

## **Balancing Sustainable Fisheries And Human Rights Protection: Indonesian Experiences**

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### **Abstract**

The fisheries sector runs a risk of human rights violations. The issue of sustainable fisheries, human rights protection and business interests need to be balanced. Indonesia has experienced human rights violations by the fishing industry, so the government has made regulations for the protection of human rights in this industry. This article will analyse how the Indonesian government balances sustainability and human rights protection in the fishing industry. This study uses a normative juridical method with secondary data sources. The analysis was carried out in a qualitative normative manner, and conclusions were drawn deductively. Based on the research results, it was found that the Government of Indonesia issued the Regulation of the Minister of Maritime Affairs and Fisheries (MMAF) Number 35 of 2015 concerning Human Rights Certification in the Fisheries Sector that requires “fisheries entrepreneurs” to implement an enterprise-level compliance scheme consisting of three elements: (1) the establishment of a broad human rights policy; (2) mechanisms to facilitate due diligence; and (3) a remediation mechanism. In addition, the government issued the MMAF regulation Number 2 of 2017 concerning Requirements and Mechanisms for Fisheries Human Rights Certification. Indonesia has formed a human rights team and conducted human rights certification training for companies. The regulation aims to balance sustainable fisheries and human rights protection.

**Keywords:** sustainable fisheries, human rights protection, Indonesia

### **Introduction**

Southeast Asia is rapidly catching up with Europe as the world's main exporter of fish and fishing products, selling its high-quality fish in international markets. Consumers across these markets increasingly demand guarantees regarding supply-chain traceability and human rights. However, the processing and distribution of seafood products are difficult to track, as these products are usually aggregated at sea or on land from multiple fishing vessels and locations at different stages of the supply chain. This industry-wide lack of traceability has facilitated violations of human rights such as human trafficking and forced labour.

In recent years, growth in the Indonesian fisheries sector has been almost twice as fast as that of the country's overall economy, reflecting an increased focus on Indonesia's competitive advantage in maritime-related sectors. Indonesia is the largest producer in the marine capture fisheries sector in Southeast Asia, making up over 36% of the region's total production in 2015. More than 60 million people in Indonesia live in coastal communities where fishing provides a major source of income and employment. In 2013, the estimated number of workers employed in capture fisheries in Indonesia was 2.7 million (ILO, 2019).

The state plays a dominant role and has a responsibility in undertaking the constitutional obligation to realise a welfare state and protect human rights. Human rights are always synonymous with state power. In this context, the state and society need mutually beneficial collaborations for the sake of the state's integrity and advancement. are obliged to protect human rights. However, non-state actors who are also burdened with the responsibility of human rights protection have been discussed widely. They have also been burdened especially to those which have rivalled the economic and organisational strength of the state to allow them to intervene in the realisation of human rights (Rahmatullah, 2018). Besides the state, corporations are also responsible to protect human rights. In further development, corporations become one of the genuine development actors.

The violation of human rights in the fisheries sector has occurred in many regions of the world, including Indonesia (IOM/KKP/Coventry University 1, n.d.). Indonesia is the largest archipelagic state in the world, rich in marine and fisheries potency. The Ministry of Marine and Fisheries Affairs (MMFA) estimates that the potential Indonesian marine economy reaches USD 1.338 million (MMAF, 2020). FAO's data on the state of world fisheries and aquaculture shows that Indonesia is the fourth-largest catch fish producer in the world, with a productivity of 6.73% of the global fish (FAO, 2020).

Viewed from the labour aspect, it is estimated that 3.8 million Indonesian people work in fisheries companies; about 2.6 million people work as fishermen, 550 thousand work on fisheries ships, and 913 thousand work in other fisheries industries like the Fish Processing Unit (Santosa, 2016). Yet, some infringements of human rights are found in fisheries business activity, including human trafficking, forced labour, child labour, and standard work feasibility conditions

being inconsistent with the human rights and manpower-related legislations. To date, one of the challenges faced by the governmental institution and seafood industry is that the level of illegal activities and human right or labour right infringement are difficult to measure because these practices may be hidden deliberately (e.g., illegal transshipment practices and inadequate monitoring, control, and supervision over fisheries industry activities; Yuliantiningsih & Barkhuizen, 2021).

