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# Legal Protection for Indonesia Ship Crew Working on Foreign Ship

# Ayu Putri Rainah Petung Banjaransari

Faculty of Law, Universitas Negeri Semarang, Indonesia \*Corresponding email: <a href="mailto:ayuprpb@gmail.com">ayuprpb@gmail.com</a>

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#### Abstract

There are many Indonesian workers who work in the marine and fisheries sector on foreign ships because their wages are four times the wages of working on Indonesian ships. By reason of high wages often the possible consequences that will occur are ignored. As a result, many undesirable things happened such as human trafficking, torture, ill-treatment, and even murder, as happened on the Chinese ship Fu Yuan Yu 1218 against the victims of Indonesian crew members. This research was conducted to determine the form of accountability from the Indonesian government in the case of the crew of the ship. This research method is a normative juridical method with a qualitative approach and indirect observation and documentation. The findings of this research are in the form of an international legal basis regarding the rights of Indonesian crew members on foreign ships. In addition, this research also seeks legal protection from the Indonesian government based on national law for Indonesian crew members who work on foreign ships. This research is expected to contribute to providing new information regarding the implementation of Indonesian crew work on foreign ships.



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#### A. INTRODUCTION

Indonesian migrant workers are people or groups of people who work outside the territory of the Indonesian state, whether on land, sea, or air, or work under the name of another country (Mustofa, Solihin, Desyana & Hardianto, 2022). In the marine sector, there are Indonesian migrant workers who work as crew members or jobs commonly referred to as crew members (Tuahuns, 2020). Indonesian crew members are individuals or persons with Indonesian citizenship who work on ships owned by foreign countries and receive wages from foreign parties who employ them. Indonesian migrant workers who work with foreigners on their foreign vessels must comply, both with the Indonesian laws and regulations and with the regulations set by the foreign parties (Sulistiyono, Herlambang, Chandra & Abdulaziz, 2022). The demand for jobs in the marine sector, especially on foreign ships, continues to grow because the wages offered are also high. In the 2013-2015 period, Indonesian crew members who worked on foreign vessels amounted to two hundred thousand crew members and logically, in the next period, the number of crew members increased due to higher wages. This

is as happened in the work of being a crew member on a foreign ship owned by Taiwan where each crew member will be given a salary of twelve million rupiah every month in 2019 so that currently the wages that will be given will also increase a lot. The amount of wages given by foreign parties is many times greater than on Indonesian ships, which is only around three million rupiah per month. (Surianto & Kurnia, 2021) Material reasons are the reasons that support Indonesian crew members to work on foreign ships even though the risks and consequences are greater in terms of their own safety.

The number of Indonesian crew members working on foreign vessels is increasing year by year, which does not make foreign parties respect or does not make foreign parties act kindly to Indonesian migrant workers (Chuasanga & Victoria, 2021). Migrant workers with only a small number of humanitarian cases occur especially if the number of Indonesian migrant workers working on foreign ships is increasing. This moment is actually used by foreign parties to take revenge against Indonesia or carry out acts that are prohibited by human rights and the world which will actually bring them a lot of money. The practice of abuse, coercion, persecution, slavery, torture, illegal human trafficking, trade in marine products without legal documents and procedures, to murder often afflict Indonesian crew members. (Susiani, 2020) In addition, Indonesian ship crews will be employed outside of working hours or longer than workers from the foreign ship owner's country.

One of a number of cases that have occurred to Indonesian crew members is the case of Indonesian crew members working on the Chinese ship Fu Yuan Yu 1218. One person out of a total of five Indonesian citizens who worked on the ship as a crew member died and more tragically they were kept in the cold room for a month or even more than that time together with the fish they previously caught. It didn't stop there, their bodies were left behind in the end being dumped into the high seas without any sense of humanity or even without any last respect from the foreign parties. Four other Indonesian crew members eventually jumped into the open sea regardless of the next danger they would encounter because they could not stand the acts of abuse and torture carried out by foreigners against them. In addition, the ship crew channeling agent to distribute several Indonesian citizens working on Chinese foreign ships did not carry out routine and good supervision, and even did not care about him because he felt that his duties had been completed, including the money as a distribution agent had been received by him. (Lumbanrau, 2021)

