

Analysis of the Legal Protection of Ship's Crew in Sea Work Agreement in Indonesia

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Abstract

This article aims to analyze the welfare of crew members in the context of legal protection, which is reviewed in more detail from the perspective of the implementation of the maritime employment agreement in Indonesia. This is based on the poor execution of marine employment agreements in Indonesia and should pay more attention to the welfare of crew members. This research will be prepared using normative juridical research (legal research), which is research focused on examining the application of rules or norms in positive law in Indonesia. The assessment process is carried out by analyzing several related regulations, namely the Commercial Code, Laws, Government Regulations, and Ministerial Regulations. The results show that the implementation of sea work agreements in Indonesia involves various parties, such as employers/ship agents, skippers, crew members, and harbourmaster as a means of fulfilling the rights and obligations of workers and employers. In the context of legal protection, crew members in Indonesia have the right to work protection in the form of welfare, occupational safety, and occupational health. In addition, crew

members also have the right to salary, overtime pay, holiday pay, delegation pay, transportation costs and wages at the end of work in a sea work agreement.

Keywords

Legal Protection, Ship's Crew, Sea Work Agreement

A. Introduction

Indonesia's territory is dominated by the sea. As the data states, Indonesia has an ocean area of 3.25 million km² out of a total area of 7.81 million km².¹ Based on this, it can be determined that Indonesia has considerable privileges and potential in the marine sector. Where the potential of fisheries in the field of capture of 6.4 million tons / year, the potential of general fisheries of 305,650 tons / year and marine potential of approximately 4 billion USD / year.² This is then utilized by the community as a means to make a living.

This potential certainly requires harmonization through government participation. This form of harmonization is an indispensable balancing principle to overcome distortions in both inputs and outputs and make the necessary corrections to restore a fair and balanced relationship (justice for all).³ As of August 2021, there are 1.19 million marine workers in Indonesia, consisting of 1.17 million male seafarers and 25,000 female seafarers. The contribution of

¹ E.K. Netanyahu, E.V.T. Senewe, and F.H. Anis, "Perlindungan Hukum Terhadap Pekerja Laut Dalam Pemutusan Hubungan Kerja," *Lex Administratum* 8, no. 5 (2020): 54–63.

² Ida Kurnia, "LAW ENFORCEMENT AGAINST ILLEGAL FISHING IN NATUNA WATERS DURING THE COVID-19 PANDEMIC," *Res Nullius Law Journal* 3, no. 2 (2021): 178–196.

³ Syamsul Alam and Muhammad Arif, "Perlindungan Hukum Terhadap Pekerja Perspektif Tanggung Jawab Konstitusional Negara," *Kalabbirang Law Journal* 2, no. 2 (2020): 123–133.

Indonesian seafarers to the country's foreign exchange is around IDR 151 trillion per year.⁴

Protection of the basic rights of a worker and how to treat labour without discrimination is one way to promote the general welfare.⁵ Based on Article 151 of Law No.17 of 2008 concerning Cruise, it states that every crew member is entitled to welfare which includes (1) salary, working hours and rest hours, guaranteed departure to the destination and return to the place of origin, compensation because the ship cannot operate due to an accident, career development opportunities, provision of accommodation, recreational facilities, food or drink, and maintenance and health care and provision of work accident insurance. This is regulated in more detail and further in Government Regulation No. 7 of 2000 concerning Maritime.⁶ Protection that has an impact on welfare is a form of protection provided by law. This is because legal protection provides protection to human rights that are harmed by others and this protection is given to the community so that they can enjoy all the rights provided by law.

Workers need to get protection in the form of work contracts / agreements that can guarantee their safety. If the agreement is not made in writing, then the work agreement is threatened with being canceled.⁷ The parties involved in the sea work agreement are the employer/ship agent, skipper, crew, and harbourmaster. In this case, Indonesia is one of the countries that has the largest number of seafarers, it is appropriate

⁴ BM Lukita Grahadyarini, "Perlindungan Tenaga Kerja Perikanan Masih Memprihatinkan," *Kompas.Id*, last modified 2022, <https://www.kompas.id/baca/ekonomi/2022/11/08/perlindungan-tenaga-kerja-perikanan-masih-memprihatinkan>.

