STRATEGY ON THE PREVENTION AND ERADICATION OF IUU FISHING & POST-MORATORIUM POLICIES

Mas Achmad Santosa
Head of Task Force on the Prevention, Deterrence and Elimination of IUU Fishing
"The presence of the government through a clean, effective, democratic and reliable governance, by giving priority and efforts to restore public confidence in democratic institutions and continue the consolidation of democracy through reform of the political party system, electoral and representative institutions."

*Nawa Cita*

(Presidential Political Platform 2014 – 2019)

"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 Indonesia

20 October 2014
INTERNATIONAL & NATIONAL INSTRUMENT
INTERNATIONAL INSTRUMENTS ON IUU FISHING

FAO CODE OF CONDUCT FOR RESPONSIBLE FISHERIES (CCRF)

International standard and principle for countries and business actors on the implementation of sustainable fishery catch

1995

INTERNATIONAL PLAN OF ACTION TO PREVENT, DETER AND ELIMINATE

IPOA

All FAO Member Countries
8 agreed provisions
(Indonesia as country member)

2001

REGIONAL PLAN OF ACTION TO PREVENT, DETER AND ELIMINATE

RPOA

11 country members
11 agreed provisions
(Indonesia as country member)

2007

NATIONAL PLAN OF ACTION TO PREVENT, DETER, AND ELIMINATE

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Applied in Indonesia Minister’s Decree No. 50/MEN/2012 regarding the National Action Plan on the Prevention and Elimination Illegal, Unreported, and Unregulated Fishing

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2012
Moratorium for ex-foreign fishing vessel
Minister’s Regulation 56/2014

Ban on using seine net and trawl
Minister’s Regulation 02/2015

Ban on transhipment
Minister’s Regulation 57/2014

Sink captured IUU fishing vessels

Roadmap to Improve Governance of Fisheries Business

Compliance Audit of 1,132 ex-foreign vessels

Establishment of Task Force to Prevent and Combat IUU Fishing

Strengthening law enforcement:
- Enhance the coordination with navy, water police, coast guards, tax administration office, and Financial Intelligence Unit
- Application of corporate criminal liability
- Imposing administrative sanctions (based on the findings in the audit compliance)

Maritime Power “Sovereignty, Sustainability and Prosperity”

GOOD GOVERNANCE
**Task Force on Prevention and Eradication of IUUF (established by the Minister of Fisheries and Marine Affairs)**

- Conduct analysis and evaluation of 1.132 ex-foreign vessels (legal due diligence) and develop legal consequence analysis (per company and vessel)
- Develop, monitor and/or implement recommendations resulted from analysis and evaluation
- Conduct fisheries license governance reform (national and regional level)
- Monitor enforcement practices on IUU Fishing and provide technical assistance for enforcement officers on cases basis
- Develop integrated and comprehensive enforcement guidelines on IUUF
- Strengthen coordination among enforcement agencies by developing online case tracking system on IUUF

*Inter-agency coordination in which consists of 10 members from ministry/agencies

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**Task Force on Eradication of IUUF (established by the President)**

- Strengthen the enforcement capacity and effectiveness to combat IUU fishing by establishing joint enforcement task force which includes KKP, Navy, Police, Coast Guards, and Public Prosecutors
- Utilize the existing forces including warship, airborne, and other appropriate technology for surveillance and enforcement purposes
- Regular patrol (including airborne surveillance) conducted by joint task force to detect IUU fishing activities
ANALYSIS AND EVALUATION (ANEV) OF 1,132 EX-FOREIGN VESSELS IN INDONESIA
100% EX-FOREIGN VESSELS VIOLATED THE LAW

ANALYSIS AND EVALUATION (ANEV)

• Mandated by:
  1. Indonesia’s Minister Regulation No. 56/PREMEN-KP/2014 on the Moratorium of Ex Foreign Fishing Vessel
  2. Indonesia’s Minister Decree No. 26B/KEPMEN-KP/2015 on the Analysis and Evaluation of Ex Foreign Fishing Vessel

• Conducted in 7 months (March – October 2015)

• Total 1,132 vessels and 187 vessel owners distributed in 33 base ports

ANALYSIS AND EVALUATION RESULT

100% Ex Foreign Vessels VIOLATED laws & regulations

<table>
<thead>
<tr>
<th>Severe Violation</th>
<th>Average Violation</th>
</tr>
</thead>
<tbody>
<tr>
<td>769 vessels</td>
<td>363 vessels</td>
</tr>
</tbody>
</table>

1,132 vessels

SANCTIONS IMPOSED:

