

Human Trafficking

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HUMAN TRAFFICKING ON ILLEGAL, UNREPORTED AND UNREGULATED FISHING CASES AS TRANSNATIONAL CRIME ON INDONESIA COASTAL BOUNDARY

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Abstract: Indonesian strategic archipelago allows rapid migration of goods and services to its neighbor countries. Along with goods and services, the wide coastal area also facilitates migrant worker to enter and exit Indonesia through several ports. First and foremost interference on the borderless coastal boundary is Illegal, Unreported and Unregulated (IUU) Fishing. The IUU foreign fishing vessels frequently transporting illegal migrant worker obtained through human trafficking, people smuggling, forced labor, child exploitation, torture, and discrimination. This practice can then be categorized as one of the transnational organized crime at sea. This paper focuses on the studies of notorious cases of human trafficking on IUU Fishing. This journal will also observe the lack of prevention measure of transnational crime on UNCLOS and utilization of bilateral and multilateral treaties on IUU Fishing.

Keywords: Human Trafficking; Unreported and Unregulated Fishing Cases; Indonesia

I. INTRODUCTION

The Indonesian strategic archipelago naturally allows rapid movement of goods and services to its neighbor states. Along with goods and services, the extensive coastal area also facilitates migrant workers to enter and exit Indonesia through several ports. Fluid state of coastal borderless area (Velasco, 2010) rendered in convenient movement between Indonesia and its neighbor country since those ports often regulated only by borders guards with lack of agreement on sea territories between those countries. (Jaelani & Basuki, 2014) The maritime security distress leads Indonesian boundaries prone to smuggling, human trafficking, piracy and sea robbery, and terrorism practices. (For Lyons, 2013) The primary interference on the borderless coastal boundary is Illegal, Unreported and Unregulated (IUU) Fishing. The practice of IUU Fishing itself is considered as a crime mainly due to the impact to the stability of the fishery ecosystem in a maritime area. The practices of IUU Fishing are also often followed by migrant smuggling and human trafficking. (UNODC, 2011) The IUU foreign fishing vessels frequently transporting illegal migrant worker obtained through human trafficking, people smuggling, forced labour, child exploitation, torture, and discrimination. (Bata, 2018) This practices can then be categorized as one of the trans-national organized crime at sea. (UNODC, 2011)

As a transnational organized crime, people smuggling through IUU Fishing has long regulated on International Law through the United Nations Convention against Organized Transnational Crimes or the United Nations Convention against Organized Crime (UNTOC) and continued with the ratification of the Palermo Protocol to complete the convention. Indonesia, as a member state of the United Nations has also signed the mentioned regulation. United Nations Convention for the Law of the Sea (UNCLOS) has also prevented this practices by set up several regulations focuses on responsibility of flag ship. However, evidence on the usage of flag of convenience consistently threatening Indonesian coastal border by contributing to the practice of IUU Fishing.

The linkage between IUU Fishing and human trafficking in Indonesia emerge on the 3rd of April 2015. Pusaka Benjina Resources, a company on the port on the island of Benjina was

reported for kept Burmese men in cages, retained and being through coercion to fish for a company on the port on the island, Pusaka Benjina Resources. (Meyer et al., 2018).

PT Pusaka Benjina Resources (PBR) along with three companies from Thailand, PT Silver Sea Fishery, PT Thai Hoang Huad and PT Ocean Research Fishery were luring the foreign worker with generous salaries. After being told to approve unclear contracts, they are sedated and carried out to Benjina. When awake, the crew is hitherto at Benjina and could not escape. (Darulzain & Supriyadhie, 2017)

From 2004 to 2015, Benjina is one of 1445 cases of human trafficking in Indonesia. (Darulzain & Supriyadhie, 2017) Out of that number, more than 1000 fishermen from Myanmar, Cambodia, Thailand, and Laos on Benjina case alone was found of victims of people smuggling through illegally operating fishing vessel. (Pudjiastuti, Hardy, & Getchell, 2016)

This practice is supported through the archipelagic geographical territory of Indonesia which consists of various large and small islands. 81,700 km² of coastlines making waters within the sovereignty of the Republic of Indonesia and the Indonesian Exclusive Economic Zone and high seas containing resources potential fish and fish farming land become most prominent attraction for the violation of IUU Fishing and Human Trafficking. (Lewerissa, 2010)

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Human Trafficking and Forced Labour

The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others was adopted in 1949 by the United Nation. However this convention was not ratified by many states, and for over four decades trafficking was not a focus of international interest. World concerns about trafficking resurfaced in the late 1990s, and in 2000 the UN General Assembly adopted the Convention against Transnational Organized Crime. This was supplemented by three additional protocols dealing with Trafficking in Firearms, Smuggling of Migrants, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children. The latter is known as the Trafficking Protocol, or the Palermo Protocol. (Scanlan, 2004)

