

Working Paper  
Indonesia's fisheries human rights  
certification system: assessment,  
commentary and recommendations



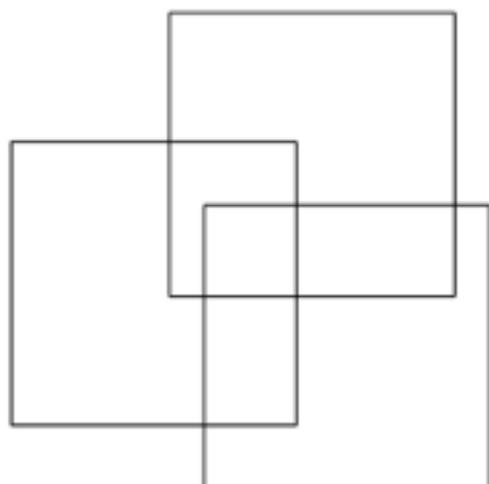




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## **Working Paper**

# **Indonesia's fisheries human rights certification system: assessment, commentary, and recommendations**





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## Executive summary

### **Part I: Assessment**

Following the rescue of over 1,000 fishers held in conditions of forced labour in Benjina, a town on Indonesia's remote Aru Islands, the Government of Indonesia has embarked on a raft of policy and regulatory changes to improve the living and working condition of fishers. The centrepiece of this is the fisheries human rights certification regulations issued by the Ministry of Marine Affairs and Fisheries (MMAF).

MMAF Regulation 35/2015 was launched on Human Rights Day in 2015 and follow-up Regulation 2/2017 was announced at the International Conference on Human Rights Protection in Fishing Industry in January 2017. Together, the Regulations establish the Indonesian fisheries human rights certification system. MMAF Regulation 35/2015 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.

One requirement of the human rights policy is a commitment to implement written fishers' work agreements (FWAs). MMAF Regulation 42/2016, which was adopted in 2016, sets out detailed requirements for the mandatory use of FWAs as a condition for employment. However, it is not consistent with the International Labour Organization (ILO) Work in Fishing Convention, 2007 (No. 188) and does not implement its provisions in issues such as fishers' work and rest hours. MMAF Regulation 2/2017 sets out the process and mechanism of certification and outlines the responsibilities of the implementing stakeholders to be established: the Human Rights Team (HRT), the accredited assessment agency and the accredited training institute. The HRT is appointed to accredit the assessment agency and the training institute. Once the human rights system is in place, fisheries entrepreneurs are to engage and pay an accredited assessment agency for an assessment of their compliance. The accredited assessment agency will then make a recommendation to the HRT or the MMAF on whether the enterprise should be certified. The failure to certify can result in the suspension or cancellation of fishing permits issued by MMAF, as well as a recommendation to the Ministry of Manpower to revoke any labour use permits. In the absence of any accredited assessment agency or training institute, the HRT retains the mandate to implement all these processes. By the end of 2018, two pilot certification processes had been carried out in relation to state-owned enterprises in the fisheries sector.

Despite MMAF's focus on the Indonesian fisheries human rights certification, as of the end of 2018, it had yet to be fully implemented. The MMAF had not yet formalized technical and operational details for the implementation of the system. Although the HRT was appointed in May 2017, it has never met and consequently no assessment agency or training institute has been accredited. In addition, there is significant misunderstanding and confusion among the fisheries industry and other stakeholders about the content and impact of these MMAF Regulations.

In particular, MMAF Regulation 42/2016 was almost unknown among stakeholders at the time of research. There was a strong tendency to view MMAF Regulations 35/2015 and 2/2017 in isolation, rather than as a part of a regulatory framework related to other applicable national laws.

## **Part 2: Commentary and recommendations**

Despite the ambitious scope of the fisheries human rights certification system as a private compliance initiative (PCI), even if fully implemented, its long-term impact on improving the conditions for fishers and workers in the fishing and seafood industry may be limited. Recent studies on the effectiveness of PCIs in improving labour conditions in global supply chains show that their impact is difficult to ascertain and can be uneven across different areas of labour standards and workers' protection. They are also not an alternative for effective national labour inspection systems, either in mandate or in practice.

In general, the standard of commitments and the success in implementing PCIs varied significantly based on the issue, the location of the company, the industry and other socio-economic factors. PCIs addressing labour issues tended to focus on the more easily detectable violations of labour standards, such as working hours, occupational health and safety, and wages. PCIs tend to have weaker commitments to underlying enabling rights such as freedom of association and non-discrimination. However, where companies do have strong commitments to freedom of association, they tend to perform better in other dimensions of corporate social responsibility, including labour rights. Overall, PCIs appear to have a positive impact on promoting transparency.

In the fishing and seafood industry globally, recent research revealed a proliferation of voluntary standards and PCIs with more than 50 in operation in 2016. Many are focused on the sustainability of seafood but have introduced social accountability standards including prohibitions on child and forced labour. Recent literature casts doubt on the effectiveness of these schemes, particularly where the producers seeking accreditation pay a fee to external certification bodies for assessment, certification and use of their label on their products. This creates a conflict of interest as numerous certification bodies compete to win business, particularly where there is weak oversight of the assessment process and standards.

These studies are cautionary tales for the Indonesian fisheries human rights certification system as it similarly depends on a service-provider relationship between the enterprise and the assessment agency. Moreover, the incentives for certification under the Indonesian system are weak. The delayed implementation and poor industry understanding of the system mean there is no persuasive market incentive to certify as the system is not widely recognized and does not lead to commercial advantage nor create economic incentives for enterprises.

Importantly, despite the link between the certification and the denial of fisheries permits or labour use permits, the coercive incentive to certify is also limited in practice. The threat of suspension or cancellation of fishing permits by the MMAF is only relevant to the estimated 1 per cent of the Indonesian fishing fleet that is over 30 gross tonnes (GT). Moreover, the labour use permits issued by the Ministry of Manpower (MoM) are not relevant to fisheries entrepreneurs engaged in the preproduction, production, processing and marketing of fisheries products.

Crucially, there is no referral mechanism to the labour inspectorate even if labour violations are found during the assessment and certification process. This is a significant gap in the Indonesian fisheries human rights certification system and weakens both the PCI established by the MMAF and the public labour inspectorate under the MoM by creating two parallel systems with oversight by two ministries. Without interaction and complementarity, the MMAF human rights certification system can undermine the role of public labour inspections through the effective privatization of labour enforcement in the fishing and seafood sector. Moreover, the absence of links to the national labour inspections systems and the displacement of Indonesia's labour inspectorate by private, albeit accredited, assessment agencies is a lost opportunity to leverage existing mandate on the enforcement of labour laws and labour inspections.

Instead, it is important that Indonesia prioritises investments in a stronger national labour inspectorate with a clear mandate and targets on compliance in fishing in line with its obligations under ILO Labour Inspection Convention, 1947 (No. 81). In addition, there are significant opportunities for integrated operations between the MoM and MMAF for robust and professional enforcement of labour laws in the maritime-based sectors.

The following key recommendations, primarily directed at the Government of Indonesia, seek to ensure the strong enforcement of labour laws and complementarity between PCIs, such as the Indonesian fisheries human rights certification system and the public inspectorate:

- i. Strengthen labour laws applicable to all fishers including by ratifying ILO Convention No. 188 and harmonizing national laws, and clarify the labour inspectorate's primary mandate to enforce applicable labour laws in this sector.
- ii. Strengthen enforcement authorities and partnerships, utilise regional opportunities and learn from regional examples.
- iii. Ensure complementarity between government authorities, particularly MMAF and MoM regulations and enforcement, increasing joint activities such as training, curriculum development and inspections.
- iv. Ensure complementarity between any PCI and public labour inspection and enhance enforcement by strengthening the legal consequences of non-compliance and creating links to the public labour inspection system. Alternatively, reshape the fisheries human rights certification system as a training and advisory programme, using existing efforts in other sectors as a model.
- v. Improve communication of policy and legislation to stakeholders including by using regional platforms to consult and communicate with the industry, trade unions, market States and others.



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ELATI TUHAN

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## Abbreviations

Anti-trafficking Task Force	Task Force for the Prevention and Control of Human Trafficking
ASEAN	Association of Southeast Asian Nations
ASTUIN	(Asosiasi Tuna Indonesia) Indonesia Tuna Association
BWI	Better Work Indonesia
EEZ	Exclusive Economic Zone
EIBN	EU-Indonesia Business Network
FAO	Food and Agriculture Organization of the United Nations
FHRS	enterprise fisheries human rights system
FOS	Friends of the Sea
FWA	Fishers' Work Agreement
GLP	Good Labour Practices
GT	gross tonnage
HRT	Human Rights Team
ILC	International Labour Conference
ILO	International Labour Organization
IOM	International Organization for Migration
IUU fishing	illegal, unreported and unregulated fishing
MLC, 2006	Maritime Labour Convention, 2006
MMAF	Ministry of Marine Affairs and Fisheries
MNE Declaration	ILO Tripartite declaration of principles concerning multinational enterprises and social policy
MoM	Ministry of Manpower
MSC	Marine Stewardship Council
nm	nautical miles
OECD	Organisation for Economic Co-operation and Development
OSH	occupational health and safety
PAC	Project Advisory Committee
PCI	private compliance initiative
SEAFDEC	Southeast Asian Fisheries Development Center
SIPI	(Surat Izin Penangkapan Ikan) Fish Catching Permit Letter
SIKPI	(Surat Izin Kapal Penangkap Ikan) Fishing Ship Permit Letter
SIUP	(Surat Izin Usaha Perikanan) Fishery Business Permit Letter
Task Force 115	Presidential Task Force to Combat Illegal Fishing
UN	United Nations
UN Guiding Principles	UN Guiding Principles on Business and Human Rights

## Introduction

The International Labour Organization (ILO) SEA Fisheries Project aims to reduce trafficking in persons and labour exploitation in the fisheries sector by strengthening coordination and increasing the efficiency and effectiveness of existing national and regional anti-trafficking efforts in South East Asia. The Southeast Asian Forum to End Trafficking in Persons and Forced Labour of Fishers (the SEA Forum for Fishers) has been established as a multi-stakeholder regional coordination body by the project, to support collaborative approaches, develop and implement joint strategies and share information.

In recent years, the Government of Indonesia has strengthened its national legislation in relation to various aspects of the working conditions of fishers and workers in the fishing and seafood industry. In addition to existing fisheries and labour laws, Indonesia developed a human rights certification system consisting of two ministerial regulations passed in 2015 and 2017, as well as the Regulation on Fishers' Work Agreements approved in 2016, all of which are now in the early stages of implementation. This Working Paper looks at the process and status of the implementation of Indonesia's fisheries human rights certification system and assesses its effectiveness and impact on working conditions in the Indonesian commercial capture fisheries sector. The goal of this Working Paper is to provide the evidence base for the programmatic interventions of the ILO SEA Fisheries Project.

This study is in two parts. Part 1 provides an overview of the national framework for fisheries, looks at the design of Indonesia's fisheries human rights certification system and identifies challenges in its implementation. Part 1 is drafted by Dorien Braam of Praxis Labs and an independent consultant to the ILO.

Part 2 draws on the literature review and qualitative research from Part 1 to contextualize Indonesia's fisheries human rights certification system as a private compliance initiative (PCI) within broader industry efforts to set voluntary standards to improve labour conditions and examines its relationship with the public labour inspectorate, which also aims to protect workers. It then provides recommendations to the Government of Indonesia and other social partners to strengthen the enforcement of labour standards and human rights protection for fishers and other workers in Indonesia's fishing and seafood industry. Part 2 is drafted by Mi Zhou, ILO Project Manager, SEA Fisheries Project.

## Methodology

The Working Paper uses mixed methodologies based on a systematic desk review of relevant literature as well as qualitative research. Semi-structured key informant interviews and group discussions were conducted during a week-long field visit to Jakarta in late January 2018 by the independent consultant. The literature reviewed included unofficial English translations of ministerial regulations and laws on labour, fisheries and human rights in Indonesia. The review also covered relevant international and regional treaties, the United Nations Guiding Principles on Business and Human Rights (UN Guiding Principles) and related documents. It also included peer-reviewed articles and grey literature including internal United Nations (UN) project documentation.

Key informants interviewed included representatives from government agencies including the Ministry of Marine Affairs and Fisheries (MMAF), the Presidential Task Force to Combat Illegal Fishing (Task Force I15), harbourmasters and members of the Human Rights Team (HRT) convened for the human rights certification system. Interviews were also conducted with employers' organizations, industry associations, trade unions and community organizations representing fishers' interests. Data were triangulated through different data sources and using mixed research methods. The findings of both the desk review and fieldwork contributed to all sections of this report, but particularly to the assessment in Part I.



## **Part I: Assessment of the fisheries human rights certification system (D. Braam)**

1. Regulatory context
2. The regulatory framework the fishing sector
3. The human rights certification system for the fishing sector
4. Relationship between fishers' work agreements and human rights

# Part I: Assessment of the fisheries human rights certification system (D. Braam)

## I. Regulatory context

### I.1 Capture fisheries in Indonesia

In 2015, global marine capture production was 92.6 million tonnes, 53 per cent of which was produced by Asian countries. Indonesia was the second largest producer worldwide with 6 million tonnes, over 90 per cent of its total capture fisheries production.<sup>1</sup> The UN Food and Agriculture Organization (FAO) and the Organisation for Economic Co-operation and Development (OECD) predict an increase in world fish production of 15 per cent by 2026, mostly attributed to developing countries in Asia. Fish consumption is also expected to increase, with Asia accounting for over 71 per cent. Meanwhile, globalization has made the supply chain of the fisheries sector increasingly complex and current issues that affect the sustainability of the industry include the trafficking of fishers for forced labour illegal, unreported and unregulated (IUU) fishing and.<sup>2</sup>

Southeast Asia is rapidly catching up with Europe as the world's main exporter of fish and fishing products, selling its high-quality fish to international markets.<sup>3</sup> Consumers across these markets increasingly demand guarantees regarding supply chain traceability and human rights. Seafood products are difficult to track through processing and distribution as these are usually aggregated at sea or on land from multiple fishing vessels and locations at different stages of the supply chain. The industry-wide lack of traceability has facilitated violations of human rights such as human trafficking and forced labour.<sup>4</sup>

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. It is the largest producer in the marine capture fisheries sector in Southeast Asia, making up over 36 per cent of the region's total production in 2015.<sup>5</sup>

More than 60 million people in Indonesia live in coastal communities where fishing provides a major source of income and employment. The estimated number of workers employed in capture fisheries in Indonesia was 2.7 million in 2013.<sup>6</sup> Types of occupations on a vessel include fisher, captain, engine crew and cook. Capture fisheries also include over 1 million land-based roles, such as cleaning and processing fish, which are often carried out by women.<sup>7</sup>

1 *FAO Global Capture Production database updated to 2015 Summary information Fisheries and Aquaculture Department*, available at <http://www.fao.org/3/a-br186e.pdf> and *EIBN Sector Reports: Fisheries and Aquaculture*, German-Indonesian Chamber of Industry and Commerce, available at [http://indonesien.ahk.de/fileadmin/ahk\\_indonesien/Publications/EIBN/Fisheries\\_and\\_Aquaculture\\_Sector\\_Report\\_2017\\_FULL.pdf](http://indonesien.ahk.de/fileadmin/ahk_indonesien/Publications/EIBN/Fisheries_and_Aquaculture_Sector_Report_2017_FULL.pdf) [accessed 3 September 2018].