- **REVOCATION**
  - BUSINESS LICENSE: 15
  - FISHING LICENSE: 245
  - REEFER LICENSE: 31

- **SUSPENSION**
  - FISHING LICENSE: 35
  - REEFER LICENSE: 26

- **WARNING**
  - FISHING LICENSE: 47
  - REEFER LICENSE: 48
ROAD MAP TO IMPROVE GOVERNANCE OF FISHERY BUSINESS
The Way Forward: Roadmap to Improve Governance of Fisheries Business

1. Improvement of vessel registration system based on good governance principle
2. Improvement of catch and trade reporting / documentation (inc. tax evasion/fraud)
3. Improvement of surveillance system
4. Inclusion human rights traceability in addition to food safety and IUUF traceability
5. Strengthening capacity port state controls
6. Improvement of fishery license governance based on good governance, fish stocks and fish allocation
7. Comprehensive and integrated enforcement and compliance policy on IUUF introducing multi legal disciplinary approach (multi-door)
8. Strengthening regional and international cooperation (inc. RPOA, Interpol, etc)
Problems Identified: Vessels Registration

**Double Registration**
- 343 vessels are indicated double registered (China and Indonesia)
- 11 vessels are indicated double registered (PNG and Indonesia)
- 8 vessels are indicated double registered (Thailand and Indonesia)

**Mark Down**
- 215 out of 226 vessels (95%) assessed in Belawan Port (Medan, Indonesia) are found mark downed
- 83 out of 131 vessels assessed in Bitung, Benoa, and Makassar Ports (interim results conducted by Ministry of Transportation) are found mark downed
Problems Identified:
Ports (General, Fishery and Private Commercial)

Inappropriate usage of Private Commercial Ports

- Several private commercial ports are found to have committed inappropriate usage of ports.

- The findings show that several ports are used as the entrance gate for:
  i. smuggling of drugs, goods, protected species, spare parts, liquor and people;
  ii. unlawful activities of exports and imports;
  iii. illegal fish catch

- The factors of inappropriate usage of ports are:
  (i) authorities’ offices are located within the company’s port, i.e. in Benjina, Avona and Wanam area
  (ii) lack of authority officials to monitor private ports
Problems Identified:  
Fish Catch Report

Inaccuracy of data collection on fish catch
- Lack of compliance to report logbook at designated fish landing ports
- Out of 245 fishery ports, only 47 ports (4.7%) are integrated with log book information systems (SILOPI)
- Fallacies in data entries of fish capture (incl. human error, technical problems, etc)

Outdated data on the estimation of fishery resources potential
- Hardly updated from time to time, the only data issued were in 2009 and 2011, while the number of fish stock have always changed every year in each of the fishing grounds
- Nearly all fishing grounds refer to the same data (2009 and 2011) on the estimation of fishery resources potential, whereas each fishing ground has different characteristics
Problems Identified:
Fishery Licensing

**Issuance of licenses is not based on sustainable fisheries calculation**
- Fishing licenses are still issued in certain fishing grounds despite the fact that some species in such grounds have been overexploited, i.e. small pelagic and demersal fishes in WPP 718 (Arafura Sea) and WPP 712 (Java Sea).

**Issuance of licenses is not based on good governance principles**
- Fish catch licenses are still issued despite the fact that it is inconsistence with the use of prohibited fishing gear(s) registered under the license.
- Lack of examination on landing port request by the vessel owner: there are vessels which land their catch at landing ports other than the ports stated in the licenses.
Problems Identified: Surveillance

Lack of abilities to detect, respond and punish

• **Ability to detect:**
  - lack of infrastructure to monitor vessels with deactivated transmitter (VMS and AIS)
  - analysis of operational violations is not conducted upon all vessels

• **Ability to respond:**
  - inspectors do not take actions against violations on timely basis
  - inability of patrol vessels to range over the suspected crime scene

• **Ability to punish:**
  - sanctions are not effective to create deterrent effect, i.e. weak punishment for deactivating vessel’s transmitter
  - punishment is rarely imposed to corporation (functional perpetrator)

[see problems identified in “Law Enforcement”]
Problems Identified:
Law Enforcement

**Sectoral approach instead of multi-door solution**
- Lack of coordination in case management
- Conventional/single legal disciplinary approach

**Weak Sanctions**
- Corporate criminal liability has not been imposed
- Serious violations are only subject to administrative sanctions
- Inadequate awareness and narrow vision of enforcement officers about sovereignty, sustainability, prosperity and justice principles in imposing punishment towards the perpetrators
Problems Identified:
Human Rights

Human Trafficking, People Smuggling and Modern Slavery
• 365 persons in Ambon and 682 persons in Benjina became victims of trafficking and modern slavery
• The crews worked for ±18-22 hours per day in 7 days a week with only 2-4 hours of recess time
• Physical and mental abuse

