Another threat to the Sovereignty of Indonesia’s territorial waters: Human trafficking in the fisheries industry

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Another threat to the Sovereignty of Indonesia's territorial waters: Human trafficking in the fisheries industry

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Abstract. Human trafficking in the fisheries industry is one of the threats to the security and sovereignty of Indonesia's territorial waters other than Illegal, Unreported, and Unregulated Fishing. The research about workers in the field of fisheries has not been done much. This article focuses on human trafficking in the fishing industry that takes place in Benjina, Indonesia's sovereign territory. Human trafficking is related to organized transnational crime and actions that violate human rights. This article uses library research as a writing method. This article aims to discuss international norms governing human trafficking, especially in the fishing industry. This article concludes that internationally there have been several relevant international conventions on ships in general and fishing vessels that have been in effect for a long time. However, Indonesia has not ratified some of them. Moreover, the efforts of the Indonesian government in handling human trafficking in its sovereign territory are divided through the handling of the defendant under Law No. 21 of 2007 on Crime of Human Trafficking and assisted the victims with assistance facilitated by IOM.

Keywords: Illegal Fishing; International Human Rights; Human Trafficking; International Law

1. Introduction
Indonesia is the largest archipelago country in the world, with 17,504 islands. The islands are scattered with a coastline of 99,030 kilometers, making it the Indonesian coastline as the second-longest in the world after Canada. Indonesia has a vast sea area with 75% of the total area of Indonesia or 5,193,250 km2; also, 65% of the total of 467 regencies/cities in Indonesia are located on the coast. Therefore, the main strength of the Indonesian nation is the marine sector.

Indonesia's vast sea area provides incentives in the form of abundant and promising marine and fisheries resources to be explored and exploited for the benefit of the people and support national development. Indonesia has Indonesia's marine wealth in the form of marine biodiversity. The Indonesian Sea has the most considerable wealth in the world, with 8,500 species of fish, 555 species of seaweed, and 950 species of biota connected with coral reefs. Thus, Indonesia has a high potential to develop its fishing industry. FAO data in The State of World Fisheries and Aquaculture shows that Indonesia is the second-largest fishing producer in the world after China, with total fish production reaching 5,420,247 tons in 2012 (7.3% of world fish production) [1].

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However, Indonesia’s fisheries resources have not been well managed. As a result, the potential of natural wealth from Indonesian fishery resources has not yet provided tangible benefits to the Indonesian population. One reason is the growth of illegal, unreported, and unregulated (IUU Fishing). IUU fishing activities have become a crime that endangers the Indonesian economy and violates the country's sovereignty [13].

Furthermore, Indonesia's strategic location makes Indonesia vulnerable to forms of transnational crime. One of them is human trafficking. In 2015, the Illegal Fishing Prevention and Eradication Task Force discovered the practice of human trafficking and slavery in Benjina, Aru regency of Maluku province [14]. Where, in this case, many foreign crew members were found to be victims of human trafficking and slavery in the field of fisheries [14]. A similar case of Ambon then follows these findings. These cases are the findings of slavery in the fishing industry, which, according to the report, is the most massive slavery case in the 21st century [14], [17]. These findings reveal not only violations of labor rights, but also violations of personal freedom and the right to life.

Trafficking in the fisheries sector is a criminal offense as well as a form of violation of human rights that still often occurs in many countries. Despite the existence of international legal instruments and national legal instruments that prohibit, and are formed to prevent and overcome these practices. In the case of human trafficking in Indonesian territorial waters, victims were recruited from various countries and forced to work illegally in Indonesia. In this regard, national laws and regulations are violated, and international conventions are ignored. The illegal fish transshipment is carried out in exclusive economic zones and Indonesian border regions, making it difficult for authorities to intercept operations. Eventually, the catch enters the global supply chain and is handled by legitimate fish suppliers, without being aware of the origin of the cargo and the human victims behind it. The situation in Benjina and Ambon is the result of increasingly widespread and dangerous human trafficking, not only in the Indonesian (and other countries) fishing industries but also globally.

