

Getting to Know More on Fishing Activities: Analysis of Illegal Fishing and Forced Labor in 4.0 Era

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Abstract

The objective of this academic paper is to analyze the situation of illegal fishing and the employment of illegal workers in the fishing industry. The analysis method is by introducing relevant laws and policies on both domestic and international issues during the year of 2015-2020.

The results of the analysis show that the fishing industry is of great importance to the global community as it is the source of one of the four factors from the past to the 4.0 era. It also significantly creates jobs into the labor market. However, under the growth of this industry especially in the ASEAN region, one of the underlying problems are illegal fishing and illegal labor. Illegal smuggling of foreign workers is hard to avoid in the fishing industry. Currently, Thailand has adopted legal measures for the purpose of mitigating the issue, but there are still legal gaps in the interpretation of these provisions toward the real situation. Although Thailand has ratified the International Labor Organization Convention. (ILO) on forced labor in 2007 (No. 188) and although forced labor is an offense under the international law, there is still no separate legal regulation which focus mainly on Forced Labor. It is a great challenge for each country which has differences society, culture and economic to effectively apply such legal measures to the provisions of their respective countries.

Keywords: Fishing Industry; Illegal Fishing; Illegal Labor; Forced Labor

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ทำความเข้าใจกิจกรรมการทำประมง: วิเคราะห์สถานการณ์ประมง และแรงงานผิดกฎหมายในยุค 4.0

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บทคัดย่อ

บทความวิชาการนี้มีวัตถุประสงค์เพื่อวิเคราะห์สถานการณ์การทำประมงผิดกฎหมายและการจ้างงานแรงงานผิดกฎหมายในอุตสาหกรรมประมง โดยการนำกฎหมายรวมถึงแนวนโยบายที่น่าสนใจและเกี่ยวข้องกับปัญหาดังกล่าวทั้งภายในและระหว่างประเทศ ในระหว่างปี 2015-2020 มาใช้เป็นกรอบในการวิเคราะห์

ผลการวิเคราะห์ พบว่า อุตสาหกรรมประมงนั้นมีความสำคัญอย่างยิ่งต่อประชาคมโลกเพราะเป็นแหล่งที่มาของหนึ่งในปัจจัยสี่นับตั้งแต่อดีตกาลจนถึงยุค 4.0 อีกทั้งยังสร้างงานให้กับตลาดแรงงานอย่างมีนัยสำคัญ อย่างไรก็ตามได้ความเติบโตของอุตสาหกรรมนี้โดยเฉพาะอย่างยิ่งในภูมิภาคอาเซียน ปัญหาหนึ่งซึ่งแฝงเร้นอยู่คือการทำประมงผิดกฎหมายและแรงงานผิดกฎหมาย แรงงานต่างชาติที่ลักลอบเข้ามาอย่างผิดกฎหมายเป็นสิ่งที่หลีกเลี่ยงได้ยากในอุตสาหกรรมประมง ในปัจจุบันประเทศไทยได้ปรับใช้มาตรการทางกฎหมายเพื่อวัตถุประสงค์ในการบรรเทาปัญหาดังกล่าวลงแต่ยังคงมีช่องว่างทางกฎหมายในเรื่องการตีความบทบัญญัติดังกล่าวกับสถานการณ์ที่เกิดขึ้นจริงอยู่บ่อยครั้ง แม้ว่าประเทศไทยจะได้ให้สัตยาบันรับรองอนุสัญญาองค์การแรงงานระหว่างประเทศ (International Labor Organization-ILO) ว่าด้วยแรงงานบังคับใช้ในปี พ.ศ. 2550 (ฉบับที่ 188) และแม้มีการกำหนดให้แรงงานบังคับเป็นความผิดตามกฎหมายแต่ยังคงไม่มีกฎหมายแยกออกมาเป็นการเฉพาะแต่อย่างใด จึงเป็นความท้าทายอย่างยิ่งยวดของแต่ละประเทศซึ่งมีความแตกต่างของสังคม วัฒนธรรมและเศรษฐกิจในการปรับใช้มาตรการทางกฎหมายดังกล่าวเข้ากับบทบัญญัติในประเทศของตนอย่างมีประสิทธิภาพ

คำสำคัญ: อุตสาหกรรมประมง; การทำประมงผิดกฎหมาย; แรงงานผิดกฎหมาย; แรงงานบังคับ

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Introduction

“If you say that your national law allows you to do something, it is fine as long as you do this inside your own territory. As long as you go international, you really have to be sure that there is an international law which you respect and which you follow” (Lavrov, n.d.).