⁵ Windi Afdal and Wulan Purnamasari, "Kajian Hukum Non-Competition Clause Dalam Perjanjian Kerja Menurut Perspektif Hukum Indonesia," *Jurnal Komunikasi Hukum* 7, no. 2 (2021): 387–402.

⁶ Hadijah Hadijah, Dian Lieska, and Yulinda Yusar, "Efektivitas Perjanjian Kerja Laut Sebagai Syarat Kelaiklautan Dan Kesejahteraan Anak Buah Kapal Indonesia," *Jurnal Manajemen Bisnis Transportasi dan Logistik* 6, no. 3 (2021): 239–250.

⁷ Arofatus Siddiqiyah et al., "TINJAUAN YURIDIS PEMUTUSAN HUBUNGAN KERJA (PHK) SECARA LISAN TERHADAP NAKHODA KAPAL PT. INTERNUSA BAHARI PERSADA (STUDI KASUS MA NOMOR 52 K/PDT.SUS.PHI/2018)" 2, no. 1 (2020): 152–173.

for the government to provide protection to sea workers who work on ships.⁸

Concentrating on the crew, Article 1 paragraph (42) of Law No. 17 of 2008 concerning Shipping provides the nomenclature of the crew which reads, "The crew is the crew of the ship other than the skipper". A crew member is a person appointed by a shipowner to work or perform services on a ship except for the skipper. The agreement between the crew agent and the crew is called the Sea Work Agreement, which contains the conditions for working at sea, a guarantee of decent work, guarantees in the form of wages, health, and disaster and health insurance, and also guarantees in the form of laws in accordance with the provisions of the applicable laws.⁹ This sea work agreement will later be examined and ratified by the harbourmaster as stipulated in Article 42 paragraph (2) letter e of Law No. 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law. However, behind that there are still several problems that require legal protection for crew members.

Legal protection for crew members today still cannot be realized properly. This can be seen from several problems that occur, such as income that is not proportional to the very heavy work, violence experienced by crew members, and lack of sleep hours so that crew members must be injected with morphine.¹⁰ This was revealed by one of the former crew members who signed the marine labor agreement. The International Labor Organization (ILO) states that the marine and capture fisheries business is the most vulnerable sector to human rights violations because it is far from the legal system and state supervision. Unlike businesses on land that can be easily monitored, capture fisheries businesses find it difficult to implement human rights-sensitive

⁸ Netanyahu, Senewe, and Anis, Loc.Cit.

⁹ I P H Parwita, I N P Budiarta, and Desak Gde Dwi Arini, "Perlindungan Hukum Bagi Anak Buah Kapal Pada Perusahaan Kapal Ikan Di Pelabuhan Benoa Denpasar," *Jurnal Konstruksi* ... 3, no. 3 (2022): 569–575, <https://ejournal.warmadewa.ac.id/index.php/jukonhum/article/download/5350/3720>.

¹⁰ Clara Indira, Fajar Sugianto, and Graceyana Jennifer, "Kegagalan Perlindungan Hukum Bagi Awak Kapal Indonesia Sebagai Implikasi Dari Disharmonisasi Mekanisme Perekrutan Awak Kapal," in *Seminar Peningkatan Sitasi Internasional*, vol. 1, 2021.

protection standards.¹¹ Based on this, legal protection is an important thing to note. Indonesia as one of the countries based on law (*rechtstaat*) and the rule of law, people really need legal protection to obtain legal certainty, and justice so that people feel prosperity and prosperity.¹²

The welfare of the crew itself juridically normative includes eleven aspects, namely salary, rest hours, guaranteed departure to the destination and return to the place of origin, compensation if the ship cannot operate due to an accident, career development opportunities, provision of accommodation, recreational facilities, food or drink, maintenance and health care and provision of work accident insurance as stipulated in Article 151 of Law No. 17 of 2008 which is explained in more detail in Government Regulation No. 7 of 2000.¹³ In reality, there are still many violations that are then classified as human rights violations that occur to crew members. This aspect of welfare tends to be problematic for crew members who should be protected by law.