Based on the definition sets by the Palermo Protocol, we can see three constituent elements of what may consider of human trafficking (UNODC, 2011):

1. "act" involved. This describes the type of conduct as the "act" like recruitment, transportation, transfer, harbouring or receipt of persons. The actors of this conduct also constitute of fishing vessel owners or operators, and senior crew on board fishing vessels.
2. The "means" by which people are scammed into the position of exploitation. This element illustrates a distinctive characteristic of human trafficking as contradicted with labour exploitation or migrant smuggling. Furthermore, the victim's consent often negates by the trafficker.
The "means" in this element commonly carried out through:
 - Threat or use of force or other forms of coercion
 - Abduction
 - Fraud or deception
 - The abuse of power
 - The abuse of a position of vulnerability
 - Bribery to obtain the victim's consent.
3. The "purpose." Palermo Protocol lists forms of exploitation that are included in the definition "at a minimum." The list is therefore non exhaustive.

The Palermo Protocol does not act as a human rights instrument; it is designed to promote cooperation between states in combating organized crime. Trafficking emphasized as a matter of processes. Trafficking, as an act determined by three factors: 'transportation...by

means of...for the purpose of exploitation.' In that manner, the crime of the slave trade emphasized more than the crime of slavery. .(Scanlan, 2004)

Whilst the Palermo Protocol explicitly mentions forced labor, trafficking at first tended not to be interpreted as a labour issue. Only In 2005 when the International Labour Organisation published a Global Report on Forced Labour, international law agree that sectors like agriculture, mining, and domestic labour were prone to forced labor, and showing the forced labour extracted from migrants, both internal and international, as 'trafficking'(Scanlan, 2004):

"The global movement against trafficking has definitely provided an impetus to the understanding of, and action against, forced labour; and...it may potentially present law- and policy-makers with an option."

It is clear trafficking is not only about force, freedom, and consent, but also 'exploitation'.(Scanlan, 2004) On the basis of consideration mentioned above, this paper raises academics assumption that trafficking remain a complex phenomenon in with various issues involve, including migration policies, labour measures and fishing industries.

II. METHODOLOGY

This study will utilize literature research as the primary methodology. The research will emphasize 1982 The United Nations Convention on the Law of the Sea (UNCLOS) as the underlying source. Another source of law also examined as supporting data i.e. customary international law, general principles of law, international treaties, conventions, declarations and decisions of international organizations. The authors will beforehand determine the practices of IUU Fishing in the Indonesian coastal border. After the possible violation has been examined, the customary international law and the general principles of law will be used as a tool to attributing them to transnational crime. Experts writing then will be used to resolve the outline of the prevention measure of transnational crime on UNCLOS and the utilization of bilateral and multilateral treaties on IUU Fishing on International Law.

III. RESULT

Human Trafficking and IUU Fishing

IUU fishing contributes to human trafficking in the form of forced labor, particularly for boats that sail at sea for an extended time. Workers on the illegal vessel are commonly poorly paid migrant workers working under poor labor situations, and are from time to time treated roughly and forced to remain at sea. Many of them are labor migrants who are inexperienced fishers, forced to deal with atrocious conditions that found in most sorts of industrial fishing. Long-haul fishing boats also have been attributed to having notably dangerous labor abuses. For example, in 2013 The International Labor Organization found that 25 percent of workers on long-haul fishing ships in Thailand were not working willingly. The laborers forced to work in slave-like conditions in waters near Thailand. Five percent of laborers in Myanmar reported violence and threat of violence aboard IUU fishing vessels. They then noticed the executions of fellow workers as a means of enforcing obedience. Among the interviewed Thailand trafficked migrants, 60 percent allegedly witnessed the murder of a co-worker by the ship's captain. (National Intelligence Council, 2016)

Ten Korean-owned vessels and one Ukrainian vessel were correspondingly involved in the mistreatment of their Indonesian, Myanmar and Vietnam crew. The victims cited a series of maltreatment including injury, lengthy shifts, non-payment of wages, verbal, physical, and psychological abuse, and even death. (MacFarlane, 2017) Moreover, Southern Storm Fishing and the Sajo Oyang Corporation, two foreign commercial fishing companies found responsible for negligence towards crew members triggering abuse and underpayment of wages in New Zealand in 2013.(MacFarlane, 2017)