Since 1970, Antarctic toothfish and Patagonian toothfish was mass caught up by trawler. These fish are popular in restaurant as a tasty dish and are highly demand in United State and Japan market, this reason had aroused the illegal fishing to expand rapidly

(Christensen, 2016). Until the year of 1980, Illegal fishing was observed in south ocean and continued to 1990’s as a blooming period of time for illegal fishing. The same type of fish was approximately over six times of catching informed by authorized fishing vessels.

From being aware of potential impact to marine fish stock, some of the conservation measures such as “Driftnet fishing in convention area” was arisen 1990 (The Commission for the Conservation of Antarctic Marine Living Resources, 2018). That is the tale of the root cause of illegal fishing, in the past, before the time of industrialization, each nation had already competed each other and fought for the natural resources such as land, maritime boundaries and people. Over the sea, fish stocks are one of the resources which being needed in high demand in order to serve people consumption. Conflicts over fish stocks have become more frequent in terms of

smuggling and invading into the sea territory of neighbor countries globally.

Among the 4.0 era, disputes generally occur in Illegal, unreported and unregulated fishing (IUU) platform which deplete conservation efforts, decrease fish stocks, avoid the legal regulations, take an unfair disadvantage and steal the benefits from coastal states especially in developing country. The aim of Food and Agriculture Organization (FAO) of the United Nation, one of the departments who had tried to prevent this crisis, is to eliminate illegal fishing that might occur in the future. The highly demand of fish in market chain magnetize illegal fishing to spread in recent years from all over the world for instance in Russia, South Korea, China, Philippines and Taiwan (Falaju, 2016).

According to the Asian statistic, IUU fishing has been increasing especially in developing coastal state for example due to illegal fishing Malaysia loses up to RM6 billion every year (Abdullah, 2019). Since 2006, 748 vessels and 7, 203 fishermen from Vietnam who worked for illegal fishing in Malaysian (Hamzah, 2019). Waters had been investigated, until 2019 Malaysia had arrested 25 Vietnamese vessels which fishing illegally in their waters (Hamzah, 2019). Besides, Unreported fishing from small vessel which operated in provincial water had caught tuna in Philippines’s Exclusive Economic Zone around 10000 tons each year. (Pramod, Nakamura, Pitcher, & Delagran, 2014).

Almost 25% of tuna was illegally caught by Vietnamese vessels where originate in Indonesian EEZ without permission. Even though international cooperation is already existed but fish stocks with higher demand would easily stimulate acts of IUU fishing. However, the regional cooperation is yet

not enough to prevent IUU fishing efficiency because IUU fishing has not respected either national territories or international attempts to systemize fishing on the high seas. To be concluded, it is not easy to estimate number of lost caused from acts of IUU fishing.

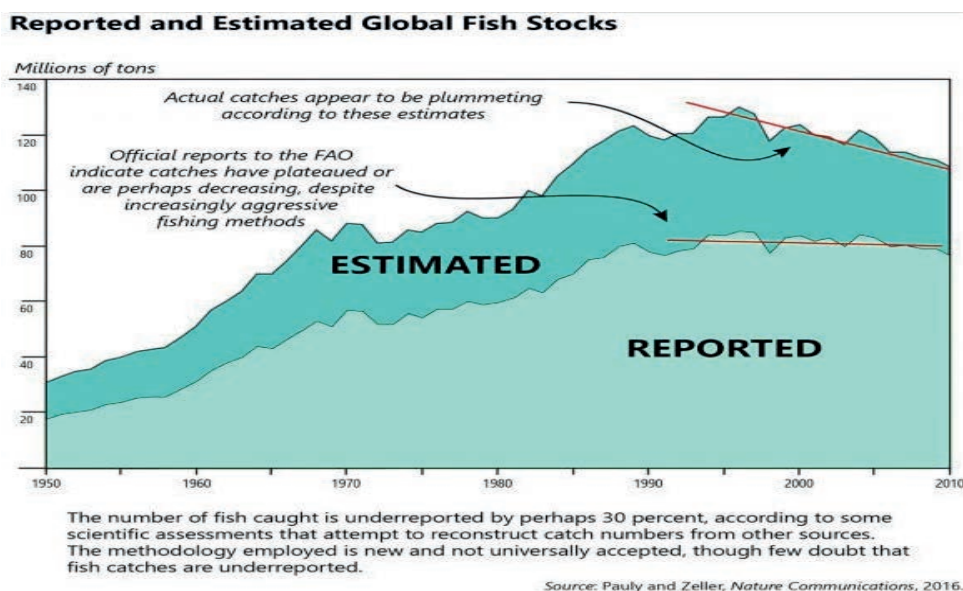


Figure 1 Reported and Estimated Global Fish Stocks

Note. From, “Catch reconstructions reveal that global marine fisheries catches are higher than reported and declining.” (Pauly, & Zeller, 2016)

