

## Indonesia Balances War on Illegal Fishing with International Obligations

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*Since **Susi Pudjiastuti** left her post atop the Indonesian Ministry of Marine Affairs and Fisheries in 2019, the nation's fisheries policy has undergone major changes. Besides [reviving a controversial lobster larvae export program](#) that Susi had banned and [ending her policy of sinking foreign poaching boats](#), now the ministry is formulating regulations on how to promptly release illegal foreign fishing vessels caught by Indonesian authorities. So is it the best time to have such a regulation in Indonesia?*

Indeed, the obligation for granting a prompt release for illegal foreign fishing vessels and crews is laid out under the [United Nations Convention on the Law of the Sea \(UNCLOS\)](#). UNCLOS not only grants a sovereign right to a coastal state to explore and exploit natural resource in its exclusive economic zone (EEZ), but also the right to conduct law enforcement against any breach of national regulations if there are a foreign fishing vessels illegally fishing in the coastal state's EEZ.

However, UNCLOS also imposes a limitation on law enforcement in the EEZ, since coastal states only have sovereign rights over natural resources and not full sovereignty. Article 73(2), for instance, states that if vessels and their crews are caught for illegal fishing practices in the EEZ, they should be promptly released upon the posting of a reasonable bond or other security.

Since Indonesia is a party to UNCLOS, it is bound to the obligation to grant prompt release under Article 73(2). To date, however, Indonesia does not have specific regulations on how to implement this obligation for prompt release. On the other hand, Indonesia has national laws that might contradict and make it impossible to implement prompt release.

Under the Indonesian fisheries law, for instance, it is permissible to immediately sink an illegal foreign fishing vessel [based on sufficient preliminary evidence](#) without the need for a final and binding court decision. Therefore, Indonesia can implement its policy of sinking vessels and disregard the obligation for prompt release.

One of the major directions that President Joko Widodo gave to the new fisheries minister, Edhy Prabowo, is to create a [friendlier business environment in the fisheries sector](#), so there will be an increase in Indonesian fisheries exports. To implement the president's direction, Edhy has changed some of the previous policies, including no longer sinking illegal foreign fishing vessels in Indonesian waters. He argued that it is better to use the vessels for Indonesian fisheries training rather than to sink them.

Even though many have praised Susi Pudjiastuti for [successfully promoting the sustainable use of the oceans](#) as well as the war against illegal, unreported and unregulated (IUU) fishing. It seems that the president was not satisfied with Susi's relationship with the business sector, therefore replacing her with a new minister. Now, as part of his goals in creating a more business-friendly fisheries sector in Indonesia as well as to ensure compliance with UNCLOS, he is formulating the regulation to implement the obligation for prompt release.



Indonesia's former fisheries minister Susi Pudjiastuti leads the capture of an illegal fishing boat in the Natuna Islands. Image courtesy of the fisheries ministry.

Indeed, prompt release has been a serious concern for the international community. Since the International Tribunal on the Law of the Sea was established in 1994, there have been at least nine cases regarding the failure to grant prompt release by coastal states. And in some major cases, such as those of the vessels [MV Virginia G](#) and [Monte Confurco](#), the tribunal has emphasized the importance of the prompt release obligation to balance the interest of coastal states and flag (vessel) states.

Therefore, it is not impossible for Indonesia in the future to be brought before the tribunal by any country that demands a prompt release if Indonesia does not grant prompt release. That's because there aren't national regulations that make the prompt release possible, and the Indonesian fisheries law makes it possible to sink illegal fishing vessels with only preliminary evidence and no chance of a prompt release. But this article argues that the policy to sink poaching vessels is not necessarily a breach of UNCLOS if the offer of prompt release has been made and the flag state country fails to express interest in paying a reasonable bond for the release.

That being said, indeed, it is important for Indonesia as a party to UNCLOS to have national regulations to implement the obligation for prompt release. That way there will be a certainty of the legal framework that currently does not exist.

However, it doesn't mean that granting a prompt release should be a compromise to any illegal fishing practices in Indonesian waters. Indonesia still has to focus on the sustainable

use of the oceans by having strong sanctions against any illegal fishing practices without breaching any international obligations. Therefore, prompt release should not mean that Indonesia must take a weaker stance toward the war against illegal, unreported and unregulated fishing, but more to balance the coastal states' and flag states' rights under UNCLOS.

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Featured image: A bucket of fish at a market in Labuan Bajo, Indonesia. Image by Rhett A. Butler/Mongabay.

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