



The Countermeasures Efforts of Illegal Transshipment Impact as a Transnational Crime

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Abstract

Abstract

The impacts and drawbacks of transshipment, which threaten sustainable development, underscore its classification as a transnational crime. While legal countermeasures are needed to address transshipment crimes in Indonesia, the practice persists due to the necessity of ensuring fish freshness, which involves time-consuming landing processes. Furthermore, the effectiveness of countermeasures is hindered by the lack of a dedicated agency or institution with comprehensive authority to oversee and act against maritime crimes in Indonesian waters. This article examines the relationship between transshipment and transnational crime and proposes a countermeasures framework. The research findings indicate that transshipment is regulated by both international and national laws but qualifies as a transnational crime due to its cross-border impact and its association with other transnational crimes. Recommendations include establishing cooperation between central and regional governments to enhance marine and fisheries governance and implementing a restorative justice mechanism to address fisheries crime cases, such as transshipment, by requiring offenders to compensate for damages and restore fish resources.

A. Introduction

Fisheries crime covers illegal fishing as well as unreported and unregulated fishing activities referred to as Illegal, Unreported, and Unregulated (IUU) fishing.¹ The activities of foreign fishing vessels operating without permits within Indonesian territorial waters pose a significant threat to the country, as they constitute violations of Indonesia's jurisdiction, specifically within its Exclusive Economic Zone (EEZ).² Among the various forms of IUU fishing is transshipment, a practice where fish are sold at sea, preventing the catch from being landed and reported. Transshipment, in this context, can be considered a form of theft, as the transfer and sale of fish occur on the high seas between vessels without official documentation of the catch.³

Globally, transshipment is responsible for the extraction of 11 to 26 million metric tons of fish from the oceans annually. This practice results in revenue losses for individual countries, ranging from US\$10 billion to US\$23.5 billion each year. Moreover, transshipment undermines global fisheries management and conservation efforts, contributing to overfishing. Notably, 35% of all transshipment activities take place on the high seas, while 65% occur within EEZs. Of these, 39% take place in Russia's EEZ, while the remaining 61% are spread across 41 countries worldwide.⁴ Thus, transshipment represents a widespread problem affecting marine areas on a global scale.

Transshipment activities involving fishermen and foreign vessels on the high seas can be classified as transnational crimes, given that they involve cross-border operations and networks between actors from different countries. This aligns with the criteria outlined in Article 3 of the UNTOC Convention, which emphasizes the elements of transnational crime.⁵ However, despite these characteristics, transshipment has not yet been officially categorized as a transnational crime under the 2000 UNTOC. Nevertheless, transshipment serves as a primary offense that often facilitates the commission of other crimes, highlighting the need for international cooperation to effectively combat and prevent such activities.

Illegal transshipment activities are often referred to as the "mother offense" due to their connection to a range of other violations, forming a chain of crimes. These include fish dumping (high grading, where fish with lower market value are discarded), falsification of catch records, embezzlement of fish, overfishing, counterfeiting of catch weights, illegal fishing, the use of prohibited fishing gear, mislabeling of fish products, and direct sales to evade taxes.⁶ In essence, transshipment serves as a tool that facilitates not only fisheries-related crimes but also broader offenses such as drug trafficking, human trafficking, and corruption.⁷ This underscores the severity of transshipment and the significant threats it poses to sustainable development.

¹ Fernando Aprizal, Siti Muslimah, "Penegakan Hukum Terhadap Kasus Illegal, Unreported, Dan Unregulated Fishing Yang Dilakukan Terhadap Kapal Km Bd95599 Ts Di Laut Natuna Sesuai Dengan Hukum Internasional", *Belli Ac Pacis* 5, no. 2 (2019): 87-92, 88.

² Pasili, "Sanksi Pidana Perikanan Terhadap Kia Yang Melakukan Illegal Fishing Di Zee", *Jurnal Hukum Universitas Brawijaya* (2015): 1-22, 5.

³ Yayan Hikmayani, Rikrik Rahadian, Nurlaili dan Rizky Muhartono, "Efektivitas Pemberlakuan Kebijakan Moratorium Kapal Eks Asing dan Transshipment Terhadap Kinerja Usaha Penangkapan Ikan", *J. Kebijakan Sosek KP* 5, no. 2 (2015): 101-112, 102, DOI: <http://dx.doi.org/10.15578/jksekp.v5i2.1021>.

