

The Role of The Fisheries Court in The Settlement f Illegal Fishing Disputes in Indonesia

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Abstract

The practice of illegal fishing or fish theft in Indonesian waters is still ongoing until now. These problems result in many parties being harmed, so it is very necessary to enforce the law that regulates these acts. The purpose of this study is to analyze the position of the fisheries court as a special court and how the fisheries court solves illegal fishing problems related to fishing without being equipped with documents or permits. This research is a qualitative research whose implications are descriptive analytical. In connection with this approach, the type of normative juridical approach used is the legal approach. The result of this study is that the fisheries court in its position has the authority to examine, adjudicate, and decide on criminal acts in the fisheries sector as a special court within the general judicial environment. As for why the fisheries court is a special court because the judges are not pure, there are judges who are in control of the fisheries sector. As well as the existence of foreign vessels that commit fish theft without being equipped with documents or permits, they will be given sanctions and criminal penalties in accordance with Law Number 45 of 2009 which was previously revised from Law Number 31 of 2004. The punishment given to illegal fishing perpetrators can be in the form of imprisonment, fines, and revocation of rights. Illegal fishing perpetrators must receive rewards by being subject to large fines for committing violations.

Keywords

Fisheries Law; Fisheries Court; Law enforcement

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1. INTRODUCTION

Indonesia's geographical condition as an archipelagic country where two-thirds of its territory is marine waters consisting of coastal seas, high seas, bays, and straits. Where it has a beach of 95,181 km, with 5.8 millimeters at km² waters. Such geographical conditions provide a wealth of marine and fish resources. Indonesia's oceans located on the equator and tropical climate seem to have consequences for the richness of species as well as the potential of fishery resources, for example fish which are



estimated to have 6,000 species and only 3,000 species have been identified. (Sasvia, 2019) The potential for abundant fishery resources has also led to many cases of violations in fisheries laws in Indonesia. One of them is that fish theft is starting to rampant in exclusive economic zones and in Indonesia's territorial waters. As a result of the vastness of Indonesian waters and the weak supervision of the authorities over fishery activities, fishermen often use it to carry out *illegal fishing* in Indonesia. Practice *illegal fishing* or fish theft in Indonesian waters is still ongoing until now. (Lestari, 2013)

Illegal fishing In the sense that *illegal* means something that is violated and *fishing* means fishing. So it can be interpreted that *illegal fishing* is an offense committed in terms of stealing fish. This is clearly considered *illegal* by the government. And it can be known that the problem *illegal fishing* not only disturbing the nation, but also disturbing international peace. In addition, problems also arise when the supervision in Indonesian waters is quite low which can make many parties do (Efendi, 2002) *illegal fishing* in the Indonesian ocean.

Until now, *illegal fishing* continues to cause various negative impacts, namely in the socio-economic aspect making Indonesia suffer losses of up to Rp 240 trillion every year. When viewed from the scope, this is the same as 25% of the total fishery area which is calculated as 1.6 million every year. . (Budiyo, 2014) *Illegal fishing* carried out by fishermen from foreign countries is detrimental to local fishermen, because in addition to taking fish resources in the Indonesian sea, they also double profits and buying and selling transactions outside Indonesia. Ships from foreign countries that are often caught stealing come from Thailand, Vietnam, the Philippines, and Malaysia. (Huala, 2002)

In addition to having an impact on the country's economy and society, the existence of *illegal fishing* also has an impact on the damage to the marine environment. The Oceanographic Research Center of the Indonesian Institute of Sciences (LIPI) has revealed that statistical data shows that the most damage to coral reefs is caused by actions (Arianto, 2017) *illegal fishing*, and damaging the marine ecosystem that has been cultivated by local residents.