Concept and Theory

As mentioned previously, each region including Asean gains the benefits from resources like fisheries which we try to protect, the IUU fishing then becomes global problem. The concept of this article can be described that, if all nations aren't interested in number of fish caught and ignore illegal fishing control

measure, those situations would lead to the failure of species conservation and protection. Moreover, IUU Fishing is potentially affected the decrease of ecosystem restoration effort in fish species and immature fish. To be negligent toward the regulation such as avoid coastal state internal law could initiate conflict which generates the discrepancy over the rights and

duties between Private Sector and International Sector globally.

Recently, combating IUU fishing is being kept moving forward from national level to regional and international level. To be said, Thailand had tried hard to solve illegal fishing because of yellow card from EU. In the international level, in order to address IUU fishing, cooperation is needed to be done through information exchange among neighbor's countries also international organization such as FAO and PSMA. (Agreement on Port State Measures)

Seeing that illegal fishing is universal crime which occur in fishery industry, it's mean that illegal fishing carries another issue so called human trafficking. Forced labor is part of illegal labor problem which the ILO has tried to unlock through the new legal instrument that result from binding the regulation such as Forced Labor Convention 1930 and other related law together. In 2020, we probably have the efficiency legal instrument to fight the IUU fishing namely adjusted UNCLOS 1982, Gap fish and PSMA which could be called out as the theory for these issues and will be addressed in the article.

Result: Illegal fishing and Forced Labor

When the fishery itself become illegal, that is impossible to completely manage the industry without illegal employment. As for "working with low wage" are the important reason that make the producer jumped into the cycle of human trafficking under forced labor condition. According to the ILO's Force

Labor Convention, 1930 (No 29), ILO provides the Global Action Program against forced labor and trafficking of fishers at sea (GAPfish) which aim to get rid of forced labor in fisheries sector (International Labour Organization, 2015).

Now a day, not only illegal fishing is universal jurisdiction issue, but modern slavery is also the international problem that inevitably related to it. Picture of the crews working like robot seem like their lives are hanging on uncertain mortality. Fishes have been illegal caught around 26 million tons and illegal fishing has generated income approximately US\$23 billion a year (Lomas, 2019). The 10-20% of global catch certainly cause the same scale of illegal hiring in this industry (Abdullah, 2019).

Moreover, about 25 millions of world population including men, women and children are categorized as forced labor which work like a slave under harsh conditions (Ryder, n.d.). In general, area of works in fishing industry are divided into two parts namely sea farer and worker in the factory. Victims of illegal labor are often forced to work in the place of nowhere hidden from public view and are hard to be found. To identify and investigate the acts of forced labor are quite risk and complicated. Besides, around US\$150 billion are being put in illicit profits which causes unfairness toward industries and businesses competition therefore each state is able to lose billions in tax income and social security contributions (Ryder, n.d.).

Force Labor Issue (Britannica Editors, 2018) as part modern slavery and human trafficking concept always relate to illegal fishing, the best historical illustration which can describe force labor are Nazi Germany and Soviet under dictatorship administration. Back into those time, forced labor was highly demanded in Germany and Soviet, they took hostage, political prisoner and people who didn't agree with the regime to labor supply. Those labors had been put to work such as in arms/ weapon factories, chemical plants, mines, livestock, etc. They worked not only in harsh condition but also under menace. Most of them had died from starving, overworking and poor welfare.

"Fisheries Crime" refer to illegal activities in fishing manufacturing, (United Nations Office on Drugs and Crime, n.d.) migrant worker then was brought into illegal fishing chain by broker or private agencies which deceived the large percentage from doing so. The victim may be forced to work onboard almost year with lots of working hours but get paid in low wage. Most of the crews come from developing countries because of the lack of knowledge, language skill, and poverty. Those reasons lead them into the darkness of working life.

Definitions and Regulations Framework

According to Food and Agriculture Organization's guideline and policy, acts of IUU Fishing has been defined (Lehmköster, 2013) as

"Illegal Fishing" refers to fishing activities without permission or contravene a regulation

such as RFMO (Regional Fishery Management Organizations) conservation measure (Food and Agriculture Organization of the United Nations, 2017) of both coastal states and foreign vessel (including to RFMO's member countries vessel) working in the area of the sea that coastal states pertain sovereignty. Those area including the Exclusive Economic Zone which coastal states hold sovereignty right.

