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The political economy of unfree labor and the state: An Indonesian case study

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Abstract

Employing the concept of unfree labor, this article explores the role of the state in reinforcing victims' vulnerability and shaping the political economy of trafficking practices. Based on a case study of trafficking victims in Benjina and Ambon, Maluku Province, Indonesia, I argue that Indonesian authorities' intervention was driven not by humanitarian interest, nor by the concern for the protection of migrant workers' rights, but rather by the intent to advance a political and economic agenda against the Thai fishing industry. Consequently, the intervention ignored the exploitative relations of production that underpinned the vulnerability of victims, despite being conducted in the name of victim-protection and improving livelihoods.

Keywords

fishermen, human trafficking, unfree labor, Indonesia, political economy

Introduction

Indonesia is a State party to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (hereafter, the UN Trafficking Protocol) and has enacted Law 21/2007 on the Eradication

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19 of the Criminal Act of Trafficking in Persons (hereafter, the Anti-trafficking Law). Given this background, the state is obliged to protect and to provide support to human trafficking victims. Using the concept of unfree labor, this article explores the role of the state in enforcing the Anti-trafficking Law and analyzes whether state intervention promotes the protection of trafficking victims. These questions are examined in the case of trafficked fishermen who were rescued in 2015 in Benjina and Ambon, Maluku Province.

What went before

On 21 March 2015, the Associated Press (AP) released an online investigative report on the story of trafficked fishermen in Benjina, which would be followed by another high-profile case in neighboring Ambon. While Ambon is the provincial capital of Maluku with a government-operated port, Benjina is an area on distant Maikoor Island, whose port is largely controlled by commercial fishing companies. AP was the first media agency to report on the case, which eventually uncovered enslaved fishermen whose marine catch entered the supply chains for major supermarkets, restaurants and pet stores all over the world, including in the United States of America (USA). The majority of fishermen that AP interviewed were Myanmarese, who worked on Thai fishing trawlers illegally operating in Indonesia. PT Pusaka Benjina Resources (PBR), an Indonesian fishing company, owned the harbor in Benjina, and the fish collected in the area were transhipped at sea to a cargo ship owned by Silver Sea Reefer Co. Ltd. (Silver Sea), a Thai shipping company (McDowell et al., 2015). The case attracted much international attention, which motivated the Indonesian government to intervene and detect enslaved fishermen from three other mainland Southeast Asian countries.

Just over a week later, on 3 April 2015, the Indonesian government evacuated hundreds of fishermen to the neighboring island of Tual, beginning what government and observers would refer to as the "Benjina case." There were 654 fishermen, and they originated from Myanmar (508), Cambodia (96), Thailand (42) and Laos (8) (IOM-Indonesia et al., 2016: 94; Dillon, 2015b). But in the haste to "rescue" the fishermen back in April, the Indonesian government did not collect exact numbers. About 320 were evacuated to Tual, and initially 50 fishermen from Myanmar even refused to leave Benjina without their unpaid wages (McDowell and Mason, 2015). But they later gave up on their demands along with the other evacuated fishermen. In Tual, the International Organization for Migration in Indonesia (hereafter IOM-Indonesia) provided health assessments, medical aid and psycho-social assistance, as well as determined whether the fishermen were victims of trafficking. Perpetrators were arrested for prosecution in Indonesia, and IOM-Indonesia arranged the repatriation of the victims by coordinating with Indonesia's Directorate General of Immigration and the embassies of

Cambodia, Myanmar and Laos to verify the victims' nationality and prepare travel documents for their return home.

Initially, the rescue mission in Benjina appeared smooth and successful due to the swift response of actors, acting under the guidance of the UN Trafficking Protocol. However, problems regarding repatriation and the victims' right to unpaid salaries soon surfaced. During the immediate rescue process, there was almost no public mention of victims' right to unpaid wages or negotiations for back pay. An Al Jazeera (2016) documentary on the case told of how two victims from Benjina, who did not receive back pay after repatriation, struggled to continue their lives amid poverty and unemployment. A victim confessed that returning home without compensation made him a burden to his family. He had difficulty starting a new life due to limited access to enter the job market. Return assistance, thus, should consider not only how to prevent trafficking but also address the struggles victims are likely to face after the intervention.

The situation was completely different in nearby Ambon a few months later, where the majority of victims were supported to negotiate for back pay before repatriation (Dillon, 2015a; Rogers, 2015). The 'Ambon case' attracted attention after dozens of trawlers anchored in Ambon harbor were not permitted to leave due to a recently-issued moratorium on the use of foreign fishing vessels in Indonesian waters. In June 2015, the Cambodian Embassy informed IOM-Indonesia that 230 of their citizens were stuck in vessels in Ambon port. But before IOM-Indonesia had a chance to screen the Cambodians for indications of human trafficking, as they had done in Benjina, employers chartered a private plane to repatriate them, in coordination with the Indonesian and Cambodian government. Thus, the Cambodian fishermen were given no opportunity to claim compensation or secure back pay (Rogers, 2015; Palmer, 2018: 60). Among the 459 remaining fishermen, IOM-Indonesia identified 363 new victims of trafficking in that region. IOM-Indonesia supported the claim for back pay of this latter group of fishermen, after they demanded payment before agreeing to repatriation.