2 "Fish projections in the OECD-FAO Agricultural Outlook 2017-2026", *GLOBEFISH - Analysis and information on world fish trade*, FAO, available at <http://www.fao.org/in-action/globefish/news-events/details-news/en/c/1032635/> [accessed 3 September 2018].

3 "Top Fish And Seafood Exporting Countries", *World Atlas*, available at <https://www.worldatlas.com/articles/top-fish-and-seafood-exporting-countries.html> [accessed 3 September 2018].

4 *Making Sense of Wild Seafood Supply Chains*, Future of Fish, available at [http://www.futureoffish.org/sites/default/files/docs/resources/TNC\\_SeafoodSupplyChainReport.V10.Web\\_.pdf](http://www.futureoffish.org/sites/default/files/docs/resources/TNC_SeafoodSupplyChainReport.V10.Web_.pdf) [accessed 3 September 2018].

5 "Total Fishery Production of Southeast Asia: 2015", *Fisheries Statistics of Southeast Asia*, SEAFDEC Database, available at <http://map.seafdec.org/NewBulletin/totalproduction.php?py=2015> [accessed 18 February 2019].

6 *Final Report: Strategic Plan for ACIAR Engagement in Developing Indonesia's Capture Fisheries Research and Management Capacity*, Australian Centre for International Agricultural Research (ACIAR), available at <https://www.aciar.gov.au/node/12386> [accessed 18 February 2019].

7 *Stakeholder Validation Workshop*, USAID Oceans and Fisheries Partnership (USAID Oceans), available at [https://www.seafdec-oceanspartnership.org/wp-content/uploads/2018.01.26\\_USAID-Oceans\\_Integrated-Stakeholder-Consultation-Workshop\\_Indonesia.pdf](https://www.seafdec-oceanspartnership.org/wp-content/uploads/2018.01.26_USAID-Oceans_Integrated-Stakeholder-Consultation-Workshop_Indonesia.pdf) [accessed 3 September 2018].

The highly perishable nature of fresh seafood – 20 per cent spoils before it reaches the consumer – puts sellers throughout the supply chain in a vulnerable position, with limited margins and powerful buyers higher up the chain.<sup>8</sup>

## 1.2 Working conditions in Indonesian fisheries

Studies show that poor working conditions are not uncommon in the fisheries sector in Indonesia.<sup>9</sup> Excessive working hours, child labour and hazardous work are widely reported. Work agreements are almost unheard of and salary payment mechanisms are varied, unpredictable and often lack transparency. Many fishers have no formal education and have few alternative livelihood opportunities and so tend to have limited job mobility and remain in their position for many years. Many receive a daily wage, either paid monthly or after each trip. However, some workers with a higher occupational status, including the operator, may receive bonuses through a share-of-catch system and this can incentivize fishers to work excessively long hours. Furthermore, if the revenue of the catch is below expectations, fishers may receive low or no payment.<sup>10</sup> It is common practice for fishers to take out a loan, or “payment advance”, from the captain before going to sea. Although this is a way of covering income gaps without paying any interest, it increases both fishers’ dependence on the captain or fisheries entrepreneur and the risks of debt bondage.

In 2015, the Government rescued over 1,000 fishers from Benjina, a town on Indonesia’s remote Aru Islands, where they had been held in conditions of forced labour. The fishers came from Cambodia, Laos, Myanmar and Thailand and had been trafficked to Indonesia via Thailand on fishing vessels. The fishers were working excessive hours with little or no pay and had been subjected to psychological and physical abuse. They were fraudulently and deceptively recruited abroad and forced to work on fishing vessels. Some fishers had been held in forced labour for more than ten years with no prospect of ever returning to their home country. The company’s vessels transhipped their catch at sea and so avoided monitoring and control by the authorities.<sup>11</sup> Five Thai and three Indonesian nationals were subsequently imprisoned and fined in the case; the investigation into the fishing company involved was still continuing at the time of writing.<sup>12</sup> The International Organization for Migration (IOM) estimates that up to 4,000 migrant fishers from countries including Cambodia, Laos, Myanmar and Thailand may be stranded or held in other remote parts of the Indonesian archipelago.<sup>13</sup>

In response to the Benjina cases, the MMAF audited 1,132 “ex-foreign vessels” and found “rampant human rights abuse in the form of human trafficking, people smuggling, child labour, forced labour, workers without any form of social protection, wage discrimination and physical abuse.”<sup>14</sup> Other reported cases

8 *Making Sense of Wild Seafood Supply Chains*, op. cit.

9 *Research on Indicators of Forced Labor in the Supply Chain of Fish in Indonesia: Platform (Jermal) Fishing, Small-Boat Anchovy Fishing, and Blast Fishing*, Verité, Fair Labor Worldwide, available at <https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=2779&context=globaldocs> [accessed 3 September 2018].

10 idem.

11 *Report on Human Trafficking, Forced Labour and Fisheries Crime in the Indonesian Fishing Industry*, IOM, available at <https://www.iom.int/sites/default/files/country/docs/indonesia/Human-Trafficking-Forced-Labour-and-Fisheries-Crime-in-the-Indonesian-Fishing-Industry-IOM.pdf> [accessed 3 September 2018].

12 *Background Paper - Consultative Forum on Regional Cooperation Against Human Trafficking, Labour Exploitation, and Slavery at Sea (Bali, 27-28 March 2018)*, ILO, 2018, available at [https://www.ilo.org/jakarta/whatwedo/publications/WCMS\\_627181/lang-en/index.htm](https://www.ilo.org/jakarta/whatwedo/publications/WCMS_627181/lang-en/index.htm) [accessed 3 September 2018].

13 *Report on Human Trafficking, Forced Labour and Fisheries Crime in the Indonesian Fishing Industry*, op. cit.

14 *Indonesia Fisheries: 2015 Review: A report on trends in coastal marine resources and fisheries management in Indonesia*, California Environmental Associates, available at <https://www.packard.org/wp-content/uploads/2016/09/Indonesia-Fisheries-2015-Review.pdf> [accessed 3 September 2018] and *Indonesia’s Multi-door Approach in Combatting Fisheries Crime: The Fights Against Fisheries and Associated Crime in Indonesia*, Presidential Task Force to Combat Illegal

of labour exploitation included fishers from the Philippines without identification documents,<sup>15</sup> as well as fishers lacking insurance and job security.<sup>16</sup> The MMAF took action by sinking illegal foreign owned and operated fishing vessels. A moratorium on new licences for foreign-built capture fishing vessels was imposed, over 1,000 vessel and company licences were reviewed and the issuing of new licences to vessels over 150GT was prohibited.<sup>17</sup> Furthermore, the Minister closed capture fisheries to foreign investors.<sup>18</sup>

## 2. The regulatory framework the fishing sector

Indonesia, as a Member State of the UN, the Association of Southeast Asian Nations (ASEAN) and other international and regional cooperation mechanisms, is bound by international standards and treaties, and multilateral and bilateral agreements, including the Universal Declaration of Human Rights, the UN Guiding Principles and Sustainable Development Goal 8: “Decent Work and Economic Growth”. Furthermore, Indonesia has ratified all eight fundamental ILO Conventions, under which it is required to ensure decent work conditions and counter forced and child labour and human trafficking. Indonesia is also party to ILO Labour Inspection Convention, 1947 (No. 81), but is not a signatory to the Work in Fishing Convention, 2007 (No. 188).

### 2.1 Licensing of fisheries activities

The fisheries sector in Indonesia consists of what is locally known as “artisanal” or “minor” fishing and commercial fishing. Artisanal fishing is mainly subsistence fishing by fishers and coastal communities. Respondents interviewed estimated that artisanal fishers catch 10kg per day on average and work around 160 days per year.

MMAF respondents estimate that up to 90 per cent of the fishing fleet are small vessels under 5GT, operating up to 4 nautical miles (nm) off the coastline. These are regulated at the provincial level and do not require licences but may need to be registered.<sup>19</sup> These fishing vessels account for up to 40 per cent of marine capture total production and are operated by small crews consisting mostly of family members.

The commercial fishing fleet is divided into small and large-scale fishing vessels. According to the Southeast Asian Fisheries Development Center (SEAFDEC), commercial capture fisheries in Indonesia are vessels between 5GT and 30GT with either an outboard or inboard motor, or vessels over 30GT using an outboard motor; only the latter are licensed at the national level by the MMAF.

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Fishing, available at [http://fishcrime.com/wp-content/uploads/2016/10/Presentation\\_Mas-Achmad-Santosa.pdf](http://fishcrime.com/wp-content/uploads/2016/10/Presentation_Mas-Achmad-Santosa.pdf) [accessed 3 September 2018].

15 *Indonesia Labor Analysis Summary*, USAID Oceans and Fisheries Partnership, available at <https://www.seafdec-oceanspartnership.org/resource/indonesia-labor-analysis-summary/> [accessed 18 February 2019]

16 *Stakeholder Validation Workshop*, op. cit.

17 *Indonesia Fisheries: 2015 Review*, op. cit.

18 *EIBN Sector Reports: Fisheries and Aquaculture*, op. cit. At the same time, Indonesian fishers abroad also face human rights violations and a lack of protection. For example, in one case, Indonesian workers were paid less than half the minimum wage for fishers on a Korean-flagged fishing vessel. See for example, *Research on Indicators of Forced Labor in the Supply Chain of Fish in Indonesia*, op. cit.

19 *Final Report: Strategic Plan for ACIAR Engagement in Developing Indonesia's Capture Fisheries Research and Management Capacity*, Australian Centre for International Agricultural Research (ACIAR), available at <https://www.aciar.gov.au/node/12386> [accessed 18 February 2019]. See arts. 6(3), and 19 (3) of Ministerial Regulation No. 17 of 2006

In 2014, over 650,000 fishing vessels were registered in Indonesia of which an estimated 1 per cent was over 30GT.<sup>20</sup> Commercial fishing vessels average two trips a month each lasting ten days on average.

The key national legislation regulating fisheries is Fisheries Law 31/2004, as amended by Law 45/2009. Under its provisions, the MMAF is responsible for issuing the following permits to entities conducting fisheries business (together referred to as “fishing licences”):

- i. The Fishery Business Permit Letter (Surat Izin Usaha Perikanan, SIUP): a written permit that companies need in order to conduct business in fisheries in line with the means stated in the permit.<sup>21</sup>
- ii. Fish Catching Permit Letter (Surat Izin Penangkapan Ikan, SIPI): a written permit that enables a fishing vessel to catch fish legally. Both Indonesian and foreign-flag vessels are required to have this permit.<sup>22</sup>
- iii. Fishing Vessel Permit Letter (Surat Izin Kapal Penangkap Ikan, SIKPI): a written permit that allows a fishing vessel to transport fish.<sup>23</sup>

The licensing regime only applies to commercial fishing; subsistence fishers using vessels of less than 5GT are exempt from the requirement to possess a SIUP, SIPI or SIKPI.<sup>24</sup>

According to Law 23/2014 on Local Government (Annex Y), authority over marine and fisheries affairs, including fishing licences, is divided between central and provincial government. The MMAF provides fishing licences to vessels over 30GT, while provincial governments are responsible for issuing fishing licences for vessels of between 5GT and 30GT. In practice, the provincial government may delegate responsibility for licensing to regency governments, in line with local regulations.<sup>25</sup> At the same time, provinces are responsible for fisheries resource management relating to near-shore waters up to 12nm. Central government manages waters between 12nm and 200nm.<sup>26</sup>

Furthermore, the ownership of vessels (fishing or otherwise) over 7GT must be registered with the Directorate General for Sea Transport at the Ministry of Transportation.<sup>27</sup> Vessels can only be registered if they are owned by Indonesian citizens or companies established/incorporated under Indonesian law and domiciled in Indonesia, or owned by Indonesian business entities in the form of joint ventures where Indonesian citizens own the majority of shares.<sup>28</sup> After registration, the owner receives a deed of ship registration and an Indonesian Ship Nationality Certificate. For fishing vessels to be duly registered with the Ministry of Transport, a recommendation from the MMAF is required.<sup>29</sup>

20 *Fishery and Aquaculture Country Profiles: The Republic of Indonesia*, FAO, available at <http://www.fao.org/fishery/facp/IDN/en> [accessed 3 September 2018].

21 Law 31/2004 as amended by Law 45/2009, arts. 1(16) and 26(1).

22 Law 31/2004 as amended by Law 45/2009, arts. 1(17) and 27.

23 Law 31/2004 as amended by Law 45/2009, arts. 1(18) and 28.

24 Law 31/2004 as amended by Law 45/2009, arts. 1(11), 26(2), 27(5) and 28(4).

25 Prior to Local Government Law No. 23 (2014), MMAF regulations gave licensing authority for vessels between 5GT and 10GT to regency governments and vessels between 10GT and 30GT to provincial government. These regulations have since been superseded by Law 23 (2014). However, in practice, the division of responsibility between regency and provincial governments persists.

26 *Indonesia Fisheries: 2015 Review: A report on trends in coastal marine resources and fisheries management in Indonesia*, California Environmental Associates, <https://www.packard.org/wp-content/uploads/2016/09/Indonesia-Fisheries-2015-Review.pdf> [accessed 3 September 2018]. Also see Law 23/2014 on Local Government (Annex Y).

27 Law 13/2012, art. 5(2).

28 Minister of Transportation of the Republic of Indonesia, PM 13 Number of 2012 about Registration and Nationality of Ships, available at <http://extwprlegs1.fao.org/docs/pdf/ins161825.pdf> [accessed 18 February 2019].

29 Ministry of Transport, Ministerial Regulation No. 39 of 2017, art. 7(1).

Vessels over 20m in length, 100GT or with engines over 250HP must also be submitted for classification by PT Biro Klasifikasi Indonesia (also known as BKI), which can classify commercial ocean-going vessels flying Indonesian flags.