"Unreported Fishing" refers to fishing activities without report or misconduct to state or relevant agencies (Food and Agriculture Organization of the United Nations, 2017) (The report must be informed which specified in fisheries regulation) such as Thailand fishery regulation. The report such as Royal Ordinance on Fisheries (Thailand Regulations) section 81 sub-section 2-3 (Royal Ordinance on Fisheries, 2017) "fishing logbook" must comprise on types and quantity of caught, point of anchored, transshipment, port in-port out, etc.

"Unregulated Fishing" refers to fishing activities by both stateless vessel or ship without nationality over the area that international organization take responsibility. Further, the acts are included violation of the RFMO conservation and management measure (Food and Agriculture Organization of the United Nations, 2017). For instance, the Ghana flag fishing vessel, Lu Rong Yuan Yu 988, had been put under the charges of illegal fishing, fishing in restricted areas, crew without documentation and in unhealthy living conditions (Schvatzman, 2018).

Forced Labor Convention, 1930 (No. 29) article 1 are defined the essential of force labor as “work without voluntarily” or “work under menace of any penalty” (Article 1, Forced Labour Convention, 1930 (No. 29)).

This definition consists of three elements. (International Labour Organization, 2020): Work, Menace of Penalty, and Involuntariness.

(1) “Work” refers to both work and service in every sector of economic system which hire workers to do their task.

(2) “Menace of Penalty” refers to the acts of forcing someone to work by threaten them to face with penalty if he/she doesn’t follow those unlawful orders.

(3) “Involuntariness” In general, “Voluntarily” refers to working with consent. So, Involuntariness in the other hand means to worker who unwilling to take the job offer because they can’t negotiate for freedom or salary and so on.

For the example: Myanmar labor with poor working conditions, they had been forced to work 15-20 hours a day. Moreover, they sailing over the sea for many years without a chance to leave or take a break. The employer would endanger the labor if they have tried to escape (Manager Online, 2014).

Analysis Framework

Analysis the framework of Legal enforcement

In present, international cooperation have put so much efforts on fighting with illegal

fishing which related to forced labor through convention, ratification of the protocol to national regulations, activated international measures and international organization’s regulation such as RFMOS and GAPfish. Moreover, they have shared the illegal fishing’s information to address these problems. For instance, Flag state control principle by UNCLOS imposes that sailing in high sea, each ship required ship’s nationality now that high sea is the heritage of mankind that no one can claim sovereignty over it. Rights and obligations follow by nationality of ships so call “Flag of Convenience” (the flags they fly, the rights and obligation of those countries they need to follow) are blooming among the fishing business since it is a lot easier if the ship get investigate randomly.

Further, Article 94.1 of UNCLOS imposes the principle that every state shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag also in 94.2 (a) state that in particular, every state shall maintain a register of ships containing the names and particulars of ships flying its flag. (Manager Online, 2014) The reason is to attach the law over ships flying its flag, moreover, the vessel must have genuine link with the flag they fly. In case that each ship is accused with illegal fishing or forced labor on board, the law enforcer would know how to cope with it.

The Agreement on Port State Measures (Thailand is the 58th member, 6 of 10 ASEAN

countries who are currently join the parties). Thailand, Cambodia, Myanmar, Indonesia, Philippines and Vietnam (Food and Agriculture Organization of the United Nations, 2016a) are the first binding regional agreement to specifically target illegal fishing and illegal labor. The purpose of the agreement is to eliminate and prevent the illegal exploitation also labor hiring in our home port state. The agreement toward these issues is abided by the international rules of law which provides authority to port state to investigate any vessel that come into their sovereignty.

Illegal fishing and forced labor might not be able to take advantage from port state. If port states suspect or found the acts of illegal fishing, they can refuse the vessel to use the port then report other states plus RFMO immediately. Due to those agreement, PSMA (Agreement on Port State Measures) has encouraged another project which related especially to ASEAN region such as TCP/INT 3603 (National Strategies for Compliance with Port State Measures Agreement) (Food and Agriculture Organization of the United Nations, 2016a) and TCP/RAS 3621 (Inception workshop support countries with this problem to address illegal, unreported and unregulated (IUU) fishing) (Food and Agriculture Organization of the United Nations, 2018).

