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### Child Labour and Jermal Fishing Industry in Indonesia-Need to understand 'Blue Economy' from the Lens of International Labour Dispute Management: Towards Labour Justice in the Oceans

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#### ABSTRACT

*Indonesia is not an exception to the concept of cheap labour and exploitation of child labour. Over Forty lakhs (4 million) child labours are involved in the sectors, namely, agriculture, forestry, and fishery. The work scope in these fisheries and aquaculture sectors ranges from fishing, diving, handling and repairing nets, herding fish, digging ice, cooking, loading and offloading fish, classing fish, salting fish, and peeling shrimp. The child labour in this Jermal fishing is a labour issue and seen from different angles. Whether the Child Labourers in the sphere of blue economy to be left remediless? The author also intends to connect the convergence problems between International Labour Law and International Human Rights Law in the above-said context.*

**KEYWORDS:** Jermal Fishing, International Labour Dispute, Child Labour, Blue Economy, and State Responsibility

#### INTRODUCTION

Indonesia is a country located in the Southeast Asia in the Indian and Pacific Oceans. It is closely working together with ILO as a member country from 1950. Since Indonesia is famous for archipelago the fishery sector stands first in employment. The major problem is engaging children in Jermal fishing (Offshore fishing) consists of hazards tasks. The workforce of child workers are under the age group of 12 to 16 years recruited in the Jermal fishing and supervised by foremen in each Jermal platform. Jermal platforms are like small hut built using woods ingrained in the sea, away from 15 to 25km from the land. The perils involved in the Jermal fishing are accidents, drowning, isolation, low wages and long working hours, poor sanitary practices. Studying in detail shows the hazards confronted by these children in this Jermal industry are fatal accidents like

venomous sea snake bites, stings by jellyfish. In rainy season strong winds may devastate their Jermal platforms in turn cause wounds, fractures, and risk of death.

In countries of surplus and cheap labour and acute poverty, is Child labour a solution or abuse? Although attempts made by the government to regulate Jermal fishing but because of the labour surplus and family poverty forced the people to go to work. The pattern describes the human suffering and humiliation of child labour in Jermal fishing and this should be taken as a matter of international labour legal concern. Although the International Labour Organisation (ILO) has adopted plethora of International Conventions on the Abolition of Worst Forms of Child Labour, national legal systems mostly treat them as 'soft instruments'. Resultantly, the enforcement is almost nil. Vitally, to promote remedial justice by way of suggesting ways for individuals' access to international labour

justice. Above all, to create an awareness that in the domain of 'Blue Economy' the human rights violations inflicted upon the Child Labour in Indonesia and other South East Asians is not a national labour concern but that of international labour legal concern. The method relied is descriptive and the reports prepared by the ILO will be extensively interpreted and utilised.

### **I-CONCEPTUALISATION OF PROBLEMS OF JERMAL FISHING: Human Rights and Conservation Perspectives**

The etymological understanding of the term 'Indonesia' is quite interesting as it is derived from the Greek word '*indosnesos*' which literally mean 'Indian-Island'. Indonesia had several names in different times. Before the influence of Europeans in the name of colonisation, the country had been ruled by significant kingdoms namely Srivijaya-Palembang, Kertanagara, Majapahit era, and Muslim kingdoms predominantly has brought changes in the socio, cultural, trade and economic aspects. It is located in the Southeast Asia in the Indian and Pacific Oceans.

After the advent of the concepts of colonisation and modern international law in the earlier 16<sup>th</sup> century which has re-written the definition of 'who is Sovereign'. These innovative things explicitly avoided the interference of *jus sacrum* (divine law). In turn the new concise explanation of the term 'sovereign' emerged with having its offshoot of concepts like slavery, forced and bonded labour, Genocide and other intolerable human rights violations.

Indonesia was also not an exception to the exploitation by the European colonies. For a long term the country was under the control of Dutch. So it was also called as the Dutch East Indies. In 1850 James

Richardson Logan coined the name Indonesia, after that geographer Bastian used the name in his book titled 'Indonesien' in 1884. Only after the independence of the country in 1945 the Government declared its archipelagos as 'Republic of Indonesia'. Albeit the Dutch Government officially recognised its independence only in 1950, after the loss of many lives in either side.

