

Illegal Fishing of Vietnam Ship due to Overlapping of Maritime Zone in Indonesian and Vietnam EEZ

Romi Gaku Setojati^{1*}, L. Tri Setyawanta R²., Peni Susetyorini³
 {gakusetol@gmail.com^{1*}, penithundip@yahoo.com³, peni.susetyorini@live.undip.ac.id³}

Faculty of Law, Diponegoro University, Semarang, Indonesia^{1,2,3}

Abstract. As an archipelagic country, Indonesia has recognized the 1982 UNCLOS. Indonesia has sovereign rights in the Exclusive Economic Zone (EEZ). In the Indonesian Exclusive Economic Zone (*Zona Ekonomi Eksklusif Indonesia/ZEEI*), in the North Natuna Sea, Vietnamese fishing vessels often engage in illegal fishing. This study aims to examine the efforts that the government has made in Indonesia in overcoming cases of overlapping areas in the EEZ and to analyze the basis for law enforcement of the Indonesian EEZ in the North Sea of the Natuna islands. The legal research method used is normative juridical, with data collection using secondary data and analyzing data qualitatively. The results showed that based on UNCLOS 1982, disputes in the overlapping zone in the EEZ should be resolved by an agreement to determine the boundaries of the EEZ, and the state party to the dispute can hold a provisional arrangement to minimize disputes in North Natuna Sea area.

Keywords: UNCLOS 1982, Illegal Fishing, Exclusive Economic Zone, Overlapping zone, Provisional Arrangement.

1 Introduction

Vietnam's Illegal Fishing activities in the overlapping zones of the Indonesian Exclusive Economic Zone (*Zona Ekonomi Eksklusif Indonesia/ZEEI*) area are repeated, causing conflict between the two countries. Indeed, the sea boundary and its rules have been regulated in UNCLOS 1982. Based on UNCLOS 1982, the sea area is divided into six areas, namely:

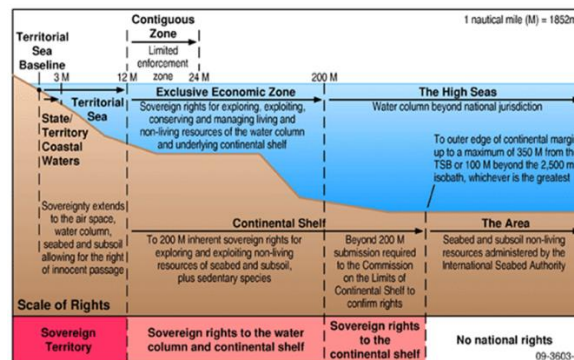


Fig. 1. Maritime Zones of UNCLOS 1982.

Based on Article 3 of UNCLOS 1982, the width of a country's territorial sea has been regulated, namely:

“Each State has the right to determine the breadth of its territorial sea to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention.”

While the Exclusive Economic Zone is described in Article 55 of UNCLOS 1982, it is stated that:

“An exclusive economic zone is an area outside and adjacent to the territorial sea, which is subject to the special legal regimes set forth in this Chapter based on which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the provisions of the relevant provisions of this Convention.”

UNCLOS 1982 in article 56 also regulates sovereign rights and jurisdictions owned by coastal states in the Exclusive Economic Zone area where sovereign rights are to carry out activities in the needs of exploration and exploitation, management and conservation of living and non-biological natural resources. Meanwhile, jurisdiction is the creation and use of artificial islands, installations and structures, conducting marine scientific research, protection and preservation of the marine environment, and other rights and obligations as stipulated in this convention.

In international law, regarding the regulation of state sovereignty on land and at sea, there are fundamental differences in procedural and substantive. This difference occurs in the law of the sea, which regulates sovereignty, sovereign rights, and jurisdiction. “Sovereign rights” or sovereign rights in the exclusive economic zone and continental shelf is the right to use the sea area specifically. International law does not allow the state to exercise full sovereignty in the area. It is different from the full sovereignty of the state that applies on the mainland [1].

In connection with this sovereign right, in the 1982 UNCLOS, there are three main principles: The first principle is that the state has sovereign rights to a portion of the sea area directly adjacent to the country's coastline. The second principle limits the first, which states that the seabed and part of the land above it is a common property which is part of the “common heritage of mankind.” The third principle; states have an obligation to defend and protect the oceans and accommodate the needs of other countries along with their sovereign rights over the oceans.

