


Enhancing Crew Protection in Indonesian Commercial Fishing: A Critical Evaluation of ILO Convention 188

Dinda Mangesti Dewi ^a, Satria Unggul Wicaksana
Prakarsa ^a✉ 

^a Universitas Muhammadiyah Surabaya, Indonesia

✉ Corresponding email: satriaunggulwp@um-surabaya.ac.id

Abstract

This paper critically examines the efficacy of International Labour Organization (ILO) Convention 188 in protecting the rights and welfare of Indonesian fisherfolk engaged in commercial fishing activities. Indonesia, with its vast maritime territory and significant dependence on the fisheries sector, faces multifaceted challenges in ensuring the well-being of its fisherfolk amidst the complexities of the global fishing industry. By reviewing the provisions of Convention 188 and its implementation in the Indonesian context, this study sheds light on the gaps and shortcomings in safeguarding the rights, safety, and working conditions of Indonesian fishers. Moreover, it explores the socio-economic factors influencing the vulnerability of fisherfolk to exploitation and abuse, such as poverty, lack of education, and inadequate regulatory enforcement. Through an analysis of case studies and empirical data, this paper offers insights into potential strategies for enhancing the effectiveness of Convention 188 in protecting Indonesian fisherfolk, including improved enforcement mechanisms,



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capacity building initiatives, and greater collaboration between government agencies, civil society organizations, and the fishing industry stakeholders. Ultimately, the findings underscore the urgent need for comprehensive reforms and concerted efforts at the national and international levels to ensure the rights and well-being of Indonesian fisherfolk are upheld in the context of commercial fishing.

KEYWORDS *Protection of Shipwreck workers, Human Rights, Indonesian Citizen, ILO*

Introduction

Indonesian Shipwrecked workers (*anak buah kapal-ABK*) are all Indonesian citizens who are engaged in work and receive wages from foreign ships. Every year, the number of shipwrecked workers increases, so in this case, there is an increase in the potential number of residents from within and outside the country from the growth sector of the fishing industry. The Indonesian population mainly works in the fisheries sector, so to find a decent job and livelihood, they choose to become shipwrecked workers (*anak buah kapal-ABK*).¹ Protection for shipwrecked workers is already contained in a firm and clear legal product so that it can provide good protection to shipwrecked workers. The longer the suffering of the lives of the shipwrecked workers gets heavier, but that alone is not enough because many human rights violations occur.²

The number of placements of Indonesian migrant workers has increased over the past two years; in June 2023, orders reached 20,338. In 2021 and 2022, there were no crew placements in South Korea, while in June 2023, there were 16 placements.³ Based on data in September 2023,

¹ Daniel Surianto and Ida Kurnia, "Perlindungan Hukum ABK Indonesia Di Kapal Asing Dalam Perspektif Hukum Nasional," *Jurnal Hukum Adigama* 4, no. 1 (2021): 1667–91.

² Arum Nur Fadilah Muis, "Perlindungan Dan Penegakan Hak Asasi Manusia Terhadap Kasus Perbudakan Anak Buah Kapal Indonesia Di Kapal Asing," *Jurnal Hukum Lex Generalis* 3, no. 12 (2022): 988–99.

³ Yana Anusasana D E, "PMI Placement and Protection Data June 2023," 2023.

the order of shipwrecked workers in Japan is 169 people.⁴ In 2022, there will be 10,925 migrant crew members from Indonesia working on flagged fishing vessels. It reveals many possibilities of working under the threat of forced labour, illegal vessel arrests, and human rights violations. There were 27 migrant crew members, including Indonesian citizens with forced and inappropriate labour from the International Labor Organization (ILO), such as excessive overtime work, withholding wages and confiscation of documents. Then, there were also allegations related to human trafficking, and many shipwrecked workers who worked on the ship died while working due to work accidents.⁵

The existence of occupational diseases and work accidents in the labour sector has not been appropriately overcome due to a large number of accidents and occupational diseases; it is also a lot in the shipping sector. The International Safety Management Code is a management regulation in global safety for the security and operation of ships and prevention of pollution that has been determined by the International Safety Management Code and can be amended. Safety and health and health in work in the shipping industry are very important because there are substantial risk factors. Experts who are competent in implementing the occupational safety and health (K3) program are needed.⁶

There were five Indonesian shipwrecked workers in 2020 who worked with the Long Xing 629 ship. They told how the performance they performed for 14 months; four of them five died, three were buried at sea with a ban, and one person died in Busan health; one of them told the story of the shipwrecked workers could only sleep for three hours, To eat only get time for 10 minutes and 15 minutes, working hours from 11 to

⁴ Yana Anusasana D E, "PMI Placement and Protection Data September 2023," 2023.

⁵ Indonesia Greenpeace, "10.925 ABK Indonesia Di Kapal Ikan Taiwan Bekerja Di Bawah Ancaman Kerja Paksa," 6/09/22, 2022, <https://www.greenpeace.org/indonesia/siaran-pers/55298/10-925-abk-indonesia-di-kapal-ikan-taiwan-bekerja-di-bawah-ancaman-kerja-paksa/>.