In retrospect, the rescue mission was not focused on alleviating the exploitative relations of production that characterized the working conditions of these fishermen. Although state agencies did their part in enforcing the Anti-trafficking Law, as discussed in this article, they also played a part in reproducing the vulnerabilities of labor trafficking victims. Human rights discourse, as well as narratives of vulnerable fishermen, were used by Indonesian state agencies in order to advance its agenda against Thai fisheries. In intervening in a highly publicized case of human trafficking within its national waters, Indonesia's Ministry of Maritime and Marine Affairs (Kementerian Kelautan dan Perikanan or KKP) sought to further discredit the Thai fishing industry, already under considerable international scrutiny for its forced labor practices. As mentioned, the enforcement of

anti-trafficking laws was less about the protection and empowerment of victims and more about clamping down on illegal Thai fishing in Indonesian waters within the broader objectives of making Indonesian fisheries more globally competitive.

The role of the state

Previous research has attempted to link human trafficking with severe labor exploitation. Some view the phenomena of human trafficking and new slavery as unequal power relations between labor and capital, rather than as a market anomaly in the global capitalism structure (LeBaron and Ayers, 2013; Shamir, 2012; Strauss and McGrath, 2016; McGrath, 2013a). Other scholars focus on the enforcement of human trafficking, slavery, forced labor and rights protection regimes to sustain the hegemony of certain approaches in resolving human trafficking cases or slavery (Yea, 2015; Palmer, 2018; Chuang, 2014; David, 2015). There is also interest in examining the complexities of victims' lived experiences before and after state interventions, placing the outside-in approach to engage with victims' vulnerabilities in anti-trafficking regimes (Weitzer, 2014; Kempadoo, 2015; Paasche et al., 2018). However, the role of state agencies/actors in contributing toward reproducing vulnerabilities in the anti-trafficking project has not been sufficiently analyzed. A closer look at the Benjina and Ambon cases reveals that the state plays an active role in reinforcing migrant vulnerabilities through various modes of enforcement and the use of anti-trafficking and protection narratives to advance its own national political-economic interests.

Structure of the paper

The article is divided into six sections. First, it discusses the concept of unfree labor, examining the way it shapes both labor's vulnerability and the Indonesian government's role in using victims' condition as a strategic tool to take advantage of Thai fisheries' damaged reputation in the global market. The section also discusses limitations of the UN Trafficking Protocol, which overlooks the labor relations dimension in dealing with trafficking cases. Second, it presents the methodology and data sources of the research. The details of the Benjina case to illustrate the role of the state in reinforcing unfree labor are discussed in section three. Fourth, it shows how the mode of enforcement performed by the Indonesian government reinforce the condition of unfree labor, as highlighted by the asymmetrical relations between victims and fishing companies over the issue of unpaid salaries. The fifth section provides evidence on how the human rights narrative was used to advance Indonesian economic interests in the global fisheries industry. The sixth and final section concludes and offers some recommendations.

Unfree labor and the UN Trafficking Protocol

2 Unfree labor denotes a precarious, unprotected and highly exploitative condition in which workers need to endure in their participation in the contemporary global economy (Barrientos et al., 2013: 1037). 2 Unfreedom refers to “the significant restrictions on workers’ various freedoms” (Yea and Chok, 2018: 926), such as—in relation to the case study—the freedom to contest slavery-like practices during employment, the freedom to exit enslavement and re-enter the labor market, the right to claim unpaid salaries, and the freedom of movement. The concept proposes ‘continuum-oriented frameworks’—where workers can be more or less free—to disengage from a dichotomy of “free” or “unfree” labor (McGrath and Strauss, 2015: 302; Barrientos et al., 2013: 1037–1038; Lerche, 2011: 6–7; Yea, 2017: 3). 2 This approach argues that under capitalism, a range of compulsions continuously structure workers’ commodification of their labor power, thus subjecting them to economic coercion. Compulsion is understood as multidimensional, involving various types of violence and controls imposed upon workers that limit their autonomy to choose the buyer of their labor power in the market (McGrath, 2013a: 33, 2013b; Bernards, 2018). The characteristic of compulsion “destabilizes any notion that ‘slavery-like’ conditions are exceptional” (Yea, 2017: 2), particularly when politically-assisted market rule and labor deregulation tendencies adopted by many countries were positively associated with forced labor and human trafficking (Peksen et al., 2017: 7). Therefore, conceptualizing unfree labor as an embedded characteristic helps explain why victims of trafficking or slavery remain unfree even after the resolution of rescue missions.

In presenting a connection between states and unfree labor, the approach highlights the interplay between a repressive capitalist structure and the agency of neoliberal state authorities in facilitating the reproduction of workers’ vulnerability and shaping the governance of unfree labor. States contribute to the governance of unfree labor, primarily through migration control and the enforcement of market and business regulations (LeBaron and Phillips, 2019: 6–7). In the case study, immigration controls informed by the domestic anti-trafficking law and the UN Trafficking Protocol were used to rescue, assist and repatriate victims. The interventions were remiss on labor regulations to protect victims’ employment rights, especially when the Indonesian government treated the victims as undocumented migrants (their employers had confiscated their identity documents) and non-citizens (Palmer, 2018: 60). The UN Protocol has been heavily criticized by many scholars due to its state-centric approach in addressing such cases and protecting the human rights of victims. Many argue that the protocol is narrowly focused on criminal prosecution, relegating victim protection and international cooperation to options, rather than obligations, for states (Jansson, 2014: 74–77; Martin and Callaway, 2011: 234).