Fisheries companies try to reduce their operational cost by reducing the number of crew members, employing low-cost migrant labourers, increasing work hours, and ignoring important factors such as health and safety to maintain their profits (FishWise, 2018). In 2008, the United Nations issued the United Nations Guiding Principles on Business and Human Rights (UNGPs on BHR). UNGPs on BHR was established to provide guidance to the state and companies to prevent and overcome human right infringements in the business sector (Leipzig, 2015).

In 2015, the fisheries business in Indonesia was coloured with human right infringement in the form of slavery practices in PT Benjina Pusaka Resources (Khadafi, 2016). Following this incident, Indonesian government issued Decree No. 35/PERMEN-KP/2015 about Human Right System and Certification in fisheries business (thereafter called PERMEN MMAF 35/2015), PERMEN Number 2 of 2017 about Government Regulation (PP) Number 27 of 2021 about the Governance of Marine and Fisheries Sector as the implementation of Job Creation Law in the fisheries sector.

Until 2021, some parties view Human Right Certification policy has not been optimal yet. This Human Right Certification program vanished following the end of Susi's ministerial leadership, the presence of Law No. 11 of 2020 about Job Creation, and the issuance of Government Regulation Number 27 of 2021 about the Organization of Fisheries and Marine sector that facilitated the stakeholders into changing the licensing system into approval (MMAF, 2021). Several years have passed since the issuance of the Minister of Marine and Fisheries' Regulation in 2015, but it has not been implemented yet because of some constraints. This article aims to analyse how to balance sustainability and human rights protection in the fisheries sector.

### **Materials and Methods**

This is a juridical normative study. The research was conducted using statute and analytical approaches. Secondary data consisting of journals and books were used. Primary data to support the secondary data was obtained by interviewing the staff of MMFA. The data were analysed qualitatively (Marzuki, 2005).

### **Results**

Human rights should be fulfilled obligatorily by the state. The primary international instrument governing human rights is the Universal Declaration of Human Rights (UDHR) 1948. Fundamentally, the UDHR governs the protection of

every human being from human right infringement and slavery practices via Articles 3 and 4. Article 3 of UDHR mentions that everyone deserves living, freedom, and safety as an individual. Article 4 mentions that no one should be enslaved, and all forms of slavery and slave trafficking must be prohibited.

Globalisation considerably affects all aspects of life, including economic growth and development. With the inception of privatisation, multinational corporations changed into transnational corporations (TNCs). In running its business, these corporations often violate human rights (Ratner, 2001). So, in 2008, the United Nations issued the UNGPs on BHR specifying the human right protection norms based on the principles of international law for the state at national and global level and for businesses. UNGPs on BHR basically consists of three pillars (Bijlmakers, 2018):

1. The state's obligation to protect human rights, in which the government should protect individuals from the violation of human rights committed by third parties, including businesses.
2. Corporation's responsibility for respecting human rights by avoiding, reducing, or preventing negative effects of their operations; and
3. The need for expanding the victims' access to effective recovery through either judicial or non-judicial mechanisms.

The application of human right norms and standards in any business activity, TNCs, and multinational corporations should be dealt with smartly as the global reality, along with the establishment and acceleration of the attempt to respect, protect, and fulfil human rights. This idea resulted in a significant development in the process of formulating the 10 principles of UNGP that have become the consensus of international society. The principles of human rights for businesses have been derived from UN's Declaration of Human Rights in 1948—the declaration about the principles and fundamental rights in working (International Labor Organization's Declaration on Fundamental Principles and Rights at Work)—Rio Declaration on Environment and Development, and United Nations Convention Against Corruption.

Nevertheless, the state remains fully responsible for respecting, protecting, and fulfilling human rights (the duty bearer). However, recently, reality indicates that in the public life domain, the state's strategic roles are partially played by corporations. The state's regulation is an instrument to 'suppress' and to ensure that corporations actually attempt to respect and protect human rights in its business activities (Moris, 2006).

The narration of businesses and human rights in UNGPs on BHR is soft law involving any effect potentially caused comprehensively by the company on human beings and understanding that business is complex and its decisions can harm vulnerable groups. Human rights, particularly for labourers, have attracted the attention of international society (Majda El Muhtaj, 2015).

## Discussion

### 1. Relationship between Sustainability and Human Rights Protection in the Fisheries Sector

Sustainable fisheries aims to protect marine resources, so they can be used by the next generation. Sustainable fisheries activities must be aimed at all stakeholders, such as government, communities (consumers), business actors, fishermen, academics, and non-government organisations because sustainable fishing activities certainly affect all these parties.

