

Legal Protection of the Rights and Obligations of Ship Crew Based on Government Regulation No. 22 of 2022 Concerning Placement and Protection of Migrant Commercial Ship Crews and Migrant Fishing Ship Crews

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Abstract. Ship Crew, and/or Migrant Workers, specifically referring to the ILO Convention on migrant workers of 1949 (no. 97) in article 11 are people who migrate from one country to another to work. Terminologically, Indonesian Migrant Workers are people who move to other areas, both within and outside the country, either legally or illegally to work for a certain period. Apart from that, it is controlled in Regulation Number 39 of 2004 concerning the Arrangement and Security of Indonesian Laborers Abroad vide Article 1 section (1) which expresses that the meaning of Indonesian Specialists (TKI) is each Indonesian resident who meets the prerequisites for business working abroad in a business relationship for a specific period and getting compensation. In reality, the welfare of Ship Crews has not received a profitable portion in every agreement contained in the Sea Work Agreement, there are still many Ship Crews who are paid less than most workers on land. Over time, changes (reforms) need to be made that can guarantee the welfare of crew members who work on merchant ships, commercial ships, and cruise ships, so that they are no longer only within the scope of migrant workers, but must also be able to be changed and treated as ship crew members fully following the maritime paradigm or nautical insight. Reform of laws and regulations is an effort to realize the protection of human rights.

Keywords: Legal protection, Well-being, Ship's crew.

1 Introduction

The Republic of Indonesia is a state of law (*rechtsstaat*), namely a state in which all attitudes, behavior, and actions, whether carried out by the authorities or by its citizens, must be based on law.[1] The Indonesian rule of law is a state based on Pancasila and the 1945 Constitution of the Republic of Indonesia, an agreement to form a state government, protect the entire nation and all bloodshed, promote the general welfare, and make the life of the nation intelligent. The Indonesian rule of law is a modern rule of law, in connection with which the government's main task is to improve the welfare of its people. That is why the modern Law State is also called the Welfare State.

The era of reform was expected to bring echoes of real change in the prosperity of the nation and state. At first, it turns out that up to now we have not been able to show a real change in building a legal, social, political, economic, and cultural condition that is more transparent and democratic, especially the benefits that have not yet reached the same level among workers or laborers. The biggest obstacle is the weakness in the employment law system which is more structural, cultural, and substantial.

Legal protection for the welfare of Ship Crew is the goal and realization of the fulfillment of basic rights by Article 27 passage (2) of the 1945 Constitution of the Republic of Indonesia "Each resident has the privilege to work and a living deserving of humankind", and Article 33 section (1) which expresses that "The economy is organized as a joint exertion in light of the guideline of family relationship". Infringement of fundamental privileges safeguarded by the constitution is an infringement of basic freedoms. Thus, failure to fulfill the rights of workers or laborers is a real violation of humanity. The privileges being referred to incorporate freedoms, for example, the right to life, the right not to be tormented, the right to religion, the right to equity under the steady gaze of the law, and so on., which are all controlled in legal guidelines.[2]

In reality, the welfare of Ship Crews has not received a profitable portion in every agreement contained in the Sea Work Agreement, there are still many Ship Crews who are paid less than most workers on land. In the process, signing an agreement requires a seafarer to make peace with the ship's captain, trader, or merchant agent. This negotiation process is in stark contrast to the difficulties experienced by Seafarers. Regardless of the difficulties experienced, it turns out that it all starts with differences in terminology and legal umbrella between migrant workers and ship crew.

Ship Crew, and/or Migrant Workers, specifically referring to the ILO Convention on migrant workers of 1949 (no. 97) in article 11 are people who migrate from one country to another to work. In terms of terminology, Indonesian Migrant Workers are people who move to other areas, both within and outside the country, either legally or illegally to work for a certain period. Aside from that, it is likewise controlled in Regulation Number 39 of 2004 concerning the Situation and Security of Indonesian Laborers Abroad vide Article 1 section (1) which expresses that the meaning of Indonesian Specialists (TKI) is each Indonesian resident who meets the necessities to working abroad in a business relationship for a specific period and getting compensation.