Protection concerning human trafficking is related to the capability and political willingness of government agencies and other related actors to provide resources necessary for victims to reclaim their rights while addressing their vulnerability. According to the UN Trafficking Protocol, there are several obligations that states must provide to protect the victims: (1) rapid and accurate victim identification, (2) no prosecution or detention of victims, (3) protection of and support to victims, (4) legal assistance, (5) participation in legal proceedings and the right to remain, and (6) attention to the rights and needs of child victims. However, the protocol does not contain specific and detailed mechanisms of protection and support to victims within state jurisdiction. States might promote protection and support if they facilitate criminal prosecution (see Chapter 5, Gallagher, 2010). Hence, the actual mechanisms to protect victims depend on the interest of state agencies and their capacities to provide protection and support (see Clark, 2003; Hernandez and Rudolph, 2015; Jonsson, 2012; Okubo and Shelley, 2011; Blanton et al., 2018).

Gallagher (2010: 337–339) mentioned that states also often prefer to quickly repatriate victims to their country of origin, even though the UN Trafficking Protocol requires repatriation to “preferably be voluntary” and to be conducted “with due regard for the safety of the person and the status of any related legal proceedings.” The *travaux préparatoires* of the protocol and an Interpretative Note mention that many states were resistant toward voluntary repatriation and felt that it should not be understood as an obligation. Thus, it is common for the states to conduct forcible repatriation without considering victims’ future well-being (Gallagher, 2010: 337–349). This type of repatriation is, indeed, problematic as states continuously reproduce victims’ deportability as illegal aliens and disposable economic subjects (Bal, 2015: 281; De Genova, 2002: 439). Therefore, the implementation of a repatriation policy can be considered as an effort to enforce migration control through state power, in order to decide who is in and who is out.

Moreover, the lack of international cooperation on this issue may have implications for intervention, rescue programs and law enforcement, as states prefer to play neutral by avoiding breaching each other’s sovereign jurisdiction. According to Gallagher (2010: 404–405), states can cooperate beyond borders for investigation and prosecution of trafficking cases. However, cooperation will depend on the desire and goodwill of the states to perform cross-border operations. Thus, to understand the state’s interest, Aspinall and Van Klinken (2011: 10–11) explained that it is useful to locate arenas in which the actors invest their strategic actions to compete with other actors. The exertion of control over victims’ powerlessness (Mende, 2019: 238) is a crucial attribute of how dominant groups use various forms of structural and productive power to rationalize their actions (Choi-Fitzpatrick, 2017).

In the context of this case study, attempts by KKP and IOM-Indonesia to enforce the UN Trafficking Protocol had the effect of compounding victims’

precarity and vulnerability. The immediate repatriation of victims from Benjina, without considering their right to claim unpaid salary, indicates that the state only employs the logic of migration control to swiftly expel foreign victims out of Indonesian jurisdiction. Beyond the rescue mission, KKP employed two strategic actions to advance its political-economic agenda against Thai fisheries. Firstly, KKP reinforced the **legal, Unreported, and Unregulated Fishing (IUUF)** policy measures to restructure the Indonesian fishery market (Parlina and Salim, 2015; *Kompas Daily*, 2015a; Fardah, 2014). Secondly, KKP used the narrative of human rights and victims' adversity to disguise their primary intention and interest in making these interventions: to dominate the global fishery market, especially in European countries and the US, while Thailand restructured its industries to recover from the Benjina case.

Methodology and data sources

The period of study of this article is March 2015 to August 2016, and I conducted face-to-face interviews with five high-ranking officials who played crucial roles in determining and assisting the Indonesian government's approach. Representatives from KKP, included Yunus Husein, ¹ Deputy Chief of the Task Force for the Prevention and Eradication of IUUF, and ¹ A Cholieq Syahid, Head of Ambon Fishery Port. Husein's task force was assigned by the KKP minister to work with IOM-Indonesia on the case, and Syahid had an active role in providing victims with temporary shelter in the port of Ambon before their repatriation. As a *shahbandar* (harbor master), Syahid was familiar with the day-to-day activities of the fisheries, including both small- and large-scale fishers. To better understand the state's law enforcement objectives, I also interviewed a prosecutor, Nana Riana, in his capacity as a member of ⁶ the Attorney General's Anti-Terrorism and Transnational Crime Task Force, which prosecuted the case. An Ambon Immigration officer, Frederick,¹ who was involved in the repatriation, provided data about immigration control imperatives at the time. Lastly, I interviewed a senior official from IOM-Indonesia, which assisted these government agencies in their responses to the trafficking cases. The interviews were conducted in two locations, which were Jakarta (Hussein, Riana and the IOM-Indonesia official) and Ambon (Syahid and Frederick). Respondents consented to be identified and named in this study, except for the IOM-Indonesia official, who requested anonymity.

In addition, I used secondary sources from the media, government and NGO reports to fill gaps in the interview data. The media reports used in this article are from the period of March 2015 to April 2016. I also conducted

¹Frederick is a mononymous name.

participant observation of the back pay negotiation process between the victims and their companies in Ambon. I did this observation during my internship period at the IOM-Indonesia Counter Trafficking and Labour Migration (CTLM) unit from 20 August 2015 to 20 November 2015. Overall, the interview and participant observation data often ended up contradicting media reports that portray the success of the government in cracking down on the case and rescuing the victims. The interview data also confirmed the government's strategic approach in using the case to promote the economic interests of Indonesian fisheries.