One of the main problems that threatens sustainable fisheries is overfishing. Overfishing can result in the collapse of a fishery and even the extinction, locally or globally, of an over-exploited species. The extinction of one species will negatively impact the health of its entire ecosystem. As the food web shifts to address the loss of one species, other species can also become endangered, triggering a widespread loss of biodiversity. (Davis Bastone, 2021). Population decline not only has an impact on ecosystems but also has devastating consequences for humans. If overfishing continues, there will be significant job and revenue losses because seafood is one of the most-traded commodities on the planet, accounting for more than 20% of the GDPs of many developing countries (World Bank, 2019; FAO, 2020).

Human rights and labour abuses like those described above are clearly linked with a variety of societal drivers (for example, greed, corruption, cultural inequity, and global economic conditions), but they are also rooted in environmental issues. For example, overfishing has resulted in the decline of fish stocks closer to shore, so vessels are travelling farther out to sea (ILO, 2013). Fishing in more remote locations for longer periods increases fuel and operating costs for longer trips (sometimes facilitated by the use of transshipment vessels), and diminished catches provide ample incentives and opportunities to take advantage of the low risk of being caught when committing human right abuses or other crimes such as illegal fishing. Economic pressures, exacerbated by declining catch, can also cause operators to scrimp on health and safety provisions onboard vessels.

At the same time, addressing many intersecting environmental issues is critical because a healthy ecosystem supports a resilient and well-protected workforce (Riggs and Pontarelli, 2014). Collective action is required for proper fishery management and to reduce overfishing risks. For example, to put an end to overfishing, governments and businesses must collaborate to establish fishing quotas.

## 2. Corporations' Due Diligence in Protecting Human Rights in Fisheries in Indonesia

According to the Food and Agriculture Organization through The State of World Fisheries and Aquaculture, fisheries is considered more dangerous than other professions. As a result, this profession is classified as a "3D" job, meaning, it is dangerous, dirty, and difficult, with erratic weather conditions increasing the danger. According to data from the International Maritime Organization, the percentage of fishing boat accidents caused by human error is 43.06%; natural factors, 33.57%; and technical factors, 23.35% (IMO, 2007).

Indonesia has experienced incidents of violation of human rights in the fishing industry. Initially, in response to the slavery incident in Pusaka Benjina Resources company in 2014, Indonesian Government had made some policies and regulations to improve the life and working conditions of fisheries ship attendants. One of those policies is the Human Rights Certification Regulation Number 35/PERMEN-KP/2015 issued by the MMAF (Chapsos & Hamilton, 2018).

The Regulation of Minister development has adopted the basic principles of national and international regulations, including Article 28 of the 1945 Constitution, Law Number 39 of the Human Rights, 1999 (thereafter called the Human Rights Law), Law Number 21 of the Eradication of Human Trafficking Crime, 2007 (thereafter called Human Trafficking Crime Law), the United Nations Guiding Principles on Business and Human Rights (thereafter called UNGPs on BHR) with the state's principle to protect human right, the employers' principle to respect human rights, and all parties to do recovery, and ILO Convention Number 188 about occupation or job in Fisheries Sector (Maskur, 2015).

The provision of the Minister of Marine and Fisheries' Regulation Number 35/PERMEN-KP/2015 mentions that the business sector is required to have the Fisheries Human Rights certificate is fish catching business in the sense of catch fisheries business including fish catch outcome and fish transportation and fish processing businesses (fish processing unit). The data on the number of fish catching companies in Indonesia in 2021 is presented in the table below.

No	Type of business	Number
1	National private	401
2	Individual	3480
3	Business venture	444
4	Cooperative	44
	Total	4369

A fish processing unit (Indonesian: Unit Pengolahan Ikan or UPI) is a place or facility that conducts fish-processing activities. By its sale volume or asset, UPIs are classified into four scales: micro-, small-, medium-, and large-scale UPIs. Most of the production by medium- and large-scale UPIs is intended for the export

market. The main destination of this export depends on the type of commodity. Generally, the export destinations of fisheries products by value were the United States, Japan, China, Thailand, and Vietnam in 2018 (MMAF, 2018).