Based on the above problems, the author formulates research questions as follows, (1) how is the application of sea work agreements in Indonesia, (2) how is the analysis of the legal protection of crew members in Indonesia in sea work agreements in Indonesia.

B. Method

This research will be prepared using normative juridical research (legal research), which is research focused on examining the application of rules or norms in positive law.¹⁴ Normative juridical research in this study discusses issues concerning crew members and sea work agreements in Indonesia. This normative research is a study of legal systematics, namely research whose main purpose is to identify the

¹¹ Lukman Adam, “Kebijakan Perlindungan Pekerja Perikanan Tangkap Indonesia,” *Jurnal Kajian* 21, no. 4 (2016): 321–338, <https://jurnal.dpr.go.id/index.php/kajian/article/view/782>.

¹² Niru Anita Sinaga and Tiberius Zaluchu, “PERLINDUNGAN HUKUM HAK-HAK PEKERJA DALAM HUBUNGAN KETENAGAKERJAAN DI INDONESIA,” *Jurnal Teknologi Industri* 6 (2017): 56–70.

¹³ Tri Cahyadi, “Perlindungan Hukum Pelaut Di Kapal Indonesia Berbasis Nilai Keadilan,” *Jurnal Pembaharuan Hukum* 4, no. 1 (2017): 97.

¹⁴ Johnny Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2006).

notions or basis in the law which in this case relates to the Ship's crew and the Sea Work Agreement in Indonesia.¹⁵

C. Result and Discussion

1. Application of Marine Employment Agreements in Indonesia

Regulatively, the meaning of a Sea Employment Agreement can be seen in Article 1 point 5 of Government Regulation No. 7 of 2000 which defines a Sea Employment Agreement as an individual employment agreement signed by Indonesian seafarers and water transportation employers. The commencement time of the sea employment relationship is when each party begins to perform its obligations, while the end time is after the cessation of the rights of each party in the employment relationship. In accordance with Article 398 and Article 401 of the KUHD regarding the conditions that must be met in a sea work agreement and regarding the termination of the employment relationship. In Article 398 of the Code of Commerce, sea work agreements can be made for 3 types of work bonds, namely:¹⁶

- a) Division of Marine Employment Agreements based on time or period, this PKL is then further divided into 3, namely:
 - 1) Sea Labor Agreement which is organized for a certain period of time or Periodic Sea Labor Agreement, for example: for 2 years, 5 years or 10 years;
 - 2) Sea Labor Agreements that are organized for an indefinite period of time, in which the employment relationship continues until terminated by the parties or otherwise the employment relationship ends in the near future (tomorrow), the day after tomorrow or so if one of the parties or the parties wish it; and
 - 3) Sea Labor Agreement which is organized for one or several trips, this sea labor agreement is organized based on the voyage held by the company from one port to another port.

¹⁵ Bambang Sunggono, *Metodologi Penelitian Hukum* (Jakarta: Raja Grafindo Persada, 2016).

¹⁶ T. V. Yustisia, *KUHD: Kitab Undang-Undang Hukum Dagang* (VisiMedia, 2014). h. 153.

- b) Sea Labor Agreement when viewed from the point of view of the difference in sea labor agreements in the law, which concerns the issue of valid reasons for terminating employment, then sea labor agreements can be grouped into 2 types, namely:
 - 1) Sea labor agreement for skipper.
 - 2) Sea Labor Agreement for Ship's crew.
- c) Sea Labor Agreement in terms of the binding parties, sea labor agreements are divided into two, namely:
 - 1) Personal or individual sea employment agreement, which is a sea employment agreement made between a worker and a shipping company.
 - 2) Collective Sea Labor Agreement or Collective Labor Agreement (KKB), which is made between a shipping company or a combination of shipping companies and a combination of workers (crew members), with the condition that each party must be a legal entity. Collective Sea Employment Agreements are very beneficial to workers (seafarers), because they negotiate with employers as a unit, namely a legal and recognized organization (in Indonesia: Kesatuan Pelaut Indonesia), so they are not easily pressured by employers, because if negotiations or deliberations reach a dead end, quantitatively the employer will suffer more losses than the seafarers, because the ship is not operating.