The trafficking case in Benjina: Saving the victims?

Trafficking victims were identified in two primary locations (see Figure 1), Benjina and Ambon. Both locations are in the eastern part of the Indonesian



Figure 1. Ambon and Benjina location.

Note: The author modified the original map to highlight Benjina and Ambon.

Source: Wikimedia commons. https://commons.wikimedia.org/wiki/File:Indonesia_provinces_outline_map.svg

archipelago and are part of Maluku province. The province is one of the biggest fish producers in Indonesia—particularly the Arafura Sea—which provides diverse fishing products such as tuna, squid and many others (Tubaka, 2019). A report by IOM-Indonesia, KKP and Coventry University (2016: 16–17) showed that foreign fishing vessels operating in Benjina and Ambon had violated Indonesian fisheries regulations, such as using illegal fuel, transshipment at sea, violating customs rules and reflagging their vessels to appear Indonesian.

Most of the media reporting and the Indonesian government's intervention was concentrated in Benjina because of the global attention on the case (McDowell and Mason, 2015; Mendoza et al., 2016; McDowell et al., 2015). The AP started investigating the story after learning from an anonymous source about the increasing number of stranded Myanmar fishermen in Benjina. Before publishing the story in March 2015, the AP provided evidence to IOM-Indonesia to ask for its help in rescuing the men and ensuring their safety. About two weeks before the story ran, IOM-Indonesia informed the Indonesian marine police of the need to rescue the fishermen from Benjina island. Eight fishermen were rescued in Benjina, including the AP source. After the March 2015 story was published, seafood businesses in the USA, including Walmart, wrote to the Thai and Indonesian ambassadors in Washington demanding action. The Obama administration (2009–2017) acted by passing the 2015 US Trade Facilitation and Trade Enforcement Act to ban all products made with forced labor and human trafficking from all over the world. The law forced exporter countries, like Thailand, to ensure that their products were not linked to either of those crimes in order to continue supplying importers in the US (Mendoza, 2016).

The rescue operation was marked by two key features. First, the KKP took a leading role in the intervention to avoid reputational damage to the Indonesian fishing industry. Susi Pudjiastuti—KKP minister—expressed her worry that the case would damage the image of the Indonesian fishing industry as the world might think that Indonesian fishing trawlers used forced labor. She believed that the forced labor practices were largely confined to Thai trawlers, albeit with permission granted by the Indonesia government, which reflected the common practice of illegal fishing in Indonesian waters (Kompas, 2015d). Pudjiastuti's concern was not for the victims as exploited workers but was more about the case becoming a potential disruption to Indonesian fishing. Thus, KKP's initial response was mostly to protect Indonesian waters from foreign fishing. Under the Marine and Fisheries Minister Regulation No. 56/2014, a moratorium was imposed on granting permits for foreign fishing vessels to fish in Indonesian waters. The moratorium was supposed to be lifted on 30 April 2015, but because of the trafficking case in Benjina, the deadline was extended to six months. The extension was granted to show the government's commitment to combating IUUF and

cracking down on forced labor in Benjina. Along with the extension of the moratorium policy, Pudjiastuti also issued a ministerial regulation for human rights protection in the fishing industry. The regulation was aimed at helping KKP in fighting IUUF and putting an end to forced labor practices in the industry.

The second key feature of the intervention was how the investigation, rescue and repatriation were conducted. The government, with the help of IOM-Indonesia, swiftly responded to evacuate and rescue the victims in Benjina. The government conducted investigations (Salim, 2015; Parlina and Salim, 2015), victim identification (Mason and McDowell, 2015; Grahadyarini, 2015), victim evacuation (Mason and McDowell, 2015; Salim and Sundaryani, 2015), established temporary shelters (*Kompas Daily*, 2015e; *The Jakarta Post*, 2015), provided healthcare (Mason and McDowell, 2015; Grahadyarini, 2015) and implemented repatriation (*Kompas Daily*, 2015b, 2015c; *The Jakarta Post*, 2015). KKP and law enforcement agencies conducted investigations to examine possible violations in Benjina and identify suspects (Parlina and Salim, 2015), which were later used to prosecute PT. PBR under the Anti-trafficking Law (AP, 2015).

IOM-Indonesia's CTLM unit also played a central role in rescuing victims. As mandated, the unit applies a three-pronged approach to combat trafficking—prevention, protection and prosecution. While prevention is mainly performed by raising public awareness and conducting capacity building with various stakeholders, IOM-Indonesia's protection program includes providing identification, repatriation and reintegration assistance to Indonesian and foreign victims of trafficking. Under its Victims Assistance Fund (VAF), it provides protection to victims as well as technical support to improve the role of local anti-trafficking efforts. The CTLM unit assists law enforcement agencies in developing guidelines and training manuals to strengthen the implementation of Indonesia's Anti-trafficking Law. It also focuses on labor migration because of the significant number of migrant workers cases in Indonesia. Its work on labor migration focuses on the development of migrant labor policies and programs as well as providing effective protection and assistance to labor migrants. However, unlike counter-trafficking, the CLTM unit has no national regulations to guide it in protecting and assisting labor migrants (see IOM-Indonesia, n.d., IOM-Indonesia and Ministry of Women Empowerment and Child Protection of the Republic of Indonesia, 2019: 14–15). Concerning the case of trafficking in Benjina and Ambon, IOM-Indonesia's response was explained as follows:

1 The immediate response, the first step (was to) screen everyone, see if there (are) any vulnerable cases, and get those vulnerable cases away from the perpetrators, the ones who are committing the abuse. The immediate response (was) to get a large population of people away from Benjina and bring them to Tual (the

nearest accessible island), to get them away from those who commit the abuses and also to protect them and then get them home (IOM-Indonesia official, interview, 18 April 2016).