Table 1: Fisheries licensing authorities	
Size of motor (GT)	Licensing authority
≤5	No fisheries licences required
5>≤30	Provincial government
>30	MMAF – national government

The law provides for the registration of fishing vessels and elaborates on the functions and management of fishing ports by the Government.<sup>30</sup> Fishing vessels can be registered by providing a certificate of ownership, proof of the owner's identity and a measurement certificate.<sup>31</sup> Before a fishing vessel can perform any fishing activities, an Operations Feasibility Letter, issued by the Fisheries Controller, and a Sailing Approval Letter, issued by the harbourmaster, is required.<sup>32</sup> The Fisheries Controller is empowered broadly to investigate fisheries' activities, inspect the equipment, examine business documents, verify the validity of SIPIs and SIKPIs and detain and arrest a ship and/or person suspected of breaking the law. Fisheries courts have been established in ten district courts to investigate and adjudicate criminal offences and administrative violations in the fishmeries sector.<sup>33</sup> There is some government pressure to issue licences quickly to increase economic investment. In 2017, 120 applications for fishing licences were received. All applicant companies were subjected to MMAF due diligence procedures, which entailed interviews and checks conducted by MMAF fisheries officers to assess competencies, the validity of licences and quality of fishing gear provided.

## 2.2 Labour protection for fishers and migrant fishers

The Manpower Act of Indonesia (No. 13 of 2003) regulates matters relating to employment and also covers fishers. The Directorate General of Labour Inspection Development under the Ministry of Manpower (MoM) is the technical unit assigned to provide labour protection for workers and employers in Indonesia. The vision of the Directorate is to realize prosperous and fair industrial relations by promoting legal certainty.<sup>34</sup> The 2003 Manpower Act provides for labour inspections to be conducted by government labour inspectors with the competence and independence to guarantee the implementation of labour laws and regulations.<sup>35</sup>

30 Law 31/2004 as amended by Law 45/2009, arts. 27, 28, 36 (1), 41A.oo

31 Law 31/2004 as amended by Law 45/2009, art. 36 (2).

32 Law 31/2004 as amended by Law 45/2009, arts. 43 and 44.

33 Law 31/2004 as amended by Law 45/2009, art. 103.

34 *Factsheet on Labour Inspection in Indonesia*, ILO & Kemnaker, available at [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/publication/wcms\\_549704.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/publication/wcms_549704.pdf) [accessed 3 September 2018].

35 ILO Jakarta unofficial translation of the *State Gazette*, No. 39, 2003, Act of the Republic of Indonesia Number 13 year 2003, available at <http://www.ilo.org/dyn/travail/docs/760/Indonesian%20Labour%20Law%20-%20Act%2013%20of%202003.pdf> [accessed 3 September 2018].

However, the MoM has not sought to enforce labour protection in the fishing sector. One reason appears to be the lack of contact between the MoM and the fishing sector, as the MMAF has licensing authority over fishing activities. Historically, there is also a perception that the fishing sector is specialized and its operations too different from the land-based workplaces that the MoM is more familiar with. There is also a lack of labour inspectors with experience in fisheries and in informal employment, which is common in the fisheries sector.<sup>36</sup>

The most detailed regulation on the work conditions of fishers to date is the MMAF's Ministerial Regulation 42/2016 on Fishers' Work Agreements. However, as the MoM does not enforce MMAF regulations, the working conditions of Indonesian fishers is currently not part of the mandate of MoM labour inspectorates. Instead, labour conditions on fishing vessels are currently the responsibility of inspectors from the MMAF. Yet, while the MMAF has the advantage of maritime infrastructure and regular contact with fishing vessels, owners and fishers, it does not have MoM's mandate, power, or expertise to enforce national labour laws which already apply to the fishing sector.

## 2.3 Relevant government authorities

### a. The Ministry of Marine Affairs and Fisheries

The MMAF was formally established as an independent ministry in 2000, reflecting the expansion of the mandate of what had been the Directorate General of Fisheries at the Ministry of Agriculture. The MMAF consists of the Minister of Marine Affairs and Fisheries; a Secretary General; an Inspectorate General; five Directorate Generals, including Capture Fisheries and Supervision and Control of Marine and Fishery Resources; as well as two research and resource development agencies.

The objectives of the MMAF are threefold. Firstly, it aims to improve oversight of marine and fisheries resource management and develop the fish market through a quarantine system, quality control, fishery product safety and fish biological safety. Secondly, it seeks to ensure sustainability by optimizing marine management, conservation and biodiversity. And thirdly, it aims to increase the sustainability of fishing and cultivation by improving the competitiveness and logistics of marine and fishery products, developing human resource capacity and empowering communities and modernizing marine science and fisheries.

The Directorate General of Capture Fisheries is responsible for fisheries management and cooperates with other directorates regarding licensing, control and surveillance. Fisheries surveillance is conducted by the MMAF in cooperation with the Navy in Indonesia's exclusive economic zone (EEZ) and with Marine Police in the territorial sea and archipelagic waters.<sup>37</sup> The MMAF Training Centre is responsible for occupational health and safety inspections, as an implementing entity of the human rights system, as well as for other elements related to labour conditions in vessel and seafood processing inspections.

<sup>36</sup> Research on Indicators of Forced Labor in the Supply Chain of Fish in Indonesia: Platform (Jermal) Fishing, Small-Boat Anchovy Fishing, and Blast Fishing. Verité, Fair Labor Worldwide, available at <https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=2779&context=globaldocs> [accessed 3 September 2018].

<sup>37</sup> *Fishery and Aquaculture Country Profiles*, op. cit.

Law 22/1999 Concerning Regional Administrations, as amended by Law 32/2004, implemented a decentralized government structure. Under this law, the fisheries sector in the provinces is the responsibility of provincial governments. Each of the 34 provinces has multiple regencies, headed by a mayor (bupati), that have delegated responsibilities for small-scale fisheries for which they are accountable to their respective provincial government.

#### b. Presidential Task Force to Combat Illegal Fishing

In response to the Benjina case and foreign vessels found fishing illegally in Indonesia's EEZ, the Presidential Task Force to Combat Illegal Fishing (Task Force 115) was established in 2015 by Presidential Decree No. 115. Task Force 115 is mandated to combat IUU fishing and to support the MMAF in monitoring, evaluating and improving the fisheries system. As an inter-agency task force, its members include representatives from the police, the Navy, the Directorate General of Sea Transportation (Ministry of Transportation), the Directorate General of Tax, and the Directorate General of Customs and Excises.<sup>38</sup>

Task Force 115 advises the MMAF on a range of legal and policy matters and is widely perceived as the key stakeholder in Indonesia's fight against IUU fishing and in the regulation of fisheries. It participated in drafting Ministerial Regulations 35/2015 and 2/2017. Task Force 115 continues to advise other stakeholders, including any HRT established under Ministerial Regulation 35/2015, on the implementation of legislation and provides input to the current development of the standard operating procedures for the implementation of human rights certification. Task Force 115 has implemented public awareness campaigns on the 2015 and 2017 Ministerial Regulations since November 2017.

#### c. Ministry of Manpower

The MoM is mandated to issue regulations on labour laws, determining maximum working hours and minimum wages. Collective bargaining agreements in the transportation sector are also registered with the MoM. The MoM's Directorate General of Labour Inspection Development is responsible for conducting labour inspections, including in fisheries businesses. However, the MoM is limited in its capacity with a shortage of labour inspectors and limited expertise in the fishing sector or relevant to fishing vessels. Although informants reported that labour inspectors do not often board vessels for inspections, Indonesia has begun pilot joint inspections on-board vessels with labour inspectors from MoM. Further, inspections before the vessels leave port are signed off by the harbourmaster rather than a labour inspector, blurring areas of responsibilities.

<sup>38</sup> *Report on Human Trafficking, Forced Labour and Fisheries Crime in the Indonesian Fishing Industry*, IOM, available at <https://www.iom.int/sites/default/files/country/docs/indonesia/Human-Trafficking-Forced-Labour-and-Fisheries-Crime-in-the-Indonesian-Fishing-Industry-IOM.pdf> [accessed 3 September 2018].

#### d. Anti-trafficking Task Force

In 2007 the Ministry of Law and Human Rights enacted the Eradication of the Criminal Act of Trafficking in Persons (21/2007), which defines trafficking in persons as:

[T]he recruitment, transportation, harbouring, sending, transfer, or receipt of a person by means of threat or use of force, abduction, incarceration, fraud, deception, the abuse of power or a position of vulnerability, debt bondage or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, whether committed within the country or cross-border, for the purpose of exploitation or which causes the exploitation of a person.

The law applies to Indonesian citizens trafficked outside of the country as well as Indonesian and foreign citizens trafficked into or within Indonesia.<sup>39</sup> Following the Benjina case, the fishing and seafood industry was flagged as a major sector for victims of trafficking; at sea, conditions can be hazardous and fishers are isolated, far from help. Migrant workers are particularly vulnerable to trafficking in persons and face additional challenges during the recruitment and placement process, for example taking out loans to cover the payment of recruitment fees, obtaining the appropriate identity documents and work permits, and difficulties surrounding the signing of a work contract in a language understood by both parties.

Presidential Regulation 69/2008 established the Task Force for the Prevention and Control of Human Trafficking (Anti-trafficking Task Force) to coordinate the formulation of policies and implement counter-trafficking strategies and interventions.<sup>40</sup> The Coordinating Ministry for Human Development and Cultural Affairs leads Indonesia's provincial, local and district level anti-trafficking task forces.<sup>41</sup>

### 3. The human rights certification system for the fishing sector

Following the uncovering of human rights violations and abuses in the fisheries sector, three MMAF Ministerial Regulations were passed in 2015, 2016 and 2017 to strengthen protection for workers, including fishers, in the industry.

- Ministerial Regulation 35/2015 on the System and Certification of Human Rights in the Fishing Industry, adopted on Human Rights Day 2015, requires fisheries entrepreneurs to implement a human rights system that consists of a human rights policy, human rights due diligence and a remediation mechanism for human rights violations. Without the certification of their human rights system, fisheries businesses can lose one or more of their licences to operate (Ministerial Regulation 35/2015, article 12).
- Ministerial Regulation 2/2017 on the Requirements and Mechanism of Human Rights Certification for Fisheries provides more detailed guidance on the procedure for certification including the accreditation of assessment agencies to undertake certification and training institutions. It was announced at the International Conference on Human Rights Protection in Fishing Industry held in Jakarta in January 2017.<sup>42</sup>

39 Indonesian Law on Anti-trafficking, English translation of Law 21/2007 on the Eradication of the Criminal Act of Trafficking in Persons, ILO, available at <http://apmigration ilo.org/resources/indonesian-law-on-anti-trafficking> [accessed 3 September 2018].

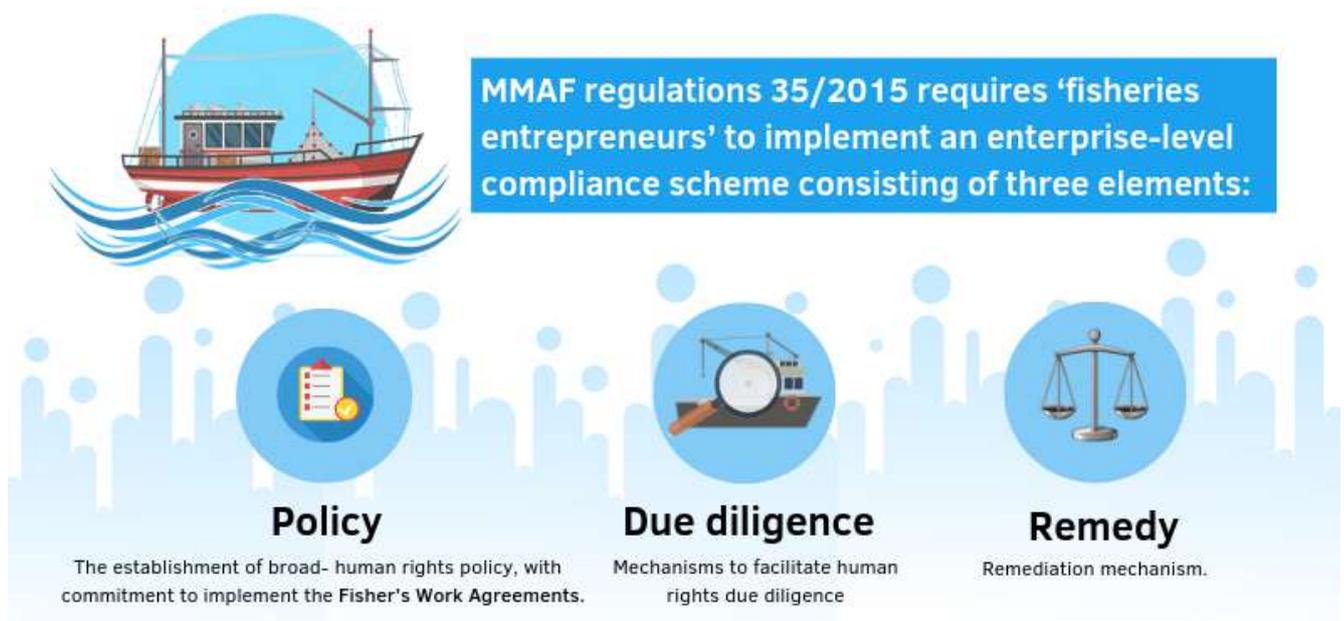
40 *Supporting Safe Labour Migration in Indonesia*, IOM, available at <https://indonesia.iom.int/supporting-safe-labour-migration-indonesia> [access 24 September 2018].

41 Presidential Regulation 69/2008 on Anti Trafficking Task Force, art. 6.

42 <https://www.business-humanrights.org/sites/default/files/documents/Fisheries%20Conference%20and%20Human%20Rights%20Certifica->

Together, the 2015 and 2017 Ministerial Regulations establish the processes and system for fisheries human rights certification, as defined in article 1(16) in both regulations. While some stakeholders view Ministerial Regulation 35/2015 as based on the ILO Convention No. 188, it is closer in spirit and structure to the UN Guiding Principles, focusing on the responsibilities of businesses, with an emphasis on due diligence, as well as on the obligations of the Government to ensure business enterprises respect human rights throughout their operations.<sup>43</sup> Ministerial Regulation 35/2015 has adopted several foundational principles of the UN Guiding Principles in terms of requiring businesses to establish human rights policies and guidelines through a “commitment to meet their responsibility to respect human rights; a human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights; processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute”.<sup>44</sup>

Figure 1. MMAF Regulation on Human Rights System and Certification in the Fisheries Business



Together, the 2015 and 2017 Ministerial Regulations set up a broad-based system regulating all activities in the fisheries industry, from production processing to distribution. Consistent with the UN Guiding Principles, the fisheries human rights certification system includes a protection policy, due diligence and remedy. Importantly, the system connects fisheries' licensing requirements to human rights certification and envisages a hybrid system of government regulations with PCI. It requires fisheries entrepreneurs – defined broadly as someone who conducts business in the fishing and seafood industry – to set up a human rights system which is subject to third-party assessment and certification.<sup>45</sup> Lack of certification can lead to administrative sanctions such as the suspension or revocation of licences.

[tion%20%28FIHRRST%29.pdf](#)

43 UN Guiding Principles on Business and Human Rights, available at [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf) [accessed 3 September 2018].

