

# LEGAL STATUS OF FOREIGN-FLAG VESSELS WHEN THEIR FISH-TRANSPORTATION VESSEL LICENSES HAVE BEEN REVOKED BY THE MINISTRY OF MARINE AFFAIRS AND FISHERIES

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## Abstract

*In combating Illegal, unregulated and unreported fishing, the Minister of Maritime Affairs and Fisheries has several times issued the ministerial decisions to revoke SIKPI (Surat Izin Kapal Pengangkut Ikan) / fish-transportation vessel license. In practice, some Indonesian fishery companies charter foreign-flag vessels to be used as fish-transportation vessel. In such cases, how is the legal status of the foreign-flag vessels when the Ministry of Marine Affairs and Fisheries have revoked their SIKPI licenses? In many cases, after revoking the SIKPI, the Minister of Marine Affairs and Fisheries "arrests" the vessels. Could the Indonesian Government "arrest" the vessels? What are the legal risks that could possibly arise?*

**Keywords:** *Foreign-flag vessels, Fisheries, Vessel, Licenses, Legal,*

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## I. INTRODUCTION

Indonesia's marine territory is about 6.32 million km<sup>2</sup> with a coastline of 99.093 km. Indonesia's coastline is the fourth longest coastline in the world after the United States, Canada, and Russia.<sup>2</sup> In addition, Indonesia has 17,504 islands, consisting of 13.466 islands have been

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<sup>1</sup> Yesaya Mau, Analisis Faktor-faktor yang Mempengaruhi Pendapatan Nelayan di Wilayah Pantai Teluk Kupang Provinsi Nusa Tenggara Timur (The Analysis of Factors which are Affecting the Revenue of Fishermen in the Region of Gulf Coast of Kupang East Nusa Tenggara Province), (Semarang: Universitas Diponegoro-Doctoral Thesis, 2009), 1.

<sup>2</sup> Letter of Geospatial Information Agency No.B-3.4/SESMA/IGD/07/2014, see the Ministry of Marine Affairs and Fisheries, Kelautan dan Perikanan dalam Angka Tahun 2014 (Maritime Affairs and Fisheries in Figures 2014), 143. See also Rokhmin Dahuri, *Membangun Kembali Perekonomian Indonesia melalui Sektor Perikanan dan Kelautan* (Rebuilding the Economy of Indonesia through the Fishery and Marine Sector), 62.

named and 4.038 islands have not been named.<sup>3</sup>

As the largest archipelagic State in the world,<sup>4</sup> Indonesia is one of the countries which have the highest marine biodiversity in the world considering the marine genetic, marine species and marine ecosystem.<sup>5</sup> In particular eastern Indonesian waters, the Indonesian archipelago is a centre of diversity for a lot of marine and coastal species. Indonesia is one of the most species rich environments in the world since there are more than 3000 species of inshore fish live in Indonesian waters.<sup>6</sup> The mega-marine biodiversity of Indonesia is the main asset for marine biotechnology industry.<sup>7</sup>

According to the State of World Fisheries and Aquaculture – FAO 2014, Indonesia is the second major producer of marine capture fisheries. It is also the second major producer of aquaculture. Indonesia has the second highest number of fishers and aquaculture farmers.<sup>8</sup> Based on the draft of the 2015-2019 Strategic Plan of the Ministry of Maritime Affairs and Fisheries, the potential of Indonesia marine capture fisheries counted for about 6.5 million tons in 2012.<sup>9</sup> Nevertheless, extensive illegal, unregulated and unreported fishing in Indonesian waters,

<sup>3</sup> OECD, *OECD Review of Fisheries: Policies and Summary Statistics 2013*, OECD Publishing, 2013, 439.

<sup>4</sup> Gunawan Sumodiningrat, “Peran Departemen Kelautan dan Perikanan dalam Peningkatan Kemiskinan melalui Kredit Mikro” (The role of the Department of Maritime Affairs and Fisheries in Poverty Alleviation through Micro Credit) (Jakarta: Balai Riset Kelautan dan Perikanan, Departemen Kelautan dan Perikanan, 2006), 6.

<sup>5</sup> Dirhamsyah, “IUU fishing in Indonesia’s live reef fisheries”, *Australian Journal of Maritime and Ocean Affairs* (2012), Volume 4 (2), 44.

<sup>6</sup> Rokhmin Dahuri, “Membangunkan Raksasa Ekonomi Kelautan yang Tertidur” (Awaken the Sleeping Giant Marine Economy), *Republika*, 21 Februari 2014.