Though the Constitution of Indonesia (COIn) adopted on 18 August 1945 later it was modified and fixed on 5 July 1959. The unique feature of COIn is that it is based on the faith of oneness of God; also promote multi-culturalism, religious tolerance. The COIn under Article-28E para-1 guarantees their citizens as fundamental human rights to worship and to practice any religion. The motto of Indonesia enshrined in Article-36A of COIn as '*Bhinneka Tunggal Ika*' means 'Unity in Diversity'.

While the length and breadth of the topography of Indonesia is filled with natural resources. But as a developing country there are some major socio-economic problems to be addressed, namely, poverty, poor education reformatory schemes, unemployment, corruption, lack of safety to its citizens and foreigners, non-accountability of security personnel for their human rights violation, poor environmental policy, and so on.

One major incident in terms of lack of safety to people and environment is Bali bomb blast happened in 2002 and 2005. The suicide bombers nearly killed 200 innocent peoples includes local and foreigners. The United Nations Security Council Counter-Terrorism Committee (CTC), was established after the 9/11 attack in the United States of America, to prevent terrorist acts both within and outside the territory. The CTC in its resolutions 2002 and 2005 vehemently

expressed its disapproval of these serial bomb blasts in Bali. The aftermath of the bomb blast did not affect the incoming of tourists all around the world. But the incidents caused a deep impact in socio-environment issues, such as, spoilage of underwater ecosystem (coral reefs) and safety of the human-beings and other living beings on and offshore.

Another social cum environmental issue is the platform fishing or also called jermal fishing or offshore fishing where cheap labour and exploitation of child labour are involved in the agriculture, forestry, and fisheries sector. Also Indonesia is closely working together with Indonesia Labour Organisation (ILO) as a member country from 1950. Employing children in platform fishing is a major drawback of the country's growth. This occupation involving children comprises of greater seriousness of their lives and ecosystem.

Under the cohort of 12 to 16 years are employed in this fishery sector especially in offshore fishing. Offshore fishing or platform fishing is that there are smaller crude shelters built in the sea away from 15 to 25km from the land. The nature of work involved in this sector are fishing, diving, and repairing nets, herding fish, cooking, loading and unloading fish, and etcetera. The precarious matters in the jermal fishing are accidents, drowning, low wages, long working hours and pitiable sanitariness.

In day-today life these children are undergoing various hazards, namely, poisonous sea snake bites, and stings by jellyfish. Sometimes strong winds might destroy their huts permanently also resulted in causing wounds, fractures, and risk of life. Also most of the child workers do not know swimming. But because of the poverty, unemployment and surplus labour the children unfit to work in sea are given job by risking their lives. Even children

good in swimming cannot make to the shore because of the strong water current and high tides.

Whether jermal fishing has psychological impact on child workers? The evolution of science proven the fact that isolation of children will affects their cognitive power and reasoning ability. In Jermal fishing the children has to leave their home for at least three months offshore. As a result of this mental illness cause child workers become a threat to the society. Whether minimum wages are guaranteed in this offshore fishing sector? Wages and leave are least guaranteed to these child workers. They will get their wages only after the completion of the contract period. During contract period any absent from the work will get nil wages. Even they suffer from ill health must proceed in the work. Also no proper food is supplied to these children. They have to take only seafood for survival, vegetables, rice and fruits are supplied rarely. If they consume any costly seafood other than their regular meals, the foremen will deduct it from their wages.

The list of problems faced by the children is lengthy. Poor hygiene conditions include contaminated drinking water cause diarrhoea, and pathogenic environment shows nil sanitary facility. These pitiless things happening in this country should not be taken into lighter vein. As it is purely gross human rights violation and international supervision is needed to effectively abrogate child labour.

In countries of surplus and cheap labour and acute poverty, is Child labour a solution or abuse? The child labour in this jermal fishing is not only a labour issue but also seen from different angles. Like massive human rights violation and violation of normative labour law where recruitment, wages, hours of work are against the laws of nature and because of this there is a collapse in the social

arrangement school going children are forced to work in hazardous industries is an ugly truth of Indonesia.