44 UN Guiding Principles, p. 16, para. 15.

45 Ministerial Regulation 2/2017, art. 1(6).

In addition, MMAF Ministerial Regulation 42/2016 lays out detailed requirements for FWAs and appears to reflect elements of ILO Convention No. 188 (see Part I, Chapter 5 for more detail). Fisheries entrepreneurs are required to implement FWAs to satisfy the due diligence requirements of Ministerial Regulation 35/2015.

While most stakeholders are aware of the existence and purpose of Ministerial Regulation 35/2015, there is considerably less awareness of the contents of Ministerial Regulation 2/2017. Ministerial Regulation 42/2016 is seen as independent from the 2015 and 2017 Regulations and is rarely considered to be essential to the human rights certification system. This may be due to the fact that the name of the regulation itself does not refer specifically to the human rights certification system.

However, the human rights certification system established by the 2015 and 2017 Ministerial Regulations does not work in isolation from other existing national regulations. They must be read, and applied, in conjunction with other relevant legislation, including Ministerial Regulation 42/2016.

### **3.1 Requirements of the fisheries human rights certification system**

The UN Guiding Principles set out the responsibilities of business enterprises to respect human rights, understood, at a minimum, as those set out in the International Bill of Rights and the ILO's Fundamental Principles and Rights at Work. They call on businesses to develop policies, human rights due diligence processes and remediation mechanisms. This approach is adopted in Ministerial Regulation 2015/35, article 4, which requires fisheries enterprises to have a public human rights policy, due diligence and remedy mechanisms. Although implementation and reporting requirements under the UN Guiding Principles take into account a company's size and structure, Ministerial Regulations 2015/35 and 2/2017 do not distinguish between "entrepreneurs" under the legislation.<sup>46</sup> Human rights certification is a condition of government licensing and failure to implement a human rights system can lead to the loss of fishing licences.

At the enterprise level, the human right policy is a statement of commitment to comply with all applicable laws and regulations and to respect the human rights of all parties involved in fisheries business activities. The statement must include commitments to respect fair and decent working conditions – including remuneration, rest periods, standard of living, medical treatment, social security insurance, protection from occupational risks, special rights for the vulnerable and work agreements, and to avoid forced labour.<sup>47</sup>

Human rights due diligence must be conducted by identifying and assessing the impact of potential human rights violations that may be attributed to, or contributed to, by the fisheries entrepreneur. Where risks are identified, the fisheries entrepreneur must take measures, evaluate their effectiveness and communicate the results to stakeholders.<sup>48</sup>

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46 UN Guiding Principles.

47 Ministerial Regulation 35/2015, art. 5 (2).

48 Ministerial Regulation 35/2015, art. 6 (1).

The fisheries entrepreneur is furthermore required to fulfil criteria of human rights compliance, which are related to safe and decent working conditions. Specifically, the fisheries entrepreneur is required to have in place occupational safety and health procedures; adequate accommodation and nutrition; recruitment system procedures, such as compliance with competence and minimum age requirements; work agreements; and a labour system in line with collective bargaining agreements or company regulations.<sup>49</sup> The detailed requirements for human rights compliance are published as an Annex to Ministerial Regulation 2015/35 and elaborate on the need for fisheries entrepreneurs to have standard operating procedures in place regarding health, accommodation, occupational health and safety equipment, training and recruitment. It provides for work agreements, to be authorized by the harbourmaster; decent working conditions; and sustainable community development.<sup>50</sup>

Non-compliance with human rights requirements and the failure to obtain a fisheries human rights certificate may result in sanctions that can effectively stop legal business operations. These include, for example, suspension or revocation of one of the fisheries licences required under the Fishery Law (a SIUP, SIPI or SIKPI)<sup>51</sup> as well as a recommendation to the MoM for revocation of the labour use permit.<sup>52</sup>

In addition, Ministerial Regulation 2/2017 has provision for a grievance mechanism, although it is not sufficiently detailed. While both the assessment agency and the HRT may receive complaints from aggrieved parties or the public<sup>53</sup> and conduct evaluations, there is no clear action or sanctions proposed under the legislation.

### **3.2 Procedures for certification**

Ministerial Regulation 2/2017 sets up the implementation mechanism for human rights certification for fisheries. This Regulation sets out details of the requirements and procedures for issuing and obtaining a fisheries human rights certificate. It also contains conditions and steps for the accreditation of assessment agencies and training institutes, as well as a complaints mechanism.

Under Ministerial Regulation 2/2017, the Minister has the authority to issue human rights certificates to fisheries entrepreneurs and delegates this authority to the head of the fisheries HRT. The Regulation stipulates two stages of the certification process: first, a document review of the application for assessment; and second, the implementation of the assessment and regular compliance monitoring.<sup>54</sup>

A fisheries business can apply for certification in writing to the Head of the HRT. The Regulation stipulates the documents required for the application, including, at a minimum: the relevant SIUP, SIPI or SIKPI; a report on the implementation of the human rights system; copies of crew's documents (collective bargaining agreement, union membership, FWAs, insurance/social security, fishers' competence certificates); and additional documentation if foreign fishers are on board.<sup>55</sup>

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49 Ministerial Regulation 35/2015, art. 6 (3).

50 Ministerial Regulation 35/2015, Annex.

51 Law 31/2004 as amended by 45/2009.

52 Ministerial Regulation 35/2015, art. 12.

53 Ministerial Regulation 2/2017, arts. 24 to 26

54 Ministerial Regulation 2/2017, arts. 5 to 8; and arts. 9 to 16.

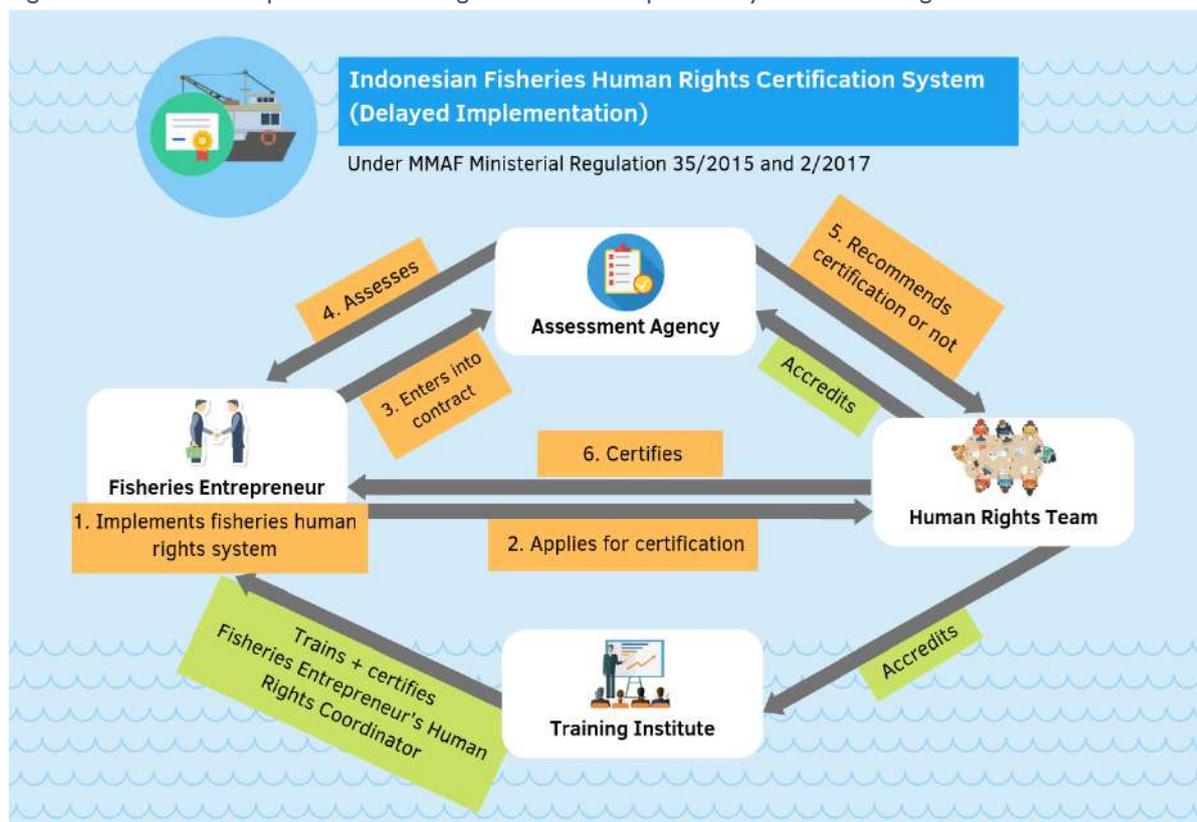
55 Ministerial Regulation 2/2017, art. 5.

If there are defects in the documentation submitted, the application is rejected and the fisheries business has six months to resubmit and may apply for technical assistance from the HRT.<sup>56</sup> If the defects can be easily remedied, the HRT returns the application for re-submission within six months.<sup>57</sup> If the documentation is complete and verified, the HRT can issue a letter of implementation for assessment of fisheries' human rights certification.<sup>58</sup>

Once a fisheries business receives the fisheries human rights certification, an assessment agency may be appointed by the HRT to conduct assessments and monitor compliance on their behalf at least twice during the validity of the certificate.<sup>59</sup> The assessment agency needs to be independent and is appointed by the HRT.<sup>60</sup> However, fisheries entrepreneurs have to enter into a contract with the assessment agency in order for the latter to start its assessment and monitoring.<sup>61</sup> This contract between the fisheries entrepreneur and the agency must be submitted to the HRT.<sup>62</sup>

The agency assesses fisheries entrepreneurs' documentation and conducts field monitoring in offices, on fishing vessels and/or in fish processing units. Interviews may be held with workers, inspectors, harbourmasters, trade unions and immigration officers.<sup>63</sup> A report is submitted to the Head of the HRT, including a recommendation regarding the issuing of a human rights certificate, which is verified by the HRT.<sup>64</sup>

Figure 2: Fisheries entrepreneur human rights certification process by the Human Rights Team



56 Ministerial Regulation 2/2017, arts. 6(2)(a) and 7(1), 7(3) and 7(4).

57 Ministerial Regulation 2/2017, arts. 6(b) and 8.

58 Ministerial Regulation 2/2017, art. 6(2)(c).

59 Ministerial Regulation 35/2015, art. 17 (1).

60 Ministerial Regulation 35/2015, art. 19 (1, 2).

61 Ministerial Regulation 2/2017, arts. 9 (1) and 20 (1).

62 Ministerial Regulation 2/2017, art. 10 (2).

63 Ministerial Regulation 2/2017, art. 11 (2, 3, 4).

64 Ministerial Regulation 2/2017, art. 13 (1).

The technical guidelines (not yet formalized at the time of writing) on certification provide detailed guidance to the HRT and/or assessment agencies on how to assess companies as part of the human rights certification system. These include what documentation to review, which individuals to interview and what physical site inspections to conduct. They also give guidance on when fisheries entrepreneurs are compliant (no more than ten minor inconsistencies and no major non-conformities according to the technical guidelines) and when improvements need to be requested (no more than 15 minor inconsistencies). If more than 15 minor inconsistencies and/or more than three major non-conformities are found, the fisheries entrepreneur is considered non-compliant and has to re-apply for human rights certification within six months. There are no details about what happens if there are one or two major inconsistencies.<sup>65</sup>

### **3.3 Stakeholders for implementation and certification**

#### **a. The Human Rights Team**

Ministerial Regulation 35/2015 provides for the establishment of a fisheries HRT consisting of representatives of relevant ministries, non-ministerial government institutions and relevant non-governmental institutions. The HRT is responsible for determining the terms and criteria for the implementation and inspection of human rights certification and accrediting assessment bodies and training centres to carry out aspects of certification. Most importantly, the HRT is responsible for issuing, suspending or revoking human rights certificates.<sup>66</sup>

An HRT was officially appointed through Ministerial Regulation 35/2015 and consists of directors (14), expert staff (three) and executors (ten), including senior staff from the MMAF, the MMAF Sub-Directorate of Fishing Vessels and Fishing Gear, the Ministry of Foreign Affairs, the MoM Occupational Health and Safety Directorate, the National Agency for the Placement and Protection of Indonesian Workers, the Human Rights Commission, training institutions and legal advisers. The mandate of the HRT expired on 31 December 2017 and it was expected that a new Ministerial Order would be issued to extend it. However, despite some attempts to do so, as of March 2019, according to members of the HRT, it had yet to meet. Consequently, it has not been able to carry out its mandate under the Regulations thus far.

#### **b. Assessment agencies**

Under Ministerial Regulation 2/2017 the Head of the HRT can appoint an assessment agency to conduct assessments of the fisheries entrepreneurs' human rights systems and compliance monitoring on its behalf. Public or private entities seeking accreditation as assessment agencies need to submit their own documentation, including their deed of incorporation, tax identification number, company registration, an overview of their organizational structure, International Organization for Standardization (ISO) documentation and a certificate which testifies that they have conducted technical training on the human rights certification system.<sup>67</sup>

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65 Draft Technical Guidance for Assessing Human Rights Certification in Fisheries, 2017.

66 Ministerial Regulation 35/2015, art. 9 (4).

67 Ministerial Regulation 2/2017, art. 19.

The assessors are required to possess appropriate educational backgrounds and experience.<sup>68</sup> Once an application for accreditation is received, the HRT conducts an inspection of the validity of the documents and assesses whether the agency conforms and complies with the requirements of the Audit Organizing Agency and Management System Certification.<sup>69</sup> Accredited assessment agencies have to submit an annual report to the fisheries HRT.

As the HRT has yet to meet, no assessment agencies have been accredited to date. In addition, as the assessment agencies need to submit a certificate of the technical training they have received on the fisheries human rights certification system and no official curriculum is currently available, accreditation procedures have yet to be implemented. Stakeholders are unclear what kind of organizations can apply to become assessment agencies and how they should be trained. In the absence of available assessment agencies, the HRT remains responsible for conducting assessments.

### c. Training institutions

Recognizing that the system is new, Ministerial Regulation 35/2015 states that training on the system will be provided by the MMAF or appointed training institutions.<sup>70</sup> For each fisheries business, the implementing coordinator of the human rights system must be appointed and trained, evidenced by a certificate of competence.<sup>71</sup>

As with assessment agencies, training institutions – including colleges and ministerial training institutes – may also apply to receive accreditation for the purposes of human rights certification. Such an applicant institution must submit their documents to the HRT and trainers must have appropriate education and experience in areas such as occupational safety and health. In the absence of training institutions, the HRT (which has yet to be convened) may provide its own training experts under article 23(7).<sup>72</sup> At the time of writing, no training institutions have been accredited.