Issues- This problem resulted in many parties being harmed due to the actions of *illegal fishing*. Therefore, it is very necessary to enforce the law that regulates these acts. In this case, Indonesia has been quite advanced in designing its national regulations, but the implementation and enforcement of laws in the field still need attention. Because this is the problem that is happening today, it must be solved properly so that the existing law in Indonesia runs and is more well directed. (Ariadno, 2007) (Michael, 2020)

Law enforcement in the fisheries sector is very necessary in overcoming various problems that arise in the field. The state institutions are authorized to investigate, prosecute, and adjudicate criminal acts *illegal fishing* among others, the Ministry of Marine Affairs and Fisheries, the Indonesian Navy, the National Police, the Prosecutor's Office and the Fisheries Court or District Court. The Government of

Indonesia has issued Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries which is the legal umbrella in regulating fisheries in Indonesia. The existing fisheries law will be a reference and guide in carrying out law enforcement actions both by law enforcement officials and by other authorized officials. With this fisheries law, it will be possible to determine what legal actions can be imposed on perpetrators of fish theft in Indonesian waters. (Solihin, 2010) As well as perpetrators of fish theft carried out by foreign fishing boats in the archipelago's waters.

Illegal *fishing* activities still occur in Indonesian waters, although various efforts to overcome it have been carried out by the Indonesian government. These illegal activities are very detrimental to the State of Indonesia, especially for local fishermen. An interesting issue to be researched and studied is, what is the position of the Fisheries Court as a special court in Indonesia? And what is the role of the Fisheries Court in resolving *Illegal Fishing* problems related to fishing without being equipped with documents or permits?

2. METHOD

This research is an analytical descriptive research using qualitative methods, where data and information related to research problems obtained through literature studies are then analyzed qualitatively, to then be interpreted according to the meaning contained in the data and information. This research is a descriptive analysis by comparing and examining various kinds of policies, regulations and regulations related to the role of the Fisheries Court in dispute resolution *illegal fishing* in the territory of Indonesia. The approach in this legal research is normative, normative law on various laws and regulations regarding fisheries in Indonesia, land which is then analyzed and compared with data that actually occurs in the field in the form of facts. In this study, the focus of the laws to be used is Law of the Republic of Indonesia Number 31 of 2004 concerning Fisheries, Law of the Republic of Indonesia Number 45 of 2009 concerning amendments to Law of the Republic of Indonesia Number 31 of 2004 concerning Fisheries, (Rusandi, 2021) Law No. 48 of 2009 concerning Judicial Power and Law No. 49 of 2009 concerning the Second Amendment to Law No. 2 of 1986 concerning the General Court.

3. FINDINGS AND DISCUSSION

The Position of the Fisheries Court as a Special Court

The rapid development of the times and technological advances also bring increasingly complex legal issues, for which a professional judicial institution is needed to handle more specialized problems. The judiciary in Indonesia is regulated by Law Number 48 of 2009 concerning Judicial Power, where in Article 18 of the law gives an overview that currently there are 4 (four) judicial bodies divided based on their respective functions (functional distribution), namely the general court, religious court, military court, and state administrative court (TUN). Then it is clarified in Article 8 Paragraph (1) of Law

Number 49 of 2009 concerning the Second Amendment to Law Number 2 of 1986 concerning General Justice which says that "In the general justice environment, a special court can be formed regulated by law". (Sabar, 2014)

In the history of the judiciary in Indonesia, the term special court/special court is understood as an antonym of the general sense of justice which is tiered. This can be seen starting from the first-instance trial in the District Court, the appellate court at the High Court to the cassation level trial to the Supreme Court. Before Indonesia's independence, the three levels of justice began from judicial bodies that already existed in the Dutch East Indies judicial system, namely ' (Latief, 2013)*Landraad*' which was made the District Court, '*Raad van Justitie*' which became the High Court, and '*Hogeraad*' which was developed into the Supreme Court. Therefore, all courts outside the ordinary judicial environment are generally called Special Courts, such as Religious Courts derived from '*Priesterraad*' and others. (Asshiddiqie, 2013)

A special court is defined as a form of court outside the general court that applies in a country, that in a Special Court Loading *Differentiation* or *Specialties* within the scope of the general judiciary. The various forms of special courts in Indonesia are as follows: children's courts, commercial courts, human rights courts, corruption courts, industrial relations courts, and. (Harwati, 2015) The special fisheries court in the general judicial environment was formed with the consideration that the establishment of this special judicial body is expected to be in accordance with Article 4 paragraph (2) of the Law on the Principles of Judicial Power which reads: "The court assists justice seekers and tries to overcome all obstacles and obstacles to be able to achieve a simple, fast, and low-cost justice." Meanwhile, what is meant by "regulated by law" is the structure, power, and procedural law. (Khopiatuziadah, 2017).

