



Construction of the Legal Protection of Indonesian Migrant Workers as Children of Foreign Fishery Boats (Abk)

L. Hadi Adha; Wiwiek Wahyuningsih; Eka Jaya Subandi

Undergraduate Legal Studies Program, University of Mataram, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v11i9.5891>

Abstract

In Indonesia, a number of workers who work abroad are one of the largest sources of foreign exchange income and a major contributor to the country's economy and development. Indonesian workers who work abroad are currently called Indonesian migrant workers after the enactment of Law No. 18 of 2018 concerning Migrant Worker Protection. Even though the migration experience experienced by workers abroad is quite good, there are still many complaints and reports of acts of violence and exploitation, this often becomes a public concern, especially the protection of migrant workers who work as sailors and crew members on foreign fishing vessels. still very minimal compared to domestic workers. The method in this research uses a type of normative legal research, using statutory, conceptual and legal analysis approaches. The findings in this research show that several international legal standards, especially in the ILO Convention No. 188 of 2007 concerning work in fishing, can be used as references and recommendations for the formation of national laws in the context of protecting and providing legal certainty for Indonesian citizens who work as migrant workers, especially as a crew member on a foreign fishing vessel. While in national law the legal construction of protection of Indonesian migrant workers as crew members and crew members of foreign fishing vessels in not specifically found in Law No. 18 of 2017, but with the issuance of Government Regulation No. 22 of 2022 concerning Placement and Protection of Migrant Commercial Ship Crews and Migrant Fisheries Ship Crews, it becomes a regulation that specifically provides legal certainty for migrant workers, especially those who work as sailors on foreign or foreign-flagged vessels.

Keywords: *Legal Construction; Indonesian Migrant Workers; Fishing Boat Crew*

Introduction

Population migration is not new, migration has occurred in the past and migration will continue. Current estimates based on *International Organization for Migration (IOM)* data report that there are 244 million international migrants globally (or 3.3% of the world's population).¹ Economic and demographic differences, both internally within a country and externally between countries or regions make the movement of people across national borders a natural response to world globalization. Decreasing

¹International Organization for Migration (IOM). The UN Migration Agency, Word *2018 Migration Report*.

communication costs, faster ways of traveling and transfer of money have all made the movement of people easier. Overall, migration is a productive experience for a large number of people. Work is the main reason people migrate internationally, and migrant workers make up the vast majority of the world's international migration, with most living in high-income countries and many involved in the service sector. However, many migrant workers suffer from poor working and living conditions compared to citizens of their host countries. Although there are international standards to protect them, their rights as workers are often undermined. Moreover, for those who have immigrant worker status as crew members and crew members of foreign fishing vessels. They are in an even more vulnerable situation due to the lack of protection for those vulnerable to illegal activities, violence and exploitation by dangerous elements.

Indonesian migrant workers (PMI) who work in the domestic sector generally have received a lot of attention and public attention; this is indicated by the arrangement or management of regulations for this type of work which tends to be better than before, both during the pre-placement period, during placement and post-placement of migrant workers. However, this is not the case with Indonesian workers who work as seafarers or as crew members (ABK), especially fishing crew members (AKP) on foreign-flagged ships. Migrant workers as crew members on ships owned by foreign companies receive little attention regarding safety and protection of their rights. This can be seen from the government's admission that it does not have accurate data on the number of migrant workers working in the shipping sector.²As quoted from data from the Ministry of Manpower, almost 78 percent of PMI who work in all sectors are low-skilled and do not have high education. Worse still, data on the placement of PMIs who work as crew members is generally not recorded by the Computerized System for Overseas Workers (SISKOTKLN). These crew members, like PMI in general, are more vulnerable and marginalized. This means that being a crew member is a profession that involves exploitation such as human trafficking, slavery and inappropriate treatment in their profession.

Workers in the fisheries sector are most vulnerable to exploitation compared to other migrant sectors. Working conditions on fishing vessels are even worse when it comes to fishing. Being forced to continue working is nothing new on fishing vessels, including in Indonesia, which in fact is one of the centers of human trafficking as well as a destination and transit for victims both from within and outside the country. In 2015 alone, more than 1,000 fishermen from Myanmar, Cambodia, Thailand and Laos were found trapped in Ambon and Benjina. They are trafficked from their home countries, forced to work 20 hours a day on ships.³

The reality of the condition of Indonesian crew members, who receive bad treatment, not only occurs abroad but also in their own country. In the report "Fish for Export: Working in the Wild Capture Seafood Industry in Indonesia", in 2018 it was stated that working conditions on ships can be very unpleasant and dangerous. Therefore, it is difficult for Indonesian crew members and fishermen to obtain their rights, even though the report also states that Indonesia itself is the second largest seafood producer in the world after China, and is in first place in tuna hunting in the world, seafood exports, especially to the US, Japan and Europe, reached 5 billion US dollars. The most valuable export from Indonesia is tuna, which is obtained from the eastern waters of the archipelago.⁴ From time to time, Indonesian fishing vessel crews are often trapped in situations of modern slavery at sea. Various problems were reported by crew members. Greenpeace Southeast Asia stated that 34 cases of Indonesian fishing vessel crews

²<https://nasional.kontan.co.id/news/wah-gov-akui-belum-punya-data-pasti-nomor-pekerja-migran-sektor-pelayaran>.