Illegal Workers
• The use of foreign captains and seamen without proper immigration documents
• Child’s labor
• No fisher’s work agreement made for the crews hence the rights and obligation are not clearly stipulated
• Workers are paid under standard salary, no social security/insurance, no proper medical care
• Egregious health and safety violations, substandard food and poor accommodations

- 93 cases
- 614 cases
- 600 cases
- 20 cases
- 25 cases
- 28 cases
- 46 cases
- 19 cases
NUMBER OF VESSELS SUNK BY THE MINISTRY, THE NAVY, AND THE POLICE OF THE REPUBLIC OF INDONESIA

“SINK THE VESSELS”

NUMBER OF VESSELS SUNK BY THE MINISTRY, THE NAVY, AND THE POLICE

2007 - 2014*: 38
2014 - 2015: 59
18 AUGUST 2015: 37

*NUMBER SUNK SOLELY BY THE MINISTRY
CHALLENGES, IUUF CASES, HUMAN TRAFFICKING & MULTI-DOOR APPROACH IN INDONESIA
CURRENT LAW ENFORCEMENT CONDITION IN MARINE AND FISHERY IN INDONESIA

- Lack of coordination among law enforcement agencies
- Conventional Approach (SINGLE DOOR)
- Lacking 3 (three) abilities: Ability to detect, Ability to respond, Ability to Punish
- Corruption in Judiciary System and Bureaucracy
**HAI FA CASE**

- **IMO**: 7818561
- **MMSI**: 371295000
- **Call sign**: 3 EAY
- **AIS TYPE**: Cargo
- **Gross Tonnage**: 3830
- **Deadweight**: 4258 t
- **Length x Breadth**: 107x 16.12m
- **Year build**: 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 the Hai Fa’s Captain guilty and imposed fine only amounted to two hundred million Rupiah (around USD 15,000)
On 9 September 2015, INTERPOL released and publicized HAI FAPURPLE NOTICE

Consequences of the PURPLE NOTICE:
- Gathering information from law enforcers / public from 190 countries
- Last position of Hai Fa was near Hong Kong (Interpol had sent letter to NCB Hong Kong to monitor and give information regarding the activities of Hai Fa)

HAI FA 1 TRILLION COUNTERCLAIM!
- Hai Fa filed a civil claim to the Ministry of Marine Affairs and Fisheries (MMAF);
- MMAF has submitted evidence to the District Court of Central Jakarta;
- MMAF has prepared witness and experts for the next court proceedings;
- Court proceedings is held every Tuesday.
**SINO CASES (AMBON)**

5 Fishing Vessels

- Gross Tonnage : 250-275 GT
- Designated Port : Merauke, Papua
- Location of Capture : Arafura Sea
- Ruling Court : District Court of Ambon

**Violations**

- Catching fish without permit
- Catching fish beyond designated fishing ground (territorial sea)
- Catching fish using double trawler (double-nets)

**Verdict**

- District Court ruled guilty:
  - Imposed fine only amounted to one hundred million Rupiah (around USD $7,500) or 4 months imprisonment
  - Confiscation of the trawlers to be destroyed
  - Amount from the auction becomes state revenue
- Appellate Court ruled harsher verdict:
  - 2 years imprisonment
  - Imposed fine amounted to 1 billion Rupiah (around USD $73,000) or 6 months imprisonment
  - Confiscation of vessels to be destroyed
  - Amount from the auction becomes state revenue
- Navy investigator is currently pursuing corporate criminal liability towards PT Sino Indonesia Shulinda Fishing

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IUU FISHING CASES IN INDONESIA (2)
IUU FISHING CASES IN INDONESIA (3)

SINO CASES (MERAUKE)

6 Fishing Vessels

- Gross Tonnage: 250-275 GT
- Designated Port: Merauke, Papua
- Location of Capture: Port of Merauke
- Ruling Court: District Court of Merauke

Violations

- Catching fish without permit
- Sail without seaworthiness clearance

Verdict

- District Court ruled guilty:
  - 2 years imprisonment
  - Imposed fine amounted to 1 billion Rupiah (around USD $73,000) or 6 months imprisonment
  - Confiscation of vessels to be destroyed
  - Amount from the auction around 6,8 billion Rupiah ($497,000) becomes state revenue
SILVER SEA 2 CASE

- Gross Tonnage: 2,285 GT
- Designated Port: Ambon
- Location of Capture: Sabang (Northern Aceh)

**Alleged Violations**

- Transport fishes without permit (carrier permit already expired)
- Conduct illegal transhipment in Arafura Sea
- Deactivation of AIS and VMS
- Employ illegitimate crews

**Status**

- Arrested by Navy on 12th of August 2015
- Carried 19.300 tons of fishes
- Investigation by Indonesian MOMAF Investigators
MV Silver Sea Line 3 conducted transhipment with Mabiru 05 and Jaya Sejahtera 104

