

# Protection of Indonesian Seafarers in Overseas Employment Post Act Number 15 Year 2016

*\*This article is part of ongoing research*

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**Abstract:** Through Act Number 15 Year 2016, Indonesia ratified MLC 2006. A high expectation is desired through this action, since MLC 2006 is striving for social security protection, work rights, and equal opportunity in employment or occupation (nondiscrimination) for seafarers. According to data from Directorate of Protection of Indonesian Citizens and Legal Entities by October 2015, there were 463 cases related to seafarer handled by them. A lot of problems are faced by Indonesian migrant workers who work as seafarers.

## 1 INTRODUCTION

Many legal issues faced by migrant workers abroad, including those who work as seafarer. Data released by the National Agency for the Placement and Protection of Indonesian Migrant Workers (BNP2TKI) shows the fact that Indonesia is the third largest maritime worker in the world, totaling 254,186 people and currently working on foreign flag ships. Based on data from the Directorate of Indonesian Citizens Protection and Indonesian Legal

Entities, up to October 2015, there are approximately 463 seafarer related cases that have been handled by the Directorate. Approximately 221 Indonesian seafarers (from 2012 - 2015) indicated to be victims of human trafficking. Furthermore, data obtained from the International Organization for Migration (IOM) there are 283 cases of Indonesian seafarers classified as trafficked fisherman until 2015 (P2K OIBPPK Kementerian Luar Negeri Republik Indonesia, 2015).

It is a fact that seafarers and people working on ships have different job characteristics than other industry sectors, not only just very specific workplaces, but also work across countries. On that basis, in 2006 internationally agreed upon Convention which regulates seafarer as subject

matter, that is MLC 2006 and entry into force in 2013.

As an archipelagic state and spirit of the Nawacita Program of President Jokowi, Indonesia ratified MLC 2006 through Act Number 15 Year 2016. This ratification has a very important meaning for Indonesia. First, it gives protection to seafarers where seafarers' rights and needs are preserved and to obtain their rights without being exploited. Secondly, as the country with the third largest seafarers in the world, besides regulating protection, the Convention also protects the national shipping industry in global competition and contributes to making Indonesia a strong maritime axis.

Having committed to MLC 2006 Indonesia has the obligation to provide protection for seafarer, including those who are abroad. The safeguards in this case include also the arrangements in the legislation at the national level. Through this research will be reviewed the regulations that existed before Act Number 15 Year 2016 related to seafarer protection, then it will be compared with the provisions contained in MLC 2006. In the end, the ideal provisions for seafarer protection abroad will be obtained so as to minimize the cases occurred before.

## 2 SEAFARER PROTECTION BEFORE ACT 15/2006

In national level, various marine rules have been established, such as shipping rules, employment and so on. In general, the national legal framework containing such arrangements is:

- a. Act Number 13 Year 2003 on Manpower;
- b. Act Number 39 Year 2004 on Placement and Protection of Overseas Workers;
- c. Act Number 21 Year 2007 on the Elimination of TPPO;
- d. Act Number 17 Year 2008 on Shipping;
- e. Act Number 6 Year 2011 on Immigration;
- f. PP Number 7 Year 2000 on Kepelautan;
- g. PP Number 20 Year 2010 on Transportation in Waters;
- h. PP Number 3 Year 2013 on the Protection of Overseas Workers;
- i. Permenhub Number 84 Year 2013 on the Recruitment and Deployment of Ships;
- j. Circular Letter of Dirjen Hubla No. UK11 / 21/12 / DJPL-06 on the Protection of Crew;
- k. KKP Candidate No. 35 / Permen-KP / 2015 on Fisheries Rights;
- l. Regulation of Head of BNP2TKI Number: PER.13 / KA / VII / 2009 concerning Data Collection of Indonesian Overseas Seafarers Placement Abroad;
- m. Head of BNP2TKI Regulation Number PER.03 / KA / I / 2013 concerning Procedures for Placement and Protection of Indonesian Workers of Fishery Seafarers in Foreign Ships;
- n. Head of BNP2TKI Regulation Number: PER.12 / KA / IV / 2013 concerning Procedures for Recruitment of Seafarers' Placement and Protection on Ships of Foreign Flags.