This article aims to discuss more deeply about the legal instruments, and examine the role of the Indonesian government as the main actor in dealing with threats to human trafficking and human security that occur in Indonesia’s territory.

2. Methodology
This research is a qualitative methodology based on data collection through a literature study. The literature study is interpreted as a series of activities relating to the method of collecting library data, reading and recording and processing research materials [3]. In this literature method, the author deals directly with text or numeric data so that library data is ready to use and not by taking it directly from the field or witnesses [3]. The data is obtained through various sources consisting of literature books, scientific journals, theses, research reports, and other references that have relevance to those discussed by the author. Also, news articles and site documents from online media related to Internet discussion are used as secondary data sources.

3. Result and discussion
Human trafficking in the fisheries industry has become a significant issue in recent years due to the increasing number of cases that have surfaced. The remote situation at sea, limited contact with the authorities on land and sea, and unclear ownership of fishing vessels allow human trafficking and other crimes to occur. In the following section, we discuss the historical background of human trafficking in the fisheries industry, also examine how the regulation of trafficking in persons in the international sphere and explain the actions of the Indonesian government in responding to cases of human trafficking that occurred in its territorial waters.

3.1. Historical background human trafficking in the fishing industry
Human trafficking for labor exploitation in the fishing industry in Indonesia is nothing new. In 1999, the International Labour Organization (ILO) conducted a study of forced child labor on fishing platforms known as "jermal" [3], [12].

Jermal is a wooden building that is often placed for miles from the beach, which consists of a 20-40 square meter platform and a small wooden hut for sleeping and processing fish. Almost all workers
who work on these platforms are young boys aged less than 14 years [4]. They were recruited from villages with promises to work for three months on offshore fishing platforms and high salaries. However, the recruiters did not explain the working conditions clearly. The boys then experience excessive working hours, dusty working conditions, physical torture, and sometimes sexual abuse. As a result of being stranded on the jermal, they were unable to attend school [5]. The practice of placing child laborers is categorized as a form of trafficking of children because children are taken from their families and forced to work in exploitative conditions.

It is worth noting that human trafficking on jermal only represents one component of human trafficking in the Indonesian fishing industry and human trafficking continues in other regions with lower levels of observation of law enforcement or with the interests of fewer international organizations. However, Indonesians are not the only victims of human trafficking in the Indonesian fishing industry. They represent a minority compared to several foreigners who have been trafficked to Indonesia to work as fishermen since 2011. They, mostly from Cambodia and Myanmar (but also the Democratic Republic of Laos and Thailand), were recruited through inward tricks for the fishing industry. They were promised profitable job opportunities as fishermen in Thailand. In reality, it is not a favorable salary that they get but a job without pay, or with a partial payment, with excessive working hours that often exceed 20 hours per day, and conditions are not clean and unhealthy. For most victims, what happened was that they were trafficked for labor exploitation, forced labor, physical, sexual, and psychological torture, with no chance of escape.

Table 1. Types of violations of labor rights in the fisheries industry.

<table>
<thead>
<tr>
<th>No.</th>
<th>Type of violation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Child Labour</td>
</tr>
<tr>
<td>2</td>
<td>Fraudulent And Deceptive Recruitment Withholding</td>
</tr>
<tr>
<td></td>
<td>identifying Documents</td>
</tr>
<tr>
<td>3</td>
<td>No Payment/Salary</td>
</tr>
<tr>
<td>4</td>
<td>No Working Agreement</td>
</tr>
<tr>
<td>5</td>
<td>Homicide &amp; Sexual Abuse</td>
</tr>
<tr>
<td>6</td>
<td>Health and Safety Violations</td>
</tr>
<tr>
<td>7</td>
<td>18-20 Hour Workdays</td>
</tr>
<tr>
<td>8</td>
<td>Physical and Mental Abuse</td>
</tr>
<tr>
<td>9</td>
<td>Working Without Social Security</td>
</tr>
<tr>
<td>10</td>
<td>Substandard and Inhumane Living Condition</td>
</tr>
</tbody>
</table>

Source: Processed by authors from a study result published by the Ministry of Maritime Affairs and Fisheries (KKP), IMO, and Presidential Task Force in 2016.