For the screening process, IOM-Indonesia used the UN Trafficking Protocol and Indonesia's Anti-trafficking Law as its basis to formulate the checklist to identify victims. In the Benjina and Ambon case, the most challenging part of identification was to determine the members of the captain's inner circle in the trawlers' organization structure and to separate victims from perpetrators (IOM-Indonesia official, interview, 18 April 2016). From 7 April 2015 to 31 January 2016, IOM-Indonesia managed to identify 656 victims in Benjina and 472 victims in Ambon. Most of the identified victims were fishermen from Myanmar (891), Thailand (122), Cambodia (99) and Laos (14). IOM-Indonesia also provided 1,075 trafficked foreign fishermen in Benjina and Ambon with repatriation assistance. Besides repatriation assistance, IOM-Cambodia provided reintegration assistance to 84 Cambodians. IOM-Myanmar provided the same assistance in collaboration with the Myanmar government. However, the exact number of beneficiaries in Myanmar was not reported (IOM et al., 2016: 94), and the IOM-Myanmar official website did not publish an official report of the program. The report did not provide any information on whether Thai and Laotian victims were offered reintegration assistance.

Initially, the intervention process appeared reasonable and successful, until an Al Jazeera documentary revealed that victims in Benjina were repatriated without receiving their outstanding wages (Al Jazeera, 2016). This was in contrast to the Ambon case, where victims had a chance to negotiate back payment of wages with the company. The victims insisted on their right to receive their salary before returning home (Dillon, 2015a; Rogers, 2015; Palmer, 2018: 59–60). IOM-Indonesia had also learned an important lesson from Benjina: intervention should not only be limited to rescue. In retrospect, the IOM-Indonesia official considered the situation of the rescued fishermen in the Benjina situation unfortunate: "there was such a rush to make sure that they got home quickly . . . everyone who left from Benjina got nothing on any back salary" (IOM official, interview, 18 April 2016).

The back pay issue, furthermore, revealed that both the government and IOM-Indonesia repatriated victims without a clear strategy to protect and support victims' right to salary. They only considered the workers' unfree labor condition as basis for screening and identifying them as victims. None of the agencies involved considered the exploitative labor conditions that victims had been trapped in prior to the rescue, or the fact that they were owed wages. In other words, the case was handled solely as a crime in the fisheries sector and neglected the violation of labor rights.

The IOM-Indonesia official's statement (interview, 18 April 2016) implies an acknowledgment of the organization's shortcomings in helping victims

secure their rights. While later declaring its mandate only as an observer of salary negotiations (see Dillon, 2015a), local IOM-Indonesia staff tried to rectify their failure in Benjina by helping the victims in Ambon negotiate for back pay. However, KKP did not emphasize protection and support at any point, as it pursued the agenda of clamping down on Thai illegal fishing in Indonesia. The next section discusses the back pay issue and the logic behind KKP's intervention in greater detail.

State interventions: Repatriation without labor compensation?

As discussed above, the protection and support of victims was not a primary objective of the Indonesian government. In responding to AP's March 2015 report, IOM-Indonesia mainly conducted the screening process and facilitated immediate repatriation (Dillon, 2015b). At that time, it was reasonable to rely on IOM-Indonesia as it had the capacity based on the trafficking protocol guidelines and the funds to repatriate the victims. The same situation occurred in Ambon in June 2015. Palmer (2018: 63) stated that IOM-Indonesia had done most of the support and protection phases in Ambon due to the Indonesian government's lack of capacity—even willingness—to help the victims.

The noticeable difference between the Benjina and Ambon cases was the back pay negotiation issue. In Benjina, IOM-Indonesia repatriated 654 of 656 screened fishermen from April 2015 to January 2016. The two other fishermen refused to return home and went missing (IOM-Indonesia et al., 2016: 94). It was learned that the other migrants were repatriated without receiving their salary. In Ambon, however, most of the victims refused to leave before receiving their unpaid wages for the work they had performed in the fishing trawlers. Victims in Ambon refused to leave after witnessing colleagues from Cambodia being repatriated without pay in June 2016 (Palmer, 2018: 60). A chartered flight booked by the fishing companies, in coordination with the Cambodian government, had sent them to Cambodia before Indonesian authorities and IOM-Indonesia reviewed their trafficking status. This alarmed victims in Ambon, who feared that their employers would do the same thing by colluding with their home governments to avoid paying wages. They demanded that they should receive payment before they entered the Assisted Voluntary Returns and Reintegration (AVRR) program (Dillon, 2015b; Palmer, 2018: 60).