⁶ Andi Hendrawan, Akademi Maritim, and Nusantara Cilacap, "Program Kesehatan Dan Keselamatan Kerja Diatas Kapal.," *Jurnal Sains Teknologi Transportasi Maritim* 2, no. 1 (2020).

4 and 5 in the morning.⁷ There are also many shipwrecked workers who experience non-payment of salaries while working on foreign ships. The Indonesia Fisherman Association (INFISA) noted that from 2008 to 2021, there were at least 1,300 complaints where the problem was often unpaid salaries. Then, there are also cases of crew members who experience unreasonable salary cuts and human rights violations, including violence on board.⁸ Mashuri, an Indonesian crew member who worked on the *Purse Seine*, stated that one of them died of torture and was kept for a month in a fish cooler and thrown into the sea. At the same time, Mashuri and his four friends were constantly beaten and tortured on the ship, and finally decided to jump off the ship and drift at sea for 12 hours.⁹

Aspects The fulfilment of the rights of shipwrecked workers requires decent work by ILO Convention 188 and can find out what policies are taken by the government from the aspect of legal regulations to shipwrecked workers who are vulnerable to human rights violations, it is necessary to ratify ILO Convention 188 regarding the government's responsibility in filling legal vacancies and providing legal certainty for efforts to prevent and overcome problems in fisheries and marine affairs.¹⁰ Legal protection of Indonesian citizens (WNI) as shipwrecked workers is still minimal, but there are efforts that can be made improving regulations is the key to providing full protection, and the role of the state is also

⁷ wijaya callista & Affan Heyder, "ABK Indonesia Di Kapal China: 'Tidur Hanya Tiga Jam, Makan Umpan Ikan', Hingga Pengalaman Pahit Yang Sulit Dilupakan Melarung Jenazah Teman," BBC new indonesi, 2020, <https://www.bbc.com/indonesia/dunia-52466661>.

⁸ karanja & setiadi tresno, "Eksplorasi ABK Bekerja Di Kapal Asing Sering Terjadi, INFISA: Paling Banyak Gaji Tak Dibayar," kompas.com, 2022, <https://regional.kompas.com/read/2022/06/13/204012478/eksplorasi-abk-bekerja-di-kapal-asing-sering-terjadi-infisa-paling-banyak>.

⁹ eben raja Lummbarau, "ABK Indonesia: 'Teman Saya Meninggal Dan Disimpan Sebulan Di Tempat Pendingin Ikan', Potret 'perbudakan' Di Kapal Dan Lemahnya Pengawasan Agen Penyalur ABK," 20/05/20, 2020, <https://www.bbc.com/indonesia/indonesia-52633694>.

¹⁰ Heni Rosida, Ahsana Nadiyya, and Wulan Saputri Indah, "Urgensi Ratifikasi Konvensi ILO 188 Tahun 2007 Sebagai Pemenuhan Dan Perlindungan HAM ABK Indonesia Di Kapal Asing," *Humani (Hukum Dan Masyarakat Madani)* 12, no. 1 (2022): 189–204.

needed in order to create a sense of security for shipwrecked workers.¹¹ The number of slavery that occurs in Indonesian shipwrecked workers is the exploitation of coercion in work that occurs in the shipwrecked workers because they work for 18 hours or more a day, wages that are not decent, the workplace is not good, lack of supporting facilities for shipwrecked workers besides that also in the protection of human rights has been regulated in laws and international conventions.¹² In the regulation regarding the legal protection of migrant labour, it has been regulated in international instruments.¹³

According to researchers, the protection of crew members is very necessary, and serious attention is given to fishermen, who have a high level of occupational risk and are at risk for accidents and injustice when working on ships. Shipwrecked workers need to have an understanding of the rights promised in the work agreement so that there is no injustice that occurs to shipwrecked workers (*anak buah kapal-ABK*). Then, the shipwrecked workers recruitment system needs to be tightened again in the recruitment process. It is necessary to periodically motoring the government to the shipwrecked workers directly so that it can cut or minimize violations that occur. The author also notes that national regulations are less covering and less specific about the work of a fisherman, so it is necessary for countries to ratify ILO Convention 188 as a legal umbrella for fishermen.

In handling the case of shipwrecked workers who are working on foreign ships in foreign waters has its uniqueness compared to other migrant workers. The International Labour Organization (ILO) classifies in several ways that support the need for special handling due to the difficulty of supervision, limited access to ships where incidents occur,

¹¹ Lalu Hadi Adha, "Jurnal Private Law Fakultas Hukum Universitas Mataram Perlindungan Hukum Pekerja Migran Indonesia Yang Bekerja Sebagai Awak Kapal Perikanan (AKP) Asing" 2, no. 3 (2022).