Although identified in Indonesia’s territory, the majority of foreign fishermen are employed by the Thai fishing industry. Their presence in Indonesia is closely related to the history of the Thai fishing industry, which has undergone rapid shipping modernization and industrialization since the 1970s and 1980s [7], [13]. Since being introduced to trawl fishing methods through joint initiatives between the governments of Thailand and Germany (through the Philippines), the Thai fisheries industry has changed drastically. Trawler users grew from only around 2,600 ships registered in 1969 to more than 11,000 registered vessels in 1982. The increase in the number of vessels then caused overfishing. Until the 1980s, Thailand's fisheries exploitation capabilities were comparable to those of a high-income country. The fisheries industry has become one of Thailand's leading industries. Thailand became the third-largest exporter of fish and fishery products in 2012.

Furthermore, at the same time, the surrounding countries began to declare the Exclusive Economic Zone (EEZ) based on the United Nations Convention on the Law of the Sea (UNCLOS), which had a significant impact on the activities of the Thai fisheries fleet in the region. With the enactment of
UNCLOS, many of the territories that were previously considered as international waters currently enter the jurisdiction of other countries in the region or the EEZ area [20]. However, Thai fishing vessels often enter the EEZ without permission to catch fish, causing the seizure of Thai trawlers in Vietnam, Myanmar, the Philippines, Indonesia, and Malaysia. However, these arrests do not make a deterrent because they only represent a small part of the Thai fleet, which respond to increased regulation of fishing areas by investing in faster ships, detection equipment, and weapons to avoid capture. Besides, fierce clashes between Thai trawlers and fishing vessels from Myanmar, Vietnam, Indonesia, and other countries began to emerge as a result of these illegal activities.

In response, Thailand started to arrange joint ventures with countries in the region during the late 1990s so that its fleet could catch fish legally on their EEZ. However, IUU fishing in foreign waters still occurs. These illegal practices were triggered by the inability of Thai authorities to control the number of vessels fishing in their territorial waters, which encouraged Thai ships to search for larger catches outside their fishing grounds. The overlapping further complicates the situation with the EEZ of its neighboring maritime countries, which creates reasonable confusion among the fishermen where the EEZ boundaries have been established. Indonesia, as one of the critical fishing sources, has been an easy target for illegal operators for many years.

3.2. International norms concerning human trafficking in the fisheries sector
In minimizing human trafficking, in New York, on November 15, 2000, the General Assembly adopted the Convention Against Organized Transnational Crime with Resolution 55/25 and the accompanying Protocol. This convention came into force on September 29, 2003. This convention consists of 41 paragraphs and three supporting protocols. Besides, the United Nations, in 2000, established the protocol to prevent, suppress, and punish trafficking in persons, Especially Women and Children (also known as the Palermo Protocol). The protocol opposes trafficking in persons and encourages a comprehensive international approach to enhance efforts to prevent and combat trafficking in persons. This protocol also facilitates global partnerships in the investigation and criminalization of trafficking activities. This protocol also provides protection and assistance to victims of trafficking “with full respect for the human rights of victims.”

This protocol defines trafficking in persons as: "the recruitment, transfer, transfer, reception, or acceptance of a person, by threat or use of force or other forms of coercion, kidnapping, fraud, deception or abuse of power or vulnerable position or giving or receiving payment or benefit from being able to obtain approval from someone in power over another person, for exploitation purposes. Exploitation includes at least exploitation to prostitute others or other forms of sexual exploitation, forced labor or services, slavery or slavery-like practices, servitude, or organ harvesting [17].