Over time, changes (reforms) need to be made that can guarantee the welfare of crew members who work on merchant ships, commercial ships, and cruise ships, so that they are no longer only within the scope of migrant workers, but must also be able to be changed and treated as ship crew members by the maritime paradigm or nautical insight. Reform of laws and regulations is an effort to realize the protection of human rights.[3]

Re-interpretation of the maritime paradigm is important in the current context, as part of the development and realization of Good Corporate Governance policies, so that there is no discredit to the welfare of ship crews and workers on land.

The rule of law aims primarily to provide legal protection for the people. According to Philipus M Hadjon[4] that legal protection for the people against government actions is based on two principles, namely the Principles of Human Rights and the Principles of the Rule of Law. Recognition and protection of human rights have a primary place and can be said to be the goal of the rule of law. As a consequence of the rule of law, there must be guarantees for state institutions as a means of state government to be able to run the government and citizens have the rights and obligations to receive guaranteed legal protection.

Adroitly, lawful security for individuals for government activities incorporates preventive legitimate assurance and oppressive lawful insurance. In preventive lawful security, individuals are permitted to submit protests (inspraak) or sentiments before an administration choice takes conclusive structure.

Pancasila as the way of thinking of life of the Indonesian public in its fifth rule states "Civil rights for Every single Indonesian Individual". This implies that equity for individuals is a higher priority than equity for specific gatherings.[5] Justice must be upheld while upholding the principles of justice to create a prosperous, just, prosperous, and equitable society both materially and spiritually.[6] This justice must be felt by all Indonesian people, including justice for workers and workers, whether they work domestically or abroad.

A transient specialist frequently called a traveler laborer is "an individual who is to be locked in, is locked in or has been participated in a compensated movement in a Condition of which the person is certainly not a public.[7] Traveler laborers assume a significant part in monetary development both in their nation of beginning (home state) and in the nation where they work (have state).

The root of the problem of not reaching an agreement for the welfare of ship crews, especially those working on merchant ships, commercial ships, and cruise ships, is the poor state civil service system in Indonesia, which in principle consists of two important things, namely: (1) internal problems in the country's civil service system, and (2) external issues that affect the function and professionalism of the state civil service. Apart from that, problematic situations related to internal issues in the civil service system can be analyzed by paying attention to the subsystems that make up the state civil service.

2 Research Problem

The issue in this paper is "the manner by which the legitimate assurance for the government assistance of boat group depends on Regulation Number 39 of 2004 concerning the Arrangement and Security of Indonesian Laborers Abroad?"

3 Method and Approach

3.1 Method

The method used in writing this applied paper is a descriptive-analytical method, namely by using data that clearly describes problems directly in the field, then analysis is carried out and then conclusions are drawn to solve a problem. The data collection method is through observation and literature study to obtain solutions to problems in preparing this paper. In line with the research objectives to be achieved, the domain of this research is included in the realm of qualitative research, thus a qualitative approach method will be used. According to Petrus Soerjowinoto et al., qualitative methods are methods that emphasize the process of researchers' understanding of problem formulation to construct a complex and holistic legal phenomenon.[8]

3.2 Approach

The normative juridical approach, namely the juridical approach method used to examine problems in terms of law and statutory regulations, with the rule approach, in particular looking at the issues to be talked about involving lawful guidelines as auxiliary information as essential, optional and tertiary legitimate materials.[9]

In order to protect the legal rights and obligations of ship crews, the normative juridical approach is applied to specific written laws or statutory regulations. These are based on Government Regulation No. 22 of 2022 concerning the Placement and Protection of Migrant Commercial Ship Crews and Migrant Fishing Ship Crews.[10] Based on government regulation no. 22 of 2022 concerning the Placement and Protection of Migrant Commercial Ship Crews and Migrant Fishing Ship Crews in Practice, this research describes the situation of the object under study. Specifically, it focuses on the legal protection of ship crews' rights and obligations.

4 Discussion

4.1 Legal Protection of the Rights and Obligations of Ship Crew Based on Government Regulation No. 22 of 2022 concerning the Placement and Protection of Migrant Commercial Ship Crews and Migrant Fishing Ship Crews.