### d. Joint inspections

MMAF Regulation 35/2015 envisages joint inspections for the protection and respect of human rights at the enterprise level. Under article 11, inspections at fishing ports are to be carried out by the fisheries inspector, harbourmasters and other competent authorities in coordination with the HRT. The results of inspections are to be submitted to the HRT, presumably as a part of the evidence to be considered in the certification process. However, at the time of writing, the HRT had yet to meet and so no such inspections had taken place.

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68 Ministerial Regulation 2/2017, art. 19(2).

69 Ministerial Regulation 2/2017, art. 19 (3).

70 Ministerial Regulation 35/2015, art. 10.

71 Ministerial Regulation 35/2015, art. 10(2) and 10(3).

72 Ministerial Regulation 2/2017, art. 21.

## 4. Relationship between fishers' work agreements and human rights

### 4.1 Fishers' work agreements as a requirement

As noted earlier, while national labour laws already apply to fishers, lack of enforcement in the sector by the MoM and the promulgation of new ministerial regulations by the MMAF mean that the most detailed regulation on fishers' working conditions is now MMAF Regulation 42/2016 on FWAs.

FWAs with appropriate remuneration standards are required at an enterprise level as a part of the public human rights policy and statement of commitment to respect fair and decent working conditions under MMAF Regulation 35/2015, article 5. Fisheries entrepreneurs are required to provide written FWAs to fishers as a part of the documentation in their application for implementation of the human rights certification system.<sup>73</sup> Ministerial Regulation 42/2016 states that FWAs are a tool to protect both the fisher from occupational risks and the vessel owner, operator, captain or agent from business risks.<sup>74</sup>

The 2016 Regulation defines the FWA as an agreement between the fisher and one of the following: the fishing vessel owner; the fishing vessel operator; the captain of the fishing vessel; or the recruitment agent.<sup>75</sup> It also puts the responsibility on fishers to be aware of their rights and obligations under the FWA and safety and health regulations.<sup>76</sup>

Although Indonesia has not ratified Convention No. 188, the requirement for written work agreements is consistent with it. MMAF Regulation 42/2016 stipulates detailed requirements for the FWA. However, these requirements are not always consistent with Convention No. 188 and do not deal with many aspects of fishers' working and living conditions required by Annex II of Convention No. 188.

#### a. Requirements of the FWA

The minimum requirements for FWAs are: name, date and place of birth of the fisher; the place and date on which the agreement is signed; the rights and obligations of both signatory parties; data on the fishing vessel; details of the other party (whether it is the vessel owner, operator or recruitment agent); a description of the fishing operations area; the fisher's competency and position on board; the fisher's self-reporting requirements if working abroad; the standard wages, bonuses and calculation method; annual leave and resting periods; agreement termination conditions; insurance data; information regarding repatriation; and references to collective bargaining agreements and other applicable regulations.<sup>77</sup>

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73 Ministerial Regulation 2/2017, art. 5.

74 Ministerial Regulation 42/2016, art. 4

75 Ministerial Regulations 42/2016, art. 1.

76 Ministerial Regulation 42/2016, art. 12(1) and art. 22(2)

77 Ministerial Regulation 42/2016, art. 46.

## b. Wages

Ministerial Regulation 42/2016 (articles 24 to 27) provides a detailed salary structure, setting the fisher's basic salary at a minimum of twice the regional/provincial minimum wage, a sailing allowance (3 per cent of basic salary), a production bonus (at least 10 per cent of basic salary), overtime pay (at least 25 per cent of the daily sailing allowance) and standby compensation, if applicable. Payments should be made half in cash and half in the bank.

Significantly, none of these wage requirements applies to fishers working on fishing vessels that use the profit-sharing remuneration system.<sup>78</sup> Article 28 states that remuneration specified under the Regulation do not apply to fishers working on board vessels implementing the share-of-catch system (also referred to as the "sharing system" or "profit-share system" in Indonesian literature). Regulation 42/2016 does not specify any requirements for the share-of-catch system, but requires the proportions for the sharing system to be documented in the FWA.<sup>79</sup>

Although Regulation 42/2016 does not refer to it, Law 16/1964 on Fisheries Profit Sharing System has not been repealed and still applies. Under Law 16/1964, the following percentages are stipulated for fishers working on vessels implementing the profit-sharing system:<sup>80</sup>

- i. If using a sailing vessel, a minimum of 75 per cent of the total profit;
- ii. If using a motorized vessel, a minimum of 40 per cent of the total profit.

Sharing between the fishers shall be arranged among themselves, with the proviso that the ratio between the highest earner and the lowest earner shall not exceed three to one.<sup>81</sup> It is not clear whether the MMAF intends to enforce Law 16/1964 in respect of FWAs under the new regulations.

Representatives from the Indonesian Chamber of Commerce and Industry estimate that over 90 per cent of fishers work in share-of-catch arrangements as it is difficult to set salary scales given fishing vessels' different capacities and the unpredictability of catch in terms of quality and quantity. Fishers in Indonesia are often paid at the end of the fishing trip, with some stakeholders arguing that this system is preferred by fishers as it gives them greater freedom to leave the vessel. Indonesian fishers abroad or on foreign vessels usually receive monthly salary payments, which are received either on board or in the next port of call, while remittances are usually paid through the agent.

78 Ministerial Regulation 42/2016, art. 28.

79 Ministerial Regulation 42/2016, art. 28.

80 Law 16/1964 on Fisheries Profit Sharing System, arts. 3(1) and 3(2).

81 Law 16/1994 on Fisheries Profit Sharing System, arts. 3(1) and 3(2).

### c. Hours of rest

Ministerial Regulation 42/2016 provides for a minimum rest period of eight hours a day, allowing a maximum of 16 working hours including eight hours of overtime. This exceeds the working hours stipulated by Convention No. 188, which sets a minimum rest period of ten hours in any 24 hour period and at least 77 hours rest cumulatively every seven days.<sup>82</sup> Regulation 42/2016 does not prescribe a minimum for cumulative rest over seven days. Instead, it stipulates that fishers should be allowed ten days' leave every six months.

### d. Exclusions

Ministerial Regulation 42/2016 also exempts fishing vessels where the owner is the captain – regardless of the size of the crew or vessel – from the need to sign FWAs. This is inconsistent with Convention No. 188 which applies to all fishers and all fishing vessels engaged in commercial fishing operations, including the need for FWAs, regardless of vessel or crew size.<sup>83</sup>

## 4.2 Enforcement of the fishers' work agreements: harbourmasters

As a part of the human rights policy for fisheries entrepreneurs under MMAF Regulation 35/2015, FWAs are evidence of a commitment to human rights and their implementation would be checked by the assessment agency. However, for the day-to-day implementation of FWAs, MMAF Regulations 42/2016 tasks harbourmasters at fishing ports with responsibility for inspecting and checking signed FWAs for each fisher as they depart. FWAs should be reviewed and authorized by the harbourmaster, according to the Fisheries Law and Ministerial Regulation 42/2016. The harbourmaster also has a role as mediator in conflicts related to FWAs if no amicable solution is found.<sup>84</sup>

These are additional tasks for harbourmasters, who have a range of duties under the Fishery Law (31/2004 as amended by 45/2009), including for issuing Sailing Approval Letters; regulating the arrival, movement and departure of fishing ships (and issuing report proof); checking a vessel's documents; investigating technical aspects of ships, including catching equipment; checking and legalizing sea work agreements/manning requirements; checking logbooks; and controlling fishing port facilities and activities. The harbourmasters' inspections also include a review of the crew list.

Harbourmasters objected to the imposition of new tasks relating to FWAs under MMAF Regulation 42/2016. One noted that they do not have the capacity: in Jakarta's Nizam Zachman Oceanic Fishing Port, for example, there are four harbourmasters and six assistants who inspect approximately 1,484 fishing vessels that depart and land there. Moreover, they noted that they are not trained to mediate in disputes related to FWAs, nor are they experts on employment contracts and legal matters. One harbourmaster reported underage fishers are sometimes identified through the pre-sailing inspection process, but they do not impose sanctions and only require the replacement of the underage crew member before the fishing vessel receives clearance to sail.<sup>85</sup>

82 Ministerial Regulation 42/2016, art. 14.

83 Convention No. 188 Art. 2 and Art. 16.

84 Ministerial Regulation 42/2016, art. 40.

85 See art. 42 of Law No. 45/2009 amending Law No. 31/2004 on duties of harbourmasters.

## 5. Challenges in implementation

### 5.1 Delays

More than three years since the adoption of Ministerial Regulation 35/2015, and despite the subsequent approval of Ministerial Regulation 02/2017, implementation of the human rights certification system is still in its initial stages. Preliminary meetings between the Human Rights Commission and the MMAF took place in early 2017 to discuss the mandate of the HRT and the appointment of a certification agency. An HRT meeting planned for May 2017 was postponed indefinitely and had yet to be convened at the time of writing. According to the MMAF Sub-Directorate of Fishing Vessels and Fishing Gear, standard operating procedures for Regulation 35/2015 have been drafted, however, by the end of 2018, these had yet to be formalized.

Despite steps already taken by various department of MMAF, the absence of an HRT has significant consequences for the implementation of the system. No assessment agency or training institute has been accredited and no joint inspections for human rights required under article 11 of MMAF Regulation 35/2015 have been conducted. While drafts have been prepared, no operational protocols or procedures have been formalized.

While the MMAF training centre conducted preliminary training on human rights and intends to develop a human rights certification manual, as there are currently no standards for testing competencies, none of the staff trained in 2017 could be certified. Consequently, as at the end of 2018, MMAF staff were not in a position to carry out human rights system processes.

Nevertheless, MMAF officials have stated that pilot assessments were conducted in two state-owned companies in November 2017, although key informants were not aware that a formal assessment had taken place as a part of the pilot. The pilot assessment, conducted as a part of training, consisted of a review of company documentation – including work agreements and salary payment mechanisms – followed by a physical site inspection in Bitung by MMAF staff, including members of Task Force 115. The assessment process examined company documentation on quarantine, work agreements and vessel safety. The companies received recommendations requiring the upgrading of cooking facilities (at a cost of 2.75 million Indonesia rupiah (IDR) or around US\$200) and improving bed quality (IDR6 million or US\$420) on its vessels. While Ministerial Regulation 35/2015 requires fisheries businesses to appoint human rights focal points and the companies did not have one, this was not included in the recommendations.

## 5.2 Coverage of the system

Under Indonesia's fisheries human rights certification system, the key enforcement action that can be taken by the government is through the MMAF, which can suspend or revoke fisheries licences. If a fisheries entrepreneur fails to obtain the human rights certification, the MMAF can suspend or revoke the fisheries licences required under the Fishery Law (a SIUP, SIPI or SIKPI),<sup>86</sup> and recommend that the MoM revoke their labour use permit.<sup>87</sup> Sanctions against the master fisher and captain of the fishing vessel may also be imposed.<sup>88</sup>

However, the MMAF does not license fishing vessels under 30GT. According to Law 23/2014 on Local Government,<sup>89</sup> authority over maritime and fisheries affairs, including fishing licences, is divided between central and local government. Fishing licences for vessels over 30GT are provided by the MMAF, while sub-national governments are responsible for issuing fishing licences for vessels of between 5GT and 30GT.<sup>90</sup>

According to MMAF Ministerial Regulation No. 35 of 2015 (article 3), the human rights system is applicable to all fishing vessels flagged to Indonesia, regardless of size or where they operate, as well as to all foreign-flag transshipment vessels operating in Indonesian waters.<sup>91</sup> However, in practice, MMAF as the central government, has limited enforcement actions against smaller vessels licensed by the provinces.

As a result, Indonesia's fisheries human rights certification system is, in practice, limited in scope. According to the FAO estimate, the system would only apply to the 1 per cent of Indonesia's fishing fleet that is larger than 30GT.<sup>92</sup> Based on the MMAF's online real-time Record of Authorized Vessels, as at 21 January 2019, there were only 2,141 fishing vessels above 30GT in Indonesian waters.<sup>93</sup>

## 5.3 Inconsistency and confusion between regulations

While the various regulations are meant to be read and implemented in tandem, there are several discrepancies between them, which can create confusion. Importantly, Ministerial Regulations 35/2015 and 2/2017 seek to regulate the conduct of the "fisheries entrepreneur" and implement a fisheries human rights system at the enterprise level. However, Ministerial Regulation 42/2016 does not use the term "fisheries entrepreneur", but puts the responsibility for FWAs on a range of actors including fishing vessel owners, fishing vessel operators, captains, and recruitment agents.

It is not clear how these actors relate to the "fisheries entrepreneur" or whether they may be deemed to be a "fisheries entrepreneur" under Ministerial Regulations 35/2015 and 2/2017. Therefore, if there is a defect in the FWA signed by the fisher, or if there are violations of the FWA and agreed

86 Law 31/2004 as amended by 45/2009.

87 Ministerial Regulation 35/2015, art. 12.

88 Ministerial Regulation 35/2015, art. 12(4).

89 Law 23 of 2014 on Local Government, arts. 11, 12 and 27.

90 Law 23/2014 as amended by Law 9/2015, art. 14 and Annex Y.

91 Since moratorium 56/2014, no foreign-flag vessels can fish in Indonesian waters.

92 *Indonesia Fisheries: 2015 Review: A report on trends in coastal marine resources and fisheries management in Indonesia*, California Environmental Associates, available at <https://www.packard.org/wp-content/uploads/2016/09/Indonesia-Fisheries-2015-Review.pdf> [accessed 3 September 2018].

93 *Fishery and Aquaculture Country Profiles: The Republic of Indonesia*, FAO, available at <http://www.fao.org/fishery/facp/IDN/en> [accessed 3 September 2018] and [rvia.kkp.go.id/data-kapal](http://rvia.kkp.go.id/data-kapal) [accessed 21 January 2019].

working conditions of the fisher, it is not clear how breach of the agreement or the failure to sign an agreement, by a fishing vessel owner; operator, agent or captain would affect the human rights certificate of the “fisheries entrepreneur”. If there is no impact on the status of certification for the “fisheries entrepreneur”, this would have little effect on improving labour conditions for fishers who are often subcontracted and may not have an FWA signed with the fisheries entrepreneur.

In addition, as outlined earlier, there is a significant gap in protection if all fishers working on vessels captained by the owner are excluded from FWAs. Moreover, for fishers working on vessels over 30GT captained by an owner, Regulation 35/2015 would require FWAs to be signed while Regulation 42/2016 would exempt them. Similarly, it is not clear whether Regulation 42/2016 intends to defer to Law 16/1964 in the area of wage regulation for vessels implementing profit-sharing arrangements.