¹² Satriya Aldi Putrazta et al., "Perlindungan HAM Dari Perbudakan Modern Bagi ABK Indonesia Di Kabupaten Tegal (Studi Pada ABK Yang Tergabung Di Komunitas INFISA)" 6, no. 1 (2023),

¹³ Fadilah Lay Fatimah Ely, Popi Tuhulele, and Dyah Ridhul Airin Daries, "Pengaturan Tentang Pekerja Migran Dan Tanggung Jawab Negara," *TATOHI Jurnal Ilmu Hukum* 2, no. 2 (2022): 122–29,

recruitment processes that are not in accordance with existing procedures, and the increase in crew in the fisheries sector, solving cases that occur by shipwrecked workers is more complex and takes a longer time. Because there are challenges in handling, the placement and protection of shipwrecked workers in the fisheries sector are not harmonious in the regulations of handling and protecting fishery shipwrecked workers (*anak buah kapal-ABK*), have not synergized in the distribution of authority and coordination between agencies in related institutions in Indonesia, and have not integrated data on the placement of shipwrecked workers abroad. These challenges cause not optimal handling steps that can be taken.¹⁴ This research raises questions to be studied more deeply; there are two formulations of the problem, namely (1) How is the legal protection of Indonesian shipwrecked workers reviewed from *ILO Convention 188*? (2) What are the efforts of the state in providing legal protection to the shipwrecked workers (*anak buah kapal-ABK*)?

This research uses *Socio-Legal* research. Which comprehensively examines law creation and implementation for legal policy from various scientific perspectives. The sociolegal approach refers to scientific disciplines and aspects of social sciences to study and apply law from various aspects with a review of the political economy of law.¹⁵

This research is studied with an interdisciplinary approach that covers various aspects ranging from legal psychology to the sociology of law and legal history. As well as seeing the law and institutions working, not only looking at the authority but the implications of an authority or from the study of the work of authority in time to give birth to a dynamic in the diversity of theoretical views and legal innovations and overcome legal protection efforts for shipwrecked workers Migrant Workers in Indonesia by using *ILO Convention 188* as a reference material.¹⁶

¹⁴ Fikry Cassidy et al., "Strategi Perlindungan Dan Penanganan Kasus Anak Buah Kapal (ABK) Sektor Perikanan Indonesia Yang Bekerja Di Luar Negeri," 2016, 40,

¹⁵ Rifda Ayu Akmaliya, "Anti-Dumping Committee 's Strategy to Confront Dumping Practices: Indonesian Law and International Law Perspective," 2019.

¹⁶ Widodo D. Putro Herlambang P. Wiratman, "Tantangan Metode Penelitian Interdisipliner Dalam Pendidikan Hukum Indonesia" 31 (2019): 402–18.

Legal Protection for Indonesian Crew Members in Terms of ILO Convention 188?

A. Understanding Crew (ABK)

Under ILO Convention 188 on work in fishing, a crew member is a person who has been employed or employed in any capacity and performs work on board and is paid on the basis of the sharing of catch but is not included in the converts, marine personnel, and other persons using permanent service to the government, those based on land who carry out duties on fishing vessels fish as well as crew observers. To become a fisherman, there are also requirements regarding the minimum age of working on a ship, which is in accordance with the age of 16 years that has been determined, but can also be at least 15 years old if you have the competence and there is no obligation to attend a school which has been stipulated in national law and attend training in the fishing sector. This is in accordance with Article 9 regarding the minimum requirements for working on fishing vessels.¹⁷

In recent times, maritime security has become a serious matter. There are threats in the form of violence, navigation, threats to marine resources and threats to sovereignty and law, both illegal fishing, human trafficking, and exploitation and exploration of marine resources.¹⁸ ILO Convention 188 contains the rights that can be obtained by crew members, among the rights the following: (1) The right to receive wages (Article 23); (2) The right to receive hours of rest (Article 13); The right to receive accommodation and food (Article 25); The right to receive health care (Article 29); The right to receive social security (Article 34); The right to receive protection against illness, injury or death from working (Article 38).¹⁹

ILO Convention 188 contains a lot of rights about what rights are obtained by shipwrecked workers in working on ships, which should be

¹⁷ "PEKERJAAN DALAM PENANGKAPAN IKAN K188" (n.d.).

¹⁸ Penengakan Hukum et al., "Pengamanan Dan Penengakan Hukum Di Perairan Indonesia Sebagai Konsekuensi Penetapan Alur Laut Kepulauan Indonesia (ALKI)" 10, no. December (2015).

¹⁹ PEKERJAAN DALAM PENANGKAPAN IKAN K188.

strengthened and considered, especially considering that there are so many shipwrecked workers who work in foreign seas who risk their lives and bodies in working, then their rights should be given and facilitated in accordance with the content of the agreement that has been agreed before. This is based on Article 16 of ILO Convention 188 on crew employment agreements.

