Florence, Italy, pg. 669-676).

³⁷ See Article 1 paragraph 8 President Regulation No. 10/2008 (dalam Ika Riswanti Putranti, 2016. *The European Union’s Generalised System of Preferences : A Better Trade Facilitation for Beneficiary Country?*, European Press Academic Publishing Florence, Italy, pg. 669-676).

³⁸ See Article 11 President Regulation No. 10/2008 (dalam Ika Riswanti Putranti, 2016. *The European Union’s Generalised System of Preferences : A Better Trade Facilitation for Beneficiary Country?*, European Press Academic Publishing Florence, Italy, pg. 669-676).

Implementation of INSW should be seen as a good opportunity for the fundamental reform on public services, particularly to provide transparency and excellent service on exports-imports. The INSW system is designed to simplify business processes in which public services on exports-imports will become simpler, faster and more effective. With regard to the hierarchical bureaucracy chains, such as local autonomy, the establishment of INSW is intended to harmonise and synchronise the procedures and formalities in exports-imports related to the issuing of permit licences and certificates of origin. Therefore, overlapping on issuing licences allows bureaucracy constraints and corruption to be avoided.

Practically speaking, INSW fundamentally changes and totally transforms government agencies that are related to exports and imports. The existence of one single national portal on exports and imports is the reflection of the successful integration of government agencies e-data and information. Government agencies are recommended to provide the service level for stakeholders through the Service Level Arrangement (SLA) in order to deliver a transparent service and guarantee legal certainty.³⁹ For instance, the management of Intrade in delivering its service must implement SLA to guarantee transparency and legal certainty in the procedures of exports and imports.⁴⁰

³⁹ See Article 10 paragraph 4 President Regulation No. 10/2008 (dalam Ika Riswanti Putranti, 2016. *The European Union's Generalised System of Preferences : A Better Trade Facilitation for Beneficiary Country?*, European Press Academic Publishing Florence, Italy, pg. 669-676).

⁴⁰ See Article 1 paragraph 11 Ministry of Trade No.28/M-DAG/PER/6/2009 (dalam Ika Riswanti Putranti, 2016. *The European Union's Generalised System of Preferences : A Better Trade Facilitation for Beneficiary Country?*, European Press Academic Publishing Florence, Italy, pg. 669-676).

CHAPTER IV

Findings :

A legal deficiency within trade regulations implemented in Indonesia

1. The Single Windows Concept still focusing on Services rather than Scrutiny.

The concept of single window services, includes customs and government agencies, is based on trade facilitation in which the services element became the main focus. Thus, it reduces the effectiveness of the scrutiny function. The purposes of the automation of import export services system that demands a simplicity, fast services, convenience, and legal certainty. Services and Scrutiny system should have be implemented hand in hand so as to minimize injury, mainly from the domestic side.

2. Lack of international cooperations and harmonization trade facilitation.

Fisheries import documents required to be accompanied with a number of documents, where the most important document related to traceability is the catch certificate and certificate of origins. According to the research field findings, the catch certificate and certificate of origin verification conducted unilaterally through document verification. Badan Karantina Ikan, pengendali Mutu dan Keamanan Hasil Perikanan (BKIMP) only carry out verification based on the attached document available. In order to verify the document with the issuing agency or Competence Authority from the country of origin need a cooperation covering harmonization rules and regulation and technology and sharing information. In fact, the limitation of cooperation and in adequate technology that availabel has impeded the verification.

Harmonization of procedures in the export import services and scrutiny of catching fish is needed. In this regard, facilitating the Competent Authority of the country of destination and countries of origin of export products and import products controlling and establishing coordination related to the suspect products resulting from IUU Fishing. Single Windows in a regional and a national level considered as a tool of the trade facilitation harmonization for the Competent Authority of the country of

destination and countries of origin of export products and import products to conduct verification and coordination if any inquiry invoked.

3. The lack of regulations related to supply chains traceability and risk management of imported fish.

Traceability and supply chain risk management of imported fish still have obstacles mainly related to the information technology applied in traceability system. Falsification of documents and certificates indicate a loophole in the supply chains, where the inspection and verification merely based on the document. Some developed countries have developed technology to monitor the traceability of fish through DNA information.

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