Initially, the Indonesian government requested IOM-Indonesia to help arrange the AVRR program of the Ambon victims by coordinating with the embassies for travel documents and providing a one-way air ticket to their country of origin. The refusal of the victims to return home without securing their unpaid wages complicated the process. KKP, the Indonesian National Police, the Ministry of Manpower and the Immigration Directorate General

stepped in to negotiate with the three major companies in Ambon that were responsible for forced labor practices. IOM-Indonesia took part as an observer in the negotiation process (IOM-Indonesia et al., 2016: 100–101; Palmer, 2018: 60–61). By 31 January 2016, IOM-Indonesia reported that there were 373 Myanmarese and one Cambodian who reached an agreement with their companies for back pay; 87 victims decided not to submit claims, 12 fishermen could not file claims because their company was in Benjina, and seven others could not identify their employers. The fishermen from Laos and Thailand were provided assistance by their governments; hence, they did not participate in the wage negotiation discussions.

However, the negotiation process was unfavorable for the victims as they could not negotiate with companies on an equal footing. The negotiation was voluntary in nature between the companies and the victims. During the negotiation, I observed that none of the intervening actors—KPK, the Indonesian National Police, the Ministry of Manpower, and the Immigration Directorate General—actively argued in the interest of the victims. The companies could easily have their way because the victims did not have documents or evidence to prove their claims for back wages. The Indonesian authorities did not invoke domestic labor regulations to force the companies to pay up. The language barrier was also a problem that made the victims helpless in communicating their demands to the companies. At that time, the translation process solely depended on the victims who could speak some rudimentary Indonesian. This language barrier benefited the companies as they could pressure the victims into accepting less money.

In the absence of proper representation, it was IOM-Indonesia's local staff who provided assistance to the victims by re-calculating their claims, counter-checking competing claims and negotiating for victims when disputes occurred. However, IOM-Indonesia's position raised a code of conduct issue as it was supposed to be an observer and a neutral party during the negotiation process. IOM-Indonesia did overstep its boundaries, but it felt compelled to be more proactive to protect the victims' interest.

Yes, maybe we "stretched" [our jurisdiction] a little bit on behalf of the fishermen. We acted almost on behalf of protecting the fishermen's interest so that they didn't get cheated . . . All that we did was put an effort to tell the fishing company, "This is what the victims say you owe them, and you are trying to pay less [than the victims' claim] and you are trying to cheat them. You are trying to break your promise regarding the amount of money you will pay them." Yes, we should not have participated in the negotiation to that extent; we should have really been there as an observer (IOM-Indonesia, interview, 18 April 2016).

The passive involvement of Indonesian authorities in the back pay negotiation in Ambon indicates the disinterest of the Indonesian government in pursuing

the issue of unpaid wages. In fact, the Immigration Directorate General pressured IOM-Indonesia to conclude the negotiation process rapidly; the discussion lengthened as there were disputes between the victims and the companies on ⁶the length of employment and the amount of promised wages. The Immigration Directorate General wanted the victims out of Indonesia in the shortest time possible (Palmer, 2018: 60). An interview with an Ambon immigration officer supports this observation and suggests their office's approach to trafficking:

[Under Indonesia's Anti-trafficking Law], if it is human trafficking, they are no longer treated as illegal migrants. Under the Anti-trafficking Law, we give them [the victims] facilities [temporary shelter] and for IOM-Indonesia to identify them and send them back home immediately afterwards. If using immigration's SOP (Standard Operating Procedures for illegal migrants), you [the victims] will be detained. We won't take care of their well-being in our detained facilities. They must accept what is there. Eat whatever we serve them. But if they are found to be illegal migrants, they must be deported. Deportation is difficult for us, as we must prepare documentation, especially if their respective countries of origin refuse to recognize them. They will then become stateless and die in Indonesia. If they're dead, it's not a problem. If they make trouble or commit criminal activities in Indonesia, that's the problem (Frederick, interview, 31 March 2016).

Frederick's statement, moreover, indicated how the deportability of the victims was reinforced through the way the state constructed their legal status. The victims were considered disposable, as their presence in Indonesia had no further value to the society and the economy after the case. The Directorate General of Immigration wanted the victims to return home immediately, disregarding victims' demands for back pay. Thus, the problem of human trafficking was addressed by enforcing immigration laws over protecting migrant workers from exploitative labor conditions (Palmer and Missbach, 2019: 915–916).

⁵Both the UN Trafficking Protocol and Indonesia's Anti-trafficking Law appeared inadequate in enabling victims to claim unpaid wages. While there is a mechanism under the Anti-trafficking Law to claim restitution for human trafficking cases, the restitution could only be ordered by the courts. According to state prosecutor Riana (interview, 20 April 2016), who worked on the cases of fishermen in Benjina, by the time the case had gone to the courts, prosecutors had trouble identifying victims as many had already been repatriated. ¹When prosecutors were preparing the case, they received assistance from the Witness and Victim Protection Agency (LPSK) to identify victims who wanted to press charges, but LPSK or even the Myanmar government could not locate the victims.

LPSK said that too many victims were repatriated from Benjina. However, LPSK said that they would do their best to represent the victims' rights to restitution. They were ready to coordinate (with the) Myanmar government for such matter. They had expressed their willingness to (the) Myanmar government if there were any other victims that would like to press charges. However, (the) Myanmar government itself had difficulty in locating the victims (Riana, interview, 20 April 2016).