³This is stated in the report entitled "Report on Human Trafficking, Forced Labor and Fisheries Crime in the Indonesian Fishing Industry". The report, published in 2016, was prepared by the International Organization for Migration (IMO) in collaboration with the Ministry of Maritime Affairs and Fisheries (KKP) and Coventry University.

⁴The report is a collaboration between Coventry University, the Center for Sustainable Ocean Policy (CSOP), the International Organization of Migration (IOM) and the Issara Institute. Report prepared by Katharine Jones, David Visser, Jeremia Humolong Prasetya and Dina Nuriyati.

involved 13 foreign vessels in long-distance waters, resulting in four main complaints. First, fraud was found on 11 foreign ships, second, withholding of wages was found on 9 foreign ships, third, excessive overtime was found on 8 foreign ships and fourth, physical and sexual violence was found on 7 foreign ships.⁵ *Destructive Fishing Watch* (DFW) Indonesia recently released data on the number of AKP who became victims while working on fishing vessels. During the period 22 November 2019 to 19 July 2020, at least 13 Indonesian AKPs were recorded as victims on Chinese-flagged fishing vessels. Of this number, 11 people are known to have died and the rest are declared missing. The latest data, on July 19 2020, there was an AKP named Fredrick Bidori who had to breathe his last breath in a hospital in Peru, because he had a work accident on a Chinese-flagged fishing boat. The data above is only part of the total number of AKP from Indonesia who experienced various incidents while working on ships. Of all these, the most dominant are cases of forced labor and also criminal acts of trafficking in persons (TPPO)⁶

In recent years, the marine and fisheries sector has once again found a place in the hearts of Indonesian people. This is evidenced by the increasing public interest in working in this sector, including on board fishing vessels. Unfortunately, working on board a fishery vessel as a fishing vessel crew member (AKP) is very risky. Acts of violence, physical and psychological exploitation often befall workers. The State must pay attention to these risks by issuing regulations that can implement security and safety standards for Indonesian citizens (WNI) who work as AKP on fishing vessels at home or abroad. Therefore, regarding what has been described previously, the problem formulation in this research is; What is the legal construction for the protection of Indonesian migrant workers, especially for crew members (ABK) and fishing vessel crew (AKP) who work on foreign or foreign-flagged vessels?

Research Methods

This article is based on research conducted to find solutions to legal issues that arise, therefore the type of research and method used in this research is normative juridical, namely research conducted by means of document studies focused on examining concepts and theories, laws and regulations in terms of finding answers to the problems or problem formulations raised, supported by a statutory approach, a legal conceptual approach, and a legal fact approach (Sudiarawan, et al. 2020). With the discovery of sources of legal materials as study material both primary, secondary and tertiary legal materials. In this article, which is prescriptive analytical in nature, it is found through literature study, then the sources of legal material are analyzed and reviewed with interpretation techniques and legal systematization techniques (Hutchinson 2015).

Discussion

Construction of an International Legal Framework Concerning the Protection of Migrant Fishing Ship Crews

In recent years, the maritime and fisheries sector has begun to receive attention from the Indonesian people as a new type of work. It has been proven that in the last few years, people's interest in working in this sector, including on fishing vessels, has also continued to increase. Unfortunately, working on a fishing vessel as a fishing vessel crew member (AKP) has enormous risks. Apart from the issue of wages or salaries, the lack of clarity in maritime work agreements, discrimination in working hours, which have not yet been fully implemented as maritime work agreements (PKL) as well as various acts of violence, both physical and physical, experienced by crew members of Indonesian migrant fishing

⁵The Seabound report launched by Greenpeace was accessed <https://www.greenpeace.org/indonesia/cerita/4918/perlindungan-awak-kapal-perikanan-as-pekerja-migrant-indonesia/>

⁶<https://www.mongabay.co.id/2020/08/07/kerja-rumah-bangun-untuk-melindungi-awak-kapal-perikanan/>

vessels.⁷These risks are of course of concern to the state by issuing regulations that can implement security and safety standards for Indonesian citizens (WNI) who work as AKP on fishing vessels at home or abroad.

Why the issue of Indonesian migrant fishing vessel crew is a priority that must receive the country's attention, several things are the basis for consideration:⁸

- The ILO has stated that working on fishing vessels is one of the most dangerous, even deadly, professions.
- Many countries in Southeast Asia supply crew to foreign-flagged fishing vessels. Apart from Indonesia, there are also the Philippines and Vietnam.
- From 2014 to 2022, the Indonesian Migrant Workers Union (SBMI) continued to record an increase in cases of forced labor experienced by Indonesian migrant AKP on foreign ships.
- Every year, Indonesian migrant AKPs almost always die while working at sea. Many of these cases fulfill the elements of a criminal act of trafficking in persons (TPPO).
- Until now, in Indonesia there has not been a single ministry, agency or institution that has clearly recorded data regarding the AKP of Indonesian migrants - number of AKP, ship on which they work, period of work, and so on.