⁴ Kristina Boerder, Nathan A. Miller, Boris Worm, "Global Hot Spots of Transshipment of Fish Catch At Sea", *Science Advances Research Article* 4, no. 7 (2018): 1-11, 2, DOI: 10.1126/sciadv.aat7159.

⁵ Convention Against Transnational Organized Crime atau UNTOC adalah konvensi internasional bentukan Perserikatan Bangsa-Bangsa (PBB) pada tahun 2000 di Palermo, Italia PBB melalui Resolusi Perserikatan Bangsa-Bangsa Nomor 55/25 sebagai instrumen hukum dalam menanggulangi tindak pidana transnasional yang terorganisasi.

⁶ Ardi Hendharto, "Understanding Iuu Fishing As Transnational Organized Crime With Special Example Of Benjina Case", *Kajian* 23, no. 2 (2018): 95-109, 103.

⁷ Fish-i Africa, *Illegal Fishing? Evidence and Analysis* (Gaborone, Botswana: Fish-I 2017), 19.

The consequences of transshipment extend beyond immediate financial losses, impacting both current and future generations. Fish that should benefit today's population, as well as future generations, are diverted abroad through illegal transshipment, preventing optimal utilization of these resources. Moreover, the economic gains from fisheries are diminished due to inaccurate reporting, creating biases in fisheries data that undermine resource management. Illegal fishing, particularly through transshipment, often employs environmentally destructive technologies, further depleting fishery resources.⁸ In some cases, transshipment even undermines national sovereignty, as foreign vessels enter territorial waters without permission, committing acts of fish theft.⁹ Thus, the long-term impacts of transshipment are felt by future generations, emphasizing the need for decisive action.

In response, the Indonesian government has implemented various measures to combat and prevent transshipment, including the establishment of legal frameworks. Regulations such as Ministerial Regulation of Maritime Affairs and Fisheries (Permen KP) No. 57/Permen-KP/2014 (a revision of No. 30/Men/2012) on capture fisheries businesses, and Permen KP No. 58/PERMEN-KP/2014, which governs the discipline of civil servants within the Ministry of Maritime Affairs and Fisheries, reflect Indonesia's efforts to curb transshipment. These regulations prohibit the practice of transshipment or the transfer of goods at sea, impose a moratorium on capture fisheries business licensing, and regulate the use of foreign captains and crew members.¹⁰ These legal initiatives demonstrate Indonesia's commitment to tackling transshipment, given its role as the largest contributor to illegal fishing-related losses. However, despite these efforts, illegal transshipment continues to occur, resulting in an estimated annual loss of IDR 20 trillion, with 75% of that amount (approximately Rp. 15 trillion) attributed to transshipment, according to the Director General of Supervision and Control of Marine and Fisheries Resources (P2SDKP) at the Ministry of Marine Affairs and Fisheries.¹¹

Several regions in Indonesia frequently experience transshipment practices, one of which is the waters of Benoa, Bali. In this area, transshipment is carried out by transferring cargo to a Taiwanese aircraft carrier, resulting in state losses amounting to billions of rupiah. Susi Pudjiastuti, the former Minister of Maritime Affairs and Fisheries, explained that longline vessels (a type of fishing vessel) catch approximately 30 tons of fish per trip, with each ton valued at around USD 5,000. Taiwanese fishermen typically make 8 to 10 trips over the course of eight months.¹² In another case, transshipment was reported off the coast of Pulau Weh, Sabang, Aceh, where the Thai-flagged cargo ship Silver Sea 2 was apprehended by the Indonesian National Army for operating without a Fish Transporting/Gathering Ship Permit (SIKPI).¹³

This article highlights the significant impacts and disadvantages of transshipment, which poses a direct threat to sustainable development and can be classified as a transnational crime. On one hand, there is an urgent need for legal measures to prevent and combat transshipment in Indonesia. However, on the other hand, transshipment has become a practical necessity for the fishing industry. Fishery products fetch higher market prices when sold fresh, and landing

⁸ Savitri Nur Setyorini, "Penerapan Transshipment: Kaitannya Dengan Hak Bangsa Indonesia Atas Komoditas Perikanan dan Pembangunan Berkelanjutan", *Jurnal Hukum Lingkungan* 1, no. 2 (2014): 86-100, 94.

⁹ Muh. Risnain, "The Eradication Concept of Illegal Fishing In Keeping Security and State Sovereignty in the Fisheries; The International and National Legal Perspective of Indonesia", *Jurnal Cita Hukum. Faculty of Sharia and Law UIN Jakarta* 5, no. 1 (2017): 59-74, 61, DOI: 10.15408/jch.v5i1.4120.