The unlawful and humanitarian acts committed by foreign parties against Indonesian migrant workers have violated legal regulations regarding the fulfillment of human rights, maritime, manpower or labor rights, both national law and international law. Actions that violate the law have violated international law regarding the fulfillment of universal human rights without any element of

discrimination, including the fulfillment of the right to life and the right to decent work, as mandated by the Universal Declaration of Human Rights (UDHR) and other international laws relating to this case. The existence of international law as a form of legal protection is very much needed by ship crews who are victims of ill-treatment from foreign parties. If there has been bad treatment, then Indonesian national law will not be able to provide strong legal protection so that in this case it requires assistance from law enforcement and international judicial institutions to provide justice to the victims and provide warnings to both the Indonesian government and the Chinese government, to further enhance supervision of migrant workers in the maritime sector.

The case that befell Indonesian crew members on Chinese foreign ships must be brought to the attention of the Indonesian government as the legal basis of the Indonesian nation and has been mandated by Article 27 of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia) regarding the right to employment and livelihood are appropriate and as regulated in the Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower (hereinafter referred to as the Manpower Act). (Prisnasari, 2019) In addition, the Indonesian government must act decisively and closely monitor the performance of the crew channeling agents abroad or to foreign ships by reflecting on the cases that have occurred to victims who are treated like humans.

Universal human rights must be upheld by anyone and by governments in any part of the world because they depart from humanity and comply with applicable laws, so there will be eternal peace between nations. The fulfillment of human rights, which are the basis of basic rights and obligations in relation to labor issues in the maritime sector, is the forerunner to reducing problems in the maritime world of work and to avoiding disputes in labor relations between two or more countries.

Legal issues in the maritime domain for crew members must be the focus of resolution by the Indonesian government and government institutions. The government together with the Ministry of Manpower, Ministry of Foreign Affairs, Ministry of Law and Human Rights, and Ministry of Maritime Affairs and Fisheries of the Republic of Indonesia must seek the best solution for criminal victims aboard foreign vessels owned by China and other foreign vessels as stated in this scientific article. This paper aims to analyze the basis of international law that regulates employment and the basis of international law that regulates work safety for Indonesian crew members who become migrant workers aboard foreign-flagged vessels. In addition, this paper also aims to analyze the efforts of the Indonesian government to legally protect Indonesian crew members working on foreign vessels in the perspective of national law. This paper will be useful for the government to carry out work on foreign ships and benefit the community for the

government's efforts to legally protect Indonesian crew members so that when they work in this area, they already know the advantages and disadvantages.

### **B. RESEARCH METHOD**

The legal research method used in this scientific paper is a type of normative juridical research because the research is carried out without having to conduct research directly in the field (Tan, 2021). The case approach can describe the conditions that occur in the field through indirect observation to solve existing problems so that they are in accordance with the data and facts collected from valid data sources. In addition, this case approach is also carried out by analyzing and identifying by means of documentation to understand in depth a phenomenon that occurs along with its consequences and legal settlement (Bachtiar, 2018). The main material and secondary material as a source of data in legal research were collected using library research techniques. Researchers conduct a study of written data sources such as legal books in the field of law related to research, results of previous research, and other documents that are related to the research topic. This literature study focuses on several primary legal materials and secondary legal materials in the form of theories, concepts, principles, norms, and customs, but the research location must really exist. This research was conducted with the object of research being the foreign ship Fu Yuan Yu 1218 belonging to China, where legal problems occurred in research subjects who were victims of non-humanitarian acts. This one legal issue is one of many other legal issues in the marine, fisheries, and shipping fields, where the opportunity to employ Indonesian crew members is an opportunity to take revenge against the Indonesian government and act dishonorably to its citizens. The research data that has been collected will be sorted and classified so that analysis can be carried out on a case by case or problem by problem basis based on problems that actually occur. Data sorting has the aim of determining research data that can be guaranteed its validity or validity. The data is then classified into several classifications with the same or almost the same discussion topics to obtain more specific data (analysis method from general to specific).