B. Factors causing human rights violations against crew on foreign ships

Factors that influence Indonesian citizens working abroad are 2 of them are Pull Factor and Push Factor. What is meant by Pul Factor is the existence of inadequate economic conditions, as well as insufficient education and lack of expertise. The Push Factor is the gap between urban and rural life, easy migration, and large salary income. That is what makes the crew have a high interest in working abroad, even though they also know that there is a high risk as well.²⁰ The increase in the work sector in Indonesia from year to year increases drastically, so it requires large and adequate employment.²¹ Workers, in this shipwrecked workers (*anak buah kapal-ABK*), flocked to find work abroad, was to improve the family's economic conditions.²² The lack of an economic sector in Indonesia and large income in destination countries have an impact on labour mobility in the international aspect.²³

Human rights are a set of rights that have been inherent to humans as creatures created by God and have been protected and upheld by the state

²⁰ M.Hum Dr. Devi rahayu, S.H., M.H Prof. Dr. Nunung Nurwahandi, S.H., and Prof Zuhairah Arif Abd Ghadas Abd, *Perlindungan Hak Pekerja Migran Di Indonesia*, 2021.

²¹ Anang Irawan, "Legal Status of Outsourcing After the Constitutional Court Decision Case Number 27/PUU-IX/2011," *Arena Hukum*, 2019

²² REYNOLD HUTAGALUNG, *Perbudakan Modern Anak Buah Kapal Ikan (ABKI)*, 2019.

²³ Nicholas Bloom and John Van Reenen, "PERAN DINAS TENAGA KERJA TRANSMIGRASI KABUPATEN BULELENG DALAM PENEMPATAN DAN PEMBERIAN PERLINDUNGAN HUKUM TENAGA KERJA INDONESIA DI LUAR NEGERI," *NBER Working Papers* 8, no. 2 (2013): 89,

and law.²⁴ In protecting human rights, the state cannot limit the rights and freedoms of every citizen. Therefore, human rights are categorized as non-derogable rights, which means human rights cannot be measured or reduced even in emergencies.²⁵ Efforts to protect society from arbitrary acts that, in reality, are not in accordance with the rule of law in order to create order and tranquillity so as to make humans enjoy their dignity as free human beings is an effort to protect human rights.²⁶ The law of human rights has a common goal, which is to uphold respect and provide protection to all human beings.²⁷

The problems that occur with migrant workers, in this shipwrecked workers (*anak buah kapal-ABK*), have become an international concern.²⁸ There are so many fishermen who work abroad and experience injustice; raising the issue of human rights is a problem initiated by the world, so this is considered serious for all groups because it can protect, respect, defend and guarantee human rights in any form. In the development of human rights, one of them is in the form of slavery, which often occurs in the era of the fishing industry in the form of exploitation and human trafficking. Therefore, it is necessary to provide protection for the crew as a whole, as well as strict monitoring.²⁹

Here are some cases of complaints, based on data from the Indonesian Migrant Workers Union, in 2014 - 2022

No.	Case	As
1.	Not given a salary	348

²⁴ M H Fahlevi and A Hariri, "Analisis Terhadap Hilangnya Hak Politik Bagi Terpidana Korupsi Ditinjau Dari Hak Asasi Manusia," ... *Ditinjau Dari Hak Asasi Manusia* 5, no. 1 (2021),

²⁵ Riska Agustin et al., "Tinjauan Yuridis Alasan Penolakan Kebijakan Wajib Vaksinasi Covid-19 Dari Asas Manfaat, Kepentingan Umum Serta Hak Asasi Manusia (HAM)" 7, no. 1 (2022).

²⁶ Anang Dony Irawan, Kaharudin Putra Samudra, and Aldiansah Pratama, "Perlindungan Hak Asasi Manusia Oleh Pemerintah Pada Masa Pandemi COVID-19," *Jurnal Citizenship Virtues* 1, no. 1 (2021): 1–6,

²⁷ LLM Dr. Diajeng Wulan Christianti, S.H., *Hukum Pidana Internasional*, 2021.

²⁸ M.Hum Dr. Any Suryani H., S.H., *Perlindungan Pekerja Migran Indonesia, Gajimu*, 2023.

²⁹ Riza Amalia, Ade Irma Fitriani, and Bayu Sujadmiko, "Perlindungan Hak Anak Buah Kapal Dalam Kerangka Hukum Nasional Dan Hukum Internasional," n.d.

No.	Case	As
2.	Trafficking in persons	214
3.	Can't depart	42
4.	Non-conformity of employment agreement	32
5.	Unilateral layoffs	18
6.	Overstay	11
7.	Document captivity	10
8.	Die	8
9.	Deceit	4
10.	Physical violence	3
11.	Sick	2
12.	Transfer	1
13.	Loss of contact	1
14.	Work accidents	1
15.	Claiming Insurance	1
Total		696

Source: Center for Parliamentary Analysis of the expertise body of the Secretary General of the House of Representatives of the Republic of Indonesia

The problems that occur a lot to the shipwrecked workers are a serious concern because it not only concerns the rights of the shipwrecked workers that are not given, but there are many human rights violations that occur on board. This is a serious enough problem to be immediately followed up; raising human rights is an inherent right in a person and is absolute; anyone cannot take it away just because of the high and low of one's responsibility at work.