Article 4 of the Minister of Marine and Fisheries' Regulation Number 2015 regulates the Human Rights System in the fisheries sector through Clause 1 by including three provisions: a) Human Rights Policy, b) Human Rights Due Diligence, and c) Human Rights Recovery. These three provisions are compatible with the pillars governed in UNGPs on BHR, putting the obligation of protecting the human rights of labourers on the state and the company. Considering these three pillars, corporations should implement UNGPs on HBR in their business operations. This should be done because UNGPs on BHR provide a global standard to corporations on how they should respect and protect human rights in their state of operation.

Indonesia has implemented UNGPs by issuing the Minister of Marine and Fisheries' Regulation Number 35 of 2015. This regulation aims to ensure that fisheries employers respect the human rights of those related with their business activities, including fisheries ship attendants and related people, by preventing the violation of human rights and/or dealing with the effects of human rights violations. Now, the Human Rights Certification in the fisheries business is called the Fisheries Human Right Certification. It is a process of evaluating and ensuring the fisheries employers' compliance with the implementation of the Fisheries Human Rights System. The Certification is aimed at eliminating the exploitation of labourers in the fisheries business, providing legal foundation to the employees and ship attendants in the form of Marine Employment Agreement, and improving offering the value of fisheries export price.

The human rights policy is represented in the fisheries employers' commitment to

- a. Respecting the human rights of those affected by the violation of human rights related to fisheries business activities
- b. Respecting the right to fair and reasonable work conditions, including the right to
  - 1) Remuneration and fair and reasonable resting time
  - 2) Reasonable standard of life, including accommodation, food and beverage
  - 3) Getting medicinal treatment
  - 4) Getting social insurance
  - 5) Getting protection from occupation-related risk and
  - 6) Ensuring woman-, child-, and disabled-specific rights
- c. Implementing a marine employment agreement for labourers and for fisheries ship attendants with a reasonable waging standard
- d. Avoiding forced labour in the form of
  - 1) Vulnerability abuse
  - 2) Fraud
  - 3) Mobility restriction

- 4) Alienation
- 5) Physical and sexual abuses
- 6) Intimidation and threat
- 7) Identity document withhold
- 8) Wage withholding
- 9) Debt trap
- 10) Irritating working and life condition and
- 11) Overtime, among others

One of preconditions for the human rights policy is the commitment to applying the employment agreement for fisheries ship attendants. In the attempt to implement such a commitment, the Minister of Marine and Fisheries' Regulation Number 42/Permen-KP/2016 about the Marine Employment Agreement to Fisheries Ship Attendant has been issued. The regulation has been enacted since 2016 with the detailed stipulation of preconditions concerning the obligatory presence of marine employment agreement, but it has not fully satisfied the preconditions specified in the ILO's convention Number 188 on employment in the fisheries sector. For example, the regulation has not yet implemented the provisions concerning occupation and resting time issues related to the fisheries ship attendant.

The Minister of Marine and Fisheries' Regulation Number 2/2017 stipulates the certification process and mechanism and elaborates upon the responsibilities of the implementer stakeholders, including Human Rights Team (HRT), accredited assessor, and training institutions. HRT is assigned to accredit the assessor and training institutions. Following the implementation of the human rights system, the fisheries employers are obliged to hire the accredited assessor institution to audit their compliance. Then, the accredited assessor institution recommends the HRT or MMAF based on whether or not the companies are feasible to be certified. The companies' failure of getting certification can result in the suspension or the revocation of their fish catching licenses issued by the MMAF. The institution can also recommend the Ministry of Manpower to revoke the license of labour employment. However, THAM does all of the mandated processes because there are no accredited assessors or training institutions.

Through the Directorate General of Catch Fisheries, the MMAF continuously encourages all ports to cooperate with the insurance providers in their services to ship owners to give them easy access to insurance. The MMAF also holds training on fisheries human rights for 180 representatives of fisheries companies in 5 cities: Jakarta, Bayuwangi, Bitung, Tegal, and Makassar. About 120 representatives of companies have been trained until August to implement the principles of fisheries human rights in their business activities (MMAF, 2019).