2 Southeast Asia made a part of the most well-documented incidents of trafficking into forced labor in the global fishing industry. Thailand, for example, apart from being the primary destination country, acts as a key transit country for men trafficked into the fishing industries in Indonesia and Malaysia as well. Furthermore, the trafficking case in the Thailand fishing sector subsequently extends into child labor, most are trafficked from neighboring countries, like Myanmar, Cambodia, and Laos. On the same fashion of incidents, Rohingya Muslims were, in addition, become the victims of human trafficking in Thailand. The laborers had been enforced to work between seventeen and twenty-four hours a day while being underpaid. (MacFarlane, 2017)

It then can be concluded the typical practices of forced labour frequently followed with restriction of movement, retention of identity documents, the threat of denunciation to authorities, physical and psychological violence, illegal wage deductions, and non-payment of wages. Abuses and execution are also common. (MacFarlane, 2017)

The encounters mentioned above are more than enough to determine human trafficking is indeed occur on IUU Fishing industry, mostly by smuggling migrant worker into inhuman working condition on foreign nautical territory. It is then safe to conclude that more than one state involved on those incidents. This is indicated that the issues of human trafficking on IUU Fishing require a standard of practice amongst nations to control illegal fishing vessels which carrying migrant worker.

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Illegal, Unreported and Unregulated (IUU) Fishing in Indonesia

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In Indonesia, (IUU) Fishing activities were perceived as fishing activities carried out by national or foreign vessels in waters that are under the legitimate authority of a country, without permission from that country or contrary to the legislation and regulations of that country. (Pudjiastuti et al., 2016)

IUU Fishing activities generally consists of three main activities (Puspoayu & Setyowati, 2018):

- a. Illegal fishing: carried out by illegal foreign vessels in state territorial or Exclusive Economic Zone (EEZ) territorial waters of a country or contrary with the national legislation of that state;
- b. Unreported fishing: unreported or incorrectly reported data of a vessel, the operations, the number of catch to the authorized fishery management or institution in territorial waters or EEZ;
- c. Unregulated fishing: unregulated or unstipulated fishing activities in regional waters or EEZ of a country or carried out in an area or fishing activities which violates conservation and management provisions.

The IUU Fishing action category includes certain fishing activities under these circumstances: (Sodhi, 2009)

1. Organized by a national or foreign vessel in the jurisdiction of the coastal nation's national waters without authorization, or violate the country's regulations.;
2. Conducted by a flag vessel of the Regional Fisheries Management Organization (RFMO) but its actions contradict the conservation and management efforts by the organization in which the country is bound, or contrary to international binding rules;
3. Violating national law or international obligations, including what must be done by RFMO member countries.

The possibilities of IUU Fishing could emerge from the unclear nature of UNCLOS when it comes to coastal States or flag State's failed duty to fulfill their duties. The negligence is developed by the incapability of the flag State to anticipate ships flying its flags from committing IUU fishing. Then again, the coastal States, mainly developing States,

conspicuously lack the capability to secure their coastal territories and are the most negatively affected by IUU fishing.(Pautri, 2018)

As one of the largest archipelagic state in the world, Indonesia suffers the most from this subdued regulation. Indonesia is estimated to lose 1.6 million tons of fish through the practice of IUU Fishing and resulting in a yearly loss of \$3 billion. 30% of illegal fishing worldwide located within the bounds of the Indonesian maritime zone. Among 158 million tons of fish captured worldwide, 90% percent were fished within Indonesia. From those activities, approximately USD 23.5 billion are lost worldwide yearly.(Pautri, 2018)

Indonesia also affected through IUU Fishing carried out by Thousands of foreign vessels. Fishing vessels from Japan, Taiwan, South Korea, China, and the Philippines can go back and forth into Indonesian waters without authorization and cynically over-exploiting the fishery. The dilemma is exceptionally acute in North Sumatra, in the Straits of Malacca, where commercial fishermen forcibly impose on the three miles coastal zone reserved for local fishers.(Liddick, 2014)

Indonesia itself has formulated an interpretation of IUU Fishing, i.e. "fisheries activities without official permit and does not comply with the conditions contained in official regulation." (Sodik, 2009) Throughout the Indonesian area, IUU Fishing typically occurs in the Indonesian Exclusive Economic Zone area and is carried through large-sized vessels.(Haken, 2011)

As a prevention measure, Indonesia has set up several prohibition guidelines on IUU Fishing activities, i.e. immigrants, foreign vessels, ex-foreign vessels, and foreign entities from fishing, working, and investing in the capture fisheries sector. Licenses for all vessels built outside Indonesia were also prohibited. As a result, foreign vessels and ex-foreign vessels are currently restricted from fishing in Indonesian waters. A set of legislation currently prohibits government officers to issue or extend fishing licenses for the above vessels. This attempt is in addition, consistent with the 2008 Indonesian Maritime Law. The regulations also restrict foreign shipmaster or other crew members on the national fishing vessel. Moreover, it extends punitive penalties on officers who violate the Regulation.(Ikrami, 2017)