C. Legal protection of crew members under ILO Convention 188

The ILO Convention is an international organization established in order to eliminate human rights violations, as well as to provide protection in health and security to workers. ILO Convention Number 188 of 2007 concerning work in fishing has the aim that there is feasibility in working on ships for crew members. The Convention is also binding on ships that are 24 meters or more long as well as ships that sail more than seven working days and are within a route of more than 200 miles of coastline. Many obligations have been fulfilled by fishermen on board by carrying out their duties and responsibilities, but there are so many rights of

fishermen that should not be given fairly, as well as a lot of arbitrary behaviour carried out by the superiors of the crew. Seeing that the purpose of the ILO Convention, as stated in its constitution, is to protect the interests of workers if they have been employed abroad. The number of behaviours that are carried out arbitrarily to the rights of workers, therefore, is worthy of being said to be a dangerous job and a job that requires extra labour compared to other jobs.³⁰

The existence of international standards with agreement covers several points, one of which is the protection of migrant workers in this shipwrecked workers (*anak buah kapal-ABK*); the ILO Convention has a role as a tripartite organization representing countries (both countries of origin and recipient countries), workers and employers.³¹ The protection of Indonesian migrant workers is the responsibility of the state as a power holder. So providing protection to fishermen who have international standards in order to create guarantees in providing protection to fishermen is with the policies contained in ILO Convention 188 regarding work in fishing because international law was born and created because of the international community.³²

D. Legal protection of crew (ABK) in national instruments

Indonesia is the largest category of countries in the world in terms of population after China, the United States, and India, so it has an increasing number of workers.³³ I am also the largest sender in the workforce in the field of fisheries, especially shipwrecked workers (*anak*

³⁰ Ahriani, Josina Augustina Yvonne Wattimena, and Arman Anwar, "Tanggungjawab Negara Bendera Kapal Terhadap Perbudakan ABK Indonesia," *Tatohi Jurnal Ilmu Hukum* 1, no. 2 (2021): 51–68, <https://fhukum.unpatti.ac.id/jurnal/tatohi/article/view/548/0>.

³¹ Mita Noveria et al., *Perlindungan Pekerja Migran Indonesia, Kesepakatan & Implementasinya*, 2020.

³² Levina Yustitiantingtyas, "Masyarakat Dan Hukum Internasional (Tinjauan Yuridis Terhadap Perubahan-Perubahan Sosial Dalam Masyarakat Internasional)," *Perspektif* 20, no. 2 (2015): 90, <https://doi.org/10.30742/perspektif.v20i2.150>.

³³ S.E.M.S Moch, Dr. R.M Wispandono, *Menguak Kemampuan Pekerja Migran*, 2018.

buah kapal-ABK). There are so many problems that occur in the Indonesian workforce, both during placement and during completion of placement. In conducting employment relations, there is an employment agreement in accordance with applicable laws in Indonesia as well as national legal regulations and applies in the flag country of the ship where the shipwrecked workers work. In work agreements, not all have legal force when they work, so to overcome these problems, Indonesia gives several regulations as a regulator.³⁴

In the Constitution of the Republic of Indonesia 1945, there are rules regarding the rights possessed by citizens in working and having a decent livelihood, including in Article 27 paragraph (2), Article 28 A, Article 28 D paragraph (1) and (2) then in article 28 I paragraph (1) and (2) which contains about everyone not entitled to be enslaved, and examined and treated discriminatively. Then there is also Law Number 18 of 2017 concerning the protection of Indonesian migrant workers, in which Indonesian workers must receive protection from human trafficking and slavery in forced labour and be victims of arbitrary violence, so many violate human rights. The Indonesian state has provided a legal umbrella in accordance with the rights given to fishermen that can be guaranteed. In its placement, there are also regulations regarding the placement and protection of Indonesian Workers abroad because it is considered insufficient to provide legal protection to fishermen working abroad.³⁵ In providing protection to Indonesian fishermen, strict supervision and law enforcement are needed both the period before work, work and after work.³⁶

³⁴ Amalia, Irma Fitriani, and Sujadmiko, "Perlindungan Hak Anak Buah Kapal Dalam Kerangka Hukum Nasional Dan Hukum Internasional."

³⁵ Graceyana Jennifer Clara Indira, Fajar Sugianto, "Kegagalan Perlindungan Hukum Bagi Awak Kapal Indonesia Sebagai Implikasi Dari Disharmonisasi Mekanisme Perekrutan Awak Kapal" 2, no. 2 (2015).

³⁶ Dr. Any Suryani H., S.H., *Perlindungan Pekerja Migran Indonesia*.