The fisheries court in this position can resolve criminal acts related to fisheries issues. Based on Article 71 of Law Number 45 of 2009, it is explained that the Fisheries Court has absolute limited authority, namely only for criminal acts in the fisheries sector that occur in the fisheries management area of the Republic of Indonesia, both by Indonesian Citizens and Foreign Citizens. The article also explains other authorities possessed by the Fisheries Court, namely the authority to examine, adjudicate, and decide criminal acts in the fisheries sector as a special court within the general judicial environment. (Manik, 2018)

Fisheries courts are established in the North Jakarta, Medan, Pontianak, Bitung, and Tual District Courts and are domiciled in district courts. The establishment of the Fisheries Court is then carried out in stages in accordance with the needs set forth by the Presidential Decree. Until now there are 10 (ten) Fisheries Courts throughout Indonesia, for an area that does not have a Fisheries Court, it does not necessarily abolish the settlement of fisheries crimes. (Tuanger, 2023)

Fisheries disputes or criminal acts that occur in areas that do not have a Fisheries Court are resolved based on criminal law as well as those carried out by the local District Court. This is explained in Article 106 of Law Number 31 of 2004 concerning Fisheries that "As long as a fisheries court other than the fisheries court has not been established as referred to in Article 71 paragraph (3), criminal cases in the fisheries sector that occur outside the jurisdiction of the fisheries court as referred to in Article 71 paragraph (3) shall still be examined, adjudicated, and decided by the competent district court".

The procedural law used in the trial process at the Fisheries Court is the Criminal Procedure Code based on the Criminal Procedure Code. However, there are several specificities, namely investigations carried out by Fisheries Civil Servant Investigators (PPNS), TNI Navy Officers, and Police. Not all defendants in fisheries crimes must be detained and not all criminal offenders can be made defendants. In addition, evidence of fisheries crimes can be confiscated for the state or destroyed. And the trial process and the reading of the verdict can be carried out without the presence of the defendant. As for why the fisheries court is a special court because the judges are not pure, there are judges who are masters in their fields. There are 3 judges consisting of 1 career judge, 2 ad-hoc judges.

The Role of the Fisheries Court in Resolving *Illegal Fishing Disputes (Fishing Without Documents or Permits)*

Crime which generally occurs in Indonesian waters is fisheries crimes, namely illegal fishing activities, fishery activities that are not regulated by applicable regulations, whose activities are not reported to an available or authorized fishery institution or institution. Based on Law Number 31 of 2004 Jo. Law Number 45 of 2009 concerning Fisheries, fisheries crimes are broadly divided into 2 types of fisheries. The first non-fishery crime is the Crime Crime (*Misdaden*) in the fisheries sector regulated in Articles 84, 85, 86, 89, 91, 92, and 94, while the second is the Crime of Violation (*overtredingen*) in the fisheries sector regulated in Articles 87, 89, 90, 95, 96, 97, 98, 99 in the law. (Putra, 2023)

It is said to be a crime because these acts are contrary to the rule of law or legal interests, while violations are acts whose unlawful nature is only known after the prohibitions or requirements determined by the ruler of the state. This fishery crime most often occurs in Indonesia's fisheries management area is the theft of fish by foreign fishing vessels from several neighboring countries such as Thailand, the Philippines, and Vietnam. (Sugiarto, 2022)

The legal provisions regarding the crime of *illegal fishing* are contained in Article 1 point 5 of Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries, fishing is the activity of obtaining fish in waters that are not in a state of being cultivated by any means or means, including activities that use ships to load, transport, store, cooling, handling, processing, and/or preserving them. Criminal provisions in the case of *illegal fishing* are regulated in Chapter XV Articles

84 to 101 of Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries.