The cross-border dimension, thus, also renders it difficult to enforce the Indonesian Anti-trafficking Law. The decision to immediately repatriate victims made it nearly impossible to process victims' claims under Indonesian jurisdiction. Consequently, most of the victims who returned to their countries of origin without obtaining salary would suffer further, as shared by one of the victims in an Al Jazeera documentary (2016) who struggled to find a job after repatriation.

I am still struggling, and I still have no proper job. It seems like the more I try to find jobs, the harder they are to get. If I had received my wage, it could have been the capital to start my own small business.

The victim's condition explains the continuing dimension of unfree labor, where poverty and vulnerabilities continue to affect victims' lives. Moreover, the negotiation of the back pay issue in Ambon illustrated how state interventions reinforce rather than reduce workers' vulnerability. The Indonesian government's primary intention was to have the victims return to their respective countries of origin, releasing the burden of having "illegal aliens" in Indonesian territory. IOM-Indonesia acted under pressure as the Indonesian government demanded that victims were to be quickly repatriated. Thus, IOM-Indonesia's role was limited as they had to comply with the state's migration control policy. Somewhat opportunistically too, the Indonesian government then used the case to further damage the global reputation of the Thai fishing industry, another major Southeast Asian competitor in the global market.

Economic interests and human rights in disguise

In 2016, Indonesia yielded 6,109,783 tons of marine products, making Indonesia the world's second-largest marine product supplier behind China (Food and Agriculture Organization (FAO) of the United Nations, 2018: 9). Indonesia's achievement in this area does not reflect positively in terms of export value. Indonesia had a total USD3,861 million export value in 2016 (FAO, 2011) compared with Thailand's total export value of USD5,893 million in 2016, putting Thailand in fourth place after China, Norway and Vietnam

Table 1. Marine capture production: Indonesia and Thailand.

| Country | Production (tons) | | | Global Rank (2016) |
|-----------|-------------------|-----------|-----------|--------------------|
| | Average 2005–2014 | 2015 | 2016 | |
| Indonesia | 5,074,932 | 6,216,777 | 6,109,783 | 2 |
| Thailand | 1,830,315 | 1,317,217 | 1,343,283 | 15 |

Source: Food and Agriculture Organization of the United Nations (FAO) (2018: 9).

(FAO, 2018: 55). Indonesia is not among the top ten largest exporters, although in 2016, as seen in Table 1, Indonesia's marine catch was larger than Thailand's (FAO, 2018: 9).

Several Indonesian key informants speculated that illegal fishing by Thai vessels in Indonesia accounts for the discrepancy in Indonesia's production and export value. One key informant believed that 95 percent of catches in Ambon went to Thailand (interview with Syahid, 28 March 2016). Another key informant also expressed that the Thai fishing industry made a fortune from "barbaric" forced labor practices. These statements resonated with the overarching narrative of KKP Minister Pudjiastuti, who framed KKP's interventions in the trafficking cases as part of their efforts to eradicate IUUF in Indonesia (*Kompas Daily*, 2015d). The key informant's references to Thailand indicates that the informants viewed the case not only as a human rights issue but also as economic competition.

According to the Environmental Justice Foundation (EJF), Thailand's fisheries resources have been in crisis for decades because of overfishing. EJF found that since the late 1960s, Thailand's catches of marine fish in the Gulf of Thailand and the Andaman Sea have plummeted by 86 percent, making it one of the most over-fished countries in the world. Human trafficking and slavery are also common in the Thai fishing industry (EJF, 2015: 4; Issara Institute and International Justice Mission, 2017: 1). Indonesia has been quite firm in tackling IUUF since Pudjiastuti was appointed minister in 2014; IUUF has caused tremendous economic loss to Indonesia (Rahman, 2014). Initially, the reason KKP Marine and Fisheries Minister imposed a moratorium on using ex-foreign fishing vessels in Indonesian waters was to combat illegal fishing there.

you ask me, yes, the moratorium will stop the illegal fishing conducted by foreign vessels. Like in Benjina and Ambon, the fish there are mostly transferred to Thailand. So, this moratorium will benefit us, our fish resources will be for us, for our prosperity (Hussein, interview, 15 April 2016).

The moratorium was initially due to be lifted on 30 April 2015, a month after the AP reported the case. However, Pudjiastuti used the case to extend the

moratorium to combat IUUF and to respond to the Benjina case. When the scandal broke, the Indonesian government received another “weapon” to attack the Thai fishing industry. Furthermore, KKP also used the discourse of human rights and human trafficking to advance its economic agenda. The enactment of the Marine Affairs and Fisheries Regulation No. 35/2015 on System and Certification of Human Rights on Fisheries Business was another move. The regulation was a strategy to take advantage of the reputational damage to the Thai fishing industry following the European Commission’s (2015) issuance of a “yellow card” for IUUF and the US Trafficking in Persons (TIP) report (US Department of State, 2016: 39–40) placing Thailand as a tier-three country—the lowest rank in the report. According to KKP, the regulation was built on the UN Guiding Principles on Business and Human Rights and International Labour Organization (ILO) Work in Fishing Convention 2007 (ILO 188). The regulation was intended to promote ethical business in Indonesian fisheries with provisions for a standard minimum wage and clear working hours for fisheries workers, among others. Such market ethics, furthermore, became the grand narrative for the Indonesian government in global forums. At the 2015 Global Seafood Expo in Brussels, Indonesia announced its commitment to upholding human rights standards in the fisheries industry, citing its efforts in building good labor practices after the Benjina and Ambon cases (*Kompas Daily*, 2015b).