Indonesia has also translated this protocol into law in 2007 and defines trafficking in persons as "the recruitment, transportation, or acceptance of someone with the threat of violence, use of force, abduction, confinement, forgery, fraud, abuse of power or vulnerable position, debt bondage or payment or benefits, so that the approval of the person in control of that other person, whether carried out within the state or between countries, for exploitation or result in exploitation." The definition of trafficking in persons consists of three different aspects. First, it is the aspect of action focused on the recruitment, movement, and concealment of victims. Second, is the aspect of how the victim is placed in an exploitative situation. Third, is the exploitative aspect of the goal. In Indonesia, the crime of trafficking in persons is regulated in Law No. 21/2007 concerning the Eradication of the Criminal Act of Trafficking in Persons.

The Maritime Labor Convention. The International Maritime Workers Convention was established in 2006 and entered into force in 2013. Also known as the "Seafarer's Bill of Rights," the convention sets various fixed and specific standards and also detailed instructions regarding the establishment of decent work and living conditions on board. This convention also encourages ship-owners to compete fairly. Article 3 requires the government to issue appropriate domestic regulations and to respect fundamental rights to freedom of association and collective bargaining rights. The government must
also work towards the elimination of all forms of forced or compulsory labor, the effective elimination of child labor, and the elimination of discrimination in employment and occupation. Article 4 of the convention states that ship-owners must provide a safe and comfortable place to work, fair employment conditions, health protection, medical care, welfare benefits, and other forms of social security [15].

Indonesia has not yet ratified the convention. However, this convention still has a broad impact. When a flagship that does not sign the convention enters a port of the signatory country, it must comply with the rules and regulations of the convention. Failure to comply, this could result in prosecution, detention, and penalties for non-compliance with the Maritime Workers Convention. This condition is very relevant to Indonesian ships. Around Indonesia, many countries have ratified the convention (i.e., Australia, China, Myanmar, Thailand, Vietnam, Malaysia, Singapore, and the Philippines).

3.3. The response and action of the Indonesian government to trafficking in persons in its territorial waters

As a country targeted by human trafficking syndicates, the Indonesian government is faced with a huge responsibility to protect its citizens from these transboundary crimes. Human trafficking that took place in Benjina received international attention. This is because human trafficking is a form of contemporary or modern slavery [15], [16]. Slavery became a dark history of the protection of human rights in the world so that the international community agreed on various rules to prevent the reoccurrence. Human trafficking is a threat to human security. As stated by UNDP that the concept of human security is based on three essential things, namely freedom of fear, freedom from want, and freedom to live in dignity. Through this understanding, the practice of human trafficking in the territorial waters of Indonesia has violated human security, where victims do not get freedom from fear, freedom to carry out their wishes, and people live with dignity [15].

As part of an international entity, Indonesia is committed to dealing with trafficking in its territorial waters not only nationally but also regionally and internationally. In 2000, as part of the international community and as a member state of the United Nations, Indonesia signed the UNTOC. On a global scale, the United Nations (UN) has formed the United Nations Convention Against Transnational Organized Crime (UNTOC) to promote practical cooperation concerning preventing and combating transnational organized crime [6], [19]. The creation of the UNTOC aims as a primary reference for countries in their efforts to combat trafficking in persons, through which UNTOC added the Palermo Protocol to prevent and eradicate human trafficking, especially for women and children. However, the enforcement of these protocols requires a strong commitment from the countries involved, namely origin, transit, and destination countries, as a form of prevention measures for human trafficking.

Besides, as an ASEAN member country that refers to international commitments through UNTOC [18], ASEAN established the ASEAN Convention Against Trafficking in Persons, especially Women and Children (ACTIP), to tackle transnational crime. ACTIP regulates that ASEAN member countries have joint responsibility and commitment to prevent, prosecute, and punish perpetrators of human trafficking crimes and protect and assist victims of trafficking in persons [18].