¹⁰ Rizky Emelya, "Dampak Permen Kp No.56/2014 dan Permen KP No. 57/2014 Terhadap Ekspor Ikan Tuna Indonesia Ke Amerika Serikat", *eJournal Ilmu Hubungan Internasional* 6, no. 4 2018: 1565-1582, 1584.

¹¹ <https://www.bpkp.go.id/berita/read/1457/11300/Rp-15-Triliun-Kerugian-Negara-Akibat-Transshipment>, accessed on 21 february 2022.

¹² <https://news.detik.com/berita/d-3286337/menteri-susi-selidiki-transshipment-illegal-fishing-di-wilayah-ini>, accessed on 21 february 2022.

¹³ <https://www.mongabay.co.id/2015/10/07/lakukan-illegal-transshipment-kapal-asal-thailand-yang-ditangkap-di-sabang-ini-malah-melawan/>, accessed on 21 february 2022.

the catch at a fishing port often results in delays that reduce freshness. Additionally, the lack of sufficient cold storage facilities to preserve fish further drives the practice of transshipment.¹⁴

Efforts to combat transshipment in Indonesia face several challenges, primarily due to the absence of a dedicated agency with full authority to monitor and enforce laws against such crimes in Indonesian waters. Current oversight primarily focuses on foreign vessels entering Indonesia's territorial seas, while illegal fishing increasingly exploits new methods, such as funding local fishermen to engage in transshipment.¹⁵

The research method employed in this study is a normative legal research approach, focusing on conventions and laws. This approach is adopted because the study aims to analyze transshipment as a transnational crime based on both Indonesian regulations and international legal frameworks. The data will be analyzed qualitatively, using descriptive and prescriptive methods to provide a comprehensive overview and construct arguments based on the research findings.

The study utilizes primary legal sources, including relevant laws and conventions such as the United Nations Convention on the Law of the Sea (UNCLOS 1982), the Convention Against Transnational Organized Crime (2000), and regulations issued by the Indonesian Ministry of Maritime Affairs and Fisheries (PERMEN KP), as well as legal scientific articles. Secondary data are drawn from journals, news reports, books, and other relevant sources. The analytical method used in this research is descriptive analysis, which seeks to describe the legal framework and provide a thorough analysis of the issues at hand.

This research was performed to analyze "The Countermeasures Against Transshipment as a Transnational Crime" based on the following research questions: What are the impacts of illegal transshipment in relation to transnational crime? And what is the framework for countermeasures to address transshipment as it relates to transnational crime?

B. Discussion

1. Transshipment Based on International Law and Indonesian Law

Transshipment is defined by the Food and Agriculture Organization (FAO) as the transfer of a catch from one fishing vessel to another or to a vessel used exclusively for cargo transport.¹⁶ International law, specifically the United Nations Convention on the Law of the Sea (UNCLOS 1982), regulates transshipment as part of its broader governance of maritime law. UNCLOS 1982 emphasizes that while countries enjoy certain freedoms in international waters, including fishing, these activities must respect the rights of other nations and be conducted within the framework established by international conventions and legal provisions.

Article 87 of UNCLOS 1982 outlines the principle of freedom of the seas, including the freedom to fish. However, this freedom does not imply unrestricted power for any nation; instead, it is subject to regulations designed to protect marine resources and maintain the integrity of international waters. Furthermore, Article 21 and Article 19(2) of UNCLOS 1982 establish that foreign-flagged vessels pose a threat to the peace and security of coastal states if they engage in activities such as transshipment in territorial waters. The convention mandates that vessels conducting transactions in violation of international law, including illegal

¹⁴ Savitri Nur Setyorini, *Op.Cit.*, p. 97.

¹⁵ Aldhanalia Pramesti Salsabila, "Pengoptimalan Satgas 115 dengan Model Koordinasi Satgas Pusat dan Daerah Sebagai Bentuk Pencegahan Illegal Transshipment di Indonesia", *Lex Scientia Law Review* 2, no. 1 (2018): 5-20, 8.