Basically, employment agreements are used as a means of fulfilling the rights and obligations of workers and employers that must be implemented properly because in practice there are often violations from employers as employers who in fact can intervene with their subordinates.¹⁷ The sea work agreement is made in quadruplicate for the crew, shipowner, skipper and harbourmaster. The time period for sea employment agreements can be determined which is divided into 3 (three) months, 4 (four) months, 9 (nine) months or 12 (twelve) months, some are made for an unspecified time, or some are made for a

¹⁷ Agus Antara Putra, I Nyoman Putu Budiarta, and Desak Gde Dwi Arin, "PERLINDUNGAN HUKUM TERHADAP PEKERJA DENGAN PERJANJIAN," *Jurnal Interpretasi Hukum* 1, no. 2 (2020): 12–17.

certain trip. As stated earlier, the parties involved in a sea work agreement are the employer/ship agent, the skipper, the crew, and the harbourmaster. Each of them has the following operational basis:

a) Ship Owners

Basically, the nomenclature of shipowners is stipulated in Article 320 of the Commercial Code which reads:¹⁸

" Shipowner means one who uses a ship for sea voyages and steers it himself or has a skipper employed by him to steer it".

Based on this formulation, it can be determined that the shipowner acts as the owner, charterer, or charterer of the ship.¹⁹ Shipowners have juridical requirements as stipulated in Article of Minister of Transportation Decree No. 79 of 1988, which reads:

- 1) Is a State-Owned Enterprise including Regional-Owned Enterprises, one of whose businesses is sea transportation, or an Indonesian Legal Entity in the form of a PT established specifically for this business.
- 2) Owns or controls at least one Indonesian-flagged good sea vessel.
- 3) For joint venture shipping companies between national shipping entrepreneurs and foreign shipping companies, must own at least one good Indonesian-flagged sea vessel.
- 4) Have a Taxpayer Payment Number (NPWP).

b) Skipper

A skipper is required to have special skills and abilities to own a ship. In addition, the skipper is also required to follow carefully the existing customs and regulations to ensure seaworthiness for the safety of the ship, the safety of the

¹⁸ Yustisia, *KUHD: Kitab Undang-Undang Hukum Dagang*.

¹⁹ Nurmiati Muhiddin, "Efektivitas Perjanjian Kerja Laut Terhadap Keselamatan Kerja Anak Buah Kapal (ABK)," *Al Daulah: Jurnal Hukum Pidana dan Ketatanegaraan* 5, no. 1 (2016): 63–78.

passengers and the cargo it carries. Article 137 of Law No. 17 of 2008 defines a skipper as follows:

"The skipper for motor vessels of GT 35 (thirty-five Gross Tonnage) or more has law enforcement authority and is responsible for the safety, security and order of the ship, sailors and cargo".

The skipper has a very important role on the ship he controls. A skipper has a role in the safety of the voyage. The skipper is the company's representative on board the ship who has been given full legal responsibility and authority to ensure the safety of the ship, crew, cargo and all facilities around the operation / shipping area from departing from a place to arriving at the destination port.

Before departing from the dock, a skipper must ensure that the condition of the ship is seaworthy and this must be proven by a safety certificate (hull, machinery, safety equipment certificate) that has been examined or tested by a certification body. The skipper provides a clearing declaration to the harbourmaster, then the harbourmaster must examine whether the documents are complete and still valid, whether the skipper and crew are complete and meet the specified diploma requirements, whether the crew has a seaman's book and certificate. While during the voyage, the skipper must ensure that the guard system is carried out properly and always ensure that the ship sails in the designated channel.²⁰

c) Ship's Crew

The definition of crew can be seen in Article 1 paragraph (42) of Law No. 17 of 2008 which states that, "*crew members are crew members other than the skipper*". The crew certainly has a fairly strict selection through certain qualifications so that the ship can sail well and minimize all

²⁰ Baddarudin, Rusian Renggong, and Abd. Haris Hamid, "ANALISIS TANGGUNG JAWAB HUKUM NAKHODA TERHADAP KESELAMATAN PELAYARAN DI WILAYAH KESYAHBANDARAN UTAMA MAKASSAR," *Indonesian Journal of Legality of Law* 3, no. 2 (2021): 79–87.

potential problems at sea.