We are heading there, to the US and Europe. The European market has agreed to promote traceability, where fish and fish products should not come from any practice that violates human rights value. Otherwise, Europe will not buy our product (Husein, interview, 15 April 2016).

The Indonesian government used the Marine Affairs and Fisheries Regulation No. 35/2015 on System and Certification of Human Rights on Fisheries Business to penetrate the European and US markets, which are perceived to have zero tolerance toward human rights violations. Therefore, the forced labor and human trafficking narratives are continuously reinforced and supplemented with new regulations, to strengthen Indonesia’s efforts to promote its fisheries. However, a key informant said that KKP was not entirely ready to implement the regulation due to the lack of guidelines and mechanisms at the time the regulation was signed into law in December 2015. Indonesia has not ratified the ILO 188 (See ILO, 2017), although the regulation was formulated based on this convention. According to a key informant, the regulation was essential to get global recognition, and therefore, the guidelines were hastily formulated. To fill the gaps, Pudjiastuti later issued the Marine and Fisheries Ministerial Regulation No. 2/2017 toward a human rights certification mechanism in the fisheries industry. The certification is mandatory for fishing companies that want to obtain or extend operational licenses.

As mandated by the 2017 regulation, KKP established a Human Rights in Fishery team to conduct the certification process (Ambari, 2019).

Overall, KKP's interventions have been guided by its interest to promote the Indonesian fishing industry while painting its competitor, the Thai fishing industry, as a violator. Enslavement, human rights and human trafficking are the discourses that were employed against errant Thai fishing vessels. The Indonesian government treated victims as disposable economic subjects, taking advantage of victims' vulnerability—both prior to and after the intervention—to construct a narrative of Thai fishing boats using slaves and fishing illegally in Indonesian waters. Such a narrative allowed the Indonesian government to economically benefit from the trafficking scandal, while ignoring the adverse effects of the intervention and rescue process. This had severe consequences for the victims who remained vulnerable even after they had returned to their home countries. In shaping the governance of unfree labor, Indonesian state authorities were, thus, an active actor in reproducing the vulnerability of victims.

Conclusion

This article attempted to demonstrate the link between the Indonesian authorities' power and their ability to reinforce unfree labor conditions. The authorities tend to see forced labor as a market abnormality caused by unethical business practices. For many, the solution is to fix this market irregularity by upholding business ethics. However, this view neglects state actors' active role in facilitating workers' vulnerability in the governance of unfree labor. Interventions to protect human rights in Benjina and Ambon were a disguise to cover the authorities' primary intention to advance Indonesia's commercial interests on the global stage.

In this case, the Indonesian government through the KPP and enforcement agencies, used victims' unfree condition as a political strategy to advance its agenda against the Thai fishing industry. The trafficked fishermen narrative, then, served as a means for the Indonesian government to paint the Thai fishing industry as the perpetrator of a heinous act to increase their profit. Building on momentum from the case, the Indonesian government found an opportunity to inform the global market about their commitment to upholding human rights and ethical labor practices in the Indonesian fishing industry. The aim was to attract the global market to buy the fisheries-based product from Indonesia rather than from Thailand.

Despite this, there has been no formal diplomatic repercussion between Indonesia and Thailand after KKP's move. However, Thailand responded to the broader issue by restructuring its fisheries market to regain access to the global supply chain. After the scandal that ended up with an EU-issued "yellow card" (European Commission, 2015) and a third-tier rank in the US

TIP report (US Department of State, 2016), the Thai government tightened control on illegal labor recruitment through a series of legislative reforms (Stride, 2016: 4–6). Thailand also ratified ILO 188 (See ILO, 2017) to further strengthen its commitment to combat slavery and human trafficking. The reforms have had some positive impact as many workers in the Thai fishing sector started to receive salaries more regularly and obtained working permits. These have also resulted in the EU lifting the “yellow card” warning in January 2019 and the US TIP report upgrading Thailand to tier-2 in 2018 (European Commission, 2019; Vandergeest and Marschke, 2019: 10-11; US Department of State, 2018: 54).

Guided by the UN Trafficking Protocol and Indonesia’s Anti-trafficking Law, KKP and IOM-Indonesia intervened to protect and support the victims, including providing basic needs and repatriation. However, the case study found that KKP did not consider protection and support schemes for the victims as an obligation, but as an option. For instance, in Benjina, KKP and IOM-Indonesia intervened to rescue the victims without further considering victims’ right to salary. The victims in Benjina were repatriated unpaid for the labor they had performed and suffered in the fishing boats. Repatriation without labor compensation has limited victims’ choices in starting a new life which, in turn, compounded their vulnerability. Although the victims in Ambon were able to collect their wages, they were powerless to fight for their rights. The victims did not have sufficient representation and support in dealing with the companies. The Indonesian authorities helped the victims reach a settlement, but the authorities were mostly interested to have the victims repatriated swiftly. The study found that the government was less concerned with utilizing the Anti-trafficking Law and UN Trafficking Protocol to protect and support the victims.

Similarly, IOM-Indonesia’s mandate does not place protection and support schemes to victims as a key responsibility. As the case study has shown, there is a clear gap between the criminal prosecution and migration control logic of states on the one hand, and the well-being of survivors of forced labor and human trafficking, on the other. The way forward is to put as much emphasis in addressing the exploitative labor conditions faced by victims.

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