The commitment to support law enforcement in spite of IUU Fishing reflects in April 2017. 317 boats were caught red-handed when committing IUU fishing and/or other violations of the 2009 Fisheries Law. As an implication, the Indonesian executive decided to demolish and excavate them. Among the 317 boats, Malaysian, Chinese, and Papua New Guinean-flagged vessels also involved. In point of fact, such action is legitimate under Article 69(4) of the Indonesian Fisheries Law. The primary purpose of the unusual clause is to deter people from committing IUU fishing, with "Sufficient preliminary evidence" (Include evidence that the vessel was caught red-handed fishing in Indonesian waters while possessing no license.) is made as to the basis of the demolition.(Ikrami, 2017)

Cited from IOM report, IUU Fishing in Indonesia can be characterized by(Pudjiastuti et al., 2016):

- Uncertainties over accountabilities on the main administration bodies. This has emerged since Indonesian government legislation and regulations overlap with each other. The confusion occurred on worker recruitment, situations, and observation of fishing companies, manning agencies, and fishing vessels;
- Joint action in forging or deleting a vessel certificate, done by at least the ship-owner, the backers and field actors. This was accomplished by the cooperation of more than two people with the registration of double-flagged vessels in two different states;
- numerous grave criminal offenses: unlawful fishermen allegedly disobey several constitutions, from discharging the communicator, using prohibited and harmful fishing machinery, illegal transshipment, forging ship papers and the logbook;

- Employ a foreign vessel captain for unspecified periods of time. This categorizes as lawful since Indonesia Constitution prohibits the engagement of foreign crew. Nevertheless, a overwhelming number of foreign vessel captains are still reported to sail and work onboard on an excessive period of time. This negative behavior could show the conduct of IUU Fishing has started taking action;
- Indonesia's maritime resources are exploited for the benefit of the IUU Fishing actors. IUU Fishing is beneficiary for the offender since it merely involves the minimum effort in regards to compliance and exploiting the corrupt tendencies of some high-ranking officials and politicians. Hence, the corruptible behavior could provide massive financial benefits to foreign vessels;
- Connected to multiple actors in multiple countries. Hence, it operates internationally. The fishers could move over territorial waters, thus it works in multiple countries. The catch also caught on several countries and the vessel flying with a flag of convenience. The yields later moved to another state and sold in the international market at a high cost; and
- Utilize professional business-like or commercial structures. The operations are mainly managed by massive companies. The companies often established with foreign investment, and moreover, could validate their licenses. However, they are nevertheless doing law infringement and tax evasion.

48 DISCUSSION

Illegal, Unreported and Unregulated (IUU) Fishing as Transnational Crime

Illegal fishing has enhanced an international interest since this illegal activity has generated losses to the country that owns the fishery source. Developing countries are frequently affected more by this crime as the laws in developing countries are typically least in administered their territory. (Haken, 2011)

long with IUU fishing, the activities of fishers and vessels that engage in IUU fishing can consist of other crimes. A crime could still arise in a fishing vessel even though it didn't connect directly to the fishing operation. Such offenses happened by using the operations a shield or merely an opportunity to commit another crime. (FAO, 2017)

On 4 December 2001, the linkage between IUU Fishing and Transnational crime was recognized by the United Nations General Assembly adopted Resolution 64/72 on sustainable fisheries where it stated:

“[n]otes the concerns about possible connections between international organized crime and illegal fishing in certain regions of the world, and encourages States, including through the appropriate international forums and organizations, to study the causes and methods of and contributing factors to illegal fishing to increase knowledge and understanding of those possible connections and to make the findings publicly available, bearing in mind the distinct legal regimes and remedies under international law applicable to illegal fishing and international organized crime.”

Extensive efforts to carefully formulate IUU Fishing as an organized crime in Indonesia have been carried out since 2015. (Taufik, 2017) The principal consideration of this categorization is the practice of IUU Fishing has allegedly included the critical requirements of transnational crime. The transnational crime itself allegedly represents a form of trans-boundary crime that incorporates four elements, i.e. (Muhamad, 2012):

- 1) Carried out in more than one country;
- 2) Preparation, planning, direction, and supervision are executed in other countries;
- 3) Typically involving the organized criminal group where alleged crimes are committed in multiple country;
- 4) Other countries suffer a crucial impact.