Several international standards that can be used as reference standards for the protection of fishing vessels and ship crews in order to realize a sustainable capture fisheries sector are three international organizations of the United Nations, namely the International Maritime Organization (IMO), the International Labor Organization (ILO) and Food and Agriculture Organization (FAO) launched the book *Fishing Vessel Safety*. The book "Fishing Vessel Safety"⁹written by FAO, and supported by IMO and ILO, it is intended to be a guide for policy and decision makers (states) as well as other stakeholders in the fisheries, maritime and employment sectors, to ratify and implement four international instruments in the capture fisheries sector, namely:

1. IMO Cape Town Agreement (CTA) 2012;
2. IMO International Convention on the Training, Certification and Personnel of Fishing Vessels (STCW-F) 1995;
3. ILO Convention on Work in Fishing (C-188) of 2007;
4. *The FAO Agreement on Port States Measures to Prevent Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA)* in 2009.

The substance of this book contains a general overview of the four international conventions or agreements above. These four conventions regulate standards regarding fishing vessel safety, safety of fishermen or fishing vessel crew members, crew training, and safe and accountable fishery operations.

First CTA 2012 regulates seaworthiness standards for fishing vessels for safety purposes and reducing fatalities, such as The Convention for the Safety of Life at Sea (SOLAS) for fishing vessels. Matters regulated in the 2012 CTA include: ship construction, watertight equipment, electrical installations, fishing vessel safety equipment. In relation to the protection of crew members, the 2012 CTA more specifically regulates ship construction standards to ensure the safety of crew members. Currently, there are 13 countries that have signed the 2012 CTA and 48 countries have committed to ratifying the 2012 CTA, including the largest fishing countries in the world, namely Indonesia, China and

⁷Maritime Work Agreement, hereinafter abbreviated as PKL, is an individual work agreement made and signed between the ship's crew and a party acting for and on behalf of the Employer or Principal which contains the rights and obligations of the parties and is ratified by the harbormaster.

⁸ <https://koral.info/id/pendakian-yang-bisnis-dan-sepi-untuk-perlindungan-pekerja-migran/> accessed 11 September 2023.

⁹Food and Agriculture Organization of the United Nations Rome, 2020, *Joining forces to shape the fisheries sector of tomorrow Promoting safety and decent work in fisheries through the application of international standards.*

South Korea. The 2012 CTA is not yet effective because the conditions must be ratified by 22 countries that have ships, with a length of >24m operating on the high seas with a total of at least 3,600 ships. The impact of the 2012 CTA ratification on Indonesian crew members on foreign fishing vessels is that the protection of the crew members is guaranteed because the ship construction complies with international safety standards.

Second, The International Convention on Standards of Training, Certification, and Watchkeeping for Fishing Vessel Personnel 1995, (STCW-F 1995). STCW-F 1995 regulates certification and training standards for crew members working on ships >24m long. Matters regulated in STCW-F 1995 include certification and training standards for crew safety on fishing vessels. Indonesia ratified this convention in 2019 and this convention has been in effect internationally since 2012. The benefit obtained by Indonesia after ratifying the 1995 STCW-F is international recognition of Indonesian crew members' competency certificates, so that they are able to increase the competitiveness of Indonesian crew members when working in foreign fishing vessels. In addition, crew members on foreign fishing vessels will have safety capabilities in accordance with international standards.

Third, ILO Convention C-188 Work in Fishing Convention 2007 (C-188 2007). C-188 2007 sets standards to ensure crew members have decent working conditions when working on ships. Matters regulated in C-188 2007 include: mandatory medical tests, minimum age limits, standard sea work agreements, and accommodation and food. C-188 2007 has been ratified by 18 countries, and is in full force in 14 countries (2020). C-188 2007 has been effective since 2016 because it has been ratified by 10 countries, 8 of which are island countries. The rights of fishing vessel crew members regulated in C-188 2007 are fundamental rights related to forced labor, freedom of association and protection of the right to organize, the right to association and collective bargaining, equal wages, elimination of forced labor and discrimination. The benefit of ratifying C-188 2007 for Indonesian crew members who work on foreign fishing vessels is that it guarantees the protection and fulfillment of the rights of Indonesian crew members in accordance with standards of decent working conditions on foreign fishing vessels, including Indonesian fishing vessels.

Of the four conventions, the Work in Fishing Convention, ILO Convention No. 188, is the most complete, because this Convention is designed to be flexible and gradual. Contains clauses that make it easier in the hope that it will not hinder or burden countries to ratify it. The ILO hopes that C 188 will be widely ratified by all its member countries. The matters which constitute the general principles for the Implementation of ILO Convention No. 188 are contained in Article 6 of ILO Convention No. 188 which states;

1. Each Member State shall implement and enforce any laws, regulations or other measures it has adopted to fulfill its commitments under this Convention in respect of crews and fishing vessels under its jurisdiction. Other measures may include collective agreements, court decisions, arbitration awards, or other means consistent with national laws and practices.
2. Nothing in this Convention shall affect any law, decree or custom, or any agreement entered into between the owner of a fishing vessel and its crew, which ensures conditions more favorable than those provided for in this Convention.

