INDONESIA’S MULTI-DOOR APPROACH IN COMBATING FISHERIES CRIME

THE FIGHT AGAINST FISHERIES AND ASSOCIATED CRIMES IN INDONESIA

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Presidental Task Force to Combat Illegal Fishing
"We have to strive to restore Indonesia as a maritime country. The oceans, the seas, the straits and the bays are our future. We have been turning our backs on them for far too long. Now is the time to restore all until we achieve Jalesveva Jayamahe; in our seas we are triumphant."

Joko Widodo, President of the Republic of Indonesia
20 October 2014

"IUU Fishing is a serious crime. It does not only violate fisheries law but also involves other crimes such as illicit drugs trafficking, human trafficking, forced labor and other human rights related crimes. As an immediate action, I will issue a regulation to protect the workers. The regulation will be issued on the Human Rights Day on 10th of December 2015"

Susi Pudjiastuti, Minister of Marine Affairs and Fisheries of the Republic of Indonesia
15 October 2015
The world’s oceans are in peril and **global fish populations are in serious decline**. The UN FAO’s 2014 report found that 90.1% of the world’s fish stocks were fully exploited or over-exploited. The number of fisheries which are fully or over-exploited have been steadily increasing.¹

**IUU Fishing is generally considered to be responsible for 10% to 22% of total global fisheries production.**² In Indonesia, IUU Fishing caused State loss of up to IDR9 billion just in one year at only 12 fishing ports.³ Indonesia has more than 800 fishing ports.

The impact of IUU Fishing on marine ecosystems and marine wildlife populations has been severe.⁴ Several fishing grounds in Indonesian seas have been heavily drained and IUU Fishing activities have **damaged the marine ecosystems**.

**IUU Fishing damages the economy of State.** Indonesia has suffered up to USD20 billion loss per year because of IUU Fishing, which also threatens 65% of Indonesia’s coral reefs⁵, more than 85% of global fish stocks⁶ and economic activities of small-scale fishermen.

**Sources:**

²MRAG Ltd., 2009 cited by Sander *et al.* 2014:114
³Field study by the Minister’s Advisor, Dr Arif Satria, for the period of 2013-2014
⁴Sander *et al.* 2014:114
⁵Managing Director and Chief of Operating Officer of the World Bank (2015)
THE IMPACT OF IUU FISHING (2)

- IUU Fishing which is conducted in a State will eventually affect another State(s); in fact, affecting the world’s marine ecosystem.
- Global oceans cover around 70% of our planet and the collapse of marine ecosystem worldwide is inevitable; although IUU Fishing activities are concentrated in one or few regions.
- According to the last SOFIA in 2014, 90.1% of the world’s fish stocks are fully exploited or over-exploited.
- In Sierra Leone, losses due to IUU fishing are estimated to be US$29 million each year, and up to 75% of the catch of IUU vessels is dumped back into the sea, dead or dying.

- Due to its adverse environmental impact and huge economic loss, any activity which endangers global marine ecosystem and global fish stocks shall be considered as serious crime.
**Actions to Prevent and Combat IUU Fishing & Fisheries Crime**

1. **Moratorium for Ex-Foreign Fishing Vessel (1 year)**
   - Ministerial Regulation 56/2014

2. **Ban on Using Unsustainable Fishing Gears**
   - Ministerial Regulation 02/2015

3. **Task Force to Prevent and Combat IUU Fishing**

4. **Compliance Audit of 1,132 ex-foreign vessels**

5. **Demolition of 236 illegal fishing vessels**

6. **Ban on Transhipment**
   - Ministerial Regulation 57/2014

7. **Improving Governance of Fishery Business**
   - (Human Rights Ministerial Regulation, PSMA, TOFC, One Stop Service and Improvement of Public Service in Licensing)

8. **Strengthening Law Enforcement:**
   - Establishment of the New Presidential Task Force (Task Force 115) to combat fisheries crime (one roof enforcement system)
   - Imposing administrative sanctions: the Ministry has revoked 291 licenses, suspended 261 licenses and sent 48 warning letters to fisheries companies
   - Application of corporate criminal liability and multi-legal regime approach

9. **2016**
   - Prohibition of ex-foreign vessels, foreign vessels and foreign investment in capture fisheries industry (Negative List of Investment)

**Maritime Power**

**“Sovereignty, Sustainability and Prosperity”**

**Good Governance**
Audit on 1,132* ex-foreign vessels
*licenses which are still active by 3 November 2014

Owned by 187 license holders

Distributed in 33 ports in Indonesia
1,132 operating vessels registered (fishing vessels and reefers), while the factual number reaches 4,000-5,000 vessels in total

*with sizes around 100-600 GT for fishing vessels and 600-6000 GT for reefers

Ex-foreign vessels have huge capacity to exploit Indonesia’s marine and fisheries resources, hence they cause depletion of resources