In line with the sovereign rights regulated in UNCLOS 1982, Indonesia's sovereign rights in Law No. 5 of 1983 concerning the Exclusive Economic Zone (EEZ) of Indonesia Article 4 letter it is stated that *“In the Indonesian Exclusive Economic Zone, the Republic of Indonesia has and exercises sovereign rights to explore and exploit, manage and conserve living and non-living natural resources from the seabed and subsoil and water above it and other activities for exploration and exploitation economic zones, such as generation from hydropower, currents, and wind.”*

Based on the main ideas that have been described, the main problems can be formulated as follows: How is Indonesia's policy in overcoming the overlapping claims of the Exclusive Economic Zone in the North Sea of the Archipelago Natuna with Vietnam, and What is the basis for law enforcement of the Indonesian Exclusive Economic Zone in the North Sea of the Natuna Islands.

2 Method

The research approach can be interpreted as “the researcher’s point of view in choosing the spectrum of the discussion space which is expected to be able to provide a clear description of the substance of a scientific work” [2]. The research method uses a normative juridical approach, which uses secondary data sources in the form of legal rules in international and national law.

Based on the problems above, the type of data needed is secondary data sources, namely data obtained through research through books and legal sources.

In obtaining secondary data, the authors collect data from document studies conducted in several libraries to analyze the Exclusive Economic Zone dispute between Indonesia and Vietnam.

The author in this study uses a qualitative method, namely an assessment of the results of data processing, which is then poured into the form of a report on the formulation of conclusions that provide results in the form of descriptive data to analyze that make it easier to understand the symptoms to be studied [3].

3 Results and Discussion

3.1 Indonesia’s Policy on the Overlapping Claim Area in the North Natuna Sea

Overlapping Zone

The emergence of disputes between countries resulted in the estrangement of diplomatic relations. The worst impact was triggering wars between countries. Conflicts between countries can occur, among others, due to disputes over natural resources, borders, environmental damage, trade, and others [4]. Around the world, disputes over maritime boundaries should pose a formidable challenge to the existing order. With its strategic and geographically close position, the North Natuna Sea in the Riau Archipelago Province creates conflicts between Indonesia and Vietnam, especially in terms of waters and those related to the EEZ boundary. The location of our country often causes conflicts between countries that occur at sea boundaries.

Unilateral claims or violations of Indonesia’s EEZ, especially in the North Natuna Sea area, are caused by Vietnam and other neighbouring countries trying to expand their maritime territory [5]. The sea boundary agreement for the Continental Shelf Zone (ZLK) between Indonesia and Vietnam was reached in 2003 and was enforced in 2007. The problem has arisen for the Exclusive Economic Zone (EEZ). Until now, there has been no agreement. Vietnam, in the end, did receive an understanding of the regime differences between the Continental Shelf and the EEZ. Still, Vietnam, in the withdrawal of the EEZ boundary Vietnam referred to the basepoint of its outermost island. Of course, this was rejected by Indonesia, because Vietnam is not an archipelagic country, as regulated in UNCLOS 1982 [6].

With regard to the term archipelagic state, Article 46 of UNCLOS 1982 states that “archipelagic state” is a country consisting entirely of one or more islands and “archipelago” means a group of islands, including parts of islands, the waters between them and other natural forms that are related to one another same other. Vietnam is not archipelagic, so it cannot draw base points from its outer islands. It differs from Indonesia as an archipelagic country,

which has the right to draw baselines from the outermost islands by Article 47 point 1 of UNCLOS 1982 concerning archipelagic baselines.