Moreover, there is confusion underlying the registration and licensing requirements for different vessels. While the MMAF is the central authority on fishing and the licensing of fisheries activities, due to decentralization laws, it in practice only regulates vessels over 30GT. Registration of smaller fishing vessels at regional and local levels complicates compliance. Moreover, all vessel over 7GT must have ownership information registered with the Ministry of Transportation, if the vessel is at least majority Indonesian-owned.<sup>94</sup> For fishing vessels seeking to be registered with the Ministry of Transportation, a recommendation from the MMAF is required.<sup>95</sup> A further step of registration is required for classification purposes if the vessel is 20m in length, 100GT or has engines over 250HP.<sup>96</sup>

The difference in size regulation is confusing and many vessels remain unregistered or incorrectly registered. Overlapping registration requirements and authority between different Ministries, as well as gaps in regulation on smaller sized vessels, create inconsistencies and confusion about the labour standards applicable and can facilitate human trafficking and labour exploitation of fishers.

#### **5.4 Public awareness and perception**

The human rights system, in line with the UN Guiding Principles, is aimed at creating a culture of compliance among private sector actors in the fishing sector. However, barriers to this arise from a lack of awareness, misunderstanding or mistrust among key stakeholders in the fishing sector. Some stakeholders, particularly the private sector, voice concerns about a lack of stakeholder consultation during the drafting process, resulting in limited buy-in and ownership.

Some stakeholders from the private sector claimed to have been unaware of the Regulations altogether. There is a widespread misunderstanding about the content and impact of Ministerial Regulations 35/2015 and 2/2017 and limited knowledge of Regulation 42/2016 among stakeholders.

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94 Law 13/2012, art. 5 (2).

95 Ministry of Transport, Ministerial Regulation No. 39 of 2017, art. 7(1).

96 With PT Biro Klasifikasi Indonesia.

Common concerns about recent regulatory changes among employers and the private sector reflect their confusions, misunderstanding as well a fear of regulation in favour of “traditional” practices. Their concerns include:

- v. The sector is faced with too many regulation changes. Businesses are required to get too many certificates from different government entities before receiving a fishing licence and the cost of licences has increased.
- vi. The burden of responsibility on the company is too high and the Regulations are too ambitious, mainly based on the practices of foreign companies (such as work agreements or monthly salary payments) and do not reflect traditional practices in Indonesia.
- vii. Companies do not consider work agreements a necessity, relying instead on the loyalty of fishers; there are currently no standard work agreements available.
- viii. As catches are unpredictable, it is difficult to set standard salary scales for the fisheries sector. In addition, standby pay and paid leave cannot be provided. Profit sharing is currently in use on small vessels, which constitute most of the fishing sector.
- ix. There is a lack of coordination between the ministries responsible for transportation, labour and fisheries.
- x. There are no inspectors available with knowledge and/or experience of the fisheries human rights system.

Many of the objections against the fisheries human rights system voiced by the private sector and key employer informants stem from a lack of understanding of the Regulations’ purpose and contents, including their aim to protect fisheries entrepreneurs. Stakeholders were particularly worried about the implementation of FWAs and salary requirements, even though the catch-share systems are unaffected by the Regulations. However, some objections relate to the increased responsibility of fisheries entrepreneurs for implementing the human rights system, highlighting the sector’s reluctance to engage in more PCIs.

On the other hand, trade union representatives and non-governmental organizations welcome the Regulations, which they perceive to be comprehensive and believe, incorrectly, to be consistent with ILO Conventions. Their concerns, directed at the level of detail in the Regulations and enforcement, include:

- xi. The Regulations need to be more specific in some areas, for instance regarding occupational safety and health.

- xii. The Regulations are not in line with other laws and the responsibilities of different ministries are unclear; the MoM, for instance, covers the minimum wage, while the Ministry of Transportation provides licences to vessels and the MMAF has no enforcement power regarding the latter.
- xiii. There has to date been a lack of enforcement, in part due to overlapping mandates.
- xiv. There is a lack of awareness about the fisheries human rights certification system across the sector, including regarding freedom of association.
- xv. There remains a gap between national, regional and local human rights legislation both on paper and in enforcement.



## **Part 2: Commentary and Recommendations**

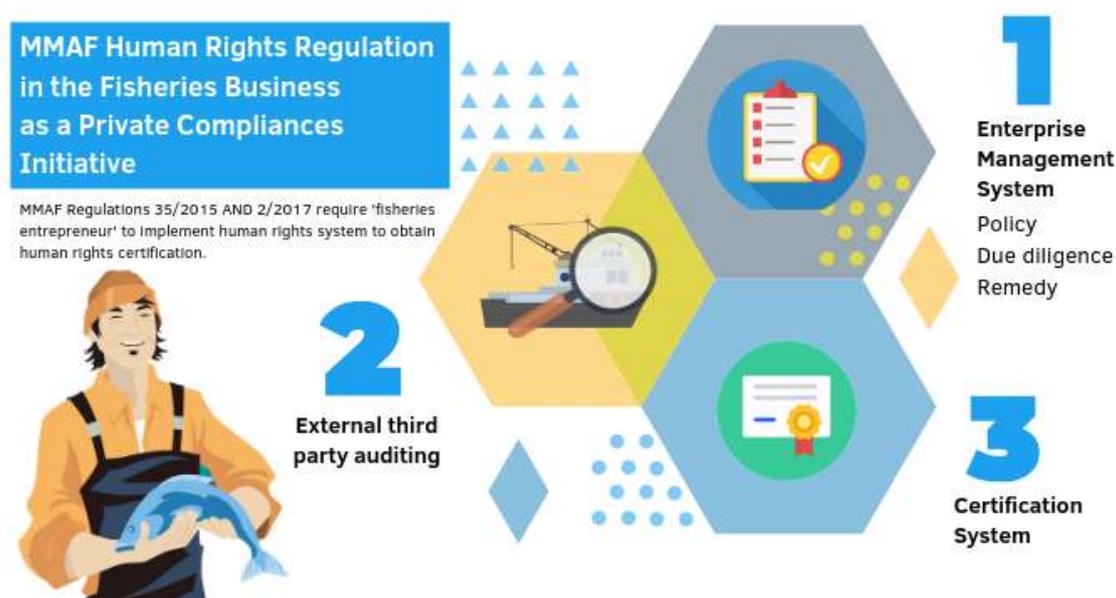
### **(M. Zhou)**

1. The system as a private compliance initiative
2. The system's relationship to public labour inspection
3. Conclusions and recommendations

## Part 2: Commentary and recommendations (M. Zhou)

Part 2 analyses Indonesia's fisheries human rights certification system in the context of the proliferation of Private Compliance Initiatives (PCIs) to monitor and improve labour standards in global supply chains, particularly in the fishing and seafood industry. In addition, this section considers the relationship between the sector-specific human rights certification system created by the MMAF and the broader labour administration and inspectorate under the mandate of the MoM. Recommendations to strengthen enforcement of labour standards and human rights protections for fishers and workers are then offered by drawing together the findings of Part I and lessons learned from other PCIs and research.

Figure 3. The system as a private compliance initiative



As the ILO has noted,<sup>1</sup> there are a vast number and extensive varieties of PCIs in the world today. While their features vary, they all have in common a process of checking for conformity against standards. The fisheries human rights certification system as established by Ministerial Regulations 35/2015 and 2/2017 is intended to address persistent violations of human rights in the industry, including human trafficking, forced labour, child labour and poor working conditions and other abuses.<sup>2</sup> On the face of it, the Regulations create an ambitious PCI with three interlocking components:<sup>3</sup>

- i. An enterprise-level management system to ensure compliance with human rights and labour standards: enterprises in the fisheries sector are required to put in place a three-part enterprise fisheries human rights system (FHRS) which includes:
  - a. a declaration of commitment in the form of a policy, which sets out the standards against which the enterprise intends to be measured and assessed;<sup>4</sup>

<sup>1</sup> ILO, *Labour inspection and private compliance initiatives: Trends and issues – Background paper for the Meeting of Experts on Labour Inspection and the Role of Private Compliance Initiatives* (Geneva, 10–12 December 2013), available at [https://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---lab\\_admin/documents/meetingdocument/wcms\\_230798.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/meetingdocument/wcms_230798.pdf)

<sup>2</sup> Ministerial Regulation 35/2015 Preamble (b)

<sup>3</sup> *Labour inspection and private compliance initiatives: Trends and issues*, op. cit., p 12.

<sup>4</sup> Ministerial Regulation 35/2015, art. 5.

- b. a due diligence process to assess risks and ensure compliance with human rights and labour standards – this implies, at the minimum, self-assessment processes that monitor compliance with national laws and regulations as well as voluntary commitments made by the enterprise in its human rights policy;<sup>5</sup> and
  - c. remedy procedures, which includes internal grievance mechanisms, if violations of human rights and labour rights are found or if there are disputes.<sup>6</sup>
- ii. An external third-party auditing process: the certification process elaborated in Ministerial Regulation 2/2017 requires an external audit conducted by the accredited assessment agency. Enterprises seeking certification must first employ an accredited assessment agency to assess its FHRS and its compliance with the relevant laws and standards. The auditing process mandated by the Regulations includes a document review and interviews with a diverse range of stakeholders.
  - iii. A certification system: enterprises can apply for certification from the MMAF or delegated certification body (currently, the Head of the HRT). The certificate confirms the enterprise's achievement of the required standards and offers the certificate holder a recognized way of demonstrating this to interested parties, including, in this case, fisheries licensing authorities. Following the assessment, the accredited assessment agency makes recommendations to the certification body, which verifies the findings of the agency before issuing the certificate.

### **1.1 Impact of private compliance initiatives in the fishing and seafood industry**

As described in Part I, there have been substantial delays in the implementation of Ministerial Regulations 35/2015 and 2/2017, particularly in relation to the appointment of the HRT and the accreditation of an assessment agency. It is therefore difficult to assess the effectiveness of the PCI created by the Regulations in improving conditions for workers in fisheries enterprises. However, with the emergence of a vast array of PCIs aimed at improving working conditions in global supply chains over the last 25 years, recent literature shows that PCIs have uneven impact across different areas of labour standards and workers' protection, and its long-term success in improving labour conditions is by no means proven.

One 2013 study found that there was limited quantitative evidence of the long-term impact of PCIs on labour standards and there were few in-depth impact assessments based on empirical evidence. There is, therefore, a limited understanding of the impact of individual PCIs as well as of their cumulative impact. Nevertheless, there was evidence that PCIs were having some positive impacts, particularly in relation to health and safety, reduction of unreasonable overtime and payment of minimum wages.

<sup>5</sup> Ministerial Regulation 35/2015, art. 6.

<sup>6</sup> Ministerial Regulation 35/2015, art. 7.

In contrast, impacts appear to be weaker with respect to rights-based and equity issues, such as freedom of association and gender equality. Moreover, permanent workers were the most likely to benefit from PCIs rather than those in more precarious situations, such as temporary, seasonal, migrant or home-based workers.<sup>7</sup>

This is consistent with other studies which show that PCIs addressing labour issues are more likely to emphasize the most easily detectable violations of labour standards, such as working hours, occupational health and safety and wages. They also tend to focus on issues such as child labour and are weaker on ensuring underlying enabling rights such as freedom of association and non-discrimination. Such initiatives are also often developed without adequate worker participation and are designed to be monitored by external social auditors, again without the adequate inclusion of workers.<sup>8</sup>

In 2017, the ILO studied the data of 2,719 companies listed in the VigeoEiris database,<sup>9</sup> which measures organizations' responsible investment and sustainable value creation by monitoring 37 sustainable drivers.<sup>10</sup> Focusing on five of these that specifically address fundamental principles and rights at work, the ILO found that the standard of commitment expressed by companies varied significantly depending on the issue, where the company was based, the industry and other socio-economic characteristics. Commitments declared only had a partial relationship to implementation indicators and the gap between commitment and implementation was particularly acute in the area of freedom of association. However, companies which did have a strong commitment to freedom of association tended to do better in all other dimensions of corporate social responsibility, including labour rights.<sup>11</sup> Although there are significant differences across regions, PCIs appear to promote transparency as regards companies' willingness to disclose their commitments towards workers and third parties.<sup>12</sup>

In 2018, the Changing Markets Foundation reported that while the number of PCIs and certification schemes that label "ethical" or "sustainable" products have grown exponentially over the last two decades, "rather than being an accelerator for positive change, this 'flood' of certification creates confusion for consumers and industry and is standing in the way of genuinely sustainable consumption".<sup>13</sup> Similarly, an assessment of voluntary schemes primarily aimed at environmental conservation found that of 161 schemes from European Union, USA/Canada, Australia and New Zealand, the vast majority (82 per cent) did poorly in one or more performance dimensions and 64 per cent of the schemes failed to achieve the majority of their targets.<sup>14</sup> Schemes that were implemented as a part of a policy mix, or under the credible threat of regulation, performed significantly better.<sup>15</sup>

7 K. Newitt, *Private Sector Voluntary Initiatives on Labor Standards Private sector voluntary compliance, Background Paper for the World Development Report 2013*.

8 ILO, *Uneven practices in voluntary labour commitments: An exploration of major listed companies through the VigeoEiris database*, November 2017, p. 10, and "Impact on Workers: ETI Study (2006)" in *Labour inspection and private compliance initiatives: Trends and issues*, op. cit., p. 12.

9 VigeoEiris is a European ratings and research agency, see <http://www.vigeo-eiris.com/about-us/>.

10 *Uneven practices in voluntary labour commitments*, op. cit., p. 12.

11 *Uneven practices in voluntary labour commitments*, op. cit., pp. 15-22.

12 *Uneven practices in voluntary labour commitments*, op. cit., p. 27.

13 Changing Markets Foundation, *The false promise of certification*, 2018, p. 7.

14 Performance dimensions: target achievement, target ambition, level of uptake. RSPB, *Using regulation as a last resort? Assessing the performance of voluntary approaches*, available at [http://www2.rspb.org.uk/Images/usingregulation\\_tcm9-408677.pdf](http://www2.rspb.org.uk/Images/usingregulation_tcm9-408677.pdf) [accessed 3 September 2018] p. 10.

15 *Using regulation as a last resort?*, op. cit., p. 12.

In the fisheries sector, more than 50 voluntary seafood standards were in operation globally in 2016. The Marine Stewardship Council (MSC) and Friends of the Sea (FOS) certification standards were the two most prominent and largest by volume. In 2015, the two initiatives together covered 9 million metric tonnes of fish and seafood products. In the same year, 14 per cent of global seafood production was certified by at least one initiative.<sup>16</sup> While the MSC and FOS are certification schemes primarily concerned with the sustainability of seafood, both have recently adopted various social accountability standards including on workers' health and safety and prohibitions on forced labour and child labour.<sup>17</sup>

Both the MSC and FOS depend on external audits from accredited third-party certification bodies which monitor the fishery operation. Producers pay a fee to these third-party certification bodies to be assessed and, if certified, use the sustainability label on their products. The third-party certification bodies are selected, appointed and paid for by the producer or enterprise. One concern is the conflict of interest inherent in this process: third-party certifiers are paid by the companies they are certifying, resulting in weak audits and lenient certification as numerous certification bodies compete to win business. Weak oversight exacerbates the problem, as these initiatives emphasize the number of participants in the scheme and the volume of catch certified as metrics for success, rather than progress or performance in terms of sustainability and outcomes.<sup>18</sup>

Similarly, the Indonesian fisheries human rights certification system under Ministerial Regulations 35/2015 and 2/2017 also relies on the findings of an external accredited assessment agency. Similar to the MSC and FOS schemes, the enterprises seeking certification pay the accredited assessment agency for their services. Although the certification body (being the Minister or the Head of the HRT, if established) is not the same as the assessment agency under the Indonesian system, the certification body relies on the report and recommendations of the assessment agency. While the certification body has seven working days to verify the assessment agency's report, it is not clear what this process may involve. In the absence of strong oversight, this service-provider relationship between the enterprise seeking certification and the assessment agency conducting the audit can create conflicts of interest and weaken the system.