Phenomenon *illegal fishing* that occur in various regions, especially the territory of the Republic of Indonesia, has a serious impact on society. The rise of illegal fisheries in Indonesian waters has an impact on national and global fish stocks. This has also caused a decline in the national economy and an increase in social problems in the Indonesian fishing community. If carried out continuously, the activities (Supriadi, 2001) *illegal fishing* what happens in Indonesia will threaten the sustainability of national and even world fish stocks. *Illegal fishing* is a violation of all forms of crime in fisheries, because it violates all provisions in fishing activities in Indonesia. (Rahay, 2019)

Illegal fishing also violates Law Number 45 of 2009 concerning Fisheries and other laws and regulations that are still in force in Indonesia. According to the Ministry of Marine Affairs and Fisheries which acts as the supervisor of marine resources and fisheries, determining (Oktaviardy, 2023) *Illegal Fishing as Illegal, Unreported and Unregulated (IUU) Fishing* which means that *illegal fishing* is an illegal fishery activity, because it is not regulated by existing regulations, or its activities are not reported to an available fishery management institution or institution. (Hakim, 2023)

Unreported or incorrectly reported fishing practices (*misreported*), or the report is substandard (*under reported*), and unregulated fisheries practices (*unregulated*) will cause problems with data accuracy about available fish stocks. If fish stock data is not accurate, it is almost certain that fisheries management will not be appropriate and will threaten the sustainability of national and global fish stocks. So if the Indonesian government is not serious about anticipating and reducing IUU activities in Indonesian waters, in addition to being detrimental to the state, it will also give the impression that Indonesia facilitates IUU activities, and can be subject to international sanctions. (Rudiansyah, 2013)

Indonesia's marine waters are very prone to activities *illegal fishing*. (Wibowo, 2023) This is because Indonesian waters have great potential for fishery resources, in addition to being influenced by the geographical position of Indonesian waters adjacent to international waters, so it is very open to the possibility of foreign fishermen entering Indonesian waters and fishing illegally. Foreign fishermen who often enter Indonesian waters come from Thailand, Vietnam, the Philippines, and Malaysia. (Achmad, 2022)

To overcome *illegal fishing* activities, good cooperation between Indonesia and various other countries is needed, because *illegal fishing* is cross-border, so it is quite difficult if it is only carried out by the Indonesian government. Bilateral cooperation between Indonesia and neighboring countries such as Thailand, Vietnam, the Philippines, and Malaysia needs to be built and developed. Through this bilateral cooperation, it is hoped that this *cross-border illegal fishing* activity can be handled properly.

One of the Indonesian waters that is often the destination of foreign fishermen *illegal fishing* is the waters in the area Indonesia's Exclusive Economic Zone (EEZ). Indonesia's EEZ is a marine area that has warm waters throughout the year so that it is a gathering place for various kinds of fish with high economic value. For example, during the Australian winter, many fish migrate to the EEZ around the Indian Ocean. Likewise during the winter in the Philippines, fish migrate to the Pacific Ocean EEZ. This is what causes many foreign fishermen to carry out illegal fishing activities in the waters of Indonesia's EEZ almost all year round. This means that Indonesia's EEZ is the most attractive waters for illegal fishing activities. Moreover, surveillance or marine patrols in the waters of the EEZ have not been optimally carried out by the Indonesian apparatus considering the limitations of its fleet or marine patrol ships. (Muhamad, 2012) (Nadjib, 2015) (Banafanu, 2023)

One example of the settlement of *illegal fishing cases* that has been successfully handled by the Indonesian government is *illegal fishing* carried out by fishermen with Vietnamese nationality, which is carried out within the Indonesian Exclusive Economic Zone (ZEEI). In 2018, based on decision number 42/Pid.Sus-PRK/2018/PN Ptk, the defendant on behalf of Nguyen Van Thuy, a Vietnamese national, carried out fishing without documents/permits in the waters of the Indonesian Exclusive Economic Zone (ZEEI):