The country has lost ±USD20billion per year as the impact of IUU Fishing activities

*Managing Director and Chief of Operating Officer of the World Bank (2015)

The audit aims to identify the compliance level of fisheries business

Audit findings will be the basis to develop new policies on fisheries sector, which reflect the principles of sovereignty, sustainability and welfare

*the President's maritime mission statement
To identify:

✓ legal compliance status
✓ modus operandi (types of violations)
✓ root of the problems
✓ policies and regulatory flaws
✓ other violations outside IUU Fishing (fisheries-related crimes)
✓ pattern of vessels’ ownership
CONSEQUENCES OF ANALYSIS & EVALUATION

- Administrative sanctions imposed (revocation, suspension and warning)
- Criminal prosecutions (multi-door and criminal corporate liability)
- Policy on fish stored in the vessels and/or cold storage
- Issuance of blacklisted fishery companies
- Deregistration – deletion of flag state identity
- Prohibit ex-foreign vessels to operate and encourage more domestic vessels
TYPES OF VIOLATIONS ON FISHERIES CRIME IN INDONESIA

1. Forgery of vessel’s document
2. Double flagging & double registered
3. Fishing without licenses / appropriate documents (sailing without port and seaworthiness clearance)
4. Illegal Modification of Vessel (inc. mark-down, changing call sign, machines)
5. Using foreign captain and seamen
6. Conversion of big foreign fishing vessels into small pump boats to enter into Indonesian waters by falsifying vessel documents and Indonesian identity of the crews
7. Deactivation of Vessel’s Transmitter (VMS and AIS)
8. Illegal transhipment at sea
9. Forgery of logbook record
10. Illegal modification of vessel (inc. mark-down, changing call sign, machines)
11. Violation of fishing ground
12. Using prohibited fishing gear
13. Non-compliance in owning/partnering with a fish processing unit
14. Unlawful landing of catches
TYPES OF OTHER CRIMES (FISHERIES-RELATED CRIMES) IN INDONESIA

1. Illegal transaction of fuel
2. Immigration-related crime
3. Customs related crime, (incl. smugglings of drugs, protected species, vessel spare parts and other goods)
4. Money laundering
5. Tax crime (evasion or fraud)
6. Corruption
7. Human rights abuses (forced labor, human trafficking and child labor etc)
8. Illicit Drugs Trafficking
TYPES OF HUMAN RIGHTS ABUSES IN FISHERY BUSINESS

- Working without social security
- Substandard and inhumane living condition
- Child labour
- Fraudulent and deceptive recruitment
- Withholding identifying documents
- No payment/salary
- No working agreement
- Physical and mental abuse
- 18-20 hour workdays
- Health and safety violations
- Homicide & sexual abuse
Art. 2(a): A structured group of 3 or more persons, existing for a period of time and acting in concert with the aim of committing 1 or more serious crimes or offences in order to obtain a financial or other material benefit.

Committed in more than one State
Committed in one State, but a substantial part of its preparation, direction or control takes place in another State
Committed in one State, but involves an organized criminal group that engages in criminal activities in more than one State
Committed in one State but has substantial effects in another State

(Art. 2(b)) Serious Crime: offence punishable by maximum deprivation of liberty of at least 4 years or more serious penalty

(Art. 5) Participation in an organized criminal group
(Art. 6) Laundering proceeds of crime
(Art. 8) Corruption
(Art. 23) Obstruction of justice
DEFINING FISHERIES CRIME AS TOC

The *Annual European Union Organised Crime Situation Report* (2003) expands on TOC definition, noting that in order for something to be described as organized crime, at least six of the following characteristics are required; and it must have characteristics 1, 3, 5, and 11:

1. Collaboration of more than 2 people (in accordance with Art. 2(a) of Palermo Convention)
2. Each with own appointed tasks (in accordance with Art. 5 para. 1 of Palermo Convention)
3. For prolonged or indefinite period of time (in accordance with Art. 5 para. 1 of Palermo Convention)
4. Using some form of discipline and control (in accordance with Art. 23 of Palermo Convention)
5. Suspected of the commission of serious criminal offences (in accordance with Art. 2(b), 5, 6, 8 and 23 of Palermo Convention)
6. Operating at an international level (in accordance with Art. 3 para. 2 of Palermo Convention)
7. Using violence or other means suitable for intimidation (in accordance with Art. 23 of Palermo Convention)
8. Using commercial or businesslike structures (in accordance with Art. 2(c) of Palermo Convention)
9. Engaged in money laundering (in accordance with Art. 6, 7 of Palermo Convention)
10. Exerting influence on politics, the media, public administration, judicial authorities or the economy
11. Determined by the pursuit of profit and/or power* (in accordance with Art. 5 para. 1 of Palermo Convention)