Although attempts made by the government to regulate jermal fishing but because of the labour surplus and family poverty forced the children to go to work. The mean minded capitalists using cheap labour for their unjust enrichment is not properly monitored by the government. Although it ratified all the major conventions it evidences the ineffectiveness of the ILO legal instruments and non execution of national legislations to stop these human rights violation. The pattern reveals the human suffering and humiliation of child labour in jermal fishing and this should be taken as a matter of international labour legal concern.

## **II-INTERNATIONAL LABOUR LEGAL OBLIGATIONS OF INDONESIA**

The ILO is one of the major International Organisations (IO) recognises and enounces the transnational goals of labour. It is only IO survived even after the scourge of two world wars. It is the oldest IO in existence.<sup>1</sup> The conception of the ILO is based on the principle of universality, peace and social justice. The motto of the ILO is '*si vis pacem, cole justitiam*' means 'if you desire peace,

cultivate justice'. The Indonesia is a member state of the ILO since 1950, ratified 20 conventions out of 190.

In general the employment and work of children are guided by measures taken by the ILO. Based on these guidelines most of the nations have adopted relevant legislation to curb the exploitation of child labour. Regardless of these attempts, child labour remains to exist even in the developed and developing nations. The basic ILO conventions (C) and recommendations (R) on child labour are C138 – Minimum Age Convention, 1973 and C182 – Worst Forms of Child Labour Convention, 1999. Article-1 of C138 concerning minimum age that each member state shall draft a national legislation for abolition of child labour. Article-2 of C182 defines the term 'child' comes under the age of 18. Article-3 of C182 gives an inclusive definition of the term 'the worst forms of child labour', namely, slavery, human trafficking, debt bondage, child prostitution, and impairments of the safety and morals of children. Article-5 of C182 says that each member shall establish a monitoring body for the effective implementation of the Convention.

Germane International Legal Instruments of Indonesia:

Indonesia made a decent effort to eradicate the exploitation of child labour. Some of the ILO legal instruments ratified are Forced Labour Convention, Abolition of Forced Labour Convention, Minimum Age Convention, Worst Forms of Child Labour Convention, and Promotional Framework for Occupational Safety and Health Convention. Under the auspicious of the Charter of the UN adopted Convention on the Rights of the Child (CRC) in 1989. The CRC is based on the principle of recognising the human dignity, also for the protection of the child before and after their birth.

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<sup>1</sup> Although it was a part of the same general instrument of the Treaty of Versailles and in spite of its links with the League of Nations, the ILO was intended to be an autonomous body. In practice, ILO worked its autonomy throughout the inter-war period. It survived the demise of the League of Nations. And established itself on a more independent constitutional basis it entered into relations with the United Nations as its specialized agency in 1946. The ILO was awarded the Nobel Peace Prize in 1969. See: <https://www.ilo.org/global/about-the-ilo/lang-en/index.htm>

Whether the right of the children are protected from exploitation? Whether States taken any measures to abrogate child prostitution? Are they safe! In order to give solution to these problems the UN deduced principles from customary international law. It extended the standards by presenting an optional protocol to the CRC. In this fishing sector in Indonesia the vulnerable groups run a risk from the sale of children, child prostitution and child pornography. The UNCRC optional protocol strongly condemns these activities and mandates its member states to implement in their national laws. The main principles of the CRC are Equal treatment and Non-discrimination, Commitment to protect them from economic exploitation, Take care of their mental and physical health, and to give them proper spiritual, moral and useful education.<sup>2</sup>

#### National Policy on Child Labour:

The Republic of Indonesia has inviolable rules and regulations and laws concerning human rights. These laws are mostly in par with the international standards stated above. The Central Bureau of Statistics exposed that roughly 43 percent are child labours and 20 percent are involved in worst form of child labour.<sup>3</sup> The government has implemented plethora of social programmes to minimise and curtail the child labour. The National Action Plan for the Elimination of the Worst Forms of Child Labour (NAP-EWFCL) in three phases has taken effort to eliminate child

labour once for all. While addressing the problems the government suggested giving financial assistance to poor families, compulsory and free education, and etcetera.<sup>4</sup>

The government departments called for in the process of eliminating child labour are Ministry of Manpower and Transmigration, Ministry of Women's Empowerment and Child Protection, National Commission on Child Protection, Ministry of Health, and Ministry of Social Affairs.