<sup>7</sup> OECD, *OECD Review of Fisheries: Policies and Summary Statistics 2015*, OECD Publishing, Paris, 2015, 76.

<sup>8</sup> Rancangan Rencana Strategis (Renstra) Kementerian Kelautan dan Perikanan 2015-2019 (The Draft of the 2015-2019 Strategic Plan of the Ministry of Ministry of Maritime Affairs and Fisheries) (The Draft of 8 March 2015), Biro Perencanaan Kementerian Kelautan dan Perikanan (the Planning Bureau of the Ministry of Marine Affairs and Fisheries), unpublished. See Sonny Koeshendrajana dan Bambang Wicaksono, *Policy Paper Indeks Kesejahteraan Masyarakat Kelautan dan Perikanan: Konsep, Dimensi dan Indikatornya* (Policy Paper Public Welfare Index of the society of Marine and Fisheries: Concepts, Dimensions and indicators), 2.

<sup>9</sup> Dirhamsyah, “IUU fishing in Indonesia’s live reef fisheries”, *Australian Journal of Maritime and Ocean Affairs* (2012), Volume 4 (2), 44.

including the live reef food fish trade, has been caused by a lack of maritime law enforcement.<sup>10</sup>

Illegal, unregulated and unreported fishing has caused major resource depletion upon Indonesia. Therefore, the Government of Indonesia has taken many actions to reduce the numbers of Illegal, unregulated and unreported fishing. One of the actions is that a national moratorium had been imposed on all fishing vessels built outside Indonesia by the Ministry of Marine Affairs and Fisheries. An analysis and evaluation process had been carried out upon over 1.100 “ex-foreign vessels” operating in Indonesian waters.<sup>11</sup>

The Ministry of Marine Affairs and Fisheries enacted the Ministerial Regulation Number 56/Permen-KP/2014 concerning Temporary Suspension (Moratorium) Fishing Licenses in the Fishery Management Zone of the Republic of Indonesia<sup>12</sup> on 3 November 2014. The ministerial regulation stayed in effect until 30 April 2015. Under the Regulation of the Minister of Marine Affairs and Fisheries No.10/Permen-KP/2015 concerning the Amendment of the Regulation of the Minister of Marine Affairs and Fisheries No.56/Permen-KP/2014 concerning Temporary Suspension (Moratorium) Fishing Licenses in the Fishery Management Zone of the Republic of Indonesia, the moratorium was extended until 31 October 2015.<sup>13</sup>

The Regulation of the Minister of Marine Affairs and Fisheries No.56/Permen-KP/2014 concerning Temporary Suspension (Moratorium) Fishing Licenses in the Fishery Management Zone of the Republic of Indonesia provided that it had two objectives. The first objective was to carry out responsible fishing activities. The second objective was to

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<sup>10</sup> Susi Pudjiastuti, *Catching Crime*, <http://web.unep.org/ourplanet/may-2016/articles/catching-crime>.

<sup>11</sup> Peraturan Menteri Kelautan dan Perikanan No.56/Permen-KP/2014 tentang Penghentian Sementara (Moratorium) Perizinan Usaha Perikanan Tangkap di Wilayah Pengelolaan Perikanan Negara Republik Indonesia.

<sup>12</sup> Peraturan Menteri Kelautan dan Perikanan No.10/Permen-KP/2015 tentang Perubahan atas Peraturan Menteri Kelautan dan Perikanan No.56/Permen-KP/2014 tentang Penghentian Sementara (Moratorium) Perizinan Usaha Perikanan Tangkap di Wilayah Pengelolaan Perikanan Negara Republik Indonesia).

<sup>13</sup> Susi Pudjiastuti, *Catching Crime*, <http://web.unep.org/ourplanet/may-2016/articles/catching-crime>.

combat illegal, unreported and unregulated fishing.

Under Article 1 of this regulation, the moratorium is only imposed upon fishing vessels constructed outside Indonesia. Then, Article 2 of this regulation stipulates that the applicability of the moratorium consist of:

- a. The suspension of granting of new fishing licenses. The fishing licenses consist of Fishery Business License (*Surat Izin Usaha Perikanan* or SIUP); Fish-Catching License (*Surat Izin Penangkapan Ikan* or SIPI); and Fish-Transportation Vessel License (*Surat Izin Kapal Pengangkut Ikan* or SIKPI);
- b. There is no any existing SIPI and SIKPI could be extended;
- c. The analysis and evaluation process shall be imposed on any existing SIPI and SIKPI;
- d. If there is any violation committed, an administrative sanction shall be imposed on.