According to the Coordinating Minister for Maritime Affairs and Investment's report, two pillars have been ratified and the other two are still in the final stages. The two that have been completed are the Port State Measures Agreement to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing; and the Standard Convention on Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F). Meanwhile, the two pillars that are being finalized are the Convention *Cape Town Agreement on Safety of Fishing Vessels*; and ILO Conventions *Convention No. 188 on Work in Fishing*. It is hoped that these two pillars will be ratified and implemented by the end of 2020 at the latest.

To date, 28 countries have signed the convention through ratification, accession, approval or acceptance in accordance with Article 11 of the Convention. They are Belgium, Canada, Congo, Denmark, Iceland, Kiribati, Latvia, Lithuania, Mauritania, Morocco, Namibia, Nauru, New Zealand, Netherlands, Norway, Palau, Poland, Portugal, Romania, Russia, Saint Lucia, Sierra Leone, Africa South, Spain, Syria, Tunisia, Uganda and Ukraine.¹⁰ Meanwhile, ILO Convention No. 188 on Work in Fishing To date, there are 18 countries that have ratified ILO Convention No. 188 of 2007, namely Angola, Argentina, Bosnia and Herzegovina, Congo, Estonia, France, Lithuania, Morocco, Namibia, Norway, Senegal, South Africa, Thailand and the United Kingdom. Meanwhile, there are several countries that still have not in force status, such as the Netherlands, Poland and Portugal which will start in 2020, and Denmark which will start in 2021.¹¹ This is an important note for the State that the importance of this ILO convention is because if it ratifies the state it has rights and obligations where these conditions are the role of the state, ILO Convention C188 is the only international convention that specifically regulates the protection and standards of decent working conditions for workers on fishing vessels. The ratification of C188 is important to encourage international cooperation, especially through the ILO, and strengthen efforts to protect Indonesian fishing crews.

Work in Fishing Convention or known as ILO Convention No. 188 (C-188) is an international instrument that regulates forms of protection for fishing vessel crews and mechanisms to ensure fishing vessels employ crew members with appropriate conditions. C-188 establishes special protection for the capture fisheries industry which has high risks (3D: Dirty, Difficult, Dangerous). This convention was adopted by the ILO (International Labor Organization) in 2007 and has been in force (entered into force) since 2017. Consists of nine parts (Chapters), containing minimum requirements for service, age, wages, work contracts, accommodation and food; health protection and medical care, social security, and regulatory compliance and enforcement.

Fishing vessel crews are the subject of this convention. What is meant by fishing boat crew in this convention is every person who works or is employed, in any capacity, on a fishing boat, including those who are paid based on a share of the catch. Those who are not included in the fishing boat crew are pilots, state officials, and land-based workers who are on duty on the fishing boat. This convention applies to all commercial fishing activities. Excluded are traditional fishing activities (daily food needs) and recreational fishing such as fishing. Then it is applied to all types of ships or boats used for commercial fishing operations. However, specifically for fishing vessels with a length of 24 meters and above and fishing vessels that are at sea for three days or more, additional stricter requirements are imposed. Ships that are only used for transporting and processing fish, because operationally they are like commercial vessels, refer to the 2006 Maritime Labor Convention (MLC).

The aim of this Convention is to ensure that crew members have adequate working conditions on fishing vessels in terms of the minimum requirements for work on board; terms of service; accommodation and food; occupational health and safety protection; health care and social security. ILO Convention no. 188 applies to all commercial fishing vessels flying the flag of a ratifying country by applying the principle of "no more favorable treatment". This principle ensures that fishing vessels from flag States that have not ratified C-188 will not receive better treatment than fishing vessels flying the flags of countries that have ratified C-188. Based on the principle of "no more favorable treatment", port states, which have ratified C-188, can inspect every foreign fishing vessel that docks. The Port State may take necessary steps to correct any conditions on board the ship that are clearly dangerous to safety or health. The ILO regulates fishing vessel inspection procedures in the Guidelines for port State control officers (ILO, 2010).

In this convention, minimum requirements or standard rules are also stated that can be used as an instrument of protection for fishing vessel crew, such as age, health examination, working hours, work

¹⁰<https://www.mongabay.co.id/2019/11/11/pekerja-perikanan-di-atas-kapal-butuh-perlindungan-negara/>

¹¹<https://maritim.go.id/kemenko-marves-tekankan-komitmen-percepat-ratifikasi-konvensi-ilo/>

agreement, salary and compensation costs, medical care and work accidents. In the ILO-188 convention, the minimum age for working on a fishing vessel is 16 years, or 15 years for people who have undergone training or work as an apprentice in the fisheries sector. Flag states can raise the minimum age limit, generally 18 years, if 16 is considered insufficient. Regarding health standards, the convention stipulates that no crew member may work on board a fishing vessel without a valid medical certificate. The competent authority must determine the nature of the medical examination, the form and content of the medical certificate. Exemption from the above medical requirements may be granted to crew members who work on ships under 24 meters long and do not go to sea for more than three days. The Working Hours Requirements, in this Convention, require that vessels have adequate crew and that fishermen have regular rest periods long enough to remain healthy and safe. Further requirements are set for vessels over 24 meters in length and vessels at sea for more than three days. Requirements regarding Employment Agreements: Ship crews have the right to have a written work agreement that they understand. The ship owner or employer is obliged to ensure that each crew member has a written work agreement, which is signed by the crew member and the ship owner or an official representative of the ship owner or employer. Every ship is required to carry a list of crew members and their details. A copy of the list must be given to the designated officer ashore, before or immediately after the ship leaves the Port.