The following are the rules of National Law and International Law

No.	Law No. 18 of 2017	Convention ILO 188	Gap Analyst
1.	Article 1 verse (2): definition of migrant workers	Article 1 letter e: definition of crew	1) Law No. 18 of 2017: there is no definition of direct crew but a definition of migrant workers. Meanwhile, in Article 4, paragraph (1), letter c, what is meant by migrant workers is seafarers away fishing vessels and sailors. 2) <i>ILO Convention 188</i> : definition of crew.
2.	Article 5 letter a: Minimum requirement to work abroad is 18 years.	Article 9 paragraph (1): The minimum age requirement to work on board a ship is 16 years	1) Law No. 18 of 2017: Article 5 letter a provides that the minimum requirement to work abroad is 18 years. 2) <i>ILO Convention 188</i> : Article 9 paragraph (1) provides a minimum age requirement to work on board a ship that is 16 years old.
3.	Chapter 7: on the protection of migrant workers. Article 31: Legal Protection of Migrant Workers Article 34: Social Protection of Migrant Workers Article 35: Protection Migrant Workers Economy	Articles 38 & 39: Protection against illness, injury or death while working on board	1) Law No. 18 of 2017 Article 17: protection for migrant workers which is divided into 3, namely, protection before work, during work, after work. Then in Articles 31, 34, and 35 there is Protection of Migrant Workers in Legal,

No.	Law No. 18 of 2017	Convention ILO 188	Gap Analyst
			Social and Economic aspects.
			2) <i>ILO Convention 188</i> : Articles 38 & 39 provide protection for crew members in the event of illness, injury and death.
4.	Chapter 30: Financing	Articles 25 & 26: Accommodation and food	1) Law No. 18 of 2017 Article 30: there is a provision that placement fees cannot burden migrant workers. 2) ILO Convention 188: provision of accommodation, food and beverage on fishing vessels that have raised his flag.
5.	Chapter 49: Implementation of Settlements Indonesian Migrant Workers	Article 22: Recruitment and crew deployment.	1) Law No. 18 of 2017: provisions about Placement of Migrant workers in Indonesia, in which there are placement agencies and companies. 2) <i>ILO Convention 188</i> : provision of member states that already provide recruitment and placement services needs to be ensured that these offices are jointly coordinated. It is in the interest of employers and workers (Crew)

No.	Law No. 18 of 2017	Convention ILO 188	Gap Analyst
6.	Article 39: Responsibilities of central and local governments.	Article 8: Responsibilities of fishing vessel owners, captains and crews.	1) Law No. 18 of 2017: provisions regarding the responsibilities of central and local governments. 2) ILO Convention 188: provision on the responsibilities of ship owners, captains and crews.

The national legal regulations are actually good, but until now, there have been no special rules in handling Law No. 18 of 2017, there are rules regarding migrant workers. Which, in this case, can be used by people working with legal entities or not, domestic workers or crew members. Meanwhile, in ILO Convention 188, there are special rules regarding the handling of crew who are working on board. His protection and handling were also solemnized because the crew was a vulnerable worker.

Efforts Made by the State in the Legal Protection of Crew (ABK)

A. The role of the state towards Indonesian crew members

Indonesia is a maritime country, with a comparison of sea area greater than land area.³⁷ The State of Indonesia is a State of Law.³⁸ The state has granted and guaranteed the rights of Indonesian fishermen on foreign ships. Law is a product made by humans, and of course, there are many

³⁷ Saraya Husna and Levina Yustitiningtyas, "Responsibility for Marine Cargo Expedition (EMKL) for Service Users Due to Damaged/Lost Goods During the Sea Shipment Process," *Legal Horizon: Scientific Magazine Faculty of Law, Wijayakusuma University* 24, no. 2 (2022): 1–8,

³⁸ Tiara Yahya Deramayati and Satria Unggul Wicaksana, "Trial in Absentia in Corruption and the Right to Defense of Defendants in Human Rights Perspective," 2021,

shortcomings in its function. Therefore, it makes it an obligation of the state to make efforts to improve the law so that later, it can provide benefits to the community. This is in connection with the concept of human rights, which has given the state the main legal subject because the state can protect, enforce, and promote human rights.³⁹

B. State policy towards crew members who experience human rights violations on foreign ships

Currently, the government has made several efforts to protect workers by delaying services, revocation of written company business licenses, and temporary suspension of some or all of the business activities of placing migrant workers in Indonesia; repatriation and cancellation from abroad can also occur. The State has a fundamental duty and responsibility, namely providing opportunities for private agents to send migrant workers, namely creating basic provisions for continuing to operate, and has the responsibility to evaluate and conduct strict supervision of PM3MI for agents of public, private and government agencies. There are several sanctions that can be given, namely administrative sanctions and criminal sanctions. Administrative sanctions can be imposed on PT by reprimanding, written warning, suspension in business activities, and license revocation. While the criminal sanctions are by using the criminal path of imprisonment, confinement and fines. The Ministry of Transmigration is referred to as sanctioning, suspension, and revocation of permits in the deployment of migrant worker placement companies that are delinquent or commit fraud.⁴⁰

C. State responsibility to crew members who experience human rights violations on foreign ships

³⁹ Nadiya Nurmaya and Bima Prakoso, "Formulasi Dewan Tripartit Industri Maritim Dan Ratifikasi Konvensi International Labour Organization Nomor 188 Tahun 2007 Tentang Pekerjaan Dalam Penangkapan Ikan," *Media Iuris* 5, no. 1 Special Issue (2022): 121–48,

⁴⁰ Dewi Asri Puanandini, "Penegakan Hukum Tindak Pidana Perdagangan Orang Pekerja Migran Indonesia," *Jurnal Hukum Dan Kemanusiaan* 14 (2020): 14.