## C. RESULT AND DISCUSSION

Legal Protection for Indonesian Crew on Foreign Flag Vessels in the Perspective of International Law

The government has responsibility for all crew members working on foreign-flagged vessels, in this particular case for crew members on a Chinese-owned foreign-flagged ship, the Fu Yuan Yu 1218. The government must seek to resolve this legal issue, both in resolving national legal issues as well as in resolving international legal issues, because countries that recognize the existence of UDHR must fully uphold human rights. Basically, international law has regulated the

practice of working freely without any element of coercion in the International Labor Organization Convention (hereinafter referred to as ILO) No. 29. In addition, fundamentally, everyone's right to get a job and a decent living has been regulated in Article 27 of the 1945 Constitution of the Republic of Indonesia which is the Indonesian constitution. These two national laws and international laws are the basis for carrying out work as migrant workers and their legal practices to build harmonious cooperation between countries.

Legal protection for everyone in the world who works as a crew of a foreign-flagged ship has been regulated in several international laws relating to labor, marine, waters, fisheries (Ahmad & Rachmawati, 2016). No exception for Indonesian crew members who also receive international legal protection because the Indonesian government is a country that is subject to international law. In addition, everyone is obliged to get a decent job, especially in this case for people who work in the marine sector and work on foreign ships belonging to other countries. Therefore, if there is a violation of international law regarding labor on board a foreign ship, the international parties who are obligated to it must participate in resolving the international problem.

Protection within the scope of international protection can provide support to a country and help Indonesian crew members because legal certainty is guaranteed by all countries in the world, in contrast to national law which only applies to the country that regulates it (Gunawan, & Arumbinang, 2021). Some international laws that are related to legal issues for Indonesian crew members working on foreign-flagged vessels are as follows: a) Maritime Labor Convention (MLC) 2006; b) The International Convention for the Safety of Life at Sea (SOLAS International Convention) 1974; c) International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers (STCW International Convention) 1982; and d) International Convention for the Prevention of Pollution from Ships (MARPOL International Convention) 1973 (Adela, 2018).

MLC 2006 has been ratified by Indonesia with Law Number 15 of 2016 concerning the Ratification of the MLC. (Pramuditya, 2020) This convention provides an affirmation of the fulfillment of basic rights for every worker, especially in this case in the maritime sector and people who work as crew members. Article 3 of this convention states that every worker must and has the right to freedom at work, such as freedom of assembly and discussion. In addition, every worker has the right to obtain self-protection from the practice of forced employment and self-protection from discriminatory treatment. Article 4 of MLC 2006 also states that every worker has the right to obtain security and protection in the workplace because these two things are the first things job seekers see. In addition, this article also states that every crew member has the right to get decent working conditions and atmosphere, fair work, good health care, as well as adequate social protection

and welfare. These conditions are regulated in this convention as a guarantee and certainty for the legal protection of crew members.

Every worker as a crew member must get safety at work even before the ship dives into the seas and oceans. The safety of ships for sailing must be prepared in advance to avoid suspicion of smuggling prohibited things or accusations of entering prohibited areas. Matters relating to the administration of the ship and the crew must be prepared together with a request for permission to sail in a certain area. Ship administration is always affixed with conditions that must be met by the shipping operator and the crew on board the ship.

The safety of the crew must also be considered carefully because there are so many technical errors or omissions in checking the completeness of the ship's machinery or automotive. The ship operator must conduct regular monitoring of the ship's propulsion engine and the needs of the ship itself. In addition, housing and facilities on board must also provide comfort and fulfillment of daily needs for workers on board. Special matters are also required, such as emergency treatment or rescue of emergency crew members from unfavorable situations that occur during sailing. Therefore, Indonesian crew members are entitled to obtain BPJS for employment with registration from the employer who employs them based on the mandate of Law of the Republic of Indonesia Number 40 of 2004 concerning the National Social Security System. In addition, Indonesian crew members are also entitled to overtime pay, vacation rights, and adequate health care (Sitompul, 2018).

STCW International Convention 1982 stipulates that workers who are on board ships must meet the standards, terms, and conditions of work considering that they spend a long time floating on the ocean. On the ship there are captains, duty officers, and officers who must meet the standards to work on the ship with a note that they must comply with applicable regulations. This is done and required with the aim of protecting the rights of every ship working on the ship so that it is hoped that there will be no ill-treatment of the crew. Every regulation is always endeavored to protect the subject or target of a regulation made and must be obeyed. Even if there are crew members who do not comply with applicable regulations and do not violate in terms of serious violations, they can be reprimanded as necessary and given appropriate punishment without any element of persecution or murder. These workers monitor each other's performance regarding qualifications and can work to improve the quality of work of each crew member for mutual safety.