- a. Starting with the fishing vessel BTH 98635 TS where Nguyen Van Thuy as the Captain with 5 (five) crew members including the Captain who is all Vietnamese nationality, departed from the port of Binh Thuan-Vietnam using the flag of the State of Vietnam to the South China Sea with the aim of catching fish.
- b. Then on Tuesday, September 25, 2018 at approximately 13.18 WIB at the position of 06o40.300' N - 108o 50.303' E according to GPS or 06° 41' 18" N - 108° 50' 18" E (Zero six degrees forty-one minutes eighteen seconds north latitude - One hundred and eight degrees fifty minutes eighteen seconds east longitude) after being converted and plotted on the nautical chart located in the South China Sea and still in the area of the Exclusive Economic Zone Indonesia (ZEEI), KP. HIU MACAN 01 has caught the fishing vessel BTH 98635 TS where Nguyen Van Thuy as the Captain along with other crew members are fishing using Rawai fishing gear.
- c. Nguyen Van Thuy with 5 (five) crew members using the BTH 98635 TS Ship has been fishing in the Fisheries Management Area of the Republic of Indonesia using Rawai fishing gear, and in the hatch of the ship was obtained fish in the form of ± 2,000 (two thousand) kilograms of fish. And the fish caught will be sold in Vietnam.
- d. Although the fishing gear is not a fishing gear that is prohibited from being used in the Fisheries Management Area of the Republic of Indonesia (WPRI). However, in the fishing operations in the waters of the Indonesian Exclusive Economic Zone (ZEEI), the fishing vessel BTH 98635 TS in which

Nguyen Van Thuy is the Nahkoda, is not equipped with documents/permits such as the Fisheries Business License (SIUP) and the Fishing License (SIPI) issued by the government of the Republic of Indonesia.

- e. The way the Rawai Fishing Fishing Gear operates is that the fishing rod is given fish bait on all fishing rods and lowered / dropped into the sea by the crew of the BTH 98635 TS ship, In 1 (one) day the Fishing Gear type is lowered / operated 2 (two) times from 07.00 – 12.00 noon and from 13.00 – 16.00 in the afternoon. Then there are communication and navigation equipment on the BTH 98635 TS ship in the form of Koompas, GPS and Radio.
- f. The Vietnamese-flagged fishing vessel BTH 98635 TS was finally secured by KP. HIU MACAN 01 from the results of the inspection of the Fishing Vessel BTH 98635 TS found fishing gear (rawai), a Vietnamese-flagged vessel but did not have ship documents, in the form of a Fisheries Business License (SIUP) issued by the Indonesian government, in addition to which mixed fish ± 930 kg were found.

From the case of this position, it can be seen that the Vietnamese fisherman is proven to be an act that violates the Fisheries Law in Indonesia, so criminal sanctions must be imposed in accordance with the applicable rules in Indonesia. In 2010 Indonesia and Vietnam agreed to cooperate in the fisheries sector, Minister of Marine Affairs and Fisheries Fadel Muhammad and Minister of Agriculture and Rural Development of Vietnam Cao Duc Phat signed a *Memorandum of Understanding on Marine and Fisheries Cooperation* in Hanoi, Vietnam, on October 27, 2010.

Indonesia requires Vietnam to be committed to tackling fish theft in Indonesian waters. Indonesia asked Vietnam to stop their fishing boats that illegally enter Indonesian waters. As of June 2010, for example, there were 120 foreign fishing vessels arrested for stealing fish in Indonesian waters. The deadweight ships over 70 tons, among others, came from Vietnam. This MoU is valid for a period of 5 years and can be renewed upon agreement between the two countries. So that for the period of 2016 until now, it is known that the settlement of fisheries crime disputes, namely *illegal fishing* carried out by fishermen from foreign countries, has been resolved based on Law Number 45 of 2009 concerning Fisheries and other laws that are still in force.

The fishing vessel BTH 98635 TS commanded by Nguyen Van Thuy, departed from the port of Binh Thuan in Vietnam which has 5 (five) crew members including the Captain. Where it has the purpose of fishing in the waters of the Indonesian Exclusive Economic Zone (ZEEI) with Vietnamese-flagged vessels but does not have ship documents, in the form of a Fisheries Business License (SIUP) issued by the Indonesian government.

The case was then brought to the Fisheries Court at the Pontianak District Court, where Nguyen Van Thuy was charged in the First Indictment with violating Article 92 jo Article 26 paragraph (1) of

Law of the Republic of Indonesia Number 31 of 2004 concerning Fisheries as amended by Law of the Republic of Indonesia Number 45 of 2009 concerning amendments to Law of the Republic of Indonesia Number 31 of 2004 concerning Fisheries reads: "Every person who deliberately in the fisheries management area of the Republic of Indonesia conducts a fishery business in the field of fishing, cultivating, transporting, processing, and marketing fish, who does not have a SIUP as referred to in Article 26 paragraph (1), shall be sentenced to a maximum of 8 (eight) years in prison and a maximum fine of Rp 1,500,000,000.00 (one billion five hundred million rupiah)".