Responsibility is an obligation to provide answers derived from calculations that have occurred and provide recovery for losses given. The state has a responsibility that will essentially be about the problems of the nature of the state.⁴¹ The State of Indonesia has guaranteed all its citizens to get the same rights before the law without any exceptions.⁴² In the 1993 Montevideo Convention article 1, therefore, the responsibility of the State shall apply after its requirements are fulfilled after the announcement of the proclamation text as a form of state or the formation of a government in accordance with national law.⁴³

The government or state is the bearer of responsibility, just like the state that carries out legal action, so the responsibility of the state, in this case, should also be included in the realm of law. The state has a responsibility to serve the community. In carrying out services to the community, it has a function, namely to provide welfare conditions to the community in terms of social, health, education and work. Law Number 39 of 1999 Article 71 concerning Human Rights states that the government or state is obliged to be responsible for respecting, protecting, upholding and promoting human rights. Further explanation is contained in article 72, which contains the obligations and responsibilities of the government contained in several steps to fully implement in accordance with the political, legal, cultural, economic, social, and security and defence fields of the country. The state must be able to provide support in the form of facilities with programs that support the quality of labour in Indonesia. So it becomes an implementation of the implementation of state responsibilities, especially in the field of labour, especially migrant workers and fishermen who, in that case, have conditions that are quite vulnerable to obtaining arbitrary behaviour and violations of their rights when working on ships.⁴⁴

⁴¹ Dina et al. Sunyowati, *International Law*, 2011.

⁴² Fahlevi and Hariri, "Analisis Terhadap Hilangnya Hak Politik Bagi Terpidana Korupsi Ditinjau Dari Hak Asasi Manusia."

⁴³ CTA Dr. T. Mangaranap Sirait, S.H., M.H, *Hukum Pidana Internasional Dan Perkembangannya*, 2021.

⁴⁴ Tri Sulistiyono et al., "Bab Vii. Model Pertanggungjawaban Pemerintah Terhadap Perlindungan Pekerja Migran Indonesia Di Negara China," n.d., 134-53.

In this case, the responsibility of the state is not criminal in nature. Therefore, it is settled in accordance with international law in general, diplomacy and negotiation or settled with international organizations of which the concerned is a member.⁴⁵ The obligation of the state to provide support in the form of facilities is realized by programs to improve the quality of labour in Indonesia. For example, training on language courses before TKI, in this case, shipwrecked workers is placed, there is skill training, professional abilities in accordance with interests and learning about the culture of the destination country, in the aspect of responsibility is an obligation given to the government because it is a manifestation of the implementation of human rights protection for migrant workers, in this case, shipwrecked workers (*anak buah kapal-ABK*), especially in the field of labour.⁴⁶

State responsibility is necessary in the case of this case because he is an Indonesian citizen, which means shipwrecked workers are the responsibility of the state. This is in accordance with Number 37 of 1999 contained in chapter V concerning the protection of Indonesian citizens by foreign representatives. Therefore, it is the obligation of the state to protect its citizens. Although not in Indonesia, legal protection is still attached to Indonesian citizens abroad.

D. Settlement of the ABK Dispute of migrant labor

There are two ways of dispute resolution that can be taken, namely non-litigation and litigation. Dispute resolution through non-litigation is in the form of dispute resolution carried out outside the court using the role of alternative institutions from dispute resolution.⁴⁷ Litigation dispute resolution is a process of resolving disputes through the court the final

⁴⁵ TOLIB EFFENDI, *Hukum Pidana Internasional* (pustaka yustisia, n.d.), <https://www.pustaka-yustisia.com/>.

⁴⁶ Ida Hanifah, "Peran Dan Tanggung Jawab Negara Dalam PERlindungan Hukum Tenaga Kerja Indonesia Yang Bermasalah Di Luar Negeri" 5 (2020): 10–23.

⁴⁷ Herni Agustina, "Pelaksanaan Perjanjian Bagi Hasil Penangkapan Ikan (Sadoh) (Studi Di Desa Tanjung Luar Kecamatan Keruak Kabupaten Lombok Timur)," 2023, 1–14, <https://www.ncbi.nlm.nih.gov/books/NBK558907/>.

result is in the form of a judge's decision, and in it, there are parties who are won and defeated.⁴⁸

Based on the case of the case that occurred in Indonesian shipwrecked workers (*anak buah kapal-ABK*), the non-litigation dispute resolution is by peaceful means, but still, the basis is the law while the construction of the settlement is in accordance with the parties. In non-litigation, dispute resolution is considered good because there are sacrifices from the parties and it does not require expensive costs, while non-litigation settlement is by means of negotiation, arbitration, conciliation, mediation, and good faith.⁴⁹ This is in accordance with UNCLOS 1982 article 279. There is an obligation to settle disputes by peaceful means, and then the settlement of peaceful disputes can be chosen by the parties. This is in accordance with UNCLOS 1982 article 280.

