



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 practices 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, IUU Fishing, Transnational Crime

INTRODUCTION

The Indonesian strategic archipelago naturally allows rapid movement of goods and services to its neighbour 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 neighbour 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 as a "hotspot" for smuggling (of goods, drugs, people and contraband), human trafficking, piracy and sea robbery, and terrorism (Ford & 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 prevent this practices by set up several regulations focuses on responsibility of flag ship. However, evidence on the usage of flag of inconvenience 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, when Indonesian government officials found Burmese men were being kept on Benjina island in cages, beaten with stingray tails and paid little or nothing, to fish for a company that occupies the port on the island, Pusaka Benjina Resources (Meyer, Gerasimov, Boll, Africa, Lepp, Segrave & Zimmerman, 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).

In 1949, United Nations has adopted the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, however this convention was not ratified by many states, and for over four decades following 1950 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).

The Palermo Protocol describes trafficking as:

“Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

The definition sets by the Palermo Protocol result in three constituent elements of what may consider of human trafficking (UNODC, 2011):

1. The “act” involved. Types of conduct which may constitute the “act” as per the definition of the Trafficking in Persons Protocol are: recruitment, transportation, transfer, harbouring, or receipt of persons. The acts of recruitment forces are consists of, as is the manners of fishing vessel owners or operators, as well as senior crew on board fishing vessels.
2. The “means” by which people are deceived into the position of exploitation. The “means” element represents a distinguishing feature of human trafficking as opposed to labour exploitation or migrant smuggling, and the definition explicitly negates the victim’s consent to exploitation if any of the “means” are employed by the trafficker. A list is provided in the definition of the various means employed to effectuate exploitation in the form of human trafficking:
 - a. Threat or use of force or other forms of coercion;
 - b. Abduction;
 - c. Fraud or deception;
 - d. The abuse of power;
 - e. The abuse of a position of vulnerability;
 - f. The giving or receiving of payments or benefits to achieve the consent of a person having control over another person.
3. The “purpose.” Palermo Protocol lists forms of exploitation that are included in the definition “at a minimum.” The list is therefore non exhaustive.

While the Palermo Protocol is not a human rights instrument, it is operating as an instrument designed to facilitate cooperation between states to combat organized crime. This Protocol emphasis trafficking as a matter of processes. The end point of slavery, sexual exploitation, removal of organs, etc. is not what is identified as trafficking. To count as trafficking an act must utilize three elements: ‘transportation...by means of...for the purpose of exploitation.’ This protocol underlined the criminalization of the slave trade rather than the criminalization of slavery (Scanlan, 2004). Whilst the Palermo Protocol explicitly mentions forced labour, 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 labour, 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.

IUU fishing contributes to human trafficking in the form of forced labour, particularly for boats that remain at sea for extensive periods of time. Workers on the illegal vessel are commonly poorly paid migrant workers working under poor labour conditions, and are sometimes abused and forced to remain at sea. Many of them are labour migrants who are inexperienced fishers, forced to deal with atrocious conditions that found in most forms of industrial fishing. Long-haul fishing boats also have been attributed to of having notably dangerous labour abuses.

For example, in 2013 The International Labour Organization found that 25 percent of workers on long-haul fishing ships in Thailand were not working willingly. The labourers forced to work in slave-like conditions in waters near Thailand. Five percent of labourer in Myanmar reported violence and threat of violence aboard IUU fishing vessels. They also witnessed the executions of fellow workers as a means of imposing obedience. Almost 60 percent of interviewed migrants trafficked from Cambodia into the Thai fishing industry allegedly witnessed the murder of a co-worker by the ship’s captain (National Intelligence Council, 2016). In 2013, human trafficking case also found in New Zealand on at least two foreign commercial fishing companies, Southern Storm Fishing and the Sajo Oyang Corporation. Those two companies at the very least, responsible for negligence towards crew members triggering abuse and underpayment of wages (MacFarlane, 2017). The violation of human rights rise between 2005 and 2011, when at least ten Korean-owned vessels and one Ukrainian vessel were involved. The foreign crews from Indonesia but also Myanmar and Vietnam, cited a series of maltreatment including: injury, lengthy shifts, non-payment of wages, verbal, physical, and psychological abuse, and even death (MacFarlane, 2017).