Construction of the National Law for the Protection of Indonesian Migrant Fishing Ship Crews

The state guarantees the fulfillment of citizens' rights to obtain work and a decent living for humanity as stated in article 27 paragraph (2) of the 1945 Constitution. This shows the state's commitment to fulfilling the rights of every citizen to obtain the right to work both inside and outside the territory Republic of Indonesia so that citizens can enjoy a life worthy of humanity. In guaranteeing the fulfillment of the rights to work and a decent living for humanity for every citizen. The Constitution of the Republic of Indonesia 1945 guarantees that every Indonesian citizen has the same rights and opportunities without discrimination to obtain work and a decent living. Work is a human right that must be upheld, respected and guaranteed to be enforced. Indonesian migrant workers must be protected from human trafficking, including slavery and forced labor, victims of violence, abuse, crimes against human dignity, and other treatment that violates human rights.

The government has issued several statutory regulations starting from the formation of laws, government regulations, presidential regulations, ministerial regulations and regulations issued by BP2MI. One of them is Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers and other regulations under the law as implementation of regulations for the protection of Indonesian migrant workers in order to regulate new governance in the placement and protection of Indonesian migrant workers which applies as general positive law. The laws and regulations that are still in force as referred to are in the following table;

No	Legislation Concerning Indonesian Migrant Workers	
1	Constitution	Law No. 18 of 2017 concerning the Protection of Migrant Workers
2	Government regulations	Government Regulation No. 59 of 2021 Implementation of Protection of Indonesian Migrant Workers. Government Regulation No. 10 of 2020 Procedures for Placement of Indonesian Migrant Workers by BP2MI. PP No. 22 of 2023 concerning the Placement and Protection of Migrant Commercial Ship Crews and Migrant Fishing Ship Crews.

3	Presidential decree	Presidential Regulation No 90 of 2019 Indonesian Migrant Worker Protection Agency. PERPRES Number 45 of 2013 concerning Coordination of the Return of Indonesian Workers
4	Ministry Regulations	Minister of Manpower Regulation No. 2 of 2023 concerning Procedures for Imposing Administrative Sanctions in Implementing the Placement and Protection of Indonesian Migrant Workers. Minister of Manpower Regulation No. 4 of 2023 Social Security for Indonesian Migrant Workers. Minister of Manpower Regulation No. 10 of 2020 concerning Adjustments to the Period of Social Security Protection Benefits Before Working for Prospective Indonesian Migrant Workers During the Non-Natural Disaster of the Spread of Corona Virus Diseases 2019. PERMENAKER Number 17 of 2019 Regarding Termination and Prohibition of Placement of Indonesian Migrant Workers
5	Agency/Institution Regulations	Indonesian Migrant Worker Protection Agency Regulation Number 4 of 2023 Regarding the Pre-Departure Orientation for Prospective Indonesian Migrant Workers. BP2MI Regulation No. 3 of 2023 Concerning One Data on Indonesian Migrant Workers. BP2MI Regulation No. 2 of 2023 concerning Guidelines for Pre-Employment Stages for Prospective Indonesian Migrant Workers Placed by the Indonesian Migrant Worker Protection Agency. BP2MI Regulation No. 7 of 2022 concerning the Pre-Employment Process for Prospective Indonesian Migrant Workers.

Sources processed by researchers.

It is stated in article 4 paragraph 1 letter (c) of Law No. 18 of 2017 that seafarers and fisheries sailors who work on foreign ships or foreign-flagged ships are included in the category of Indonesian migrant workers, then article 64 of this Law states "Provisions Further information regarding the placement and protection of ship crew and fisheries sailors as referred to in Article 4 paragraph (1) letter c shall be regulated by Government Regulation. This law contains quite significant changes in the Placement and Protection of Indonesian Migrant Workers, including:

- a. The state does not mobilize Indonesian citizens to become migrant workers, but the state is obliged to facilitate every citizen who wants to exercise their right to work abroad with convenience and a service approach.
- b. Positioning Indonesian Migrant Workers as active subjects who have dignity as human beings.
- c. Dividing duties and responsibilities for the Protection of Indonesian Migrant Workers between the Central Government, provincial governments, district/city governments and village governments.

- d. Establishment of LTSA for Indonesian Migrant Workers in provincial and district/city Regional Governments to provide easy, cheap, transparent and accountable Placement and Protection services for Indonesian Migrant Workers.
- e. The state guarantees certainty of protection for Indonesian migrant workers through the National Social Security System.
- f. Providing guarantees for the protection of Indonesian Migrant Workers from legal, social and economic aspects.
- g. Every prospective Indonesian Migrant Worker is required to have work competency according to the position they will hold as the main requirement for work.¹²

Legal Construction in PP No. 22 of 2022 Concerning the Placement and Protection of Migrant Commercial Ship Crews and Migrant Fishing Ship Crews