Other vessel, named Mabiru 98 conducted transhipment in PNG with MV Silver Sea Line 3, and Sea Network. Once Mabiru 98 entered the PNG area, the name of the vessel was changed into “Pornpohroensap 740”
This Photo was taken on April 3rd, 2015 in Benjina, Indonesia. Approximately 322 sea fearers were saved and evacuated by MoMAF of the Republic of Indonesia to Tual, Indonesia.
Slavery in Ambon & Benjina, Indonesia (2)

- Fake Identity of Crews
- Physical Torture
- Crew Graveyard
Slavery in Ambon & Benjina, Indonesia (3)

- Prison for Crews (1)
- Prison for Crews (2)
- Prison’s Lock
Slavery in Ambon & Benjina, Indonesia (4)

Human Rights Violation

- Poor work condition
- Working without social security
- Salary below minimum standard
- Salary discrimination
- Worker exploitation
- Child labour
- Modern slavery / forced labour
- Human trafficking & smuggling

Human Rights Violation
Slavery in Ambon & Benjina, Indonesia (5)

**Slavery in Benjina**
- **682 sea fearers was evacuated** from Benjina and Tual, Indonesia. They have been repatriated to their origin countries;
- Police of the Republic of Indonesia is currently conducting **investigations** on the slavery case;
- **Case Status:** Ready to be prosecuted / P-21;
- **8 people (5 captains, 3 crews)** named as suspects.

**Slavery in Ambon**
- **365 sea fearers become victims** of slavery. 105 sea fearers has been repatriated to their origin country
- Police of the Republic of Indonesia is currently conducting **investigations** on the slavery case;
- **Case Status:** Investigations;
- **4 Captains** named as suspects;

**COOPERATIONS:**
1. **International Organization for Migration (IOM)** conducts in-depth interview with the victims for the purpose of police’s investigations.
Indonesia’s Policies on Business and Human Rights

Minister’s Regulation on Protecting and Respecting of Human Rights in Fisheries Business

The Regulation will be based on the United Nations Guiding Principles on Business and Human Rights and the ILO Work in Fishing Convention 2007 (No. C188)

The Regulation will contain:

A. Human Rights Management System: (i) human rights policy; (ii) human rights due diligence; (iii) human rights certificate on fisheries products

B. Human Rights Standards Scope: (i) occupational safety and health & accident prevention; (ii) medical care, health protection and social security; (iii) corporate responsibility for sustainable society; (iv) environment; (v) land take over procedures; (vi) recruitment and placement; (vii) accommodation and food; (viii) work standards (payment, rest, repatriation)
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. marked down, changing call sign, machines)
5. Using foreign captain and seamen
6. Absence of health certificate and export declaration
7. Deactivation of Vessel’s Transmitter (VMS and AIS)
8. Illegal transshipment at sea
9. Forgery of logbook record
10. Violation of fishing ground
11. Using prohibited fishing gear
12. Non-compliance in owning /partnering with a fish processing unit
13. Unlawful landing of catches
14. Illegal Modification of Vessel (inc. marked down, changing call sign, machines)
15. Forgery of logbook record
16. Unlawful landing of catches
1. Illegal transaction of fuel

2. Immigration crime

3. Customs 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. Labor crime (modern slavery and human trafficking)

8. Child Labor
MULTIDOOR APPROACH IN MARINE AND FISHERIES

- Fishery Law
- Investment Law
- Conservation Law
- Oil & Gas Law
- Company Law
- Anti-Corruption Law
- Environmental Law
- Immigration Law
- Labour Law
- Taxation Law
- Customs Law
- Management Law
- Coastal and Remote Islands Management Law
- Quarantine Law
- Sea Transportation Law
- Human Trafficking Law
- Criminal Code
- Human Rights Law
- Indonesian EEZ Law
- Anti-Money Laundering Law
**WHY MULTI-DOOR APPROACH?**

**Why Legal Multi Disciplinary approach for IUU Fishing enforcement?**
- Crimes in marine and fishery sector is a cross-sector crime;
- Statutory limitation makes it necessary to use other regulation to capture IUU Fishing perpetrators;
- IUU Fishing usually involves money laundering, bribery and gratification, and tax evasion/fraudulence.

**Multi-door Approach**
- Broadening the perspective
- Multi legal disciplinary
- Multi law enforcers and institutions
- Synergy law enforcers
- “Follow the suspect and follow the asset”
THANK YOU

For information, cooperation, and collaboration please contact:
The Prevention, Deterrence and Elimination of IUU Fishing Task Force
(INDONESIAN TASK FORCE ON ANTI-IUU FISHING)
Ministry of Marine Affairs and Fisheries of the Republic of Indonesia
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