¹⁶ Fayakun Satria, Lilis Sadiyah, Agustinus Anung Widodo, Chris Wilcox, Jessica H. Ford, Britta Denise Hardesty, "Characterizing Transshipment At-Sea Activities by Longline and Purse Seine Fisheries in Response to Recent Policy Changes In Indonesia", *Marine Policy* 95 (2018): 8-139, 8-13, DOI: 10.1016/j.marpol.2018.06.010.

transshipment, must comply with the laws of the coastal state within whose territory the activities occur.¹⁷

In Indonesia, transshipment is strictly regulated. The Minister of Maritime Affairs and Fisheries issued several regulations to prohibit the practice of loading and unloading goods at sea. These include PERMEN KP 56/PERMEN-KP/2014, which imposes a temporary suspension (moratorium) on capture fisheries business licensing in Indonesian fisheries management areas, and PERMEN KP No. 57/Permen-KP/2014, a revision of Number 30/Men/2012, which regulates capture fisheries businesses in Indonesia. Additionally, PERMEN KP No. 58/PERMEN-KP/2014 addresses the discipline of state civil apparatus employees within the Ministry of Maritime Affairs and Fisheries in implementing the moratorium on capture fisheries licensing, transshipment at sea, and the employment of foreign captains and crew members.¹⁸

The primary aim of these regulations is to enhance the management of Indonesia's fisheries sector by requiring the re-registration of vessels and prohibiting the transfer of cargo at sea. These policies also seek to mitigate overfishing, protect marine ecosystems, and reform industrial governance in Indonesia's fisheries sector.¹⁹ The broader goal is to use this momentum to build a more sustainable and prosperous fishing industry, benefiting local communities and preserving natural resources. Both international and Indonesian laws regulating transshipment underscores the significance of this issue, which is not merely an ordinary crime. Transshipment often involves transnational crime, transcending borders and creating complex challenges for law enforcement and governance.

2. Transshipment as Transnational Crimes

The term "transnational" is specifically used to refer to crimes committed by individuals, where those individuals can be held accountable under both national and international law. It is important to distinguish perpetrators of transnational crimes from those responsible for international crimes, where the latter often involves States as the accountable entities. In such cases, States can only be held responsible through international legal frameworks (international criminal responsibility of States).²⁰

Transnational crimes, however, are typically committed by organized groups that operate across borders, seeking the most profitable opportunities while exploiting safe havens to avoid legal prosecution.²¹ These crimes are defined by their cross-border nature and their ability to evade jurisdictional limitations. The characteristics of transnational crimes are outlined in the Convention Against Transnational Organized Crime, also known as the Palermo Convention (2000).²² Article 3 of the UNTOC Convention states that the elements of transnational crime are as follows.

¹⁷ Zainal Abdul Aziz Hadju, "Analisis UNCLOS 1982 Terkait Permasalahan Yurisdiksi Negara dan Penegakan Hukum Atas Kapal Berbendera Negara Asing", *SASI* 27, no. 1 (2021): 12 – 23, p. 13, DOI: 10.47268/sasi.v27i1.254.

¹⁸ Rizky Emelya, "Dampak Permen Kp No.56/2014 Dan Permen Kp No. 57/2014 Terhadap Ekspor Ikan Tuna Indonesia Ke Amerika Serikat", *eJournal Ilmu Hubungan Internasional* 6, no. 4 2018: 1565-1582, 1584.

¹⁹ Atika Zahra Rahmayanti, Bintang Dwitya Cahyono, dan Mochammad Nadjib, "Implikasi Kebijakan Moratorium Perizinan Usaha Perikanan Tangkap Terhadap Sektor Perikanan Di Bitung", *Jurnal Ekonomi dan Pembangunan* 25, no. 1 (2017): 1-14, 3.

²⁰ Noer Indriati, "Mutual Legal Assistance Treaties (Mlats) Sebagai Instrumen Pemberantasan Kejahatan Internasional", *Jurnal Dinamika Hukum* 9, no. 2 (2009): 104-110, 105, DOI: <http://dx.doi.org/10.20884/1.jdh.2009.9.2.218>.

²¹ Klaus von Lampe, "Transnational Organized Crime: Challenges for future research", *Crime, Law and Social Change* 58, no. 2 (2012): 179-194, 182, DOI:10.1007/s10611-012-9377-y.

²² Romli Atmasasmitha, "Ekstradisi dalam Meningkatkan Kerjasama Penegakan Hukum", *Jurnal Hukum Internasional, Lembaga Kajian Hukum Internasional Fakultas Hukum Universitas Indonesia* 5, no. 1 (2007): 1-15, 3, doi:10.17304/ijil.vol5.1.145.

- a. It is committed in more than one country;
- b. It is committed in one country, but the preparation, planning, direction, or control of the crime occurs in another country;
- c. It is committed in one country but involves an organized criminal group that engages in criminal activities across multiple countries; or
- d. It is committed in one country, but its consequences are felt in other countries.