The adverse consequences of transnational crime could affect various national and private sectors by attacks the state security, human rights violations, violations of social security, belief and religion and morality. Transnational crime, in more critical cases, can equally threaten the sovereignty of the country by developing an alternative monitoring system, which scarcely serves to support the illegal practices. This could severely threaten official state institutions by, for example causing corruption⁴⁶ in the police force. (Boister, 2012)

This practice frequently follows³² by several forms of transnational organized crime, including trafficking in persons for the purpose of forced labor on fishing boats. To some extent, the viciousness of the operational condition is generally brutal and often involved abuse, sexual exploitation, and could actually¹ result in death. The prominent actors in these human trafficking crimes are recruiters, the senior crew on fishing vessels, and the fishing company or operator.(Liddick, 2014)

The undocumented fishing vessel also transports illegal labour, either to be employed on the ship or to be employed in the country that owns fisheries resources. This is how IUU fishing contributes to the trafficking in transnational human trafficking since the practice of IUU fishing also leads to the movement of the illegal migrant from one country to another through violation of the law.(Goodman, Keohane, Simmons, & Lloyd, 2010)

As one of the countries that suffered the most²⁵ from IUU Fishing, Indonesia takes a firm measure on tackling the issue by urging the international community to recognize IUU fishing as a form of transnational organized crime.(Taufik, 2017)

Transnational Crime on Indonesia National Legislation

In 2000 the United Nations adopted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children (Trafficking Protocol), as an additional instrument for the United Nations Convention against Organized Crime (UNTOC). In addition, the UN has also developed a Protocol against the Smuggling of Migrants by Land, Air, and Sea (Smuggling Protocol), in addition to UNTOC. The two protocols are frequently referred to as the Palermo Protocols.¹⁹

Through Law No. 5 of 2009 concerning Ratification of UNTOC, Indonesia has ratified the United Nations Convention against Transnational Organized Crime or the United Nations Convention against Organized Crime (UNTOC). Indonesia has also ratified the Palermo Protocol through Law No. 14 of 2009 concerning Ratification of Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children, supplementing the United Nations Convention against Organized Crime (UNTOC) (Protocol to Prevent, Act and Punish Trafficking in Persons, Especially Women and Children, Complementing the United Nations Convention against Organized Transnational Crimes).⁵³

However, it was not until 2009 that Indonesia ratified the Palermo Convention and the Trafficking Protocol, signifying that up to this time the country was not interpreted as bound to obey either document.(Mitchell, 2016)

Furthermore, Indonesia then applied international cooperation through bilateral and multilateral arrangements with other states to address a trafficking issue. Bilateral Memorandums of Understanding have been introduced with Malaysia, Taiwan and most recently the United Arab Emirates in 2015 with the intention of preventing the trafficking of individuals out of Indonesia. (Mitchell, 2016)

Throughout Southeast Asia, in 2002 the governments of Indonesia and Australia collectively assembled the Bali Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime, or the Bali Process. The Bali Process aims to promote collaboration between all Member States in areas like information sharing, cooperation amidst border security forces, legitimate national legislation and increasing opportunities for legitimate migration.(Mitchell, 2016)

44 Indonesia itself has regulated IUU Fishing as a fishery crime in Chapter XV of the Criminal Provisions of Law Number 31 of 2004 concerning Fisheries with the explanation of the crime qualifications and fisheries violations in several articles.

Practice of Transnational Crime on Indonesian Coastal Border

The 2015 controversial case of human trafficking through fisheries industries on Benjina, Maluku has triggered the critical awareness of the Indonesian Government on the challenging issue of transnational crime on IUU Fishing. The controversial story of Myint Naig, a Myanmar fisherman 43 enslaved for 22 years by Thai vessels in Indonesian marine territory inevitably lead the Ministry of Marine Affairs and Fisheries (KKP) to allegedly conduct an investigation in Benjina and Maluku. (Shobaruddin, 2018)

The inspection revealed that thousands of migrant workers from Myanmar, Cambodia and Lao PDR in Benjina and Ambon have become the victim. 1682 Myanmarse seamen in Benjina and 391 Myanmarse seamen in Ambon also assessed as being victims of trafficking. (Pudjiastuti et al., 2016)

Violations found on Benjina case by PT PBR consist of acts of trafficking and slavery, the involvement of child labor, people and goods smuggling, transferring illegal cargo in the sea, using illegal fishing gear (trawl), falsifying documents of ships and crew, and conducting illegal fuel transactions. (Yuliantiningsih, Latifah, Hartiwiningsih, & Suherman, 2018)