The Minister of Marine Affairs and Fisheries explained that after the moratorium was decided; immediately, the Task Force on Prevention and Eradication of Illegal, Unregulated and Unreported fishing was established to carry out the analysis and evaluation process for all ex-foreign vessels. Considering the audit result conducted by the Task Force, the Minister of Marine Affairs and Fisheries then revoked a lot of SIUP (fishery business licenses), SIPI (fish-catching licenses), and SIKPI (fish-transportation vessel licenses).<sup>14</sup>

In conducting fish catching, a fisherman or a fishery company shall have required fishing licenses. The applicability of moratorium results in new fishing licenses will not be granted and existing fishing licenses will not be extended. In other words, any vessel built abroad would not obtain any fishing license. As a result, there is no fish catching or fish transport which is carried out by “ex-foreign” vessel. An oceanography expert from Institute Pertanian Bogor (Institute of Agricultural Bogor), Alan Koropitan, argues that some policies taken by the Ministry of Maritime Affairs and Fisheries have an adverse impact on economic

<sup>14</sup> “Perbedaan Pendapat” Wapres Jusuf Kalla dan Menteri Susi Soal Moratorium Kapal Ikan Asing, BBC Indonesia, 30 March 2016, [www.bbc.com/indonesia/berita\\_indonesia/2016/03/160329\\_indonesia\\_wapres\\_kkp\\_perikanan](http://www.bbc.com/indonesia/berita_indonesia/2016/03/160329_indonesia_wapres_kkp_perikanan).

since almost all large fishing vessels are foreign fishing vessels. Ironically, in the previous Government, the fishing permits were given, but why suddenly in the current Government, the permits are banned.<sup>15</sup>

Direct visit Vice President, Jusuf Kalla, to Maluku and North Sulawesi found that fish production has been declined significantly.<sup>16</sup> A number of marine industries have major problems due to lack of supply of fish. According to the Vice President, the fish-processing and fish export have been reduced drastically.<sup>17</sup>

## **II. LEGAL STATUS OF FOREIGN-FLAG VESSELS WHEN THEIR FISH-TRANSPORTATION VESSEL LICENSES (SIKPI) HAVE BEEN REVOKED**

As explained above, the Minister of Marine Affairs and Fisheries revoked a lot of fishing permit licenses, including SIKPI of vessels built abroad. Mostly, vessels built abroad are foreign-flag vessels. In practice, a major number of fish transportation vessels are foreign-flag vessels. They are usually chartered by Indonesian fishery companies. It is very interesting to find out the legal status of those foreign-flag vessels when their SIKPI licenses have been revoked. According to Indonesia legislation, there is no clear answer to this legal question.

According to Article 1.9 of Law No.31 of 2004 concerning Fishery as amended by Law No.45 of 2009 (“Fishery Act”), a fishing vessel is a ship, boat, or other floating means used to catch fish, to support fish catching operations, fish cultivation, fish transportation, fish processing, training on fishery, and fishery research/exploration. For the vessels with revoked SIKPI, they would not be able to perform the transportation of fish. The vessel could not be operated as fish transportation any longer since Article 31 (2) of Fishery Act requires that any foreign

<sup>15</sup> “Ditegur Jusuf Kalla, Menteri Susi: Itu Biasa” (Be Reproved by Jusuf Kalla, the Minister Susi It is Common), Tempo.co, 1 April 2016, <http://m.tempo.co/read/news/2016/04/01/090758901/Ditegur-Jusuf-Kalla-Menteri-Susi-Itu-Biasa>.

<sup>16</sup> “Sektor Perikanan Anjlok, Menteri Susi Diminta Datangi Maluku” (Fisheries Sector Drops, Susi Minister Asked to Come into Maluku), Tempo.co, 6 April 2016, <http://m.tempo.co/read/news/2016/04/06/090760088/sektor-perikanan-anjlok-menteri-susi-diminta-datangi-maluku>.

<sup>17</sup> Undang-Undang No.17 Tahun 2008 tentang Pelayaran.

vessel used to transport fish shall have SIKPI. Thus, it would be proper to say that those vessels are not fishing vessels any longer.