I Wayan Parthiana highlights that transnational crimes do not adhere to national boundaries. Key aspects of these crimes, such as their location, consequences, and objectives, are not confined to a single country's territory. Parthiana emphasizes that transnational crimes transcend geographic limits, making them inherently difficult to address solely within a national framework. M. Cherif Bassiouni further elaborates on the elements of transnational crime, identifying three key components: international elements, transnational elements, and the element of necessity.²³ The international element refers to actions that impact more than one country or involve cross-border activities. The transnational element includes actions that affect citizens of multiple countries, involve infrastructure or methods that cross national borders, or have consequences extending beyond a single country. The element of necessity underscores the need for international cooperation to effectively counter these crimes.²⁴

Transshipment can be classified as a transnational crime because it meets these defining elements. For example, cases of transshipment in Indonesian waters, such as those in the Benoa Sea in Bali and the Sabang Sea in Aceh, involved vessels flying the flags of Taiwan and Thailand. The crew members involved were also citizens of Taiwan and Thailand, highlighting the cross-border nature of the activity. Thus, transshipment fulfills the criteria of transnational crime: it impacts multiple countries (Indonesia, Taiwan, and Thailand), involves citizens from different nations, and relies on methods and infrastructure that extend beyond national borders. This classification underscores the need for coordinated international efforts to effectively address and counteract the practice of transshipment.

Transnational crimes, as identified by the United Nations Convention against Transnational Organized Crime (UNTOC), encompass 18 categories, including money laundering, terrorism, theft of art and cultural objects, theft of intellectual property, illicit trade in arms and soldiers, aircraft hijacking, piracy, insurance fraud, cybercrime, environmental crime, human trafficking, smuggling of migrants, illicit drug trafficking, fraudulent bankruptcy, infiltration of legal businesses, corruption, bribery of public officials, and bribery of political party officials.²⁵

Transshipment is not explicitly classified as a transnational crime within UNTOC's 2000 framework. However, when assessed against certain criteria of transnational crimes, transshipment may indeed fall under this classification. Illegal, Unreported, and Unregulated (IUU) fishing is frequently associated with various transnational crimes, including illegal fishing, human trafficking, migrant smuggling, forced labor, and drug trafficking.²⁶ Transshipment, by exploiting legal loopholes to lower shipping costs for fish, often enables these activities. As a result, it is linked to corruption, international fraud, drug trafficking, and human trafficking. In essence, transshipment facilitates other crimes by obscuring illegal activities within legal trading processes, making detection more difficult.²⁷ Thus, transshipment exhibits connections to several other transnational crimes, as detailed in the following table:

²³ Shinta Agustina, "Perdagangan Perempuan dan Anak sebagai Kejahatan Transnasional: Permasalahan dan Penanggulangannya di Indonesia", *Jurnal Hukum Projustitia* 24, no.1 (2006): 47-62, 50.

²⁴ Maharani Siti Shopia, Transnational Organized Crime, *Buletin Kesaksian Lembaga Perlindungan Saksi dan Korban*, no. 3 (2012): 1-38, 4.

²⁵ Convention Against Transnational Organized Crime 2000.

²⁶ Lacey Malarky and Beth Lowell, "No More Hiding at Sea: Transshipping Exposed", *Oceana* (2017): 1-14, 3.

²⁷ Fayakun Satria, Lilis Sadiyah, Agustinus Anung Widodo, Chris Wilcox, Jessica H. Ford, Britta Denise Hardesty, *Op.Cit.*, 10.