The state protects every Indonesian citizen who migrates to work abroad in order to fulfill constitutional rights as stated in Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, namely that "every citizen has the right to work." and a decent living for humanity." Work is a human right that must be upheld, respected and guaranteed to be enforced. Indonesian Migrant Workers according to the provisions of Article 4 paragraph (1) of Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers, also include Migrant Commercial Ship Crew and Migrant Fishing Ship Crew. Therefore, Migrant Commercial Ship Crews and Migrant Fishing Ship Crews must be protected from human trafficking, including slavery and forced labor, victims of violence, abuse, crimes against human dignity, and other treatment that violates human rights. There are specific conditions for Migrant Commercial Ship Crews and Migrant Fishing Ship Crews which means they need to be regulated separately from regulations regarding the placement and protection of Indonesian Migrant Workers in general. This Government Regulation has been prepared by taking into account the provisions of legislation across related sectors such as transportation, maritime affairs and fisheries, as well as foreign relations while still paying attention to international conventions as the basis for the regulation. This Government Regulation was prepared in order to realize harmonization of regulations governing the placement and protection of Migrant Commercial Ship Crews and Migrant Fishing Ship Crews. Apart from that, the aim of this arrangement is to simplify licensing services and system integration so as to provide optimal protection for Migrant Commercial Ship Crews and Migrant Fishing Ship Crews.

The government has issued a new regulation for the Maritime and Fisheries (KP) sector regarding migrant workers in this sector. This regulation is Government Regulation (PP) no. 22 of 2022 concerning the Placement and Protection of Migrant Commercial Ship Crews and Migrant Fishing Ship Crews, which was issued on June 8 2022. In accordance with the mandate of Article 64 of Law Number 18 of 2017 concerning the protection of Indonesian Migrant Workers.

Based on Law No. 18 of 2017, this PP has differences in the use or definition of Indonesian fisheries migrant workers. PP No. 22 of 2022 uses the term 'migrant fishing boat crew', whereas in Law No. 18 of 2017, the term Indonesian Migrant Fishery Seafarers (PMI PP) is used. The terminology that will be used to refer to Indonesian migrant workers who are employed or work on foreign-flagged fishing vessels should use the terms as determined by Law 18 of 2017, namely PMI PP. As mentioned in the considerations considering PP No. 22 of 2023, it is stated that this government regulation was issued to implement the provisions of Article 64 of Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers, so it is necessary to establish government regulations regarding the placement and protection of migrant commercial ship crew and crew members. migrant fisheries.

¹²General explanation of Government Regulation No. 59 of 2021 concerning Implementation of Protection for Indonesian Migrant Workers.

It is stated in article 1 of this Government Regulation that what is meant by the Placement of Migrant Commercial Ship Crews and Migrant Fishing Ship Crews is a service activity to bring together ship crew members according to their competency or expertise and skills with employers or principals.¹³Meanwhile, protection of migrant commercial ship crew and migrant fishing ship crew is all efforts to protect the interests of prospective ship crew and/or ship crew and their families in ensuring the fulfillment of their rights in all activities before work, during work and after work in legal, economic, and economic aspects. and social.¹⁴This Government Regulation regulates the placement and protection of migrant commercial vessel crew and migrant fishing vessel crew which applies to: a. placement implementer; b. Migrant Commercial Ship Crew; and c. Migrant Fishing Boat Crew. Crew of Indonesian migrant fishing vessels who work on foreign-flagged vessels are vessels whose flag is other than the Indonesian flag and are not recorded in the Indonesian vessel register. They are also Indonesian migrant workers who are employed or work on board foreign-flagged fishing vessels by the owner or operator of the vessel to carry out the above tasks. ship in accordance with the position stated in the certificate book.

Basilio Dias Araujo¹⁵said there were three root problems that were the cause of weak protection for Indonesian seafarers and crew members on foreign fishing vessels. First, the education and training curriculum for seafarers and crew members has not yet been synchronized using the STCW-F (Standard of Training, Certification, and Watchkeeping for Fishing Vessel Personnel) standards because the Ministry of Maritime Affairs and Fisheries has not allocated funds to purchase the IMO standard curriculum syllabus. Second, there is no governance to regulate seafarer manning agent companies and ABs. The third aspect is that there is no integrated national database to use as a reference for the exact number of seafarers and crew members who are abroad.

In PP No. 22 of 2022, it is emphasized that companies placing Indonesian Migrant Workers PP are required to have permission from the Ministry of Manpower, namely the Company Permit for Placement of Indonesian Migrant Workers/SIP3MI (Article 25 paragraph 1). In the future, it is hoped that this article will be able to become the final solution to the problem of duplication of licensing authority and supervision of the placement of PMI PP or crew of Indonesian migrant fishing vessels between the Ministry of Transportation and the Ministry of Manpower. This is stated clearly in Article 43 which regulates that "when this Government Regulation comes into force, a manning agency which already has a Ship Crew Recruitment and Placement Business License issued based on Minister of Transportation Regulation Number 84 of 2013, shall transfer the permit to SIP3MI no later than 2 (two years)".