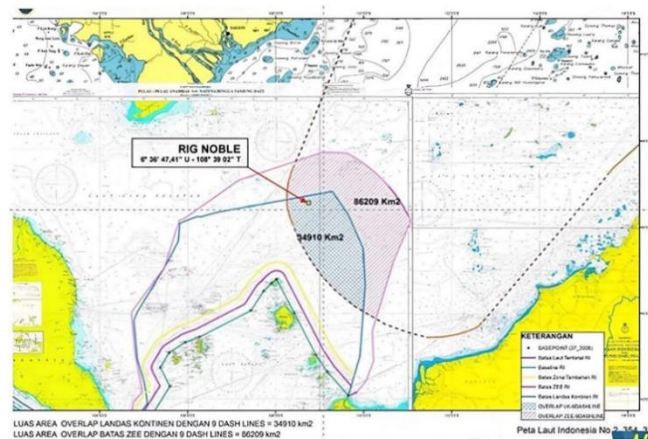


Fig. 2. Overlapping North Natuna Area, Indonesia-Vietnam-Malaysia-PRC

However, problems arise in the Exclusive Economic Zone (EEZ) sea area, for which, until now, there has been no agreement. As a result of these problems, Indonesia took a policy by unilaterally claiming the Exclusive Economic Zone (EEZ) boundary and stated it in the NKRI Map, even though the Exclusive Economic Zone (EEZ) boundary agreement with Vietnam has not materialized [7]. At the beginning of the negotiations, the Vietnamese wanted the Exclusive Economic Zone boundaries equal to the Continental Shelf Zone (ZLK). Still, Indonesia rejected the “single line” proposal.

As a result of the absence of clear agreement rules, conflicts often occur. On February 24, 2019, an incident occurred between the Indonesian Navy Warship KRI TOM-357 while capturing 4 Vietnamese-flagged fishing vessels. This Vietnamese ship broke into the Indonesian EEZ and carried out a threatening manoeuvre (hostile intent) with the assistance of Vietnam Fisheries Resources Surveillance (VFRS). Luckily, KRI TOM-357 managed to avoid this manoeuvre and continued to escort the four captured ships to the Indonesian Navy’s main base in Tanjung Pinang, Riau. Vietnam’s action angered the then Minister of the CTF, Minister Susi Pudjiastuti. [8].

Vietnam’s actions to carry out illegal fishing in Indonesian territory have never subsided. Until 2021, Vietnamese fishing vessels are always escorted by several Vietnamese Fisheries Resources Surveillance (VFRS) fishing patrol boats along the Indonesia-Vietnam Continental Shelf line. The VFRS vessels are strongly suspected of protecting Vietnamese fishing vessels and providing information to support illegal fishing activities by Vietnamese fishing vessels in Indonesia’s EEZ [9].

The Efforts of the Government of Indonesia and the Government of Vietnam in Overcoming the Overlapping of Exclusive Economic Zones

Referring to Article 55 of UNCLOS 1982, the EEZ area is adjacent to the territorial sea. So, the Indonesian EEZ area in the Natuna North Sea is in accordance with what was determined by UNCLOS 1982. The Indonesian EEZ area is also in accordance with Article 57

of UNCLOS 1982, which states that the width of the EEZ area is 200 miles measured from the coastal baseline. So, Indonesia's EEZ area has been guided by UNCLOS 1982, but until now, it is still experiencing overlapping disputes over the EEZ area recognized by Vietnam.

According to Afriansyah [10], to overcome overlapping claims between countries, they must immediately make rules when the authorities face each other (rules of engagement). The best solution for a border conflict is with the two countries' diplomatic efforts without having to take it to an international judiciary.

In connection with the determination of the boundaries of the Exclusive Economic Zone between countries, UNCLOS 1982 has regulated it in Article 74 concerning the determination of the boundaries of the Exclusive Economic Zone between countries whose coasts are opposite or side by side. Article 74 paragraph (1) states that countries in dispute regarding the boundaries of the Exclusive Economic Zone (EEZ) are required to agree on the decision on the EEZ boundaries between the countries. However, suppose a decision has not been reached or is still waiting for a decision. In that case, the countries experiencing the dispute are expected to make Provisional Arrangements or Temporary Arrangements to prevent serious losses to the marine environment, as stated in Article 74 paragraph (3).

By conducting a Joint Fishing Zone, provisional arrangements that can be carried out in EEZ areas that still have overlapping problems, the determination of the provisional arrangement of the Joint Fishing Zone is carried out between the disputing countries to avoid problems that may arise in fisheries jurisdictions in the EEZ area [11]. E.J. Manner, as one of the chairpersons of Negotiation Group 7 (NG7), during the third meeting of the United Nations Convention on the Law of the Sea, stated that two options could be done in determining the Joint Fishing Zone, namely:

1. Grey Zones
The disputing countries agree that in the zone, the maintenance or management of fishing activities is carried out under certain controls or regulations
2. White Zones
The disputing countries agree that in the zone, fishing activities for fisheries resources are abandoned by the countries concerned without proper management.