If those vessels are going to sail back to their countries, could they just sail without having port clearance? Article 219 (1) Law No.17 of 2008 concerning Shipping<sup>18</sup> requires that any vessel that sails shall have Shipping Approval Letter (Port Clearance)<sup>19</sup> issued by the Harbor Master.<sup>20</sup> Therefore, it is compulsory for those vessels to have port clearance before sailing.

For fishing vessels, the port clearance is issued by the harbor master at fishing port. According to Article 5 of the Regulation of the Minister of Marine Affairs and Fisheries No.3/Permen-KP/2013 concerning *Kesyahbandaran*<sup>21</sup> at Fishing Port,<sup>22</sup> the harbor master at fishing port has some duties and authorities. One of the duties and authorities is to issue port clearance for fishing vessels.

For the vessels constructed abroad whose SIKPI have been revoked, will the harbor master at fishing port issue port clearance for these ex-fish transportation vessels? Under Article 11 (1) of the Regulation of the Minister of Marine Affairs and Fisheries No.3/Permen-KP/2013 concerning *Kesyahbandaran* at Fishing Port, in order to obtain port clearance, the application of port clearance shall be submitted to the harbor master at fishing port. Then, Article 12a of this regulation obliges the harbor master at fishing port to carry out administrative inspection. Article 13 (1) of this regulation stipulates that the administrative inspection

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<sup>18</sup> In shipping practice, Shipping Approval Letter is not a usual term. The usual term is "Port clearance".

<sup>19</sup> Article 219 (1) of Law No.17 of 2008 concerning Shipping regulates that "Setiap kapal yang berlayar wajib memiliki Surat Persetujuan Berlayar yang dikeluarkan oleh Syahbandar."

<sup>20</sup> It would be difficult to translate the word of "*kesyahbandaran*" into an English word. According to Article 1.2 of the Regulation of the Minister of Marine Affairs and Fisheries No.3/Permen-KP/2013 concerning *Kesyahbandaran* at Fishing Port, *kesyahbandaran* at fishing port means the implementation of duty and role of the Government at fishing port to ensure the safety and security of shipping.

<sup>21</sup> Peraturan Menteri Kelautan dan Perikanan No.3/Permen-KP/2013 tentang Kesyahbandaran di Pelabuhan Perikanan.

<sup>22</sup> Peraturan Menteri Perhubungan No.PM 82 Tahun 2014 tentang Tata Cara Penerbitan Surat Persetujuan Berlayar.

tion covers documents received and examined by the harbor master at fishing port when the vessel arrived at the fishing port. According to Article 6 (5) of this regulation, SIKPI is one of the required documents. Therefore, the harbor master at fishing port would not issue port clearance for any foreign vessel whose SIKPI is revoked since SIKPI is one of the required documents.

In relation to the issuance of port clearance, in Law No.17 of 2008 concerning Fishing, it is only stated that “issued by the harbor master” (Article 219 (1)). The Regulation of the Minister of Marine Affairs and Fisheries No.3/Permen-KP/2013 concerning *Kesyahbandaran* at Fishing Port explicitly states that “the harbor master at fishing port has the duty and the authority to issue port clearance”. Under Article 2 of the Regulation of the Minister of Transportation No.PM 82 of 2014 concerning the Procedure of the Issuance of Port Clearance,<sup>23</sup> any vessel that sails shall have Port Clearance issued by the harbor master or by the harbor master at fishing port. Based on the these regulations (Law No.17 of 2008 concerning Fishing, the Regulation of the Minister of Marine Affairs and Fisheries No.3/Permen-KP/2013 concerning *Kesyahbandaran* at Fishing Port, and the Regulation of the Minister of Transportation No.PM 82 of 2014 concerning the Procedure of the Issuance of Port Clearance), there are two kinds of the harbor master, which are “the harbor master” and “the harbor master at fishing port”.

Law No.17 of 2008 concerning Fishing (Article 1.56) and the Regulation of the Minister of Transportation No.PM 82 of 2014 concerning the Procedure of the Issuance of Port Clearance (Article 1.4) have the same definition of the Harbor Master. These regulations state that the Harbor Master is a government official with the highest authority to ensure the safety and security of shipping.