The Benjina case reckoned as one of the transnational crimes due to the elements in the phenomenon. From diverse reports regarding this case, it is then found the workers were recruited from various countries and forced to work illegally in Indonesia, when 42 leading company was established and illegal transshipment of fish was carried out in the Exclusive Economic Zone ("EEZ") and border area of Indonesia. The victims of trafficking also came from several countries, namely 29 Thailand, Myanmar, Laos, Cambodia and Vietnam. One of the owners of PT PBR is a company registered in the British Virgin Island affiliated with a Hong Kong company, while most of the vessels are made in Thailand and fly the flags of Indonesia, Thailand and Papua New Guinea. (Yuliantiningsih et al., 2018)

From Benjina case, the issue of illegal migrants forced to work in fisheries cases also arise. Illegal immigrants are people who move from one country to another and cross national borders by not having official documents implied by the country of origin or destination country, or citizens of other countries who live in a country exceeding time of residence permit. (Lewerissa, 2010)

On Benjina case, most of the workers are illegal immigrant namely who hide with fake documents, settled more than the allowable time and victims of people smuggling networks. This incident showed that besides capture fisheries activities, PT PBR then commits other crimes, including entering people from neighboring countries and recruited in Thailand and then transported to Indonesia using fake papers. They moved into Indonesian territory throughout fishing vessels used to carry out fishing activities in the Indonesian territory. (Lewerissa, 2010)

Moreover, the International Organization for Migration (IOM) reported 1,207 of the 1,258 foreign fishermen working on the ex-foreign fish vessel was alleged victims of human trafficking in the Indonesian coastal area. (Pudjiastuti et al., 2016).

Aside from fishermen, women and children have additionally become the trafficking victim through IUU Fishing. International Catholic Migration Commission (ICMC) reported a trafficking route to international destinations like Japan, Saudi Arabia, Malaysia, Singapore, Hong Kong, and Taiwan has been made using Lampung as a transit point. The victim are mainly captured in Java, then moved to Batam, and finally to the destination country. Routes from Lampung typically go by land to Jambi Province (Muaratunga Harbor) and then by sea (generally by fishing boats) to Batam. (Agustinanto, Davis, Hamim, Inggas, & etc, 2003) The

woman and children who fall into the practice of trafficking are being used as child labour, drugs trafficking and also prostitution. (Agustinanto et al., 2003)

Another notorious case of human trafficking in Indonesian coastal area is the repatriation of 15 Philippines citizenship women who were arrested in Manado on 2015. 15 women were taken into fishing boats from the Philippines without official documents and were allegedly sent to work in the Manado without official working permission. (Jesalva, 2015)

Flag of Convenience on IUU Fishing

As an archipelago country, Indonesian geographical area uncovers opportunities for many countries to falsely register their vessel under the Indonesian flag. (Africa, 2007) (Gianni, 2008) In addition, double-flag vessels on exiled vessels registered in Indonesia still occurs. Those vessels had not completely removed the status of the flag of his home country. In many cases, deletion certificate forgery occurs, therefore, when it was registered in Indonesia, the ship nonetheless contain two flags. (BPHN, 2015) This practice considered as flag of convenience under international law.

Flag of convenience is identified as “a practice whereby a vessel is registered to a country which does not have the ability or will to live up to their international responsibilities.”(Bondarof, Werf, & Reitano, 2015) This unauthorized practice demonstrates the truth of both the multinational character of IUU fishing and the extent of planning that IUU fishermen use to sustain and maintain their negligent procedures. First, it done by flagging a vessel in one country. The fishing vessel then crewed by multi-national crews while owned and managed by a company. Next, it carried out in international waters or the waters of yet another state. Some IUU fishing vessels evidently obtain multiple vessels with the identical name fishing under the same permit or a separate vessel registered under multiple names. This allegedly allowed it to use multiple permits. (Bondarof et al., 2015)