According to the United Nations Office on Drugs and Crime (UNODC) Southeast Asia makes a part of the most well-documented incidents of trafficking into forced labour in the global fishing industry. On their report in 2011, Thailand revealed as not only the main destination country, but furthermore a key transit country for men trafficked into the fishing industries in Indonesia and Malaysia. International Labour Organisation (ILO) and the International Organization for Migration (IOM) have discovered evidence of extensive trafficking and forced labour in Thailand’s commercial fishing sector, including number of child labourers amongst the fishers. The same reports exposed a fact that most victims are trafficked from neighbouring countries, like Myanmar, Cambodia, and Laos (MacFarlane, 2017). On the same fashion of incidents, on 2013 Reuters found Rohingya Muslims were being trafficked into forced labour on Thai fishing boats. Thailand interviewed 600 fishers working in both national and international waters where one-third of respondents had been enforced to work between seventeen and twenty-four hours a day. Forty percent of workers

had undergone deductions in their salaries without their knowledge. The report also identified a number of typical practices: restriction of movement, retention of identity documents, threat of denunciation to authorities, physical and psychological violence, illegal wage deductions, and non-payment of wages. Ten percent of respondents also allegedly had been severely assaulted by their masters and by some extents claiming that murder is 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.

Illegal, Unreported and Unregulated (IUU) Fishing is 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 laws and regulations of that country (Pudjiastuti, Hardy & Getchell, 2016). IUU Fishing activities generally consists of three main activities (Puspoayu & Setyowati, 2018):

- a. Illegal fishing: fishing activities carried out by illegal foreign vessels in state territorial or Exclusive Economic Zone (EEZ) territorial waters of a country or are in contrary to national legislation of that state;
- b. Unreported fishing: unreported or incorrectly reported data of a vessel, vessel operations, the number of fish to the authorized fishery management or institution in territorial waters or EEZ of a country. This activity is later known as an illegal transshipment by foreign vessels in the high seas;
- 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 (Sodik, 2009):

1. Conducted by a national or foreign vessel in the jurisdiction of the coastal nation's national waters without permission, or violates the laws and regulations of that country;
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 States failed duty to fulfil their obligations. The negligence is caused by the incapability of the flag State to anticipate vessels flying its flags from committing IUU fishing activities. Then again, the coastal States, especially developing States, lack the capability to secure their maritime zones and are the most negatively affected by IUU fishing activities (Pautri, 2018). As one of the largest archipelagic state in the world, Indonesia suffers the most from this subdued regulations. 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 takes place within the Indonesian maritime zone. The Food and Agriculture Organization (FAO) found from 158 million tons of fish captured, 90% percent were fished within Indonesia and that between approximately USD 10 billion and USD 23.5 billion are lost worldwide annually (Pautri, 2018). Thousands of foreign vessels from Japan, Taiwan, South Korea, China, and the Philippines enter Indonesian vessels in over-exploiting the fishery. The dilemma is exceptionally acute in North Sumatra, in the Straits of Malacca, where commercial fishermen 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).

Furthermore, to combat this problem Indonesia has prohibited foreigners, foreign vessels, ex-foreign vessels, and foreign entities from fishing, working, and investing in the capture fisheries sector. Indonesian government has stopped issuing fishing licenses for all vessels built outside Indonesia, resulting in foreign vessels and ex-foreign vessels are currently banned from fishing in Indonesian waters. A sets of legislation now forbids government officials to issue or prolong fishing licenses for the above vessels. Consistent with the 2008 Indonesian Maritime Law, the Regulation also restricts the employment of foreigners as shipmasters or other crew members of Indonesian fishing vessels. Moreover, it extends disciplinary penalties on officers who violate the Regulation. The commitment to strengthen law enforcement against IUU Fishing reflects on April 2017 when the government destroyed and sunk 317 vessels that committed IUU fishing and/or other violations of the 2009 Fisheries Law. This action included Malaysian, Chinese, and Papua New Guinean-flagged vessels. The demolition IS legitimate under Article 69 (4) of the Fisheries Law and aimed at deterring people from committing IUU fishing. Under the national regulation "Sufficient preliminary evidence" (include evidence that the vessel was caught red-handed fishing in Indonesian waters while possessing no license) is made as the basis of the demolition (Ikrami, 2017).