No.	Types of Transnational Crime	Links to the Transshipment
1.	Corruption	<p>Corruption through transshipment in Indonesia has lossed the state finances as much as Rp. 100 T.²⁸ There are several forms of corruption through transshipment, namely:</p> <ul style="list-style-type: none"> - There are bribes to law enforcement officers in the field. It is often happens when there is a violation on ship board or at a port facility, or an officer asks directly to avoid inspection. - Misuse of permission, and lack of transparency regarding company, individual, and ship permits issued by state officials. This abuse causes limitations on public accountability for fisheries resource management. It is because an allegation of the permits issuance through bribes to the officials who release the permission. Thus, this bribery diverts money that should go into the state but it into the hands of individual government officials. - Investigation and fines on illegal activities within the scope of fisheries administration. When an operator or owner vessel is accused of violating fisheries regulations, so there can be hope that the facts of the legal process in the case are reviewed by an independent party with appropriate penalties. However, there have been allegations that the operator paid the fines set by the fisheries authority without independent review, and the funds from these fines were not properly accounted for by the competent authorities. So that it can be classified as a bribe to an official for a reduced sentence.
2.	Fraud	<p>Customs fraud is a common component of transshipment fisheries crime in West Africa. These crimes has an impact on revenue in the tax sector which lead to illegal fishing, and threaten public health. This customs fraud can pose a threat to human health, because the fish delivery process is not properly inspected or reviewed by the authorized health inspector. This fraud uses fake health documents to disguise the country of origin, real identity and flags of fishing vessels. It is often accompanied by false labeling on imported packaging, or false outer packaging that shows the fish species statement.</p>
3.	Human Trafficking	<p>There is a strong relationship between vessels engaging in illegal fishing such as transshipments and vessels exploiting their crews for forced labour. Things like this can be classified as human trafficking in the fisheries sector. This</p>

²⁸ <https://kumparan.com/kumparanbisnis/mantan-pimpinan-kpk-ungkap-praktik-transshipment-rugikan-negara-rp-100-t-1sst6QqZeaj/2>, accessed on 1 March 2022.

		phenomenon is a serious global problem because it is the same as modern slavery. Victims of human trafficking in the fisheries sector are fishermen and migrant workers. They often experience human rights violations such as because they are often beaten, left to starve, forced to work without sleep, and even killed.
4.	Drug Trafficking	Drug trafficking occurs because fishermen face rising gas prices and reduced fish stocks, so some fishermen use their boats to engage in drug and human trafficking as a means to increase their income. According to a 2007 United Nations Office on Drugs and Crime (UNODC) report, since the early 2000s, Guinea Bissau has been a transit hub for organized criminal networks that trafficked drugs from Colombia, Venezuela and Brazil through West Africa to Europe. This crime was committed by shipping large quantities of cocaine via ships which were then redistributed to smaller fishing vessels. ²⁹

Sources: Proceed/analyzed by the author

Transshipment is closely associated with numerous human rights violations affecting the crew. Crew members on transshipment vessels frequently originate from economically disadvantaged countries and are often recruited through illegal channels, leading to conditions akin to slavery. These workers are commonly enticed with false promises of compensation, only to be compelled to pay agents as a pretext for forced labor, subsequently resulting in their enslavement. Typically, they face inadequate or no remuneration and may be confined at sea for extended periods, during which human rights abuses persist. Additionally, these workers are frequently subjected to severe conditions, including malnutrition, lack of sleep, physical abuse, torture, and even murder. The crew also frequently encounters sexual violence, mental health assaults, and insufficient provision of food and potable water.³⁰ Addressing transshipment-related issues, particularly those linked to transnational crimes, presents several challenges:³¹

- a. Methodology of collecting global transshipment data;
- b. Study of link between transshipment and IUU;
- c. The pattern of transshipment in strategic locations along the EEZ;
- d. Identification of ports visited by transshipment vessels after possible encounters;
- e. Identification flag countries involved as transshipment actors;
- f. Find case studies of transshipment ship actors.

Therefore, it is anticipated that the Indonesian government will develop comprehensive legal policies aimed at preventing transshipment and addressing related crimes within Indonesian waters. Given Indonesia's status as an archipelagic nation with abundant fishery resources, it is crucial to ensure that these resources benefit Indonesian citizens rather than being exploited by external parties. Implementing effective legal frameworks for transshipment

²⁹ Interpol, *Study On Fisheries Crime In The West African Coastal Region*, France: General Secretariat Environmental Crimmes Programme, 2014, p. 25-26.

³⁰ Chelsey F. Marto, "Human Rights Violations Consequent to Transshipment Practices in Fisheries", *Ocean And Coastal Law Journal* 24, no. 1 (2019): 32-58, p. 37-38.

³¹ D. A. Kroodsma, N. A. Miller, and A. Roan, "The Global View of Transshipment: Revised Preliminary Findings." *Global Fishing Watch and Sky Truth*, (2017), p. 3.

prevention and enforcement will help safeguard these valuable resources and protect national interests.

3. The Framework for Transshipment Countermeasures as a Transnational Crime in Indonesia

From the previous explanation, it can be concluded that transshipment, as a form of transnational crime, poses significant risks to human rights and requires urgent international attention. This backdrop underscores the need for global efforts to combat transshipment crimes across various regions. Although transshipment countermeasures are addressed in legal frameworks such as UNCLOS 1982³² and The Treaty of Amity and Cooperation in Southeast Asia (TAC 1976)³³, enforcement on the high seas remains complex and indirect.