In practice, several cases of exclusive economic zone disputes run the Joint Fishing Zone, such as the EEZ dispute between South Korea and Japan, where in 1996, the two countries proclaimed the EEZ boundaries of each country. Japan felt that it was necessary to abolish the Fisheries Treaty of 1965, which had been made under the influence of UNCLOS 1956) and 1960, and to make a new treaty based on UNCLOS 1982. Finally, in September 1998, South Korea and Japan agreed on a new Fisheries Agreement establishing a joint fishing zone outside the EEZ Fisheries Zone. In the agreement, South Korea and Japan established the Gray Zone to determine the joint fishing zone of the two countries.

Another case regarding the establishment of the Joint Fishing Zone is the EEZ dispute case between China and South Korea. The Chinese government and South Korea began negotiating a fishery agreement in 1993 due to incidents of fishing vessels from both South Korea and China crossing the sea boundary that each party had claimed. Finally, in September 1998, China and South Korea set territorial boundaries divided into two parts. The first is the Transition Zone between the joint fishing zone and the Korean Zone (considered the Korean EEZ), and the second is the Transition Zone between the joint fishing zone and the China Zone. The fishery agreement was only signed by the two parties in 2000 due to differences of opinion and came into force in 2001.

Based on these cases, territorial boundary disputes in the Exclusive Economic Zone between adjacent or adjacent coastal countries are already required to have an agreement based on international law. If there is no agreement, the country concerned must make efforts to make temporary arrangements which is practical Article 74 paragraphs (1) and (3) of UNCLOS 1982.

Vietnamese fishermen are still carrying out illegal fishing cases in the ZEEI area, namely the North Natuna Sea, due to the overlapping of Indonesia's EEZ region with Vietnam, for which there is no final agreement between the two parties. Regarding the maritime EEZ boundary, on July 30 - August 2, 2019, in the framework of the ASEAN Foreign Ministers Meeting and also the Meeting with ASEAN Dialogue Partners (AMM/PMC) in Bangkok, Thailand, Indonesian Foreign Minister Retno L.P. Marsudi has conducted diplomacy with the Minister of Foreign Affairs/Deputy Prime Minister of Vietnam, Pham Binh Minh. This bilateral meeting discussed one crucial issue: efforts to settle negotiations on the maritime EEZ boundary (between Indonesia and Vietnam) in the overlapping zone [12].

In addition to the meeting, on 19-22 August 2019, the Maritime Security Agency (Bakamla) at the 12th Technical Meeting and Informal Consultation between Indonesia and Vietnam discussed the delimitation of EEZ boundaries in the two countries. The negotiations discussed the Provisional Arrangement or Temporary Arrangements in the EEZ area to minimize incidents between law enforcement officers of the two countries with EEZ authority [7].

However, what is very unfortunate is that the Provisional Arrangement, which was planned by both the Government of Indonesia and the Government of Vietnam, has yet to find a decision or agreement. The Government of Indonesia and the Government of Vietnam have also not been able to make a final decision regarding the boundaries of the EEZs of the two countries. They are still trying to determine the EEZs. On April 23, 2021, President Joko Widodo also held a bilateral meeting with Vietnamese Prime Minister Phạm Minh Chính at the Bogor Presidential Palace. At this meeting, President Joko Widodo emphasized the importance of accelerating negotiations regarding clarity regarding each country's EEZ. The contents of the bilateral meeting were revealed by the Indonesian Minister of Foreign Affairs, Retno Marsudi. First President Jokowi emphasized the importance of strengthening cooperation in the health sector. Second is the importance of increasing cooperation in the economic field. Third, seek to accelerate the EEZ border negotiations that have been going on for 11 years [13].

ASEAN as a regional organization in Southeast Asia in the context of combating Illegal Fishing, realizes that problems in the field of marine resource management require collective handling. Handling illegal fishing and setting maritime boundaries between countries also requires regional cooperation. Given the complexity of the problems faced, one is related to eradicating Illegal Fishing. Management of fishing capacity is considered one of the efforts to deal with Illegal Fishing as regulated in the ASEAN-SEAFDEC Resolution and Plan of Action on Sustainable Fisheries for Food security for the ASEAN Region Towards 2020 [14].