Clauses on the minimum requirements that crew members must meet to work on ships, as set out in the provisions of the MLC (Maritime Labour Convention) 2006 held in Geneva, Switzerland, covering minimum age limits, health certificates, training and qualifications, and recruitment and placement systems on ships.²¹ This is reaffirmed in Article 17 of PP No. 7/2000 on Maritime Affairs, which explains that, to be able to work on a ship as a crew member, you must meet requirements such as a seafarer skill certificate and / or seafarer skill certificate; be at least 18 years old; be physically and mentally healthy based on the results of a medical examination specifically conducted for that purpose; and be licensed. Qualifications for crew members are certainly needed to overcome any problems that may occur while the ship is sailing at sea.

d) Harbourmaster

A harbourmaster has an important role in every sea transportation shipping activity, both in terms of supervision, law enforcement, port, protection of the maritime environment, and the shipping itself. In other words, the success of a voyage carried out by a ship or sea transportation is also the success of a harbourmaster carrying out his martyrdom duties.²²

The existence of the harbourmaster is a manifestation of the Government's presence in sea traffic. The existence of the harbourmaster in the sea work agreement is regulated in Article 400 of the KUHD, which states "*The work agreement between the shipowner and a worker who will act as a crew member, must be carried out in the presence of an employee*

²¹ Fakhurrozi and Ridwan, "Implementasi Undang-Undang Nomor 15 Tahun 2016 Dalam Melindungi Hak-Hak Anak Buah Kapal Di PT Samudera Indonesia," *Jurnal Sainlara* 5, no. 2 (2021): 15–23.

²² Tenda Bisma Bayuputra, "TINJAUAN YURIDIS MENGENAI PERAN SYAHBANDAR DALAM KEGIATAN PELAYARAN ANGKUTAN LAUT DI INDONESIA," *Lex et Societatis* 3, no. 3 (2015): 25–36.

appointed by an authorized official".²³

The existence of the harbourmaster in the sea work agreement is also regulated in Article 1 paragraph (56) of Law No. 17 of 2008 concerning Shipping, "*Harbourmaster is a government official at the Port who is appointed by the Minister and has the authority to carry out and supervise the fulfillment of the provisions of laws and regulations to ensure the safety and security of shipping*".

All shipping activities are regulated by the government through Law No. 17 of 2008 concerning Shipping. The function of the harbourmaster in Article 207 of this regulation is explicitly explained as follows:

- 1) Harbourmaster carries out the function of shipping safety and security which includes, implementation, supervision and law enforcement in the field of transportation in waters, port, and protection of the maritime environment in the port;
- 2) In addition to carrying out the functions as referred to in paragraph (1), the harbourmaster assists in the implementation of search and rescue in accordance with the provisions of laws and regulations; and
- 3) Harbourmaster shall be appointed by the Minister after fulfilling competency requirements in the field of safety and security of shipping and maritime affairs.

Further in this regulation, Article 208 explains the duties of the harbourmaster are as follows:

- 1) overseeing the seaworthiness of ships, safety, security and order in the port;
- 2) overseeing the orderly traffic of ships in port waters and shipping lanes;
- 3) overseeing loading and unloading activities in port waters;
- 4) supervise salvage activities and underwater work;

²³ Yustisia, *KUHD: Kitab Undang-Undang Hukum Dagang*.

- 5) supervise ship delay activities;
- 6) supervise guiding;
- 7) supervising the loading and unloading of dangerous goods and hazardous and toxic waste;
- 8) supervising refueling;
- 9) supervising the orderly embarkation and debarkation of passengers;
- 10) supervising dredging and reclamation;
- 11) supervising port facility construction activities;
- 12) carrying out search and rescue assistance;
- 13) leading pollution countermeasures and fire fighting at the port;
- 14) supervising the implementation of maritime environmental protection.