Cited from IOM report, IUU Fishing in Indonesia can be characterized by (Pudjiastuti, Hardy & Getchell, 2016):

- a. Overlapping Indonesian government legislation and regulations has created confusion over the responsibilities of key government bodies responsible for the oversight of worker recruitment, conditions, and monitoring of fishing companies, manning agencies, and fishing vessels;
- b. Collaboration of more than 2 people: double-flagged vessels are registered in two different countries. This act of forging the deletion certificate is done by at least the ship-owner, the backers and field actors;
- c. Suspected commission of serious criminal offences: illegal fishers violate numerous laws, from deactivating the transmitter, using prohibited and destructive fishing gear, illegal transshipment, forging vessel documents and the logbook;
- d. Foreign masters working illegally for indefinite periods of time: although there has been a national law prohibiting the use of foreign crews, there are still lots of foreign fishing

- masters working on board vessels undertaking lengthy voyages. This shows that there is considerable planning to conduct the crime;
- e. The pursuit of profit and/or power: the very reason for fisheries crime is to gain more profit and financial benefits with the least minimum effort in regards to compliance and exploiting the corruptible tendencies of some high level authorities and politicians;
 - f. Operating at an international level: illegal fishers operate in multiple countries, fish in various areas, fly flags of convenience and land their catch directly to another State, and sell the fish in the international market at high cost; and
 - g. Using commercial or business-like structures: most illegal fishing operations are managed using large companies, often established with foreign investment, have valid licences, yet they are violating laws and evading taxes.

RESEARCH PROBLEMS

The purpose of this research is to observe the evidence on the usage of the flag of inconvenience that consistently threatening Indonesian coastal border by contributing to the practice of IUU Fishing. It sought to studies notorious cases of people smuggling on IUU Fishing. This study would also observe the lack of prevention measure of transnational crime on UNCLOS and utilization of bilateral and multilateral treaties on IUU Fishing.

FINDINGS AND DISCUSSION

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 administering their territory (Haken, 2011). Along with IUU fishing, the activities of fishers and vessels that engage in IUU fishing can consist of other crimes. Crimes associated with the fisheries sphere extend on crimes that have no direct connection with fishing operations but take place on fishing vessels, or during a fishing process and using the fishing operation as a shield, opportunity or means to perpetrate such crimes. Examples of these include: Crimes associated with the fisheries sector are crimes that demonstrate no direct connection with fishing operations but take place on fishing vessels, or during a fishing operation and using the fishing operation as a cover, opportunity or means to commit such crimes (FAO, 2017).

On 4 December 2009, 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:

“notes 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 transboundary crime that incorporates four elements, i.e.:

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 more than one 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 corruption in the police force (Boister, 2012).

The IUU Fishing severely threatens the sovereignty of the country owner of fisheries resources and inevitably raises other crimes in the field of human trafficking. This practice frequently followed by several forms of transnational organized crime, including trafficking in persons for the purpose of forced labour on fishing boats. To some extent, working conditions are often brutal and include physical abuse, sexual exploitation, and in some cases, death. The prominent actors in these human trafficking crimes are recruiters, 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 suffered the most from IUU Fishing, Indonesia take a firm measure on tackling the issue by urged the international community to recognize IUU fishing as a form of transnational organized crime (Taufik, 2017).

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 the Palermo Protocols. Through the 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).

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 to either document. Furthermore, Indonesia then applied international cooperation through bilateral and multilateral arrangements with other states to address human 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. Throughout South East 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).

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.

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 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 investigation by the KKP and the Task Force on Prevention and Eradication of IUU Fishing concluded that thousands of migrant workers from Myanmar, Cambodia and Lao PDR in Benjina and Ambon were victims of trafficking. Interviews and verifications conducted by the International Organization for Migration found 682 Myanmarese seafarer in Benjina, and 391 Myanmarese seafarers in Ambon assessed as being victims of trafficking (Pudjiastuti, Hardy & Getchell, 2016).

Violations found on Benjina case by PT PBR include: committing criminal acts of trafficking and slavery, using child labour, smuggling people and goods, transferring illegal cargo in the sea, using illegal fishing gear (trawl), falsifying documents of ships and crew, and conducting illegal fuel transactions. 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 a 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 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, Latifah, Hartiwiningsih & Suherman, 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. 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 commit 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, Hardy & Getchell, 2016). Aside from fishermen, woman and children have additionally become the trafficking victim through IUU Fishing. International Catholic Migration Commission (ICMC) reported a route to international destinations like Japan, Saudi Arabia, Malaysia, Singapore, Hong Kong, and Taiwan has been made using Lampung as a transit point for the trafficking of victims from Java, then to Batam, and finally to the destination country. Routes from Lampung generally go by land to Jambi Province (Muaratunga Harbor) and then by sea (generally by fishing boats) to Batam. The woman and children who fall into the practice of trafficking are being used as child labour, drugs trafficking and also prostitution (Agustinanto. Davis, Hamim, Inggas & etc., 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).