Referring to the Plan of Action for the Implementation of Strategic Partnership (2019-2023) and the Joint Communiqué (2018), the important points of the Joint Communiqué are related to the EEZ dispute. It is hoped that this bilateral communication will urge the Government of Indonesia to urge the Government of Vietnam in its commitment to law enforcement against Illegal Fishing, especially being able to monitor and prevent illegal fishing practices in Indonesian waters [15].

The Ministry of Foreign Affairs of the Republic of Indonesia is expected to accelerate the process of resolving maritime territorial disputes between Indonesia and Vietnam in the

overlapping zones of Indonesia-Vietnam EEZ claims. This collaboration is also expected to accelerate the process of delimiting maritime boundaries so that the division of the sea becomes clear. It is in line with the Roundtable Discussion: Building Indonesia-VietNam Maritime Partnership organized by the Indonesian Embassy in Hanoi, the Diplomatic Academy of Vietnam, and the University of Indonesia's Center for Sustainable Ocean Policy on November 26, 2021. This commitment is manifested in the close institutional relationship between the Maritime Security Agency (Badan Keamanan Laut/Bakamla) and Vietnam Coast Guard (VCG) [16].

3.2 Basis for Law Enforcement of the Indonesian Exclusive Economic Zone in the North Sea of the Natuna Islands

If based on international law, the 1982 Convention on the Law of the Sea (United Nations Convention on The Law of the Sea 1982 – UNCLOS) has regulated the sovereign rights possessed by a country in its Exclusive Economic Zone area. Article 56 paragraph (1) letter (a) of UNCLOS 1982 expressly stated that Indonesia has sovereign rights over natural resources in the North Natuna Sea and can carry out exploitation, exploration, conservation and management of its natural resources. Both in terms of non-living resources and living resources, Indonesia can exercise its jurisdiction as a coastal state in Indonesia's EEZ area.

As a coastal country with the North Natuna Sea area as the Indonesian Exclusive Economic Zone, Indonesia can exercise its sovereign rights in the EEZ by taking actions such as inspecting, boarding, detaining and carrying out legal prosecutions needed to guarantee the laws and regulations that the state has issued. Coast, in this case, Indonesia, in accordance with UNCLOS 1982. It has been regulated in Article 73 of UNCLOS 1982. In connection with such law enforcement actions, when referring to Article 111 of UNCLOS 1982, the coastal state can also exercise the right of hot pursuit when there are foreign vessels or illegal vessels that violate the laws and regulations of the coastal state.

However, UNCLOS 1982 has placed some limitations on the authority of a coastal state when enforcing laws against the actions of foreign vessels. These limitations are contained in Article 73 paragraphs (2), (3), and (4) of UNCLOS 1982. The article states that the ship and the first ship arrested must be released immediately after being given an appropriate bail. The sentence imposed on fisheries violations may not include imprisonment if there is no prior agreement between the countries concerned. The coastal state which has enforced its laws in the Exclusive Economic Zone must notify the flag state of the foreign ship through official diplomatic channels such as through the ministry of foreign affairs, the ministry of defence and security, and/or the ambassador in a country that has violated the interests of its country. This regulation in Article 73 is expected to maintain good relations between the two countries, and the interests of the use of the sea in the EEZ area can be carried out regularly and in an orderly manner [17].

The 1982 UNCLOS regulations have also been implemented in Indonesian laws and regulations because the Government of Indonesia has ratified UNCLOS 1982 by issuing Law No. 17 of 1985 concerning Ratification of the 1982 United Nations Convention on the Law of the Sea. All the regulations set in the 1982 UNCLOS protect Indonesia's marine areas and waters.

Before the ratification of UNCLOS 1982 in Law no. 17 of 1985, the Government of Indonesia first ratified Law No. 5 of 1983 concerning the Indonesian Exclusive Economic Zone, where there is no difference from the 1982 UNCLOS. The ZEEI Law is based on the regulations contained in the 1982 UNCLOS, which specifically regulates the Exclusive

Economic Zone. Law No. 5 of 1983 regulates the implementation of sovereign rights and Indonesia's jurisdiction in the Indonesian Exclusive Economic Zone (EEZ).).