The Consideration Section of the Regulation of the Minister of Transportation No.PM 82 of 2014 concerning the Procedure of the Issuance of Port Clearance explains that this regulation’s aim is to arrange and to improve the issuance of Port Clearance. This regulation

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<sup>23</sup> Article 3 of the Regulation of the Minister of Transportation No.PM 82 of 2014 concerning the Procedure of the Issuance of Port Clearance states that the the obligation referred to in Article 2 is exempted for: (a) a warship; and/or (b) a state-owned ship/government ship that is not used for commercial activities.

also aims to facilitate the task of the harbor master at fishing port. The second aim, which is to facilitate the task of the harbor master at fishing port, is important because Article 4 (2) of this regulation regulates that the harbor master at fishing port is the harbor master who is appointed by the Minister of Transportation.

Article 3 (2) of the Regulation of the Minister of Marine Affairs and Fisheries No.3/Permen-KP/2013 concerning *Kesyahbandaran* at Fishing Port also provides that the harbor master at fishing port is appointed by the Minister of Transportation. However, Article 3 (1) of this Regulation stipulates that the requirement of being harbor master at fishing port is graduated from the *kesyahbandaran* education and training. The education and skill of the harbor master at fishing port proves that the harbor master at fishing port has sufficient knowledge to deal with the issuance of port clearance for fishing vessels, including fish-transportation vessels.

The two types of the harbor master would confirm that a vessel with revoked SIKPI that could not be served as a fishing vessel at fishing port, the vessel could be served at a general port. It would prove that that vessel could be classified as an ordinary vessel served at a general port provided it is neither a warship nor a state-owned ship/government ship that is not used for commercial activities (Article 3 of the Regulation of the Minister of Transportation No.PM 82 of 2014 concerning the Procedure of the Issuance of Port Clearance).<sup>24</sup>

In practice, the Ministry of Marine Resources and Fisheries through the Directorate General of Supervision of Marine Affairs and Fisheries expressly argues that the revocation of SIKPI would result in the vessel could not be classified as a fish-transportation vessel any longer. Letter No.9809/DJPSDKP/VII/2015 dated 13 July 2015 concerning the Departure Plan of MV Dafeng Mariner states that “the Director General of Supervision of Marine Resources and Fisheries confirmed to the Harbor Master at General Port to issue Port Clearance for the vessel Dafeng Mariner”.<sup>25</sup>

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<sup>24</sup> Letter No.9809/DJPSDKP/VII/2015 dated 13 July 2015 concerning the Departure Plan of MV Dafeng Mariner.

<sup>25</sup> The Harbor Master Letter No.1434/PPN.A/TU.210/VIII/2015 dated 05 Agustus 2015 concerning the Answer to the Application of Port Clearance.



The Ministry of Marine Affairs and Fisheries confirms the authority of the harbor master at general port in issuing port clearance for vessel with expired fish-transportation vessel licenses. It could be said that vessels with expired SIKPI are under the authority of the harbor master at general port. So, it could be concluded that the vessels whose SIKPI licenses were revoked are under the authority of the harbor master at general port. Therefore, the vessels could not be classified as fishing vessels any longer.

The Ministry of Transportation also argues the same opinion with the Ministry of Marine Affairs and Fisheries regarding this matter. The harbor master at fishing port is appointed by the Ministry of Transportation. Letter of the Harbor Master at Fishing Port No.1434/PPN.A/TU.210/VIII/2015 dated 5 August 2015, it is clearly stated that the harbor master at the fishing port could not serve the application of the issuance of port clearance because the SIKPI licenses of the vessels were revoked by the Minister of Marine Affairs and Fisheries.<sup>26</sup> In this condition, it would be proper to conclude that when the SIKPI license is revoked; those vessels are not fishing vessels any longer.

#### A. THE “ARREST” OF VESSELS WHOSE FISH-TRANSPORTATION VESSEL LICENSES (SIKPI) ARE REVOKED

After issuing the ministerial decision concerning the revocation of SIKPI, the vessels are “arrested”.<sup>27</sup> According the Minister of Marine Affairs and Fisheries, using foreign ship crew are not allowed.<sup>28</sup> It would be very interesting to find out whether foreign captain and foreign ship crew are prohibited in all kinds of fishing vessels.

The rules applicable for fish-catching vessels are different than the rules applicable for fish-transportation vessels. Firstly, the license to operate a fish-catching vessel and the license to operate a fish-transportation vessel are different.

<sup>26</sup> <http://finance.detik.com/berita-ekonomi-bisnis/d-3060108/moratorium-berakhir-susi-tetap-larang-kapal-eks-asing-beroperasi>.