As an archipelago country, Indonesian geographical area uncovers opportunities for many countries to falsely register their vessel under the Indonesian flag (Africa, 2007). In addition, double-flag vessels on exiled vessels registered in Indonesia still occurs (Gianni, 2008). 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.” The use of flags of convenience proves both the transnational nature of IUU fishing and the degree of planning that IUU fishers use to assist and support their illegal operations. The practice of flag of convenience can carry out through the practices of flagging a vessel in one country, crewed by multi-national crews, owned and managed by a company, and fish in international waters or the waters of yet another state. Some IUU fishing vessels are seen to obtain several vessels with the identical name fishing under the same permit, or a single vessel may be registered under multiple names, allowing it to use multiple permits (Bondarof, Werf & Reitano, 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 26th, 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 owned by companies registered in two countries and operated by agents in Southeast Asia to catch fish in African coasts and export caught fish through transshipment and ship to various regions of the world. The vessel has been operating with at least 13 numerous names to stop the officers in international waters. FV Viking is operated with 12 numerous names and has at least eight state flags. This ship entered Indonesia without prior notice and turned off their Automatic Identification System (“AIS”). Its crew consisted of five people from Argentina, Peru and Myanmar and six from Indonesia. Several issues on the operation of this vessel including (Yuliantiningsih, Latifah, Hartiwiningsih & Suherman, 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 and operated by agents in Southeast Asia who were domiciled in several countries. The captain was a Chilean citizen. The fish was captured in various regions of the world waters and exported to Hong Kong, Malaysia, Vietnam and Taiwan through investment companies in South Africa (Yuliantiningsih, Latifah, Hartiwiningsih & Suherman, 2018).

Indonesia current Minister of Maritime Affair 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, 2019). 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 discovered the vessel to be carrying a number of different state flags, including those of China, Malaysia, the Philippines and Singapore and

ascertained it contained 20 tons of fish on board, encompassing approximately 100 sharks (Husein, 2019).

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. 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 also enhanced the role of Fishery Courts, the courts that hear and decide upon criminal cases based on the Fisheries Law. The government also expanded the resources of the Fishery Courts by including a number of ad-hoc judges to work for on those Courts, and engaging with the European Union (“EU”) and the United Nations Development Programme to prepare and enhance the ability of those judges. On multinational level Indonesia made a benchmark when at 10 May 2016 Indonesia enacted Presidential Regulation No. 43 of 2016 ratifying the Food and Agriculture Organization Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing. Indonesia later placed its instrument of ratification with the Director-General of FAO on 23 June 2016. Consequently, the ratification would facilitate Indonesia’s cooperation and exchange of information with other States parties in bolstering its port state measures to battle against these crime (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. This particular regulation established a detailed constitutional and institutional framework for a human rights system within the fishing industry. It forces four main obligations on individuals and entities doing business in fisheries (Ikrami, 2017):

- a. Obligation to make a written statement pledging to, inter alia, respect the rights of workers, and design the company’s policies and standard operating procedures based on that statement;
- b. Perform due diligence to identify and assess any risks of human rights violations resulting from their activities and subsequently take measures to mitigate those risks;
- c. Establish an effective mechanism for providing remedies in case of a human rights violation; and
- d. Possessing a Fishery Human Rights Certificate, which is issued by the MMAF to those who have satisfied all the previous requirements and is valid 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 above due diligence, including (Ikrami, 2017):

- a. Labour safety and health;
- b. Recruitment system;

- c. Basic labour rights, such as freedom of association, right to social security, right to remuneration, right to leave, etc.;
- d. Liberty and security of person; and
- e. Right to a clean and healthy environment.

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

- a. The establishment of a Fishery Human Rights Team that answers to the MMAF and is tasked with, inter alia, accrediting appraisal institutions that will appraise companies and businessmen during the human rights certification process;
- b. Provision of trainings on human rights by the MMAF or training institutions to fishing companies, individuals, and other stakeholders; and
- c. The monitoring of human rights compliance is to be carried out by Fishery Supervisors at fish processing units, Port Masters in ports, and other competent authorities.

CONCLUSION AND RECOMMENDATION

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 neighbour 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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