These Ministries involved in various activities of child labour laws, penal policy, by focalising on eradication of child labour by 2022. Whether enforcement mechanism working properly? The process of effective mechanism carrying by the Ministry of Manpower and Transmigration lacks action.

### III-ENVIRONMENTAL CONSERVATION IN INDONESIA

The Asian Development Bank (Bank) its project is to help the governments of the developing member countries (DMC). The object of the Bank is to identify the issues and challenges in the policies of the DMC. Indonesia being an archipelagic state surrounded with oceanic resources.

The fisheries resources are unevenly exploited. This imbalance reflects the coincidence of demographic pressure; property rights regimes, and binding financial and capital restrictions that confine coastal fishers to certain pelagic and near-shore fisheries. In

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<sup>2</sup> The CRC is one of the flagship conventions of UN has been ratified by more than 193 countries. It shows the universal acceptance against the exploitation of children. Available at: [https://static.unicef.org/rightsite/237\\_202.htm](https://static.unicef.org/rightsite/237_202.htm)

<sup>3</sup> Minister of Manpower Republic of Indonesia, Roadmap Towards A Child Labour-Free Indonesia in 2022. Available at: [https://www.ilo.org/wcmsp5/groups/public/---asia/--ro-bangkok/---ilo-jakarta/documents/publication/wcms\\_377170.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/--ro-bangkok/---ilo-jakarta/documents/publication/wcms_377170.pdf)

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<sup>4</sup> Affairs, Office of Child labor, Forced Labor, and Human Trafficking, "2014 Findings on the Worst Forms of Child Labor: Indonesia," September 30, 2015, pp. 1, 6-8. <http://www.dol.gov/ilab/reports/child-labor/findings/2014TDA/indonesia.pdf>

the western part of the country where the population density is quite high, the fisheries resources are heavily exploited; and there is little room to expand fishing activities. This is particularly true for areas such as north coast of Java, the Malacca Straits, and South Sulawesi. These three areas contribute to more than half of the total fish production in the country. The critical challenges facing the coastal and fisheries sector in Indonesia continue to be from an open access system, lack of an integrated framework for coastal resources protection at all levels of government, low levels of public awareness, and economic hardships in coastal communities.

Major issues that will need to be addressed include surveillance and enforcement, legal reform, generation of alternative incomes, private sector investment, public awareness campaign, and innovative community-based management approaches. In addition, currently, there is little real active surveillance and enforcement of the existing regulations protecting coral reefs. The environmental legal framework has been developed over the past two decades and, in general, is well developed and tends to meet international standards. However, some of the laws, regulations and technical guidelines will have to be adapted to the new realities in a decentralized policy setting.

#### **IV-EFFICIENCY OF WORLD COURT (ICJ) AND THE UN: a need for International labour court**

The creation of Man-made laws (MM laws) in various names and nomenclature clearly shows us that there is neither solution nor perfect solution come out of these MM laws. In International level, identification of law is very much

complicated, rather thinking it is formal and codified, actually it is not so.

Internationally the problem is complicated by three factors, namely:

- (a) The lack of single legal scripture and culture;
- (b) The relatively undeveloped state of International law;
- (c) Tensions of radical changes in International society.

In all the revelations of the Almighty, namely, the divine law (*jus divinum*) revealed in different periods in different regions clearly shows the truth and the true path to be followed, it is man who diluted and destroyed the divine law for his whims and fancies. The concept of regulating worker's rights is relatively new, with many laws still struggling to streamline the inherent labour rights which guaranteed to workers, where only coming into being in the last few years. But, Islam already laid out a comprehensive set of guidelines in this regard in its holy text '*quran*'. In Islam three very basic rights that have to be given to workers at any cost without compromise, namely, Compensation; Rest; Subsidies.