As noted in Part I, private sector stakeholders in Indonesia have voiced concerns about the proliferation of the "certificates" required. With labour standards certification as "the biggest source of new business in the fisheries sector" for certification firms,<sup>19</sup> at worst, the Indonesian fisheries human rights certification system risks expanding the business of certification and the profits of certification firms without improving labour standards and human rights protections for workers.

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16 *The false promise of certification*, op. cit., pp. 48-49.

17 Friends of the Sea, *Annual Report 2017-2018*, p.5, available at [https://friendofthesea.org/wp-content/uploads/Fos-Foe\\_Annual\\_report2018\\_EN\\_WEB\\_02-10-2018.pdf](https://friendofthesea.org/wp-content/uploads/Fos-Foe_Annual_report2018_EN_WEB_02-10-2018.pdf); Marine Stewardship Council, "MSC announces changes to labour reporting, objections and stakeholder engagement", 31 August 2018, available at <https://www.msc.org/media-centre/press-releases/msc-announces-changes-to-labour-reporting-objections-and-stakeholder-engagement>; and Seafood Source, "Labor standards key source of new business in the fisheries sector for certification firm", available at <https://www.seafoodsource.com/news/environment-sustainability/labor-standards-key-source-of-new-business-in-the-fisheries-sector-for-certification-firm>.

18 *The false promise of certification*, op. cit., pp 50-51.

19 Seafood Source, "Labor standards key source of new business in the fisheries sector for certification firm", op. cit.

## 1.2 Private consequences of non-compliance

Repercussions flowing from non-compliance with PCIs fall into two categories: private or commercial consequences and the public or regulatory consequences. The impact in the commercial sphere may be market-based – imposed by the potential end-user or consumer. The effects may also be felt in terms of commercial relationships, with punitive actions by reputation-sensitive business partners acting to manage reputational risks by improving compliance on labour conditions in its supply chain or disassociating themselves from the non-compliance.<sup>20</sup>

The Ministerial Regulations 35/2015 and 2/2017, as well as a raft of other legislative and policy changes, were adopted by the Indonesian Government in response to the Benjina case (see Part I) in an effort to protect the commercial reputation of the Indonesian fisheries business as a whole. Importantly, its neighbour – Thailand – was placed on the list of “warned countries” for IUU fishing by the European Commission between May 2015 and January 2019, a development which was closely watched by the Indonesian Government.

The Indonesian fisheries human rights certification system can be seen as a pre-emptive attempt by the Government to minimize risks in the commercial sphere for the fisheries sector and to protect a fast-growing industry in the export economy. With an eye on Thailand’s developments, the Indonesian Government’s strategy, as articulated by Taskforce 115, was to bring multiple traceability schemes (food safety, IUU fishing and human rights) into the fishing and seafood industry of Indonesia and to assure commercial stakeholders that “human rights abuses have no place in our [Indonesia’s] seafood industry”.<sup>21</sup> For suppliers of fishing and seafood products from Indonesia, the legitimacy and credibility of the Indonesian fisheries human rights certification system can help or hinder its commercial operations worldwide collectively. However, delays in implementation and the lack of certifications carried out means that there are currently negligible consequences for suppliers in Indonesia at an enterprise level as no private sector businesses have been certified.

Research has also shown that PCIs have been most effective among first-tier suppliers. Most improvements in labour conditions are concentrated among a group of employees with formal contracts in larger and first-tier supplier firms.<sup>22</sup> Subcontracted workplaces are often unmonitored and, in some cases, the most dangerous aspects of production have been subcontracted out to other enterprises to avoid regulation and limit liability. Lead firms have less control over the specific terms of subcontracts as the relationships become more remote.<sup>23</sup> As such, PCIs can create “regulatory enclaves”, pockets of good practices with little linkage to the rest of the economy.<sup>24</sup>

20 *Labour inspection and private compliance initiatives: Trends and issues*, op. cit., p. 25.

21 Mas Achmad Santosa, Presidential Task Force to Combat Illegal Fishing (Task Force 115), *Indonesia’s Approach In Combating Fisheries Related Crimes Strategy To Eliminate Human Rights Abuses In The Fishery Business*.

22 SECTOR p 11 and Posthuma <https://www.ilo.org/legacy/english/protection/travail/pdf/rdwpaper43c.pdf>

23 ILO, *Workplace Compliance in Global Supply Chains*, Geneva, 2016, and Anne Posthuma, *Beyond “Regulatory Enclaves”: Challenges and Opportunities to Promote Decent Work in Global Production Networks*.

24 *Workplace Compliance in Global Supply Chains* op. cit. and *Private Sector Voluntary Initiatives on Labor Standards Private sector voluntary compliance* op. cit.

Regulatory enclaves where, at best, only a narrow sector of the industry complies with the fisheries human rights certification system is significant risk in the fishing and seafood industry in Indonesia. Few employees have formal contracts in the industry, particularly in the fishing sector. Moreover, the risks of a regulatory enclave are exacerbated by the narrow focus of the legal consequences of non-compliance. As noted in Part I, one of the limitations of the Indonesian fisheries human rights certification system is that non-compliant and non-certified enterprises risk losing fisheries licences. In practice, however, such measures are only applicable to fishing vessels over 30GT that require such permits to operate; such vessels constitute an estimated 1 per cent of Indonesian's fishing fleet.

### 1.3 Public consequences of non-compliance

One public and legal consequence of non-compliance with PCIs would involve referral to the labour inspection authorities if the breach identified was also a breach of national law or regulations. The labour inspection authorities may then impose administrative, economic or criminal penalties.<sup>25</sup> Under the Indonesian fisheries human rights certification system this is absent. Instead, there are two potential public consequences. First, the MMAF can suspend or revoke the fisheries business permit (SIUP), fish catching permit (SIPI) or fish carrier permit (SIKPI), required under the Fishery Law. Second, the MMAF can recommend that the MoM revoke the labour use permit of the non-compliant enterprise.<sup>26</sup>

Although the MMAF's authority to revoke or cancel licences has coercive power, it has limited relevance to the fishing industry as such licences are only relevant for a tiny percentage of the Indonesia fleet. Similarly, labour use permits issued by the MoM are unlikely to be applicable to Indonesian fisheries businesses, as they are issued to those seeking to employ foreign workers, establish workers' training centres, send interns abroad or act as private recruitment agencies or subcontracting agencies domestically.<sup>27</sup> By contrast, Ministerial Regulations 35/2015 and 2/2017 only apply to the fisheries business defined as preproduction, production, processing and marketing.<sup>28</sup> There is no referral mechanism to the labour inspection system or to the MoM in general. This is a significant gap in the Indonesian fisheries human rights certification system and weakens its impact. The effectiveness of the Indonesian fisheries human rights certification system can be strengthened by increasing the legal consequences for non-compliance, including referral to the labour inspectorate or suspension of trade licences or access to credit. For example, in Cambodia's garment and textile export sector, a company can be removed from a list of eligible exporters if it violates labour laws or its own voluntary codes of conduct. Workers and unions can complain directly to the Ministry of Commerce about non-compliance with labour standards and the Ministry may suspend export licences.

25 *Labour inspection and private compliance initiatives: Trends and issues*, op. cit., p. 22.

26 Ministerial Regulation 35/2015, art. 12.

27 Law 13/2003 on Manpower, art. 42.1 and Presidential Decree No. 20/2018 on Foreign Workers, art. 7. Foreign workers are known as *tenaga kerja asing* (TKAs) in Bahasa Indonesian. As at December 2018, there were only 95,335 foreign workers registered in Indonesia. A majority of foreign workers are in high-skilled professions with no unskilled foreign workers, an attempt to protect Indonesian workers. See <https://en.tempo.co/read/1164387/number-of-foreign-workers-only-around-95000-manpower-ministry>

28 Ministerial Regulation 35/2015, art. 1.4.

## 2. The system's relationship to public labour inspection

As highlighted in Part I, the Indonesian fisheries human rights certification system, as established by Ministerial Regulations 35/2015 and 2/2017, does not operate in isolation. However, despite efforts to incentivize compliance by legislating for public consequences, such as fisheries licensing and labour use permits, the impact has been limited due to the characteristics of the Indonesian fishing fleet and its labour market. The Indonesian fisheries human rights certification system operates as a PCI in parallel to public labour inspection, despite direct support from the government.

The separation between the MMAF created PCI and the broader labour inspection administration under the MoM essentially creates two distinct systems, with oversight by two different ministries. This confuses stakeholders, complicates the enforcement of labour standards and laws, and leaves the industry, workers and government officials from multiple ministries frustrated.

The MoM, as noted in Part I, is mandated to regulate and enforce labour laws. Indonesia ratified the ILO Convention concerning Labour Inspection in Industry and Commerce, 1947 (No. 81) in 2003.<sup>29</sup> Under national laws, labour inspections are conducted to enforce labour laws; to provide information and technical advice to employers and workers to ensure the effective implementation of labour laws; and to collect information on employment relations and employment conditions in the widest sense.<sup>30</sup> The MoM has a mandate over all industries, including fishing, with the exceptions of mining and transport.<sup>31</sup> However, the MoM has a shortage of labour inspectors, with just 1,574 labour inspectors countrywide following a decline in numbers between 2015 and 2018. In 2016, according to the Central Bureau of Statistics, only 1.77 per cent of business units were inspected out of a total of approximately 26.7 million enterprises.<sup>32</sup>

As previous studies have noted, the reason behind the increasing number of PCIs on labour standards is often to address the regulatory gap created by poor enforcement and the limited capacity of local labour inspectorates.<sup>33</sup> As such, the Indonesian fisheries human rights certification system introduced by the MMAF can be seen as an attempt to address the staffing shortage in the MoM's labour inspectorate. However, as currently designed, the parallel MMAF system runs the risk of undermining the role of public labour inspections through the effective privatization of labour enforcement in the fishing and seafood sector. The lack of legal consequences for non-compliance, the absence of a referral mechanism to the labour inspection system, the limited private consequences of non-compliance, as well as the risk of regulatory enclaves, have the potential to further weaken the labour inspection system in the absence of a robust enforcement of labour laws in the fisheries sector.

29 Law No. 21 of 2003 concerning the Ratification of ILO Convention No. 81 on Labour Inspection in Industry and Trade.

30 Director General of the Development for Labour Inspection and OSH, *Strategy for Strengthening Labour Inspection*, 2018.

31 Law No. 121 of 2003, op. cit., art.2: "National laws or regulations may exempt mining and transport undertakings or parts of such undertakings from the application of this Convention". In addition, MoM Regulation 33/2016 on labour inspections mechanism states that there is no distinction or categorization of the subject of the inspections be it the labour or the employer (labour indicating anyone who is paid or receives other types of reward for their work). Art. 2 (j) of the Regulation also mentions the universality of labour inspections which encompass all sectors of economic activity

32 *Strategy for Strengthening Labour Inspection*, op. cit., p. 10.

33 K. Newitt, *Private Sector Voluntary Initiatives on Labor Standards Private sector voluntary compliance, Background Paper for the World Development Report 2013*, p. 23.

Moreover, the displacement of Indonesia's labour inspectorate by accredited assessment agencies under the MMAF Regulations is a lost opportunity to leverage MoM's mandate and experience on enforcing of labour laws and on labour inspections. The reluctance of harbourmasters in fishing ports to review and authorize FWAs, as well as mediate disputes that arise under them, described in Part I, vividly illustrates the need to align expertise with mandate and bring the MoM into partnership with the MMAF to enforce labour laws.<sup>34</sup>

Figure 4. Ensuring complementarity between PCI and labour inspection



One model of mutually reinforcing interactions interaction between a PCI and the public labour inspectorate in Indonesia is Better Work Indonesia (BWI), a partnership between the ILO and the International Finance Corporation which aims to improve working conditions and productivity in apparel-exporting factories by enhancing compliance with international labour standards and Indonesian labour law. Since 2015, it has shifted its focus away from assessments and audits, prioritizing instead advisory and training services to factories and enterprises.<sup>35</sup>

The programme has an explicit strategy of working closely with the labour inspectorate. BWI has close relations with the MoM, in particular with the Directorate-General of Labour Inspection Development, which is responsible for labour inspections. The MoM sits on BWI's Project Advisory Committee (PAC), together with national-level employers' and workers' organizations. The PAC provides an opportunity for formal interactions between BWI and the labour inspectorate. While the PAC has a primarily advisory role, in practice it is also called on to endorse new policies and procedures adopted by BWI.

<sup>34</sup> One argument sometimes put forward against the involvement of the labour inspectorate in the inspection of enterprises in the fishing and seafood sector is that it does not have a maritime infrastructure nor come into regular contact with fishing vessels, owners and fishers. However, it is by no means clear that any private assessment agency will have better maritime infrastructure nor that they are necessarily in more frequent contact with fishing vessels, owners and fishers.

<sup>35</sup> BetterWork, *Discussion paper 21: The Interaction of Labour Inspection and Private Compliance Initiatives, A Case Study of Better Work Indonesia*, July 2016

In addition, BWI and the MoM have established bi-partite *ad-hoc* committees, which have provided a forum for informal interactions. Such formal and informal interactions have strengthened the labour inspectorate by initiating new ideas implemented by that MoM and influencing the interaction among the labour inspectorate at central and district levels. Even if some of these results came about largely in an *ad hoc* fashion, the conditions for the productive and fruitful information exchanges were created through the establishment of formal relationships and structures.<sup>36</sup>

Another model can be found in the Good Labour Practices (GLP) Guidelines developed for Thailand's seafood industry by the ILO and a tripartite advisory committee that includes industry associations, private sector, workers and trade unions, and Thailand's Ministry of Labour. The GLP Guidelines includes GLP Workplace Standards, principles for industry associations, GLP programmes and tools for factory managers and industry association leaders.

Importantly, the GLP lays down key principles that the industry associations must follow to build effective labour standards programmes among their member companies. As a part of the programme, industry associations set out clear criteria and expectations of their GLP-participating companies. These criteria start with company-level commitments to GLP standards and principles, and their active participation in GLP national workshops. Participation includes association-led workplace visits to assess labour practices and coaching to help ensure that member companies fix problem practices.<sup>37</sup>

At the same time, avenues for worker complaints include the Thai Ministry of Labour and administrative labour courts, and other government avenues as well as private buyer-sponsored complaint channels. The GLP does not replace the Thai labour inspectorate, but functions as an industry-led programme to help companies to comply with workplace standards built around core international labour standards and key national laws.