MARPOL International Convention 1973 based on protection from pollution and the things that are not expected to happen is a convention that regulates more in-depth work safety on board ships. When fishing activities cause a number of pollution, both air pollution and water pollution, the fishing activities must be stopped immediately so as not to damage the marine ecosystem and the living

creatures in it and do not violate the regulations where the ship is located as it is known that sea areas often occur in international disputes and are difficult to deal with resolved.

Unpredictable things often happen in the journey on the ship such as accidents. In the event of a coral reef collision or an ice pile collision in the ocean, it will reduce the feasibility of the ship. Accidents on board must be reduced and avoided so that all seafarers are safe and the shipping operator must provide emergency necessities such as small boats to temporarily accommodate the crew. Careful preparation like this is very much needed in shipping activities and this is aimed at avoiding bilateral or multilateral conflicts which actually add to legal problems for the parties. A number of international legal protections above are expected to provide legal protection to crew members who work on foreign-flagged vessels as well as Indonesian crew members who work on Chinese foreign vessels. Legal protection is very crucial and needed by every Indonesian migrant worker to guarantee the rights that must be obtained and the obligations that must be carried out. If in the future there are discriminatory practices, torture, forced labor, work outside working hours, to acts of murder, then legal protection within the scope of this international law can protect them.

# Legal Protection from the Government of Indonesia for Indonesian Migrant Workers as Crew on Foreign Flag Ships

The territory of Indonesia is dominated by territorial waters with an amount of two-thirds compared to the land area of Indonesia which only amounts to one-third. This area which is dominated by waters makes Indonesia a maritime country so that this also affects almost all areas of life, without exception, namely the field of livelihood. The livelihoods of most Indonesian citizens are in the water sector, in this case the marine sector, whether they are fishermen, marine researchers, or sailors. The marine sector is always related to the fisheries sector so many people work in the marine sector to look for large numbers of caught fish. In this context, it will be discussed about livelihood as a sailor or crew member who works on a ship owned by a foreign country.

More and more Indonesian citizens are interested in working in the marine sector and becoming ship crews as the wages offered are also high. Starting from children after graduating from high school to adults who really crave to work as crew members, especially if that person is already a head of the family and usually for the sake of the family does not carefully consider the consequences of the work. Therefore, the Indonesian government has an obligation to provide legal protection and guarantee legal certainty for Indonesian ship crews, especially for ship crews who focus on the fishery sector (Selfina, et al, 2021). The Indonesian government also has an obligation to carry out full supervision of the course of a work on a ship over a wide expanse of ocean.

Employment law does not regulate several things, including: 1) work with personal risks and responsibilities or so-called self-employment; 2) work carried out because they are willing voluntarily for the work or interests of others; and 3) work as an administrator or representative of a community or organization (Harahap, 2020). These things then become the reason that the work is not limited to the working relationship between overseas migrant worker recruitment agencies and migrant workers, but also involves other matters such as relationships outside of work, such as relations with the government. The Indonesian government is obliged to protect Indonesian migrant workers who are abused, Indonesian migrant workers who are victims of abuse, Indonesian migrant workers who suffer physical and psychological harm, and Indonesian migrant workers who are victims of murder.

The Indonesian government is the subject of Indonesian labor law as the party that makes regulations on manpower so that it has a role in accountability to Indonesian migrant workers, including in this case Indonesian crew members who work on foreign-flagged vessels. The formation of Indonesian labor law is based on a philosophical, sociological, and juridical history. The philosophical and sociological foundation that forms the background for the formation of Indonesian labor law is history which tells of the relationship between employers and workers (Asyahadie & Kusuma, 2019). Slavery and forced labor when viewed from a sociological perspective do not really give freedom to humans. The juridical basis for the formation of Indonesian labor law is the importance of protection, guarantee, and legal certainty for every worker. The role of the government is like the classification of the scope of employment law in the private sphere, there are workers, employers, and the government (Telaumbanua, 2019).