Until the end of 2018, two certification process models had been implemented for the state-owned enterprises in the fisheries sector. The MMAF had focused on fisheries human right certification, but, until the end of 2018, the system had not been implemented completely. The MMAF had not formalised the



operational and technical guidelines for the implementation of the system. The HRT had been formed in May 2017, but it had never held any meetings, so neither assessor agencies nor training institutions had been accredited. In addition, serious misunderstanding and confusion existed between fisheries actors and other stakeholders about the content and the effect of such regulations. For example, the Minister of Marine and Fisheries' Regulation Number 42/2016 about the Marine Employment Agreement had not been known widely by stakeholders. There was a strong tendency to see the Minister of Marine and Fisheries' Regulations Number 35 of 2015 and Number 2 of 2017 separately rather than as a part of a regulatory framework related to other regulations that prevailed nationally.

To date, the Minister of Marine and Fisheries' Regulation Number 35/PERMEN-KP/2015 has not been implemented widely. This is because the Fisheries Human Rights Certification has not included into one of preconditions to obtain an Operating Certificate (Indonesian: Surat Laik Operasi or SLO) from Fisheries Supervisor as governed in the Minister of Marine and Fisheries' Regulation Number 1/PERMEN-KP/2017 about Operating Certificate and Port Clearance issued by port officer as governed in Article 11 clause (1) stating that the supervision over the protection and respect of Human Rights in fisheries port and/or other by other authorised official based on legislation.

As mentioned in the closing provision (Article 14) of the Minister of Marine and Fisheries' Regulation Number 35 of 2015, fisheries business licensing, operating certificate publication, port clearance publication, and the supervision and implementation of port officer's duties at ports should be obligatorily adjusted with its regulation within one year of the enactment of the Minister of Marine and Fisheries' Regulation Number 35 of 2015.

The authority of supervising fisheries and of checking the compliance with legality and the compatibility with the Human Rights Certification criteria in fisheries business has been included in the Minister of Marine and Fisheries' Regulation Number 47/PERMEN-KP/2020 about the Implementation of Fisheries Supervisor's Duty. This is a new challenge for the supervisor of fisheries to ensure that the business is actually free of slavery and human trafficking practices and the rights of people are protected. Primarily, corporate responsibility should ensure occupation-related health and safety. Therefore, fisheries employers should ensure the health of their employees. Second, the job recruitment system should ensure that labourers get fair rights in their job, including a fair employment agreement, waging system, restriction of working, and resting, leave and vacation times. Third, the manpower system should recognise of the labourer's right to unite and fulfil the right to social insurance. Fourth, the responsibility for community development indicates that fisheries companies with 2000 GT accumulation should hold a building program for the fishermen. Fifth, companies should hire security officers without breaking the principles of human rights, particularly, in undertaking the security tasks over the occupation or people involved in the business. Sixth, the environment where the business operates should not be polluted by involving waste

and other harmful externalities. Finally, the fisheries employers are prohibited from taking over or performing other illegal action, particularly, in constructing the business site.

The Minister of Marine and Fisheries' Regulations Number 35/Permen-KP/2015 and Number 2/Permen-KP/2017 about Precondition and Mechanism of Fisheries Human Rights Certification have developed the Fisheries Human Rights Certification System. The Minister of Marine and Fisheries' Regulation Number 34/2015 requires the fisheries employers to apply the compliance scheme at the company level. The scheme consists of three elements: 1) broadly, the development of human rights policies, 2) the mechanism to facilitate fit and proper test, and (3) the mechanism of remediation. This policy has been consistent with that governed in the UNGPs.

Until 2021, some parties realised that the Human Right Certification policy had not been implemented optimally. This program also vanished following the end of Susi's ministerial leadership. Moreover, Law Number 11 of 2020 about Job Creation and Government Regulation Number 27 of 2021 about the Operation of Fisheries and Marine Sector facilitates the stakeholders to run a business by changing the licensing system into the approval system. This change can contribute to the sustainability of the Human Rights Certification system in Indonesia.

### **Conclusion**

For balancing sustainability and human rights protection, the Indonesian government enacted the Minister of Marine and Fisheries Regulation Number 35/PERMEN-KP/2015 for the Human Rights System and Certification in Fisheries Business. The regulation ensures that fisheries company's respect human rights, and it can be the key for the eradication and prevention of human rights violations potentially occurring against labourers, fisheries ship attendants, and/or other people involved in the industry. To date, the implementation of the Human Right Certification in the fisheries business in Indonesia faces some constraints because of inadequate socialisation, poor public awareness, and inadequate human resource of port officers.

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