The settlement is litigation by means of an active role carried out by representatives of the Republic of Indonesia by providing legal assistance by providing legal counsel to defend the resolution of cases in the destination country. In the settlement of this litigation was connected with representatives of the Republic of Indonesia by the Ministry of Manpower and Transmigration, the Ministry of Law and Human Rights and the families of the fishermen who were victims. This action is a legal defence that can be carried out by the state.⁵⁰

The existence of the *Pacta sunt servanda* principle is because of the attachment of countries that have been binding in international agreements, both bilateral and multilateral agreements, that have good ethics in order to comply with all the contents of the agreement without pressure from any party. In this case, there is a *Renvoi*, which is carried out by reappointing the legal system in resolving a case, which in this case is included in an international civil case. What needs to be followed up on is that after the termination of the court's jurisdiction (Choice of

⁴⁸ Agustina.

⁴⁹ Made Dwi Wahyuni, "Hukum Internasional Memegang Peranan Penting Dalam Menyelesaikan Sengketa Untuk Menjaga Perdamaian Dan Keamanan Dunia," *Jurnal Pacta Sunt Servanda* 3, no. September (2023): 110–19.

⁵⁰ Arief Wisnu Wardhana, "Perjanjian Tenaga Kerja Indonesia Yang Bekerja Di Luar Negeri Dan Perlindungan Hukumnya," *Lex Librum : Jurnal Ilmu Hukum* 6, no. 2 (2020): 174,

Jurisdiction), it can be followed up on international private law and the rules of choice of law (Choice of Law). What has been given to him is considered to have settled according to the judge's duty. There is no provision in doing so unless the provision is enforced in accordance with the law that has been chosen.⁵¹

ILO Convention 188 Article 39 paragraph (1) states that the owner of the ship is fully responsible to the crew who have raised their flag. In ILO Convention 188 Article 43 paragraph (2), there is a rule regarding if there is a complaint. The member state can make a report to the flag state and give a copy to the ILO general, and can also take action in improving conditions on board. Meanwhile, in ILO Convention 188 Article 43 paragraph (4), the complaint can be given to professional institutions, associations, and trade unions. The obligations of the flag state in UNCLOS 1982 Article 94 must carry out full supervision within its jurisdiction. Therefore, the flag state must investigate every problem that has been charged and take action to improve the situation properly so that if there is a dispute later, each state must conduct an examination carried out in front of the competent authorities. Then, in UNCLOS 1982, Article 59 states that if there is a dispute between a coastal state and another state, then it must be resolved on the basis of justice and consideration in all relevant matters, taking into account the primacy of the interests already involved. So, if the shipwrecked workers have an accident working on board or human rights violations, there are regulations both internationally and nationally. Therefore, institutions are expected to respond quickly and responsively to respond and cope when there is a report to the crew (WNI).

Conclusion

The importance of providing legal protection to crew members. Because the shipwrecked workers is a person who is vulnerable to violations at work, the protection of crew can be seen from ILO Convention 188 regarding work in fishing, In ILO Convention 188, some

⁵¹ Jonathan Andre Woods, "Renvoi Theory and Its Applications in Private International Cases," 2021.

rights can be obtained by workers, including the right to receive wages (article 23), the right to receive hours for rest (article 13), the right to receive accommodation and food (article 25), the right to receive care and health (article 29), The right to receive social security (Article 34), the right to receive protection against illness, injury or death to work (Article 38). The purpose of the ILO Convention is to protect the interests of workers working abroad.

Human Rights are matters that need serious handling, especially in the safety of migrant workers, which in this case is the crew of the ship; the state gives the obligation to guarantee the same rights in this case, the state bears the responsibility to take action in efforts to protect the shipwrecked workers (*anak buah kapal-ABK*), so that the state can make efforts in the legal protection of crew because the state has a responsibility to provide services to the community. The service aims to provide a prosperous condition to the community in terms of social, health, education, and work. In Law Number 39 of 1999, Article 71 concerning Human Rights states that the state has a responsibility to respect, protect and promote human rights. Article 72 contains the responsibility of the state in several steps so that it can be implemented thoroughly in the political, economic, legal, cultural, social and security fields, as well as the defence of the State. In the settlement of shipwrecked workers (*anak buah kapal-ABK*), there are two ways, namely non-litigation (outside the court) by means of negotiation, arbitration, conciliation, mediation, good faith of the rules in UNCLOS 1982 Article 279. Litigation (legal path) is an active role carried out by representatives of the Republic of Indonesia by providing legal assistance and legal counsel to defend the resolution of cases in the destination country.

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