The Indonesian government's legal protection for Indonesian crew members as a form of accountability for the Indonesian government is contained in the formation of a national labor law which is still being updated by following the times. Previously, there was a Commercial Code that regulates the rights and obligations of Indonesian ship crews. (Mahdalena & Nurkhotijah, 2020) The following are several national labor laws relating to work as crew members, both foreign ships and Indonesian ships, including: a) Law of the Republic of Indonesia Number 15 of 2016 concerning Ratification of the 2006 MLC; b) Government Regulation Number 7 of 2000 concerning Marine Affairs; c) Law Number 17 of 2008 concerning Shipping; d) Regulation of the Minister of Transportation Number 84 of 2013 concerning Recruitment and Placement of Crews; e) Regulation of the Head of the National Agency for the Placement and Protection of Indonesian Migrant Workers Number PER.03/KA/I/2013 concerning Procedures for the Placement and Protection of Indonesian Migrant Workers and Fisheries on Foreign Flag Ships; f) Regulation of the Head of the National Agency for the Placement and Protection of Indonesian Migrant Workers Number

PER.12/KA/IV/2013 concerning Procedures for Recruitment, Placement, and Protection of Seafarers on Foreign Flag Ships; g) Regulation of the Head of the National Agency for Placement and Protection of Indonesian Migrant Workers Number PER.13/KA/VII/2013 concerning Data Collection for Implementing the Placement of Indonesian Seafarers Abroad; h) Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation (Adela, 2018).

MLC 2006 regulates people who can work as crew members on the condition that the terms and conditions have been met. The Indonesian government ratified Law Number 15 of 2016 with the background of cases that had previously occurred so that efforts should be made to protect the rights that should be obtained by every crew member. For young crew members, the working hours are 8 hours and the rest hours can be adjusted accordingly. In addition, in this MLC there are provisions regarding work qualifications, safety, health and security of ship crews from work accidents and improper treatment.

Government Regulation Number 7 of 2000 concerning Marine Affairs regulates the rights that must be obtained by every Indonesian seafarer or crew, specifically regulated in Article 18 of this regulation. Furthermore, these rights are usually mutually agreed upon in a work agreement which at least agrees on overtime hours, receiving wages, compensation for work losses on holidays, insurance for personal objects, delegation money, and liability in the event of an accident. Every crew member also has the right to do and get accommodation while working on the ship.

Law Number 17 of 2008 concerning Shipping discusses matters of security and welfare of the crew of the ship as stated in Article 151. Security here also includes the cost of liability if the ship is not in good condition. Then, welfare here is defined as working time, rest time, vacation time, wages, safety going to and from work in this case ships, basic needs, the right to get health care for each crew member, and work safety guarantees. The recruitment and placement of crew members is related to the role of the crew organizing agency. A work agreement is made between the agent company and the crew as a mutually agreed decision relating to matters inside and outside the agreement, including in this case health care, ease of obtaining accommodation, managing work files, providing legal assistance, and assistance of wages.

This regulation was made to guarantee the social rights, work safety, and health of Indonesian crew members while they were and worked on foreign-flagged vessels, including in the case of Chinese-owned foreign vessels. This is done for the basic needs and social needs of Indonesian crew members. Also, this regulation regulates the rights of Indonesian seafarers and is related to the conditions that must be in the work agreement, namely working time, vacation time, rest time, wages, medical care needs, and in terms of severance pay.

The Job Creation Law reforms the Shipping Law, namely between Article 14 and Article 15, Article 14A is inserted which stipulates that foreign ships can operate specifically in Indonesian waters which are not activities for carrying passengers and/or goods if Indonesian-flagged vessels are not yet available. In addition, every port business entity must obtain a business license from the central government or local government in accordance with norms, procedures, standards, and criteria so that in this case if the agent company is to employ Indonesian crew members on foreign-flagged vessels, it must meet the terms and conditions stipulated applicable laws, such as shipworthiness, seaworthiness, work safety, and legal protection for Indonesian crew members (Republic of Indonesia, 2020).

#### D. CONCLUSION

Legal protection for Indonesian crew members who work on foreign-flagged vessels, especially in this case is on a foreign ship belonging to China's Fu Yuan Yu 1218, is very necessary and must always be pursued. Indonesian national law and international law must be able to provide protection to victims by looking at the existence of mistreatment, discrimination, torture, forced labor, to the practice of killing Indonesian crew members. This should be a global concern as well because both countries are countries that are subject to the 2006 MLC and are subject to international law and human rights.

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