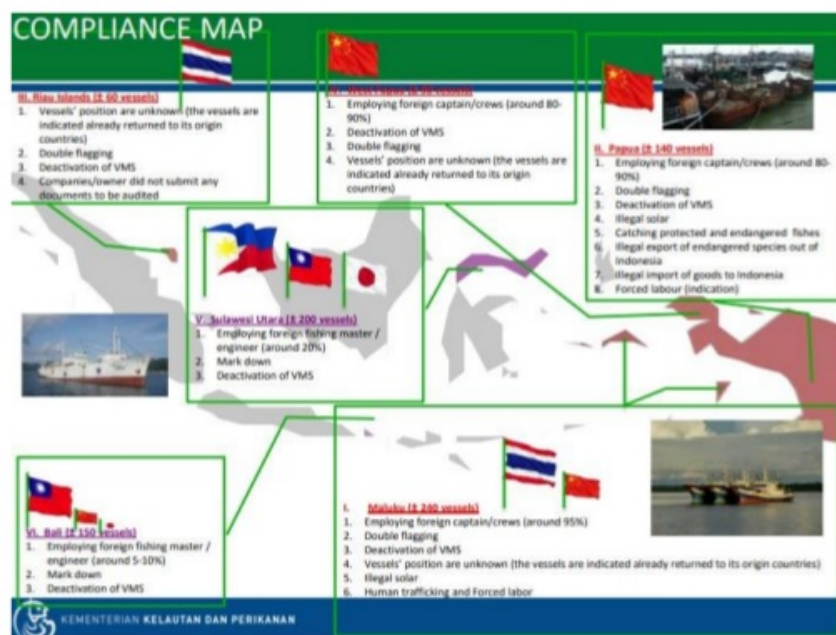


Fig 1. Compliance Map of Illegal Fishing Vessel in Indonesia (Husein, 2015)

The Flag of Convenience practice lead to lack of oversight and cooperation by flag States and has resulted in uncontrolled fishing fleets that effectively operate with violating regulations, ignoring laws and committing serious crimes including human trafficking. (Africa, 2007)

The interception of FV Viking by the Indonesian Navy on February 26, 2016 in the 12.7-mile EEZ of Tanjung Uban, Bintan, Riau Province is one of the exemplifications of the flag of convenience urgencies. FV Viking is admitted by companies established in two countries and managed by representatives in Southeast Asia. It set to catch fish on African shores and export caught fish via transshipment and ship to various countries. The vessel has been operating with at least 13 numerous names to prevent the officers in international waters. It also unlawfully caught possessing at least eight state flags. (Yuliantiningsih et al., 2018) This ship made an entrance into Indonesia without advance notice and turned off their Automatic Identification System (“AIS”). Its crew was composed of five people from Argentina, Peru and Myanmar and six from Indonesia. Several issues on the operation of this vessel including:(Yuliantiningsih et al., 2018)

- a. FV Viking obtains a stateless vessel;
- b. Reports on fishing and navigation computers, as essential tools to find the location of FV Vikings fishing, were unfound on board;
- c. The found document revealed that the caught fish are often landed in Thailand; and
- d. FV Viking was related to fishing companies in Spain.

The elements of transnational heavily reflected on its ‘ownership.’ Viking was owned by Spanish and Panamanian companies. It operated by agents in Southeast Asia who were domiciled in several countries. The captain was a Chilean citizen. The fish was captured in various world waters and exported to Hong Kong, Malaysia, Vietnam, and Taiwan through investment companies in South Africa.(Yuliantiningsih et al., 2018)

Utilization of Bilateral and Multilateral Cooperation on IUU Fishing

Indonesia current Minister of Maritime Affairs and Fisheries Susi Pudjiastuti, currently formed a fish theft eradication task force to aggressively investigate alleged violators of fishing rules. She then applies effective deterrents measures on preventing the violation, like confiscating and destroying illegal fishing vessels.(Husein, 2015) However, this national policy only shows lacks of preventive measure on international law, particularly UNCLOS on combating the practice of human trafficking on IUU Fishing.

As the biggest archipelago country, Indonesia is required to develop bilateral and multilateral treaties with the intersection between fisheries crimes and transnational organized crime, and identify strategies to strengthen criminal justice responses to include prohibition and prosecution. The underlying treaties could be made with the cooperation with neighbour ASEAN countries with largest number of foreign vessels, such as Myanmar, Thailand, Malaysia, Philippines, etc. The cooperation should also include compliance monitoring as a tool to prevent future violations that affected the marine environment, community and the country.

A remarkably successful example of bilateral cooperation on IUU Fishing is interception of Fu Yuan Yu 831 ship. This vessel is a fishing vessel owned by Best Sea Foods Lda and Fuzhou Hongdong Pelagic Fishery Co. Ltd, both are headquartered and registered in Dili, Timor Leste. Indonesian investigators inevitably discovered the vessel hauled multiple flags, including China, Malaysia, the Philippines, and Singapore. Its storage scarcely contained around 20 tons of fish and 100 sharks on board.(Husein, n.d.)