Within the national scope, Indonesia has a legal umbrella regarding the Criminal Act of Trafficking in Persons (TPPO) under Law No. 21 of 2007. In this regulation, the handling of human trafficking is based on respect for human rights values. Indonesia does not only focus on the processing of criminal traffickers in human trafficking, but the same thing is done to witnesses and victims of human trafficking crimes. Furthermore, through Government Regulation No. 9 of 2008, the Indonesian government aims to regulate integrated services for witnesses or victims of acts of trafficking in persons. In addition to regulations established by the government in tackling human trafficking crimes, Indonesia also plays an active role in international and regional forums. Including the Conference of State Parties United Nations Convention against Transnational Organized Crime (UNTOC), the
Global Forum on Migration and Development, ASEAN Ministerial Meeting on Transnational Crime (AMMTC), and Bali Process on People Smuggling Trafficking in Person and Related Transnational Crimes. [7], [8].

The Indonesian Ministry of Maritime Affairs and Fisheries as representatives of the Indonesian government in collaboration with the Task Force Team 115 (explicitly dealing with illegal fishing), the ASEAN Intergovernmental Commission on Human Rights (AICHR) Indonesia and the Foundation for International Human Rights Reporting Standards (FIHRRST) is holding an International Conference related to the protection of human rights in the Indonesian fisheries industry. The problem of human trafficking in the fisheries industry pushed the Indonesian government through the Ministry of Maritime Affairs and Fisheries to issue Ministerial Regulation No. 35/2015 concerning human rights certification in the fisheries industry aimed at preventing and minimizing human rights violations in territorial waters [9], [10]. The implementation of the regulation requires all fisheries industry companies to declare their commitment to upholding human rights, which in this case, requires the company to be fair, including its fishing vessels [9], [10]. The enactment of this regulation was part of the complementary efforts of the Indonesian government in handling and minimizing human trafficking, especially in Indonesian territory. The Indonesian government has a large role to play in this case.

Moreover, the Indonesian government also cooperates with the International Maritime Organization (IMO) in solving human trafficking problems in its region. IMO is a specialist body of the United Nations and regulates world standards in terms of security, safety, and environmental performance of international shipping. Over the years, IMO has promoted the application of more than 50 Conventions and Protocols related to maritime security and safety. IMO provides technical assistance to developing countries in order to achieve international standards in the Maritime Convention [11]. The technical assistance includes training and also expert assistance. Indonesia has been a member of the IMO since 1961 and implemented IMO's provisions and recommendations by incorporating them into national legislation. IMO serves to assist the government in dealing with threats and could improve the welfare of migrants [11]. The Indonesian government also created a joint Task Force team to deal with this problem, including the TNI, Customs and Excise, POLRI, and the Maritime Security Agency (BAKAMLA), which together with IMO investigated Benjina. The investigation was followed up by evacuating more than 300 crews who were victims of human trafficking [7].

4. Conclusion
The sea and its abundant resources not only create opportunities but also challenges for coastal communities (even the broader community throughout the world). The practice of violating human security is encouraged by illegal, unreported, unregulated fishing, which results in a demand for low-cost labor. Also, the government's weak supervision in the field of fisheries makes human trafficking came into being.

Internationally, there are several conventions on shipping vessels, fishing vessels, and merchant vessels that have been in force for decades. Although the Indonesian government has ratified the UNCLOS 1982, until now, Indonesia has not ratified critical international conventions to improve the protection of Indonesian and foreign boat crews and fishers, such as the Maritime Labor Convention (MLC) and the ILO's Work in Fishing Convention. Furthermore, to tackle human trafficking, the handling efforts undertaken by the Indonesian government began through the formation of a joint team following the instructions of the President of Indonesia by investigating Benjina’s case. The case was then followed up based on Law No. 21 of 2007 concerning Criminal Trafficking in Persons.

References