Regulation Number 21 of 1992 concerning Delivery Article 1 section 11 makes sense of that "Boat team is individuals who work or are utilized on a boat by the proprietor or administrator of the boat to complete obligations on board the boat by their situation as expressed in the endorsement book". As per the Declaration of the Clergyman of Transportation No. 70 of 1998 concerning Boat Maintaining, (Part I Article 1), expresses that "Boat team is individuals who work or are utilized on board a boat by the proprietor or administrator of the boat to complete undertakings on board the boat by the position expressed in the endorsement book. " The boat's group are the people who are recorded in the nautical register/boat's team endorsement (monsterrol), and they are designated by the boat's business visionary to chip away at board the boat to complete boat's team administrations."[11]

To ensure shipping safety to support the smooth movement of ships at sea, it is necessary to have crew members who have adequate skills and expertise. Thus, every ship that will sail must be manned by a skilled crew according to their position and duties, taking into account the size of the ship, the structure of the ship, and the shipping area. The names of the ship's crew, in this case, the ship's officers and crew, must be mentioned in the maritime register (Monsterrol).

Monsterrol is a list where all the names of the ship's crew are recorded. Made in duplicate by the Shipping Safety Inspector, which is merely a registration.[12]

Requirements for working on a ship according to Government Regulation no. 7 of 2000 (Chapter V Article 17), namely:

- a. Have a Seaman Skills Certificate and/or Seaman Skills Certificate.
- b. Be at least 18 years old.
- c. Physically and spiritually healthy based on the results of a special health examination carried out for this purpose.
- d. Certified.

In accordance with Maritime Affairs Government Regulation No. 7 of 2000, there are seafarer certificates that a seafarer must have, including:

- a. Seamanship Certificate.
- b. Seaman Skills Certificate.
- c. Basic Safety Skills Certificate (Basic Safety Training).
- d. Tanker Safety Certificate (Tanker safer).
- e. Roro Passenger Ship Safety Certificate.
- f. Certificate in Skills for Using Survival Craft and Rescue Boats.
- g. Fast Rescue Boat Skills Certificate.
- h. Advanced Fire Fighting Skills Certificate (Advance Fire Fighting)
- i. First Aid Skills Certificate (Medical Emergency First Aid)
- j. Medical Care On Board Skills Certificate (Medical Care On Board)
- k. RADAR Simulator Certificate l. ARPA Simulator Certificate.

Ship crews are divided into fishing ship crews and commercial ship crews. The fundamental freedoms and commitments for fishing vessel teams are contained in the Guideline of the Priest of Oceanic Undertakings and Fisheries of the Republic of Indonesia Number 42/Permen-Kp/2016 concerning Sea Work Arrangements for Fishing Vessel Groups, which in full reads:

Article 20

"PKL must state the rights and obligations of fishing vessel crew and fishing vessel owners, fishing vessel operators, fishing vessel crew agents or fishing vessel captains."

Article 21

- (1) Fishing Vessel Owners, Fishing Vessel Operators, Fishing Vessel Crew Agents, or Fishing Vessel Captains have the right to:
 - a. employ fishing crew according to the PKL period; And
 - b. employ fishing crew properly according to competency.
- (2) Fishing Vessel Crew have the right to:
 - a. accept appropriate job placement;
 - b. receive employment protection;
 - c. receive salaries and bonuses on time;
 - d. receive guaranteed legal protection;
 - e. receive health insurance and accident insurance;
 - f. receive transportation and accommodation costs for departure and return due to cancellation and end of PKL;
 - g. receive guarantees for the costs of repatriating the body, including documents, transportation, and burial;
 - h. receive occupational safety and health facilities, including helmets, gloves, life jackets, life vests, cold clothes, boots, work clothes, life rafts, etc.;
 - i. receive appropriate accommodation on board, including food, fresh water (drinking and bathing), and a bed; And
 - j. receive rest hours while working on a fishing vessel and annual leave.

Article 22

- (1) Fishing Vessel Owners, Fishing Vessel Operators, Fishing Vessel Crew Agents, or Fishing Vessel Captains are obliged to:

- a. create and comply with the contents of the PKB/CBA;
 - b. apply for approval of a job order letter of guarantee or letter of appointment;
 - c. create and comply with the contents of the PKL;
 - d. employ fishing crew appropriately;
 - e. provide work protection for fishing vessel crew;
 - f. pay wages for fishing vessel crews;
 - g. does not cut the wages of Fishing Boat Crew;
 - h. pay insurance premiums for fishing vessel crews;
 - i. Guarantee the costs of transportation, accommodation, departure, and return of fishing vessel crew.
 - j. repatriate the bodies of fishing crew members who died;
 - k. grant leave and permission not to work to fishing vessel crews by PKL,
And
 - l. provide opportunities for fishing vessel crew to develop careers and competencies.
- (2) Fishing Vessel Crew are obliged to:
- a. create and comply with the contents of the PKL;
 - b. carry out job duties according to the contents of the PKL;
 - c. comply with work regulations on the Fishing Vessel agreed upon by both parties;
 - d. report to the harbormaster at the fishing port;
 - e. report to the Representative Office of the Republic of Indonesia Abroad;
 - f. not falsify fishing vessel crew documents;
 - g. not using other Fishing Vessel Crew competency certificates; And
 - h. not involved in illegal and unreported fishing activities and/or trans international crime.

The basic rights and obligations for Commercial Ship Crew are contained in Government Regulation No. 22 of 2022 concerning the Placement and Protection of Migrant Commercial Ship Crews and Migrant Fishing Ship Crews as follows:

Before work;

Article 15

Each prospective Migrant Commercial Ship Crew must meet the following requirements:

- a. at least 18 (eighteen) years of age;
- b. have competence or have education by the position requirements determined by the Employer or Principal and fulfill work competency qualifications by the provisions of statutory regulations;
- c. physically and mentally healthy;
- d. registered and having a Social Security participation number; And
- e. have complete documents required.

Article 16

Every prospective Migrant Commercial Ship Crew member who meets the requirements as intended in Article 15 must register with the Regency/City Service or LTSA for Indonesian Migrant Workers online and offline.

Article 17

- (1) Migrant Commercial Ship Crew must sign the PKL before working.

- (2) PKL Ithpal Niaga Migrant Crew as intended in paragraph (1) must contain at least:
- a. identity of Migrant Merchant Ship Crew:
 1. full name;
 2. date of birth or age and place of birth;
 3. seafarer's identity document number or seaman's code;
 4. passport number; And
 5. address in Indonesia;
 - c. Employer or Principal identity:
 1. name;
 2. personal identification number; And
 3. address/domicile;
 - d. P3MI identity:
 1. name of the person responsible; And
 2. address/domicile;
 - e. ship identity:
 1. name of the ship;
 2. ship registration number or international maritime organization number; And
 3. ship's flag;
 - f. rights and obligations of the parties;
 - g. Working conditions and conditions include at least:
 1. working time, rest time, and leave;
 2. wages, methods of payment of wages, overtime pay, annual leave pay, and bonuses;
 3. accommodation, recreation, and consumption facilities; And
 4. Social Security and insurance;
 - h. place and date of signing the PKL;
 - i. position or rank of director on board the ship;
 - j. the right to repatriation or repatriation;
 - k. reference KKB number if any;
 - l. dispute resolution; And
 - m. PKL period.
- (3) Working time and rest time as intended in paragraph (2) letter f number 1 with the following conditions:
- a. The longest working time does not exceed:
 1. 14 (fourteen) hours within a 24 (twenty-four) hour period;
 2. 72 (seventy-two) hours within a period of 7 (seven) working days;
 - b. Minimum rest time is not less than:
 1. 10 (ten) hours within a 24 (twenty-four) hour period; And
 2. 77 (seventy seven) hours within a period of 7 (seven) working days.
- (4) PKL as intended in paragraph (1) is authorized by the harbormaster and recorded through an integrated system.

Article 18

- (1) Every Migrant Commercial Ship Crew is required to have the following documents:

- a. passport;
 - b. Sailor textbook;
 - c. street vendors;
 - d. proof of Social Security program participation;
 - e. health certificate based on health and psychology;
 - f. Kefa Visa;
 - g. seafarer's identity document if required by the Employer or Principal;
And
 - h. work competency certificate, seafaring expertise certificate, and/or seafaring skills certificate.
- (2) PKL as intended in paragraph (1) letter c is made based on the KKB.
 - (3) The work visa as intended in paragraph (1) letter f is attached if required by the country of placement.
 - (4) The document issuance process as intended in paragraph (1) is by the provisions of statutory regulations.

During Work.