Addressing illegal transshipment involves two primary considerations: First, illegal transshipment is not classified as a dispute but rather as a violation of fishing regulations. Second, the flag state holds jurisdiction over vessels on the high seas, including the authority to investigate potential illegal transshipment activities. Consequently, enforcement of transshipment regulations relies on the flag state's adherence to UNCLOS 1982 and the mandates of Regional Fisheries Management Organizations (RFMOs).³⁴ United Nations and ASEAN Regional Resolutions do not provide a framework for law enforcement on the high seas.³⁵

As an archipelagic nation³⁶, Indonesia should develop and implement legal policies to combat this crime. Given Indonesia's growing population and vast maritime territory, policies to protect fishery resources are crucial. From a global perspective, fisheries policies must account for Indonesia's unique geographical conditions, predominantly consisting of oceanic areas. Therefore, effective and proactive regulatory measures are necessary to safeguard national interests and ensure the preservation of marine functions. Concrete steps are needed to bolster legal frameworks and enforcement mechanisms, including the development of statutory regulations and the enhancement of law enforcement capabilities. This encompasses not only a robust naval fleet for defense purposes but also efforts to strengthen national economic resilience through effective maritime governance.³⁷

Between 2014 and 2018, the Indonesian Ministry of Maritime Affairs and Fisheries (KKP) established three key pillars for marine and fisheries development: sovereignty, prosperity, and sustainability. During this period, KKP implemented a hierarchical, state-centered governance model for fisheries resource management. This model is characterized by a top-down approach that prioritizes state-established regulations, emphasizing legality, political legitimacy, centralization, bureaucracy, intervention, command and control, and scientific elitism. This

³² Chapter XV in particular Article 287 of UNCLOS 1982 regulates alternative dispute settlement procedures for countries that are related or have conflicts in the sea area, providing 4 (four) forums to choose from, namely: International Tribunal for the Law of the Sea (ITLOS); International Court of Justice (ICJ); Arbitral Tribunal; and the Special Arbitral Tribunal.

³³ TAC 1976 is one of the legal instruments related to efforts to realize and create political stability and security in the Southeast Asian region. The TAC regulates the resolution of disputes between countries in the maritime sector using several mechanisms such as negotiation, conciliation, mediation, good service.

³⁴ Regional Fisheries Management Organizations (RFMOs) are a type of international organization dedicated to the sustainable management of fisheries resources in certain international water areas, or highly migratory species.

³⁵ Elisabeth Septin Puspoayu, Cindy Yunita Sari, dan Virania Cahya Ramadhani, "Praktik Illegal Transshipment Di Laut Lepas Berdasarkan Hukum Laut Internasional", *Mimbar Hukum* 31, no. 1 (2019): 75-94, 90.

³⁶ As stated in Article 25A of the 1945 Constitution of the Unitary State of the Republic of Indonesia (UUD NKRI 1945) that Indonesia is an archipelagic State, this provision confirms that Indonesia has a wide sea area and is divided into islands. Mexasai Indra, "Urgensi Pengelolaan Wilayah Perbatasan Dalam Kaitannya dengan Kedaulatan Negara Kesatuan Republik Indonesia", *Jurnal Selat* 1, no. 1 (2013): 13-18, p. 13.

³⁷ Kodrat Twin Riskiyanti, "Kebijakan Peraturan Menteri Kelautan Dan Perikanan Republik Indonesia Nomor 58/Per-Men/2014 Terhadap Pelabuhan Perikanan Samudera Bitung", *Lex et Societatis* 3, no. 5 (2015):80-87, 84.

approach, grounded in the ideology of “administrative rationalism,” entrusts fisheries management policy to experts in the field.

Despite these efforts, the implementation of fisheries crime eradication policies between 2014 and 2018 did not fully resolve conflicts in fisheries management and utilization. Although there was a decrease in conflict escalation, challenges remain. Therefore, future policies should not only focus on enhancing the sustainability of fish stocks and increasing their economic benefits but also address conflicts with effective resolutions to ensure equitable management and utilization of fisheries resources for all stakeholders.³⁸

National policies in the engagement sector must be examined from multiple perspectives, considering their implications at national, regional, and global levels. Continuous monitoring with an open approach is essential to adapt to changes without compromising national interests. Policies should anticipate future developments in economic and trade relations to support the national economy. Effective national law may encompass statutory regulations, jurisprudence, arbitration decisions, customary trade laws, and various institutional mechanisms and legal means, both physical and non-physical.³⁹ Recommendations for addressing transshipment issues in Indonesia include fostering cooperation between Central and Regional Governments.