Source: *Fröhlich 2003:2, citing the Annual European Union Organised Crime Situation Report (6204/1/97 (ENFOPOL 35 REV 2) DG H II)*
HAI FA CASE

- IMO: 7818561
- MMSI: 371295000
- Call sign: 3 EAY
- AIS TYPE: Cargo
- Gross Tonnage: 3830
- Deadweight: 4258 t
- Length x Breadth: 107 x 16.12m
- Year built: 1978
- Captain Name: Zhu Nian Le

Violations
- Catch and export hammerhead sharks without any permit
- AIS and VMS were deactivated once Hai Fa entered Indonesia’s water (5 periods of time)
- Sail back to China without seaworthiness and port clearances

Verdict
- District and Appelate Courts ruled that Hai Fa’s Captain guilty and imposed fine only amounted to two hundred million Rupiah (around USD $15,000)
- Currently, Hai Fa is under investigation by Marine Police for different violations.

Transnational Elements in Hai Fa Case
- Vessel is operated through a company registered in Indonesia. The Indonesian company is affiliated with a Chinese Company registered in Cayman Island and listed in the U.S. stock market (Nasdaq)
- Hai Fa uses Panamanian flag and exported hammerhead sharks caught in Indonesian waters
- Hai Fa’s captain is a Chinese citizen
PUSAKA BENJINA CASE

Violations

- Human trafficking and modern slavery
- Child labour
- Smuggling of people and goods
- Illegal transhipment
- Use of prohibited fishing gears (trawl)
- Forgery of vessels and seafarers documents
- Illegal transaction of fuel

Status and Legal Process

- 682 seafarers in Benjina became victims of trafficking
- 8 (eight) people in Benjina are in the process of prosecution (incl. companies’ managers) – now the accused
- 5 (five) vessels carrying victims of trafficking have been confiscated
- Investigation is conducted for fish crimes, forgery, labour crime, immigration crime, and money laundering by the Police and MMAF investigators.

Transnational Elements in Benjina Case

- Victims of trafficking and slavery originated from various countries, e.g. Thailand, Myanmar, Lao, Cambodia, and Vietnam
- One of the owners is a company registered in British Virgin Islands that is affiliated with a Hong Kong company owned by two Thai citizens
- Most fishing vessels were built in Thailand and using at least Indonesian, Thai, and PNG flags
- Caught fishes from Indonesia and transhipped the fish in the PNG waters with a Thai reefer
In the last 10 years, Viking has operated by using 12 different vessel names and flew at least flags of 8 different states;

On 3 incidents since 2012, Viking has given false registration documents to port authorities during site inspections;

On March 15th, 2015, Viking was detained in Malaysia by Malaysia’s authorities in which the captain is found guilty under Malaysia’s Fisheries Law and sentenced to pay RM 200,000

Viking (1.322GT) entered Indonesian waters without any prior notice and with Automatic Identification System (AIS) being switched off;

Viking was also equipped with fishing gears, which lead to suspicions that Viking has been illegally fishing in Indonesian waters;

Viking got arrested by Indonesian Navy on February 26th, 2016 within Indonesia’s Exclusive Economics Zone (EEZ), 12.7 Miles from Bintan, Riau Archipelago.

Viking was drowned on March 14th, 2016 in Pangandaraan, West Java, Indonesia

Viking is owned by Spanish and Panama companies, operated by an agent in South East Asia which domiciled in several countries;

The Captain is of Chile national;

Crewing, logistics, and financed through operators in Singapore;

Fishing in various waters around the world and exported to Hong Kong, Malaysia, Vietnam, and Taiwan through an investment company in South Africa.

*Commission for the Conservation of Antarctic Marine Living Resources, an RFMO for the Antarctic region*
WHY SHOULD WE DEFINE FISHERIES CRIME AS SERIOUS CRIME AND TOC?

- Facilitates and eases *international cooperation*: confiscation, criminal proceedings, law enforcement, etc
- Expedites the adjustment of national laws in order to adjust with UNTOC principles: *legislation harmonization*
- Facilitates the implementation of *extraterritoriality principle* (Art. 15 UNTOC)
- Facilitates *extradition and mutual legal assistance (MLA)* procedures (Art. 16-18 UNTOC)
- Alleged offenders are subject to *effective, proportionate and dissuasive criminal and non-criminal sanctions*, including monetary sanctions (Art. 10 UNTOC)
- Long statute of limitations period to commence proceedings for offences; even longer if the alleged offender evaded the proceedings (Art. 11 UNTOC)
- Facilitates and opens network for *wider exchange of information and data analysis*
**DEMOLITION OF VESSELS TO CREATE DETERRENT EFFECT**

**LAW NUMBER 45 OF 2009 ON FISHERIES**

**Article 69 (4)**: “... the investigator and the fisheries supervisor may conduct particular action such as burning down and/or sinking down foreign-flagged fisheries vessels based on sufficient initial evidence.”