Fu Yuan Yu 831 ship is suspected of stealing fish in the Indonesian water. Based on Global Fishing Watch data, Fu Yuan Yu 831 has been detected 19 times in Indonesian waters in August to November 2017. This action is considered illegal because it has fishing permit only in the territory of Timor Leste. On this case, Indonesia and Timor Leste express the same perception to prevent the IUU Fishing practice and work together to overcome IUUF in the area of both parties.(Reily, 2017)

The arrest of this vessel was carried out by Task Force 115. During the capture, six flags were recognized from numerous countries, like Indonesia, Timor Leste, China, the

Philippines, Singapore and Malaysia. The vessel also carrying 21 ship crews from Indonesia, nine Chinese, three Vietnamese and three from Myanmar.(Reily, 2017)

In addition to the previous measures, Indonesia has then developed the pivotal role of Fishery Courts. This particular court set to hear, review and decide specific criminal cases based on the Fisheries Law. The government also expanded the considerable resources of the Fishery Courts by including a number of ad-hoc judges to work for on those Courts. The court also partaking in the European Union (“EU”) and the United Nations Development Programme. That two organizations help to properly prepare and typically enhance the ability of those judges.(Ikrami, 2017)

On a multinational level, Indonesia made ¹¹ benchmark when on 10 May 2016 Presidential Regulation No. 43 of 2016 ratifying the Food and Agriculture Organization Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, U²³ported, and Unregulated Fishing has enacted. Indonesia later implements the ratification with the Director-General of FAO on 23 June 2016. Consequently, the ratification would promote Indonesia’s collaboration and exchange of information with other State parties in bolstering its port state measures to battle against these crimes.(Ikrami, 2017)

The involvement of human trafficking on IUU Fishing is also taking into Indonesia's consideration by enacted MMAF Regulation No. 35 of 2015 on Human Rights System and Certification in the Fishing Industry. By this regulation, human right were officially incorporated into fisheries law and policy.(Ikrami, 2017)

This particular regulation established a detailed constitutional and institutional scheme for a human rights system in the fishing business. The regulation set four elements on individual and entities obligation on fisheries business, i.e.; (Ikrami, 2017):

- a. Obligation to establish a written declaration. The statement should pledge to, inter alia, recognize the rights of employees, and design the company’s policies and standard operating procedures;
- b. Assessing the threat of human rights violations as a result of the IUU Fishing. The assessment should include in due diligence of the actor involved. The result should as well be brought into action as a measure to mitigate those risks;
- c. Establishment of an effective mechanism. This potential mechanism should aim accurately to provide tangible remedies for human rights violations allegedly occurred in IUU Fishing; and
- d. Possessing a Fishery Human Rights Certificate. The certificate will be granted by the MMAF to those who have conformed to all the previous requirements. It is effective for three years.

The MMAF Regulation No. 35 of 2015 also sets out a comprehensive list of standards for human rights compliance set out for businessmen and companies in performing the said due diligence, including(Ikrami, 2017):

- a. Labour protection and health;
- b. Recruitments administrationn;
- c. Fundamentals work rights, like freedom of union, right to social security, right to payment, right to leave, etc.;
- d. Independence and protection of a person; and
- e. Right to a decent and healthy environment.

Further significant provisions of MMAF Regulation No. 35 of 2015 include(Ikrami, 2017):

- a. The creation of a Fishery Human Rights Team. This aim seeks to answers the MMAF. In addition, their task typically includes accrediting appraisal institutions. The established institution will properly evaluate companies and businessmen throughout the human rights certification process;
- b. Providing human rights training. MMAF or training institutions should undertake this training to fishing companies, individuals, and other stakeholders; and

- c. The monitoring of human rights obedience. This set to be carried out by Fishery Supervisors at fish processing units, Port Masters in ports, and other competent governments.

When the cooperation made on a multinational level, it eases the burden of cost and supervision. Southeast Asia, in particular, consists of developing countries. The level of the financial capability of those countries could hinder solitary surveillance in territorial waters. By working on regional and international cooperation, a model of cost-sharing could help from the economical side. Furthermore, several countries could deal with the limit of human resources. The model could also work as an extra pair of eyes to carefully observe the massive area of Southeast Asia regional waters.

It also forces the conformity of the national government, since it involves control from a regional or international institution. As stated above, for Indonesia in particular, the corruption habit portraying a significant role in IUU Fishing. Illegal documents or ignorance on such illegal activities could easily be obtained by bribery. A multinational framework could enforce strict administration and control. Disobedient would merely lead to sanctions and a negative impression on the international level. Therefore, multinational or international cooperation is proposed as a solution for IUU Fishing surveillance and prevention measure.

V. CONCLUSION

Indonesia, as biggest archipelago country, opens the door to the practice of IUU Fishing. Along with the detrimental economic effect of IUU Fishing, that crime also opens to the practice of human trafficking through the usage of the flag on convenience. To prevent this, Indonesia is undoubtedly required to develop bilateral and multilateral treaties with the intersection between fisheries crimes and transnational organized crime and identify strategies to strengthen criminal justice responses to include prohibition and prosecution with the cooperation with neighbor ASEAN countries. The cooperation should additionally include compliance monitoring as a tool to prevent subsequent violations that affected the marine environment, community and the country.

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