Addressing transshipment crimes, particularly those involving foreign ships and local fishermen, necessitates robust cooperation between central and regional task forces. This is crucial because regional authorities manage data related to licensing and reporting, and illegal fishing often occurs in waters under regional control. An effective model has been demonstrated by the Department of Fisheries and Marine Affairs of West Nusa Tenggara Province, which began with a Memorandum of Understanding (MoU) between law enforcement agencies and local governments. Task Force 115, comprising the Indonesian Navy, Police, Attorney General's Office, Ministry of Maritime Affairs and Fisheries, Maritime Security Agency, and other relevant entities, plays a central role. The task force's responsibilities include coordinating investigations, identifying illegal transshipment methods, providing public education, designing coordination frameworks, formulating and updating strategies, monitoring, reporting, and evaluating the effectiveness of anti-transshipment measures.⁴⁰ This successful model from NTB Province could be replicated across Indonesia to prevent local fishermen from illegally assisting foreign vessels in catching fish within Indonesian waters.

Additionally, reforming Fisheries Management Governance is essential. This reform should strengthen governance at the regional level through the State Fisheries Management Area of the Republic of Indonesia (WPPNRI).⁴¹ The WPPNRI Institutional Manager should coordinate fisheries management authority at the provincial level with the Ministry of Maritime Affairs and Fisheries, ensuring that the number of permits aligns with the sustainability of fishery resources. Fisheries management reform should also focus on developing a collaborative management framework that includes central and regional government agencies, capture fisheries business actors, NGOs, and other stakeholders. This partnership aims to enhance the active involvement of resource users and stakeholders in managing fisheries, conserving fish resources, and improving public welfare.

Recommendations for handling fisheries crime cases, such as transshipment, include implementing a restorative justice mechanism. This approach requires criminals to compensate for damages and restore fish resources. Successful examples from China and Canada

³⁸ Muhamad Karim, “Evaluasi Dan Implikasi Kebijakan Pemberantasan Kejahatan Perikanan Di Indonesia 2014-2018”, *Jurnal Akuatika Indonesia* 5, no. 1 (2020): 40-54, 50.

³⁹ *Ibid.*, 85.

⁴⁰ Aldhanalia, *Op.Cit.*, 16-17.

⁴¹ Hanuring Ayu, “Arah Kebijakan Pemerintah Mengenai Illegal Unreported Unregulated Fishing (IUUF) Di Indonesia”, *Humani (Hukum dan Masyarakat Madani)* 9, no. 2 (2019): 181-192, 190.

demonstrate the effectiveness of this model in environmental and fisheries management. For Indonesia, regional and global cooperation in restorative justice is vital.⁴²

D. Conclusion

Transshipment is addressed under both international and national legal frameworks, including the United Nations Convention on the Law of the Sea (UNCLOS 1982) and various national regulations such as the Minister of Marine Affairs and Fisheries Regulation (PERMEN KP) No. 56/PERMEN-KP/2014, No. 57/Permen-KP/2014 (revised from Number 30/Men/2012), and No. 58/PERMEN-KP/2014. Given the existence of these regulations, transshipment can be categorized as an unusual crime due to its complex nature and frequent association with transnational crimes.

Transshipment meets the criteria for a transnational crime, impacting multiple countries, involving or affecting citizens across borders, and utilizing infrastructure and methods that transcend national boundaries. Additionally, it often intersects with other criminal activities such as corruption, international fraud, drug trafficking, and human trafficking.

As an archipelagic nation, Indonesia must address transshipment crimes through a range of legal policies. Recommendations for combating transshipment as a transnational crime include fostering cooperation between central and regional governments in the marine and fisheries sectors. This collaboration can be formalized through a Memorandum of Understanding (MoU) between law enforcement and local authorities. Reforms in Fisheries Management Governance should be implemented to enhance regional oversight through the State Fisheries Management Area of the Republic of Indonesia (WPPNRI). Addressing fisheries crime cases like transshipment may benefit from adopting a restorative justice mechanism, which would hold criminals accountable by requiring them to compensate for damages and restore fish resources.

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⁴² Muhamad Karim, *Op.Cit.*, 52.

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