Nevertheless, according to Indonesia *Ocean Justice Initiative* (IOJI) PP No. 22 of 2022 still leaves a number of problems, especially regarding the fate of PMI Fisheries Seafarers who were placed in manning agencies after 7 July 2021 until the publication of PP No. 22 of 2022. This is because Minister of Transportation Regulation No. 84 of 2013 has been revoked by Minister of Transportation Regulation No. 59 of 2021 which has been effective since 7 July 2021. PP No. 22 of 2022 has regulated minimum standards that must be included in Maritime Work Agreements (PKL), including: working time and rest time in accordance with ILO C-188 (Article 35 paragraph (3) in conjunction with Article 17 paragraph (3) as well as the obligation to have a Collective Bargaining Agreement (CBA), which can protect and strengthen the bargaining position of Indonesian migrant fishing vessel crew or PMI PP. To be more operational, PKL and CBA standards need to be further regulated by BP2MI (PKL) in accordance with the mandate of Article 15 paragraph 3 of Law No. 18 of 2017 and the Ministry of Manpower (CBA)

¹³Employer is a government agency, government legal entity, private legal entity, and/or individual in the destination country of placement that employs Indonesian Migrant Workers. Meanwhile, the Principal is a service user of Migrant Commercial Ship Crews and Migrant Fishing Ship Crews who is a ship owner or ship operator who employs Migrant Commercial Ship Crews and Migrant Fishing Ship Crews.

¹⁴See article 1 number 2 General provisions of PP No. 22 of 2022.

¹⁵Basilio Dias Araujo is Deputy for Maritime Sovereignty and Energy Coordination at the Coordinating Ministry for Maritime Affairs and Investment.

according to PP No. 22 of 2022, so that they can ensure proper power relations. balance between PMI PP and employers.

Even though Article 35 paragraphs (2) and (5) PP No. 22 of 2022 guarantees the forms of protection that must be provided by employers or principals to the crew of Indonesian fishing vessels, to close the gap in differences in protection standards in each country, the Indonesian Government needs to carry out bilateral negotiations and cooperation (Memorandum of Understanding/MoU) with the deployment country to determine the protection standards for Indonesian migrant fishing vessel crew in accordance with applicable international standards. The important things that need to be agreed upon and included in the MoU between the parties include:

1. Minimum wage standards
2. Procedure for payment of wages
3. Occupational Health and Safety
4. Mutual recognition commitment for PMI PP training certificates
5. Mechanisms for implementing joint inspections and mechanisms for monitoring the fulfillment of rights
6. Mechanism for monitoring the fulfillment of the rights of PMI who work on ships flying non-deployment countries' flags
7. Charging placement fees
8. Law enforcement cooperation.

So far, the lack of data integration between ministries/institutions has been one of the root causes of weak protection for Indonesian Migrant Fishing Ship Crews. PP No. 22 of 2022 addresses this problem by requiring data integration between relevant government agencies (Article 24 of PP No. 22 of 2022) . Integrated data will be very useful for all relevant government agencies in carrying out the protection of Indonesian fishing vessel crews, including handling public complaints. However, PP No. 22 of 2022 does not yet regulate mechanisms for managing public complaints and resolving disputes.

Matters that need to be considered in an effective complaint management and dispute resolution mechanism include: (1) the availability of a complaint system that is easily accessible to PMI and organized by the Government so that it has binding power to implement; (2) the complaint system must be equipped with a system for protecting witnesses, whistleblowers, whistleblowers, including identity confidentiality; (3) officers who handle public complaints must have the skills to explore and understand the problems faced by complainants/reporters and their follow-up actions; and (4) cooperation and coordination between the Government in handling and resolving public complaints.

Efforts to improve the fate of Indonesian Migrant Fishing Ship Crews, which are being pursued by many parties, will be complete if the Government equips and covers it all with policies and regulations that are targeted and fair as well as a "complete package" starting from recruitment, rights and obligations during the work period, up to repatriation and what rights and obligations must be implemented when an incident or 'force majeure' occurs. In any case, a decent, dignified and just life in accordance with the 5th Principle of Pancasila must be felt by PMI and crew of Indonesian migrant fishing vessels who try their luck on long-distance fishing vessels (distant water fishing vessels). The point "Indonesian people" in the 5th principle is binding and becomes the identity of the crew of migrant fishing vessels, wherever they go. It is the state's obligation and duty to ensure that they receive security, justice and a good and decent life,

even though they serve far from their hometowns. Hopefully PP No. 22 of 2022 can be perfected and become a protector for Indonesian Migrant Workers.

Conclusion

The legal construction of protection for migrant workers, especially for crew members (ABK) and fishing vessel crew (AKP) who work on foreign or foreign-flagged vessels, is contained in several regulatory provisions within the international legal framework, such as IMO Cape Town Agreement (CTA) 2012, IMO International Convention on Training, Certification and for Personnel of Fishing Vessels (STCW-F) 1995, ILO Convention on Employment in Fishing (C188) 2007, The FAO Agreement on Port States Measures to Prevent Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA) in 2009. Of the four international regulations, the ILO Convention No. 188 of 2007 concerning work in fishing is the legal construction that most completely outlines the rules for legal protection for crew members. and crew members of migrant fishing vessels which can be used as a recommendation for the formation of national law in the context of protection and providing legal certainty for Indonesian citizens who work as migrant workers, especially as crew members of foreign fishing vessels. Meanwhile, in national law, the legal construction protects Indonesian migrant workers as crew members. and crew of foreign fishing vessels are not specifically found in Law No. 18 of 2017, but with the issuance of Government Regulation No. 22 of 2022 concerning the Placement and Protection of Migrant Commercial Ship Crews and Migrant Fishing Ship Crews, it has become a regulation that specifically provides legal certainty for migrant workers. especially those who work as sailors on foreign or foreign-flagged ships.