Article 19

- (1) Employers or Principals are obliged to provide occupation protection for Migrant Commercial Ship Crew.
- (2) Protection as intended in paragraph (1) includes at least:
 - a. wages;
 - b. work time and rest time;
 - c. leave rights;
 - d. return;
 - e. the right to compensation for the loss of the vessel;
 - f. manning Levels;
 - g. ability and career development;
 - h. obtain accommodation, recreational facilities, food, drinks, and clean water;
 - i. health services on board and ashore;
 - j. Occupational Health and Safety;
 - k. prevention of work accidents;
 - l. access to welfare facilities at the port; And
 - m. Social Security and insurance.
- (3) Working time and rest time as intended in paragraph (2) letter b apply the provisions as intended in Article 17 paragraph (31).
- (4) The right to leave as intended in paragraph (2) letter c is obtained directly without withholding the right to wages.
- (5) Provisions regarding protection as intended in paragraph (2) are implemented by the provisions of statutory regulations, international law, international standards issued by international organizations, the law of the ship's flag country, and/or the law of the Employer's or Principal's country.

After work.

Article 20

- (1) Crew of Migrant Commercial Ships have the right to repatriation or repatriation due to:

- a. the PKL period ends when on board the ship or abroad;
 - b. The PKL is terminated by the Employer or Principal or Crew of the Migrant Commercial Ship for a justifiable reason; or
 - c. Migrant Commercial Ship Crew are unable to carry out the obligations stipulated in the PKL or cannot be expected to carry out the obligations under special circumstances.
- (2) The right to repatriation or repatriation of Migrant Commercial Ship Crew, as intended in paragraph (1), is borne by the Employer or Principal up to the area where the Migrant Commercial Ship Crew originates.
- (3) If certain conditions occur in the destination country or within the country, an extension of the PKL may be carried out. Article 21 If the PKL ends while the Migrant Commercial Ship Crew is sailing and repatriation is not possible, the Migrant Commercial Ship Crew must continue their duties on the commercial ship until the commercial ship arrives at the next port and receive wages and welfare compensation for the excess working time.

Discussions regarding legal protection for ship crew workers also require clarity regarding what is meant by the protection of Indonesian workers. The articles in the 1945 Constitution which state that there is a guarantee of protection for workers/laborers are:

1) Article 28 D section (1) of the 1945 Constitution, in particular that each individual has the privilege to acknowledgment, ensures, security, and fair legitimate conviction as well as equivalent treatment under the watchful eye of the law.

2) Article 28 D passage (2) of the 1945 Constitution "Everybody has the option to work and get fair and suitable pay and treatment in business connections."

Legal protection for workers is also stated in Article 4 letter c of the Employment Law which states that "employment development aims to protect workers in realizing prosperity". Furthermore, the articles in the Labor Law that regulate protection, wages, and welfare are contained in Chapter X in Article 67-101.

Aristotle said that humans are "zoon politicon"[14] social creatures because each member of society has a relationship with one another. As social creatures, consciously or unconsciously, humans always carry out legal actions (rechtshandeling) and legal relationships (rechtsbetrekkingen).

Legal acts (rechtshandeling) are defined as every human act carried out intentionally/on his will to give rise to rights and obligations whose consequences are regulated by law. Legal acts consist of unilateral legal acts such as making a will or gift, and two-party legal acts such as buying and selling, work agreements, and so on. Legal relations (rechtsbetrekkingen) are defined as relations between two or more legal subjects, in which relations consist of ties between individuals and individuals, between individuals and society, or between one and another society. In this legitimate relationship, the freedoms and commitments of one party are stood up to with the privileges and commitments of the other party."

5 Conclusion

In Indonesia, the basic rights and obligations for Commercial Ship Crews are contained in Government Regulation No. 22 of 2022 concerning the Arrangement and Security of Traveler Business Boat Teams and Transient Fishing Boat Groups. Specifically, guidelines administering the arrangement of Boat Team will be additionally managed in Regulation 39 of 2004 concerning the Position and Security of Indonesian Laborers Abroad. Nonetheless, until the issuance of Regulation Number 18 of 2017 concerning the Insurance of Indonesian Traveler Laborers gave by the Service of Labor supply, the courses of action for the situation of Boat Team as well as PMI had not entirely settled and talked about by any means. What happened next was a regulatory vacuum, which resulted in BNP2TKI and the Ministry of Transportation issuing mutual policies which had an impact on the unclear status of the Ship Crew.

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