Nguyen Van Thuy, as a Vietnamese citizen, has been proven to have committed a criminal act in the fisheries sector committed in the Indonesian Exclusive Economic Zone area in the waters of the South China Sea, and by paying attention to the provisions of Article 73 paragraph (3) *of the United Nations Convention on the Law of the Sea*, 1982 (UNCLOS). As ratified by Law Number 17 of 1985 jo Article 102 of Law Number 31 of 2004 concerning Fisheries and in accordance with the Circular Letter of the Supreme Court of the Republic of Indonesia Number 03 of 2015 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2015. Therefore, the Panel of Judges is of the opinion that the punishment to be imposed on the defendant is in the form of a fine, the amount of which will be determined in the verdict.

Based on Decision Number 42/Pid.Sus-PRK/2018/PN Ptk stated that the Defendant Nguyen Van Tue was legally and convincingly proven guilty of committing a criminal act as well as deliberately participating in a fishery business in the field of fishing, which did not have a Fisheries Business License (SIUP), and used fishing gear and/or fishing aids (Pair Trawl) that interfered with and damaged the sustainability of fish resources in the fisheries management area of the Republic of Indonesia.

Imposing a penalty on the Defendant Nguyen Van Tue therefore with a fine of Rp. 200,000,000.00 (two hundred million rupiah). Charging the case fee to the defendant NGUYEN VAN TUE of Rp. 5,000.00 (five thousand rupiah). As well as taking various evidences to be confiscated by the state and destroyed. Determining evidence in the form of:

- 1 (one) Unit of Fishing Vessels BV 93817 TS;
- 1 (one) Winch Unit;
- 1 (one) Axle Unit;
- 1 (one) Unit of Pair Trawl Net Fishing Equipment;
- 9,856 Kg. (nine thousand eight hundred and fifty-six kilograms) Mixed fish;
- Confiscated to be destroyed;
- 1 (one) Super Star 2400 Radio Unit;
- 1 (one) ONWA GPS Unit;
- 1 (one) Spaceon SPST-1100A Satellite Phone Unit

- Confiscated for the country;
- 1 (one) national flag of Vietnam;
- Returned to the Defendant NGUYEN VAN TUE.

This was decided in a deliberative meeting of the Panel of Judges of the Fisheries Court at the Pontianak District Court on Monday, January 14, 2019 by R. Rudi Kindarto, S.H. as the Chief Judge of the Panel and Suharman, S.H., M.M. and IR. A. Widimariyanto as a Member Judge, which verdict is pronounced in a hearing that is open to the public. On that day, the Presiding Judge of the Panel and the member judges, assisted by Lusi Nurmadiatun, S.H. Substitute Registrar of the Fisheries Court at the District Court and attended by Eka Setiawati S.H., MH. The Public Prosecutor at the Pontianak District Attorney's Office and the Defendant. (Indonesia, 2024)

4. CONCLUSION

Based on the results of research and discussion, the fisheries court in its position has the authority to examine, adjudicate, and decide criminal acts in the fisheries sector as a special court within the general judicial environment. As well as the trial process and the reading of the verdict in the fisheries court can be carried out without the presence of the defendant. As for why the fisheries court is a special court because the judges are not pure, there are judges who are in control of the fisheries sector. And the existence of foreign ships that steal fish will be given sanctions and criminal penalties in accordance with Law Number 45 of 2009. The punishment given to illegal *fishing* perpetrators can be in the form of imprisonment, fines, and revocation of previous rights that have been given previously. Illegal *fishing* perpetrators must receive rewards by being subject to large fines for committing violations.

Illegal fishing that occurs in Indonesian waters is a serious problem that must be overcome not only by Indonesia but also through bilateral cooperation. Bilateral cooperation, especially with neighboring countries in the region where fishermen often enter and catch fish illegally in Indonesian waters, needs to be built and developed to deal with this illegal cross-border activity. Although forms of bilateral cooperation have been established between Indonesia and several neighboring countries in securing border waters, it has not been able to overcome the problem of illegal fishing optimally.

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