With respect to the fishing and seafood industry in Indonesia, the MoM is aware of the need for it to engage strategically through improved labour inspections. In its 2018 Strategy for Strengthening Labour Inspections, the MoM noted that "labour inspection needs to improve maritime, marine, and fishery sectors" and that it is "necessary to establish a special working unit that handles labour and OSH [occupational health and safety] inspection related to the maritime sector".<sup>38</sup> In the short term, the MoM intends to: (1) establish marine work safety supervision and an OSH task force; (2) undertake inspection and OSH training in the maritime sector for inspectors and civil labour investigators; (3) incorporate labour inspection and marine safety materials into the training curriculum of inspectors and civil labour investigators.<sup>39</sup>

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36 Idem.

37 ILO, *Good Labour Practices (GLP) Guidelines in Thailand's Seafood Industry* 2019), available at [https://shiptoshorerights.org/wp-content/uploads/ilo-shiptoshore\\_A5-EN\\_2019-03-12\\_webV2.pdf](https://shiptoshorerights.org/wp-content/uploads/ilo-shiptoshore_A5-EN_2019-03-12_webV2.pdf)

38 *Strategy for Strengthening Labour Inspection*, op. cit., p. 33.

39 Idem.

This presents an opportunity for integrated operations between the MoM and MMAF for stronger enforcement action on labour laws, including joint on-board and port-side assessments by the labour inspectorate as well as other relevant ministries. One regional example is Thailand's Port-in Port-out inspection which is conducted by an interdisciplinary team, including the Ministry of Labour and Department of Fisheries.

The ratification of Convention No. 188 can strengthen the MoM's regulatory presence in the industry and, with the involvement of other agencies, ensure that the enforcement of labour laws in the maritime-based economic sectors is robust and professional. With ILO support, Indonesia has piloted several joint inspections in fishing ports around the country and these should be continued.

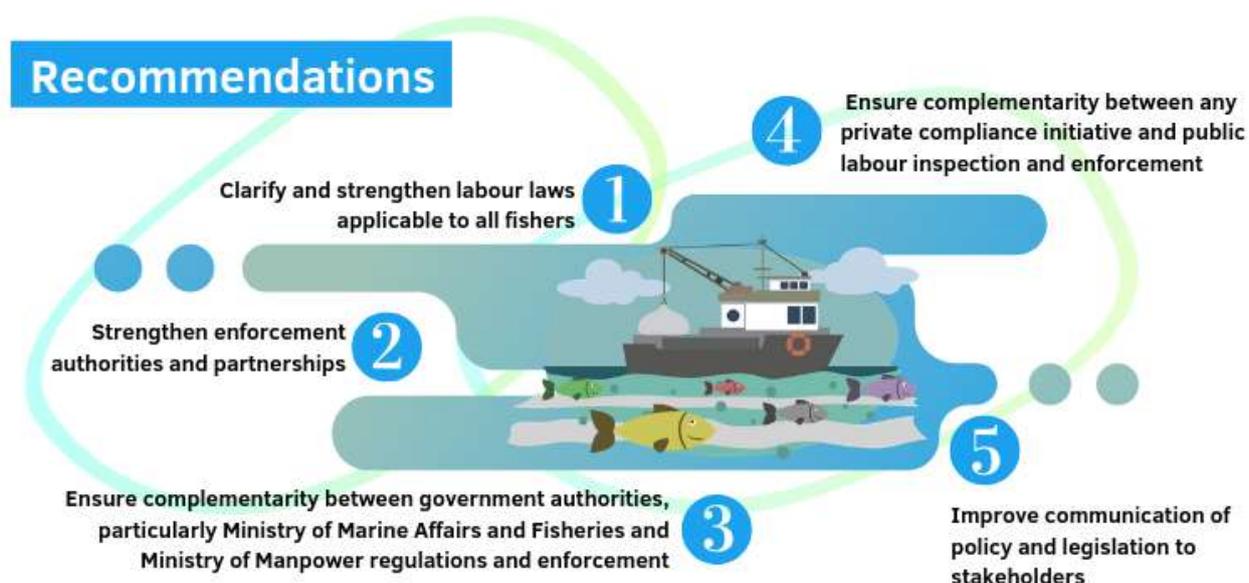
Another example of private sector compliance assessments complementing labour inspections can be found under the ILO's Maritime Labour Convention, 2006 (MLC, 2006) through the "recognized organization" mechanism. The MLC 2006 allows ratifying States to authorize "recognized organizations" to carry out flag-State inspections under the control of the public inspection system. This type of periodic inspection can result in the issuing of a "maritime labour certificate". The certificate is complemented by a declaration of maritime labour compliance with national requirements relating to the working and living conditions of seafarers and of the measures adopted by shipowners to ensure compliance. The maritime labour certificate (issued by the recognized organization) and the declaration of maritime labour compliance (signed by the government authority) are treated as *prima facie* evidence of compliance with the MLC. Accordingly, inspections in ports should normally be limited to a review of the certificate and declaration, save in exceptional circumstances. This system is complemented by an easily accessible complaints mechanism entailing investigation and remediation obligations for ratifying States and an on-board complaint procedure. Where non-conformities are detected, the MLC authorizes port State inspectors to adopt various measures, including retention of the ship in the port until they are rectified.<sup>40</sup> Although the MLC 2006 does not apply to fishers, this "recognized organization" mechanism may be a model for adaptation to expand the capacity of the public inspectorate with private sector compliance assessments.

### 3. Conclusions and recommendations

As the one of the world's largest producers of marine capture fisheries, and one with ongoing growth potential, it is important for Indonesia's economy and export trade to ensure there is robust enforcement of labour laws and protection of human rights for its fishers and workers, particularly as the labour practices of the fishing sector are coming under increasing scrutiny by buyers and trading partners. The Indonesian fisheries human rights certification system and other related laws and regulations passed by the MMAF in recent years have made admirable attempts to address gaps in Indonesia's labour laws. However, due to delays in implementation, at the time of writing, there is no evidence that the fisheries human rights certification system has had any tangible impact on the working and living condition of fishers.

<sup>40</sup> ILO, *Labour inspection and private compliance initiatives: Trends and issues – Background paper for the Meeting of Experts on Labour Inspection and the Role of Private Compliance Initiatives* (Geneva, 10–12 December 2013), p. 92, available at [https://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/--lab\\_admin/documents/meetingdocument/wcms\\_230798.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/--lab_admin/documents/meetingdocument/wcms_230798.pdf).

Figure 5. Recommendations



Moreover, the system created by the MMAF Regulations is currently parallel to, and disconnected from, broader labour regulation and administration headed by the MoM, and does not leverage existing mandate and enforcement powers of the Indonesian labour inspectorate. The PCIs created by the MMAF Regulations currently lack meaningful coercive or persuasive incentives for the private sector. The absence of a referral mechanism means that, even if the system is implemented and violations are found, sanctions are unlikely.

At the same time, there are significant regulatory gaps regarding smaller vessels (under 30GT), and there is considerable confusion among stakeholders about the relevant regulatory authorities for different vessel sizes as well as the effects of Ministerial Regulations 2015/35 and 2/2017. At the same time, while employers and the private sector are worried about increasing regulation, they are less concerned about the need to implement an enterprise-level human rights system based on a series of declarations and documents. Instead, their more substantive concerns reflect their reluctance to implement written FWAs and confusion about what is required of enterprises in order to comply with labour laws and the source of those laws.

The following recommendations are aimed at encouraging strategic reshaping, strong implementation and complementarity between MMAF and MoM regulations and enforcement. The fisheries human rights certification system can be reformed to complement the existing labour inspectorate system and create links between any PCIs implemented in the industry and the public labour system. The recommendations are aimed at creating a system of labour law enforcement and PCIs that mutually reinforce each other and strengthen the protection of fishers and workers in the fisheries sector. At the time, Indonesia needs to prioritise strengthening the national labour inspectorate, clarify its mandate and set targets on compliance in fishing in line with its obligations under ILO Convention No. 81.

## **I. Clarify and strengthen labour laws applicable to all fishers**

- a. Ratify and progressively implement Convention No. 188 in Indonesia as the minimum standard for the work and living conditions for fishers. With ILO support, the Government of Indonesia should clearly communicate the goals and impact of ratification to employers and workers and consult social partners at each stage of implementation.
- b. Clarify the mandate of the Indonesian labour inspectorate in respect of the fishing sector and invest in the national labour inspectorate to fulfil its obligations under ILO Convention No. 81.
- c. Noting the International Labour Committee's Conclusions concerning decent work in global supply chains (2016), under which governments are required to take specific measures aimed at small and medium-sized enterprises, regulate labour conditions on smaller fishing vessels that are currently entirely unregulated or registered and licensed at provincial or local levels. Alternatively, ratification of Convention No. 188 would automatically ensure that all fishers and all fishing vessels engaged in commercial operations are covered by these standards.
- d. Amend Ministerial Regulation 42/2016 to:
  - i. Ensure it is consistent with Convention No. 188, including Annex II, and existing domestic legislation, including labour laws.
  - ii. Clarify the Regulation's relationship to existing domestic legislation, including Law 16/1964 on the Fisheries Profit Sharing System.
  - iii. Clarify its relationship with Ministerial Regulations 35/2015 and 2/2017, particularly in relation to the responsibilities of the fisheries entrepreneur and those of the fishing vessel owner, operator, captain and recruitment agent.
  - iv. Identify an appropriate enforcement authority for FWAs, aligning its mandate with expertise and capacity. For example, through joint inspections between the MMAF's harbourmasters and MoM's labour inspectors.
- e. Develop bilateral and/or multilateral agreements and instruments for inspection, investigation and prosecution of foreign-flag vessels or Indonesian-flagged vessels in foreign ports and waters.
- f. Ensure compliance with Indonesia's international obligations under all human rights conventions, guidelines and other instruments. This includes providing social protection floors, including national minimum wages, and protecting the freedom of workers to establish and/or join organizations, as set out in the ILO Tripartite declaration of principles concerning multinational enterprises and social policy (MNE Declaration).

## **2. Strengthen enforcement authorities and partnerships**

- a. Provide sufficient budget and increase the number of labour inspectors at the MoM and ensure adequate training (including joint operations as recommended above) for the labour inspectorate, particularly in provinces with significant fishing operations..
- b. Using the port-in and port-out inspections implemented in Thailand as a model, continue and expand the joint inspections in fishing ports in Indonesia and include trade unions and workers representatives, as well as employers, in inspections conducted by the labour inspectorate and the MMAF. Engage in regular dialogue with trade unions and workers representatives, as well as employers, on compliance in the fishing sector and improve collaboration between the labour inspectorate and social partners.
- c. Look to regional examples, including Thailand's Maritime Enforcement and Coordination Centre (previously the Command Centre to Combat IUU Fishing) and build on previous models (such as Indonesia's Task Force 115) to create a high-level interagency task force to enforce labour laws and combat labour exploitation and human trafficking in the fisheries sector. This includes the clarification of authority and responsibility for each agency, such as the MMAF, MoM and the Ministry of Transportation.
- d. Continue to participate in the SEA Forum for Fishers and learn from regional partners in the forum.

## **3. Ensure complementarity between government authorities, particularly Ministry of Marine Affairs and Fisheries and Ministry of Manpower regulations and enforcement**

- a. With ILO support, the MMAF and MoM should jointly conduct training and inspections in relation to the fisheries sector, including:
  - i. Jointly developing a curriculum and training for MMAF and MoM staff on marine safety and labour inspections for the maritime and fisheries sector. Alternatively, MoM and MMAF staff can be mutually seconded to gain experience and receive joint training.
  - ii. Jointly developing protocols for inspections for labour law compliance on fishing vessels, with clear delineation of responsibilities and referral systems.
  - iii. While the labour inspectorate has jurisdiction over labour law, consider entering into joint MMAF and MoM agreements to conduct joint inspections in port and at sea of fishing vessels and with fishers to ensure that labour laws, as well as catch regulations, are professionally and robustly enforced.
- b. Consider the use of the private sector compliance assessments to complement labour inspections by adapting the "recognized organization" mechanism under the MLC 2006.

#### **4. Ensure complementarity between any private compliance initiatives and public labour inspection and enforcement**

- a. Amend Ministerial Regulations 35/2015 and 2/2017 and reform the Indonesian fisheries human rights certification system to incorporate best practices to ensure mutually reinforcing compliance assessments by the private sector and public labour inspectorate.
  - i. At a minimum, include a referral mechanism to the labour inspectorate if labour violations are found. The MMAF and MoM may jointly develop protocols for referral and trigger labour inspections. The two ministries may consider joint review and planning mechanisms to enhance the partnership.
  - ii. At a minimum, prioritize implementation of Ministerial Regulations 35/2015 and 2/2017 to target high-risk areas of the fishing sector.
  - iii. Establish independent grievance mechanisms to allow stakeholders, particularly workers and fishers, to challenge certification. These mechanisms may be state-based or non-state-based, in line with the UN Guiding Principles, the MNE Declaration and Indonesia's fisheries laws. Grievance mechanisms need to be legitimate, accessible, predictable, equitable, transparent, rights-compatible and based on engagement and dialogue, in line with UN Guiding Principles 26-30.
  - iv. Strengthen the public and legal consequences for non-compliance, including referral to the labour inspection system, suspension of trade licences or access to credit.
  - v. Consider BWI as a possible model to establish formal relationships and structures between the fisheries human rights certification system and the labour inspectorate under the MoM.
- b. In light of the delays in implementation and using BWI and GLP as models, reshape Ministerial Regulations 35/2015 and 2/2017 to a compliance training programme and advisory service for the remediation of gaps for the fisheries sector. This training programme and advisory service can be jointly developed and overseen by the MoM and MMAF and progressively implemented starting from export-oriented suppliers and moving on to small and medium enterprises in the supply chain.

#### **5. Improve communication of policy and legislation to stakeholders**

- a. Raise awareness of the new regulations across Indonesia and the wider region using social media, radio and television. Ensure fisheries businesses and fishers are aware of the exact contents of the Regulations and their rights and responsibilities. Use innovative media strategies to communicate to stakeholders including fisheries businesses, expectations and requirements and ensure understanding of the broader need for traceability and the human rights requirements of end consumers.

- b. With ILO support, confront and correct misinformation regarding the impact of ratification of Convention No. 188, and national legislation. In particular, clarify the requirement of the fishers work agreements under MMAF regulations 42/2016.
- c. Continue to participate in the SEA Forum for Fishers and use it as an opportunity to consult and communicate with stakeholders, including trade unions, employers' associations, market States and non-governmental organizations on policy development and implementation to improve buy-in and ownership across the fisheries sector.