The mentioned projects and guidelines brought about the concerning countries to the significant contribution in order to improve fisheries and labors management also legal

governance to fight the chaos. Those countries have known better how to apply PSMA and what they need to do in national and regional level to reach efficient standard. This goal seems like a basis's actions to manage a successful and sustainable foundation to encounter these problems in the future. (Food and Agriculture Organization of the United Nations, 2016b)

Besides, the aim of this cooperation is to support internal government agencies and conducting workshop in each country also build international and regional framework for the country decided to implement it. The maritime activities including fishing are supposed to be supported by policies and legislation institutional arrangements, monitoring, control surveillance systems and operations, identified national strategy and action plan for PMSA. TCP /RAS 3621 (Food and Agriculture Organization of the United Nations, 2018) activities support the involved countries like Bangladesh, Cambodia, Myanmar, Thailand and Viet Nam to address illegal, unreported and unregulated (IUU) fishing issue by information exchange activities about illegal fishing. Therefore, the purpose of this project is to develop the work plan in regional and national perspective.

According to FAO's assistance toward illegal fishing that Thailand once request for guidance, the duty of the state is to develop the work plan, strategy and policy such as monitoring, control and surveillance, and

vessel inspection as mentioned above. This plan might lead our state to the success of national work plan enforcement (Thailand National Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing 2015-2019 or NPOA-IUU) and (Marine Fisheries Management Plan of Thailand or FMP). The aim of NPOA-IUU followed by IPOA-IUU consecutively is to get rid of illegal fishing by any effective measure, in Thailand, we address the illegal fishing information occur in Thailand's internal water without permission, illegal landing catches, expired license, vessel without VMS settle and so on (Department of Fisheries Announcement, 2018).

In the midst of the illegal labor issue, Work in Fishing Convention 2007 C.188 ensures that labor working in all type of fishing industries would have good working condition while onboard such as safety and health care or written agreement with social security. Thailand, to be said, is the first of ASEAN's community who had ratified the convention and enforced the law (International Labour Organization, 2019) that led Thailand the enactment of the Royal Ordinance on Fisheries B.E. 2560.

Gapfish (Food and Agriculture Organization of the United Nations, 2015) Principle (ILO action program) has been set forth to combat forced labor and human trafficking inside the illegal fishing. Enhancement of ability for flag states to assure compatibility with international and national laws on board ships flying their flag to control the amount of forced labor

is also necessary. Increased capacity of port states to manage and encounter situations of forced labor in fishing and establishment of a more knowledgeable consumer base of forced labor in fisheries process are the pathway to achieve the legal standard to manage fishing labor.

Result

This article had urged the acknowledgment to respect principle of International Law for instance United Nation Convention of the Law of the Sea 1982 (UNCLOS), Labor Convention 1930, work in Fishing convention 2007 and member countries of international organization such as FAO. RFMOs to consider legislative amendments to comply with the rulings of guidance from International Maritime Organization (IMO) to support the security acts of Private Company are recognized as the instrument to solve this problem.

After examining legal practices and reviewing the ratification also amendment of both domestic law and international rule of law in Asean region especially Thailand, these ongoing actions can help avoiding discrepancy in these disputes between nation overall effectively. However, by working on the whole approaches, the legal measures had been applied by many involving departments on their own consideration so standard of legal enforcement fairness could not be completely reached. The acts of IUU Fishing together with forced labor then still develop over the marine surface even if these

are the universal jurisdiction issue which are supposed to resolve by all nation under the stable legal measures.

Conclusion

In 4.0 era, fish stock is the significant part of living factor as source of food which leads to the industrial process all around the world. Every state shall have the rights on those resources as the “treasure of mankind” but still need to concern on the neighborhood state’ benefit. Whilst the modern era, the modern technology has accelerated the fishing rate and that causes the amount of fish unbalance with consumer demand. Due to this reason, illegal fishing and illegal labor hiring has bursted out.

Since illegal fishing is involved forced labor and human trafficking, illegal foreign worker that hard to avoid. The hiring of forced labor both on shore and on board has violated the human rights which still preserved in fisheries industrial, especially in developing coastal countries in ASEAN region. Even though, those countries had put so much efforts to applied the different measure to combat illegal fishing such as ratified the treaty, enacted the legal regulations, set the national plan but there

are still legal misinterpretation and many legal loop hole which yet can’t be solved.

Recommendation

To protect the nations itself also the victims affected from this issue, government should set the clear strategy and apply the strict proactive legal policy in order to prevent the acts of illegal fishing and protect worker’s rights. To eradicate this crime, the regulator must effectively enforce those existing laws, legitimate efficient punishment, and provide the fundamental right such as compensation for forced labor. For instance, Thailand is supposed to reorganize the department involved in illegal fishing and forced labor to work cooperatively by apply the set of standard rules of law which abided by the Thai royal ordinance on fisheries B.E 2560. Further, clarifying the concerning definition and legal measures are necessary. From all above, the national efforts have to be processed under the understanding of problem and combat illegal fishing also forced labor through related legal tools with the cooperation of private and public sector

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