<sup>27</sup> Susi Pudjiastuti, *Catching Crime*, <http://web.unep.org/ourplanet/may-2016/articles/catching-crime>.

<sup>28</sup> Indonesia is a member of United Nations Convention on the Law of the Sea. The Government of Indonesia issued Law No.17 of 1985 concerning the Ratification of United Nations Convention on the Law of the Sea.

tation vessel are different. According to Article 31 (1) Fishery Act, the license to operate a fish-catching vessel, Indonesia-flag vessel or foreign-flag vessel, is *Surat Izin Penangkapan Ikan* (SIPI) (fish-catching license). Meanwhile, under Article 31 (2) of Fishery Act, the license to operate a fish-transportation vessel, Indonesia-flag vessel or foreign-flag vessel, is *Surat Izin Kapal Pengangkut Ikan* (SIPI) (fish-transportation vessel license).

Secondly, the meaning of SIPI and the meaning of SIKPI are different. According Article 1.17 Fishery Act, *Surat Izin Penangkapan Ikan* (SIPI) (fish-catching license) means a written license obliged to be possessed by any fish-catching vessel to conduct fish-catching constituting an inseparable part of a fishery business license. But, under Article 1.18 Fishery Act, *Surat Izin Kapal Pengangkut Ikan* (SIKPI) (fish-transportation vessel license) means a written license obliged to be possessed by any fish-transportation vessel to conduct fish-transportation.

Thirdly, the rule applicable for the operation of foreign-flag fish-catching vessels is different than the rule applicable for the operation of foreign-flag fish-transportation vessels. An Indonesia-flag fish-catching vessel could be operated in carrying out fish-catching in the Fishery Management Zone of Indonesia (Article 27 (1) of Fishery Act). Then, a foreign-flag fish-catching vessel could only be operated in carrying out fish-catching in Economic Exclusive Zone (Article 27 (2) of Fishery Act). On the contrary, both of an Indonesia-flag fish-transportation vessel and a foreign-flag fish-transportation vessel could be operated in conducting fish-transportation in Fishery Management Zone of Indonesia (Article 28 of Fishery Act).

In relation to the employment of foreign captain and foreign ship crew, Article 35A (1) of Fishery Act provides that fishing vessels with Indonesia flag which conduct fish-catching in the Fishery Management Zone of Indonesia shall employ captain and ship crew who are Indonesia citizens. According to this provision, there are several things could be concluded. First, this provision is applicable for fishing vessels which conduct fish-catching. It means that it is applicable for fish-catching vessels. It is not applicable for fish-transportation vessels. Then, this provision is applied to fish-catching vessels flying Indonesia flag. For fish-catching vessels flying foreign flag, the provision that

shall be applied is Article 35A (2) of Fishery Act. Under this provision, foreign-flag fish-catching vessels are only allowed to do fish-catching in Exclusive Economic Zone of Indonesia. They could employ foreign ship crew maximum 30 percent of the total ship crew.

When fishing ship licenses are revoked, is it allowed for the Ministry of Marine Affairs and Fisheries to “arrest” the vessels? This is a very significant legal question to answer since attempting to achieve good things by breaching existing regulations would not be proper.

According to Article 222 (1) of Law No.17 of 2008, the harbor master could arrest a vessel only by a written court order. The reason of the arrest is that the vessel related to criminal case or to civil case (Article 222 (2)). Therefore, the arrest of a vessel could only be undertaken by the harbor master not by other parties. Then, the arrest shall be on the basis of a written court order.

Furthermore, According Article 91 (1) United Nations Convention on the Law of the Sea<sup>29</sup>, the nationality of a vessel is the state whose flag it is entitled to fly.<sup>30</sup> The nationality of foreign-flag fish-transportation vessels would not be Indonesia. Thus, Indonesia shall be careful in undertaking any action in relation to foreign vessels since Article 73 of United Nations Convention on the Law of the Sea stipulates that “in cases of arrest or detention of foreign vessels the coastal State shall promptly notify the flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed.” Then “arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security”.

The Ministry of Marine Affairs and Fisheries through the Directorate General of Supervision of Marine Affairs and Fisheries issued a letter regarding port clearance of vessel with revoked SIKPI. Letter No.9809/DJPSDKP/VII/2015 dated 13 July 2015 concerning the Departure Plan of MV Dafeng Mariner states that: □

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<sup>29</sup> Article 91 (1) Convention on the Law of the Sea states that every state shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship.