**Article 76A**: “Any object and/or tool used for and/or resulted from fisheries crime may be confiscated for the state or destroyed subsequent to the approval of the chief of a district court.”

**UNCLOS** (ratified by Law 17/1985)

**Article 92**: “A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality”

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**NUMBER OF VESSELS SUNK BY THE MINISTRY, NAVY AND POLICE OCTOBER 2014 – AGUSTUS 2016**

**REKPITULASI PEMUSNAHAN / PENENGGELAMAN KAPAL PELAKU TPP PERIODE OKTOBER 2014 - AGUSTUS 2016**

*Update: 17 Agustus 2016*

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<td>JUMLAH</td>
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<td>Why Legal Multi Disciplinary approach for IUU Fishing enforcement?</td>
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<td>❑ Crimes in marine and fishery sector is a cross-sector crime;</td>
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<td>❑ Statutory limitation makes it necessary to use other regulation to capture IUU Fishing perpetrators;</td>
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<td>❑ IUU Fishing usually involves money laundering, bribery and gratification, and tax evasion /fraudulence;</td>
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<td>❑ Application of “follow the suspect and follow the asset” principle</td>
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<td>❑ Punishment of the functional perpetrators in addition to the physical perpetrators, including mastermind and beneficial owners</td>
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<th>Multi-door Approach Requires Enforcement Officers:</th>
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<td>✓ Having broad perspective and knowledge</td>
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<td>✓ Utilizing multi-laws to enable effective law enforcement which imposes severe and just punishment</td>
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<td>✓ Collaborating with various enforcement institutions</td>
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ROADMAP TO IMPROVE FISHERY BUSINESS GOVERNANCE

- Improvement of Vessel Registration System based on Good Governance Principle
- Strengthening Capacity of Port State Control (Implementation of PSMA)
- Improvement of Catch and Trade Reporting / Documentation
- Improvement of Monitoring, Control and Surveillance System
- Improvement of Fishery License Governance based on Good Governance & Sustainability Principle
- Comprehensive and Integrated Enforcement and Compliance Policy, which introduces Multi-Legal Disciplinary (Multi-Door) Approach
- Human Rights Protection Policy to ensure Slave-Free Supply Chain
POLICY ON HUMAN RIGHTS TRACEABILITY (PREVENTION APPROACH)

Ministerial Regulation on the Human Rights System and Certification in Fisheries Business

POLICY BACKGROUND

- UN Guiding Principles on Business and Human Rights (2011) and ILO Convention No. 188 of 2007 which provide international guidance for countries to apply business and human rights & responsible fisheries practices
- Indonesia has ratified two major human rights covenants: CCPR and ECOSOC
Impact of Elimination of Foreign IUU Fishing

IUU Policies Work

Under Minister Susi’s direction, Indonesia’s IUU policy to eliminate foreign IUU fishing and invest in a small-scale fleet reduces fishing effort by a net 35% (MMAF Data) and will lead to a long-term increase in catch as long as domestic fishing effort is well-managed.

Skipjack tuna catch by 2035 (compared to present)*

No IUU Policy IUU Policy, no domestic reform* IUU Policy, with domestic reform*

↓ 81% ↓ 26% ↑ 25%

*Eliminate open access and institute domestic licensing

Impact of Moratorium

Independent calculations show a reduction in night-time fishing effort after the moratorium, but this effort is replaced despite a 6-month extension past April 30, 2015.* Calculated by the UCSB/KKP team using data provided by the NOAA Joint Polar Satellite System (JPSS).
By 2050, global reform measures would simultaneously generate increases in fish biomass (up to 619 million metric tons), catch (up to 16 million metric tons), and fishery profits (up to $53 billion).

IUU fishing and overexploitation are major concerns for the future of Indonesia’s fisheries, threatening the livelihoods of 20 million Indonesians who rely on fishing. However, management reforms would considerably increase biomass, catch, and profit relative to maintaining the status quo.

Expected by 2050 with proper fishery reform:
- 224% increase in biomass
- 100% increase in catch
- $3.7 billion increase in profit

Adapted from Costello et al. (2016) Figure 2
CONCLUSION: ENHANCING FISHERIES GOVERNANCE TO COMBAT IUU FISHING

1. A breakthrough is needed to improve the ability to detect, ability to respond, and ability to punish illegal fishing vessels

2. Corporate Criminal Liability and multi-legal regime (multidoor approach) needs to be applied to provide more effective deterrent effect

3. Compliance monitoring needs to be improved and implemented more stringent by optimizing license as a monitoring tool to prevent future violations that adversely affected the marine environment, community and the state

4. Improving fisheries business governance is essential to pursue sustainable fisheries management
QUESTIONS?

THANK YOU!

Presidential Task Force to Combat Illegal Fishing (Task Force 115)