Policies or steps to prevent illegal fishing are very important to ensure the safety and sustainability of Indonesian marine biota and maintain the threat to the sovereignty of the Indonesian state, especially the North Natuna Sea area. The steps that can be taken are [18]:

- a. Maximizing the use of Vessel Monitoring System (VMS) or Fishing Vessel Monitoring System (*Sistem Pemantauan Kapal Perikanan/SPKP*)
- b. Maximizing the use of Vessel Monitoring System (VMS) or Fishing Vessel Monitoring System (SPKP)
- c. Increase the role and patrol activities of the Navy, Police, Bakamla, and Task Force 115 tasked with eradicating illegal fishing
- d. Multiply and increase the effectiveness of monitoring posts for illegal fishing activities, especially in areas where illegal fishing occurs, such as in the North Natuna Sea area.

In terms of maritime security in fisheries, based on Article 14 of Law no. 5 of 1983, the Navy Officers are law enforcement officers in the field of investigation in the ZEEI. However, suppose you look at Article 73 paragraph (1) of Law no. 45 of 2009 concerning fisheries Amendments to Law no. 31 of 2004. In that case, it states that law enforcement officers who can conduct investigations into criminal acts of illegal fishing are not only Indonesian marine (TNI AL) officers but can be carried out by Fisheries Civil Servant Investigators and State Police Investigations of the Republic of Indonesia.

To provide a deterrent effect on the perpetrators of illegal fishing, Article 69 paragraph (4) of Law no. 45 of 2009 concerning Fisheries expressly imposes sanctions in the case of burning and/or sinking of foreign vessels that carry out illegal fishing activities in Indonesian waters. The act of imposing sanctions in the form of burning and/or sinking of foreign vessels is carried out by "Fishing Supervisory Vessels", which are Indonesian government vessels that have been given special marks to carry out surveillance and law enforcement actions in the fishery sector.

In addition to the Navy, Fisheries Civil Servant Investigators and the National Police of the Republic of Indonesia, in 2015, the Indonesian government issued a Presidential Regulation that regulates the Task Force for the Eradication of Illegal Fishing, namely Presidential Decree No. 115 of 2015 concerning the Task Force for the Eradication of Illegal Fishing. The task force is to develop and implement law enforcement to eradicate illegal fishing in Indonesia's jurisdictions.

4 Conclusion

EEZ conflict between Indonesia and Vietnam in the North Natuna Sea area is due to overlapping zone claims to the EEZ boundary. The Indonesian government and Vietnam have agreed on the Continental Shelf Zone (*Zona Laut Kontinen/ZLK*), but there is no clear spot on the EEZ boundary. Indonesia rejects Vietnam's EEZ boundary claim, which refers to the basepoint of its outermost island, because based on Article 46 of UNCLOS 1982, Vietnam is not an archipelagic country. Referring to UNCLOS 1982, if there is a dispute regarding the boundaries of the EEZ between coastal countries, the disputing countries must agree to reach a fair solution.

Article 74, paragraph (1) and paragraph (3) of UNCLOS 1982 state that if there are countries experiencing disputes over the boundaries of the EEZ, it is necessary to hold an agreement between the countries concerned, and pending a final decision, the disputing countries must make efforts to enter into Provisional Arrangements or temporary arrangements while waiting for the final result of the agreement to be formed. In this regard, the Government of Indonesia and the Government of Vietnam have agreed to immediately complete the preparation of the Provisional Arrangement to avoid the emergence of disputes between the authorities of the two parties in the North Natuna Sea. However, until now, the Provisional Arrangement has not been completed, and the governments of Indonesia and Vietnam are still meeting to discuss each country's EEZ boundaries.

The provisions of the 1982 UNCLOS increasingly strengthen Indonesia's legal basis in the Indonesian marine area, especially in the Exclusive Economic Zone, where Indonesia has ratified the 1982 UNCLOS in Law No. 17 of 1985. Regarding the Exclusive Economic Zone area, the Government of Indonesia has also ratified Law No. 5 1983, which regulates the Indonesian EEZ. Other laws and regulations such as Law No. 45 of 2009 concerning Amendments to Law No. 31 of 2004 concerning Fisheries further strengthen the legal basis that can be enforced by the Government of Indonesia in Indonesian territorial waters against actions that harm Indonesia, such as illegal fishing.

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