<sup>30</sup> Letter No.9809/DJPSDKP/VII/2015 dated 13 July 2015 concerning the Departure Plan of MV Dafeng Mariner.

- a. Director General of Marine Resources and Fisheries confirmed to the Harbor Master at General Port to issue Port Clearance for the vessel Dafeng Mariner;
- b. The Fish-Transportation Vessel License (SIKPI) of the Vessel Dafeng Mariner was not extended because of some violations, which are:
  - 1) VMS of the vessel Dafeng Mariner had been inactive in most periods of sailing and SPB documents (Port Clearance) was not handed over to Anev Team
  - 2) According to the ship crew, the vessel Dafeng Mariner was indicated in conducting the transfer of the load in the middle of the sea (transshipment);
  - 3) According to the crew and documentation (photos), the vessel Dafeng Mariner entering clothing and food and liquor from Chinese into Indonesian territory without the Goods Import Letter of the Director General of Customs, the Ministry of Finance.
- c. Letter of the Chairman of the Task Force on the Prevention and Combating IUU Fishing No.M45/VI/2015 dated 29 June 2015 stating that, in principle, there is no objection to the planned departure of the vessel Dafeng Mariner back to its home country in China

From the above-mentioned letter, the Ministry of Marine Affairs and Fisheries confirms that although the SIKPI license of the vessel Dafeng Mariner was not extended due to some violations, it was still permitted to sail back to its country. Thus, it would be very unjust if vessels whose SIKPI licenses were revoked could not sail back to their home countries.

### **III.LEGAL RISK THAT COULD POSSIBLY ARISE**

As explained above that the harbor master has the highest responsibility in the issuance of post clearance. Considering a vessel whose fish-transportation vessel license is revoked is under the authority of the harbor master at general port and the harbor master is appointed by The Ministry of Transportation, the Ministry of Transportation and the harbor master at general port should be careful on some legal risks that could possibly arise.

Firstly, the “arrest” of a vessel shall be conducted on the basis of a written court order. When the “arrest” of a vessel whose fish-transportation vessel license is revoked without a written court order, it could be said that the “arrest” has no legal basis. So, the owner of the vessel or the party who has the right upon the vessel could make a police report regarding this matter against the harbor master at general port. Maybe, during the period of the current government, it would not happen. But, it could happen in the next government.

Secondly, a civil lawsuit could be submitted against the harbor master at general port and the Minister of Transportation. It is for sure that the “arrest” of a vessel for a long period would cause enormous material loss. The owner of the vessel or the party who has the right upon the vessel could possibly submit a civil lawsuit against the harbor master at general port and the Ministry of Transportation on the basis that the legal relationship between the harbor master (and the Ministry of Transportation) and the owner of the vessel (or the party who has the right upon the vessel) arise as a result of an unlawful act as referred to in Article 1365 Civil Code.<sup>31</sup>

Thirdly, an administrative lawsuit could be submitted against and the harbor master at general port the Minister of Transportation. The owner of the vessel (or the party who has the right upon the vessel) could first submit an application of port clearance to the harbor master at general port and to the Ministry of Transportation. If the port clearance is issued that the vessel could sail back to its home country. Then, the owner of the vessel (or the party who has the right upon the vessel) could submit a civil lawsuit upon the enormous material loss. If there is no answer or the answer is that the application of port clearance is rejected, the absence of neither an answer nor the rejection answer could be used as a legal basis to submit an administrative lawsuit.

#### **IV. CONCLUSION**

Based on the above explanation, it could be concluded as follows:

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<sup>31</sup> Article 1365 Civil Code stipulates that every illegitimate act, which causes damage to third parties, obliges the party at fault to pay the damage caused.

- a. It could be concluded that the legal status of foreign-flag vessels when their fish-transportation licenses have been revoked is not fishing vessels any longer; they could be classified as cargo vessels.
- b. The Indonesian Government could not “arrest” the vessels whose fish-transportation vessel licenses (SIKPI) are revoked since the arrest of a vessel shall be on the basis of a written court order. Furthermore, it would be unjust if vessel *Dafeng Mariner* could be granted port clearance; meanwhile the other foreign-flag vessels whose fish-transportation licenses have been revoked could not be granted port clearance.
- c. Several legal risks that possibly could arise are: a police report could be made; a civil lawsuit could be submitted against the harbor master and the Minister of Transportation; and an administrative lawsuit could be submitted against the Minister of Transportation and the harbor master at general port.

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