As previously mentioned, some laws and regulations regulate general matters, not specifically regulating seafarers, but seafarers are part of it, such as the Law on Manpower, Placement and Protection of Overseas Migrant Workers, the Eradication of TPPO. In Act Number 6 Year 2011 ..... which includes the skipper, captain of the pilot, or any of the articles governing the seafarer, are contained in Article 43 (1).... crew on duty in conveyance; d. skippers, crew, or foreign experts aboard ships or floating appliances that come directly with their means of transport to operate in the waters of the archipelago, territorial sea, continental shelf, and / or the Indonesian Exclusive Economic Zone.

Furthermore, article 52 regulates a limited stay permit granted to skippers, crew, or foreign experts aboard ships, floating appliances, or installations operating in the territorial waters and jurisdictions of Indonesia in accordance with the provisions of the laws and regulations. For other legislation, more seafarers are set up, related to MLC 2006.

## 3 PROTECTION ACCORDING TO MLC 2006

In general, there is a 2006 MLC assumption as "Seafarers' Bill of Rights", as it is a "ticket" for seafarers to claim their rights as workers, who have a different character from workers in other industrial sectors. At a diplomatic conference during the adoption of MLC 2006, former Secretary General of IMO H.E. E.E. Metropoulos, responded to the 2006 MLC as the 4th pillar of the maritime sector, complementing the three main pillars of the existing IMO legal instruments: Safety Of Life At Sea Convention (SOLAS) 1974 1978, Marine Pollution Prevention Convention (MARPOL) 1973/78, and the Standard of Training Certification and Watchkeeping for Seafarers Convention (STCW) 1978. MLC consists of 3 (three) parts of Articles, Regulations and Code. Articles and Regulations establish the fundamental rights, basic principles and obligations of the Member States of the ILO that have ratified the Maritime Labour Convention 2006 while the Code contains details for the application of the rules. The Code contains two parts: Part A contains mandatory standards that must be applied by the States which ratify the Convention and Part B contains non-mandatory guidelines to be applied by States that ratify the Convention.

Regulations and Code sets up:

- a. minimum requirements for seafarers to work on ships;
- b. working conditions;
- c. accommodation, recreational facilities, food and catering;
- d. health protection, medical care, welfare and social security;
- e. compliance and enforcement.

The basic right of workers in MLC 2006 is every person who works as a seafarer sailing through international waters has the same rights as a worker / labourer working on land. These rights are as stated in the 8 ILO Basic Conventions and have

been accommodated in the provisions of national legislation.

These rights include the right of freedom from slavery and forced labour, the right of anti-discrimination, the right to have equal remuneration, the right to associate and bargain collectively, the right not to employ children in the worst forms of employment. In addition, seafarers and crew also have a right to get work and social protection, including the right to a secure workplace, the right to get protection of occupational safety and health, the right to social security and the right to medical treatment, facilities and accommodation including recreation.

In MLC 2006, seafarer is defined as person who is employed or engaged or works in any capacity on board to which this Convention applied. This notion includes not only the crew involved in navigating or operating vessels but also persons working in hotel positions providing services for passengers on cruises or yachts.

MLC 2006 aims to ensure the rights of seafarers around the world are well-protected and provides standards of guidance for each country and ship owners to provide a comfortable working environment for seafarers. This action is needed because of the existence of seafarers across the country, so it is necessary to set an internationally accepted working standard. In summary, MLC 2006 contains provisions on:

- a. Minimum requirements of seafarers working on boats, containing the minimum requirements a seafarer must meet such as age requirements, health condition requirements, competency requirements, expertise, and training as well as recruitment and placement requirements. Generally specified include:
  - i. Minimum Age of Seafarer: Minimum age is 16 years old but for a night work or hazardous area, the minimum age must be 18 years old.
  - ii. Health Conditions: Seafarers must enclose a medical certificate (medical report) recognized by the country concerned.
  - iii. Training: Seafarers should get trainings related to their work before sailing. Including personal safety training
  - iv. Recruitment or seafarers' placement shall be carried out by carrying out proper placement and registration procedures, a complaint procedure and compensation should exist if the recruitment process fails.
- b. Working conditions, arranging contracts, salaries, and working conditions of seafarers on board. This includes clear contracts, breaks, leave entitlements, repatriation to the country of origin, and so forth. The summary is as follows:
  - i. Contract of Work: The contract must be clear, legal, and binding
  - ii. Salary: Sailors Salaries must be paid at least monthly and should be transferred periodically to the family when needed.
  - iii. Break Time: Rest periods must be applied in accordance with applicable state regulations. Maximum working hours is 14 hours a day or 72 hours a week or minimum break time is 10 hours a day or 77 hours a week. Furthermore, the rest period should not be divided into more than 2 periods where at least 6 hours of rest period should be given sequentially in one of two periods.
  - iv. Leave: Seafarers have the right of annual leave and leave for the mainland.
  - v. Return: Return of seafarer to his country of origin must be free.
  - vi. Loss / Foundering: When the ship is lost or run aground, sailors have compensation.
  - vii. Career: Every ship must have a clear career path.
- c. Accommodations, recreational facilities, meals, and catering, contain the rights related to meals, accommodation and facilities that must be provided to the seafarers. In summary, the requested requirements are:
  - i. Accommodation: It is important to take into consideration the hygiene and comfort of the residence and work for sailors. There are some minimal requirements for sleeping room, entertainment room, and dormitory.
  - ii. Eating and Catering: The quality and quantity of food must be arranged in accordance to the country flag of the ship (flag state). The ship's cook must be trained and qualified for the position on board.
- d. Protection and health care, welfare, and social security protection, including:
  - i. Medical treatment both on ships and on land: seafarers should have access to health facilities while on board at no cost and with the same quality of health services as those on the ground.
  - ii. Ship owners' obligations: Seafarers should be protected from financial consequences of illness, injury or death related to their work.

- Seafarers should also still earn a salary of at least 16 weeks from the onset of illness.
- iii. Occupational health and safety: A safe and hygienic work environment should be provided during work or rest. Measures of security level (hazard identification and risk control) should be undertaken to prevent accidents.
  - iv. Access to onshore facilities: Port States should provide adequate cultural, recreational and information facilities on land and all such facilities are open to all seafarers without distinction of race, sex, religion and political views.
  - vi. Social Security: Social protection must be available to all seafarers.
  - vii. Social security coverage should be available to seafarers (and in case it is customary in the flag state: their relatives).
- e. Implementation and Execution.
- a. Flag states: Flag states (responsible for ensuring the application of rules for ships using their flags). Each ship must be equipped with a "Certificate of Maritime Compliance". Each vessel is also required to have a complaints procedure for all crew and must investigate the complaints.
  - b. Port States: Port States (countries where the ship is leaning) must conduct an inspection depending on the existence of the "Certificate of Maritime Compliance". If certificates have been owned (and flags of ships originating from countries that have ratified MLC 2006), then investigations are only conducted to check for indications of non-compliance with the standards. If the vessel does not have a certificate, the investigation must be done thoroughly and must ensure the ship complies with MLC 2006. Thus, MLC 2006 indirectly applies to countries that have not ratified MLC 2006 if they wish to dock in the country that has ratified MLC 2006.
  - c. Seafarers' Agencies: Agencies that provide workers for ships should also be inspected to ensure they are implementing MLC 2006 (as well as other rules related to social security).

#### 4 CONCLUSIONS

Indonesia already has legislation governing seafarers before ratifying the 2006 MLC, even

arranging in detail as well. However, these arrangements should still be adjusted to those in the MLC 2006, as they apply internationally. It also needs to be scrutinized the problems faced seafarer, because although it has been arranged but still many problems that arise.

MLC, 2006 was adopted by the ILO to create a single instrument containing all international labor principles and standards applicable in the shipping industry. In order to provide protection to seafarers and crews related to the fulfilment of basic rights including wages, working conditions including work time and rest periods, medical care, health insurance, recruitment and placement, training and supervision, the Government is obliged to develop guidelines that will be guides for boat owners as well as crew of sailors and seafarers. These guidelines include:

- a. Guidelines on the Protection of Terms and Conditions of Work;
- b. Guidelines for Recruitment and Placement;
- c. Training Manual and Work Competency;
- d. Law Enforcement Guidelines.

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