In detail, *Compensation*: The first basic right of a worker is the right to compensation in return for the effort exerted and the time spent on the job. In a Hadith<sup>5</sup> which says that Creator<sup>6</sup> (Glory Be

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<sup>5</sup> A collection of traditions and one of the primary sources of Islam containing saying of the Prophet Muhammad (Peace Be Upon Him), which with accounts of his daily practice (Sunna), constitute the major source of guidance for muslims. <https://en.oxforddictionaries.com/definition/hadith>

<sup>6</sup>Creator is an Arabic word which means "Lord; Almighty; Merciful", the one and only God in [Islam](#). Etymologically, the name Creator is probably a contraction of the [Arabic](#) al-Ilāh, "the God." The name's origin can be traced back to the earliest [Semitic](#) writings in which the word for "god" was *il* or *el*, the latter being used in the [Hebrew Bible \(Old Testament\)](#). Allāh is the



Upon Him) will be an opponent on the Day of Judgement of one who employs a worker and takes full work from him but does not pay him for his labour.<sup>7</sup> Rest: Workers should not be over burdened with work. They have the right to physical and mental rest. The Prophet Muhammad (PBUH) spoke about giving the body its share of rest by saying ‘*and your body and your family have a right on you*’.<sup>8</sup> Subsidies: The Prophet (PBUH) also said, ‘Your servants are your brethren upon whom Creator has given you authority. So if one has one’s brethren under one’s control, one should feed them with the like of what one eats and clothe them with the like of what one wears. You should not overburden them with what they cannot bear, and if you do so, help them in their hard job.’<sup>9</sup>

## CONCLUSION

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standard Arabic word for God and is used by Arab Christians as well as by Muslims. See: <https://www.britannica.com/topic/Creator>. Whether “Creator (GBUH)” have been defined or determined in Islamic religion? To answer to this question, in Chapter-112, Al-Ikhlās (Purity) of Holy Quran says that: “O’ Muhammad, 1) Say: He is Creator, the One; 2) He is Creator, the Eternal; 3) Who was never born, nor ever gave birth; 4) The One beyond Compare”.

<sup>7</sup> Narrated Abu Huraira (Companion of Prophet Muhammad): The Prophet (PBUH) said, “Creator said, ‘I will be an opponent to three types of people on the Day of Resurrection: 1) One who makes a covenant in My Name, but proves treacherous; 2) One who sells a free person and eats his price; and 3) One who employs a labourer and takes full work from him but does not pay him for his labour.’” Al-Bukhari, Hadith.no.472.

<http://ahadith.co.uk/chapter.php?cid=123&page=2>

<sup>8</sup> Narrated Anas ibn Malik: The Prophet (PBUH) said that workers should be treated kindly in order not to be made to feel inferior. And also he used to sit on the floor and eat with his servants. (Al-Bukhari)

<sup>9</sup> (Al-Bukhari), <http://www.speakingtree.in/blog/workers-rights-in-islam>

Labour is synonymous to human. As seen throughout this research lakhs and lakhs of Jermal Child Labour are deprived of international labour justice. The Charter of the United Nations itself started with the hope of *never again clause*. However, human subjugation and suffering persists throughout the world. The international community led by State actors have failed to maintain human peace and security. Again, the lack of solidarity to the labour force *vis-a-vis* non representative governments has induced the ever increasing demand for international supervision. Undoubtedly, it ought to be international labour justice. Regrettably, the characteristics of international labour legislations have been fraught with non-compliance and ‘soft law’ approaches. Conveniently, State parties of the ILO instruments citing lack of funds, their increasing admiration towards multinational corporations and maladministration of local markets have created poverty, malnutrition, hunger, and unemployment. Thus there is a total impasse in compliance of international legal obligations. This is precisely the case with the Indonesian Child Labours in Jermal Fishing Industry. Contextually, solution based approach has to be initially implemented through change of approaches to labour not as commodity or the exploited but humans requiring love, compassion, solidarity and development. Of utmost importance international labour legislations and universal obligations ought to be respected.

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