References

- Adjie, H. (2023). Land ownership in Indonesia for foreign citizens. *International Journal of Criminal Justice Science*, 18(2), 1-11.
- Adha Hadi, Lalu, *Pekerja Pelaksana Rumah Tangga Dalam Perspektif International Labour Organisation (ILO)*, Dalam *Majalah Ilmiah Hukum Dan Masyarakat*, Fakultas Hukum Universitas Jember, No. 3 Tahun 2010.
- KOMNAS PEREMPUAN. 2006. Lembar Info, Pentingnya Meratifikasi Konvensi Migran 1990, Konvensi tentang Perlindungan Hak-Hak Semua Pekerja Migran dan Anggota Keluarga, edisi 1, april 2006.
- Manulang, Sendjun, 1990, *Pokok-pokok Hukum Ketenagakerjaan Indonesia*, Rineka Cipta, Jakarta.
- Migrasi tenaga kerja dari Indonesia, Gambaran umum migrasi Tenaga Kerja Indonesia di Beberapa Negara Tujuan di Asia dan Timur Tengah, IOM International Organization Migration, 2010.
- ILO, *Migration for Employment Convention (Revised)*, 1949 [No. 97], artikel 11 (1).
- UN, *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, 2000, Article 2 (2).
- Organisasi Perburuhan Internasional, 2006, "Penerapan Perundangan Indonesia Untuk Melindungi dan Memberdayakan Pekerja Migran Indonesia: Beberapa Pelajaran dari Filipina" Jakarta, Kantor Perburuhan Internasional, ISBN: 978-92-2-018694-7.
- Patrick Taran. 2007. "Clashing Worlds: Imperative for a Rights-Based Approach to Labour Migration in the Age of Globalization" dalam *Globalization, Migration and Human Rights: International Law under Review*, Volume II Bruylant, Brussel).

- Agus yudho Hermoko, 2008, *Asas Proporsionalitas dalam kontrak komersil*, Laksbang Mediatma, Yogyakarta.
- Satjipto Rahardjo, 2010, *Teori Hukum Strategi tertib manusia linmas ruang dan General*, Genta Publishing, Yogyakarta.
- Peter Mahmud Marzuki, 2006, *Pengantar Ilmu Hukum*, Kencana Prenada Media Group, Jakarta.
- Philipus M. Hadjon, 1987, *Perlindungan Hukum Bagi Rakyat di Indonesia*, PT. Bina Ilmu, Surabaya.
- Teguh Prasetyo, 2015, *Keadilan Bermartabat Perspektif Teori Hukum*, Nusa Media, Bandung.
- Jimly Asshiddiqie, 2006, *Perkembangan Dan Konsolidasi Lembaga-Lembaga Negara Pasca Reformasi*, Sekretariat Jenderal Dan Kepaniteraan Mahkamah Konstitusi RI: Jakarta.
- Bodo Lippl, 1998, *Justice Ideologies, Income Justice, and the Welfare State, A Comparispon of Justice Ideologies and the Perceived Justice of Income in the United State, West Germany, and the Netherlands*, ISJP (Internastional Social Justice Project, Arbeitsgruppe Fur Die Bundesrepublik Deutschland), Institute Fur Sozialwissenschsften Humboldt-Universitat Zu Berlin: Berlin.
- Friedrich A. Hayek, 1960, *The Constitution of Liberty*, University of Chicago Press: Chicago.
- The New Encyclopaedia Britannica, *Micropaedia Volume X*, Encyclopaedia Britannica Inc., 1980. h. 607; Clarence L. Barnhart And Robert K. Barnhart (Eds.), 1986, *The World Book Dictinary, Volume Two L-Z*. World Book, Inc.:Chicago-London-Sydney-Toronto.
- The Encyclopedia Americana, International Edition, Grolier Incorporated, Danbury Connecticut, 1990.
- UndangUndang Dasar RI 1945.
- Republik Indonesia Undang-Undang No 18 tahun 2017 Tentang Perlindungan Pekerja Migran Indonesia
- Republik Indonesia Undang-Undang No. 13 Tahun 2003 Tentang Ketenagakerjaan
- Peraturan Pemerintah No 59 Tahun 2021 Tentang Pelaksanaan Pelindungan Pekerja Migran Indonesia.
- Peraturan Pemerintah No 10 Tahun 2020 Tentang Tata Cara Penempatan Pekerja Migran Indonesia oleh BP2MI.
- PP No 22 tahun 2023 Tentang Penempatan dan Pelindungan Awak Kapal Niaga Migran dan Awak Kapal Perikanan Migran.
- Peraturan Presiden No 90 Tahun 2019 Badan Pelindungan Pekerja Migran Indonesia.
- Praturan Presiden Nomor 45 Tahun 2013 Tentang Koordinasi Pemulangan Tenaga Kerja Indonesia.
- Kepres No. 108 Tahun 2003 tentang Organisasi Perwakilan Republik Indonesia di Luar Negeri.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).