In its application in Indonesia, the maritime employment agreement has a legal basis as outlined in Government Regulation No. 7/2000 on Maritime Affairs. It must contain the rights and obligations of each party and fulfill the applicable statutory provisions. In essence, the most important function of a work agreement is to provide protection to workers.²⁴ In addition, the regulation of sea work agreements also refers to Book II Chapter 4 of The Code of Commercial Law concerning Sea Work Agreements. Article 401 of the Code of Commercial Law explains the mandate contained in Marine Labor Agreement, namely:²⁵

- 1) Full name, date of birth and place of birth of the crew member;
- 2) Place and date of the agreement;
- 3) Type of sea labor agreement;
- 4) On which ship he/she will work;

²⁴ Elisabeth A. E. Pinontoan, Fonnyke Pongkorung, and Cobi E.M. Mamahit, "PERJANJIAN KERJA BERSAMA ANTARA SERIKAT PEKERJA DENGAN PENGUSAHA MENURUT UNDANG-UNDANG NOMOR 13 TAHUN 2003 TENTANG KETENAGAKERJAAN," *Jurnal Fakultas Hukum Universitas Sam Ratulangi Lex Privatum* XII, no. 2 (2023): 1–11.

²⁵ T. V. Yustisia, *Op. Cit.*, 153.

- 5) The journeys to be taken;
- 6) The position for which he is employed or the position of the laborer on the ship, whether as skipper or crew member;
- 7) To what employment or position the laborer is bound for other duties as a duty on the ship.
- 8) The name of the harbourmaster who witnessed or authorized the sea employment agreement.
- 9) Salary or wages and other benefits other than those which are or may be required by law.
- 10) The time when the sea employment contract commenced.
- 11) A statement to the effect that the law or regulations applicable to the determination of vacation or leave days apply.
- 12) The rights and obligations of seafarers;
- 13) Employer's rights and obligations;
- 14) Signatures of labor, shipping employers and harbourmaster;
- 15) Date of signing or ratification of the sea work agreement;
- 16) Subject of termination of employment relationship;
- 17) Settlement of disputes;
- 18) Seafarer's position on the ship;
- 19) Signatures of the worker, employer and harbourmaster;
- 20) Date of signing or ratification of the sea work agreement.

In addition, the elucidation of Article 18 paragraph (2) of Government Regulation No. 7 of 2000 concerning Maritime Affairs also states the minimum things contained in the Marine Labor Agreement, namely:

- 1) The seafarer's full name and place and date of birth;
- 2) Place and date of the agreement;
- 3) The name of the ship or ships on which the seafarer will be employed;
- 4) The voyage area of the ship on which the seafarer

will be employed;

- 5) Salary, wages, overtime and other benefits;
- 6) Period of time the seafarer is employed; g. termination of employment;
- 7) Insurance and repatriation, leave, employment guarantee and severance pay; and
- 8) Dispute settlement.

The rights and obligations of the parties concerned must be contained in the PKL and fulfill the provisions of laws and regulations as mandated by Article 18 paragraph (2) of Government Regulation No. 7 of 2000 concerning Maritime Affairs. Furthermore, paragraph (3) explains the minimum rights and obligations of each party in the sea work agreement, namely:

a) Seafarers Rights

Receive wages, overtime pay, holiday pay, delegation pay, transportation costs and wages at the end of work, coverage for personal belongings carried and personal accidents and winter equipment for those working in cold climates and in winter in areas where the temperature is 15 degrees Celsius or less in the form of winter clothing and equipment.

b) Obligations of seafarers

Carry out duties in accordance with the working hours set in accordance with the agreement, bear the costs incurred due to excess luggage above the limit set by the company, obey the company's orders and work according to the term of the agreement.

c) Rights of the owner/operator

To employ seafarers.

d) Obligation of the owner/operator

Fulfill all obligations which are the rights of seafarers as referred to in letter (a) this paragraph.

2. Legal Protection of Ship's crew in Sea Labor Agreement Based on Indonesian Positive Law

The crew members are vulnerable to human rights violations. Problems regarding the protection of crew labor on board this ship should be a concern of the national community, to the international

community.²⁶ Seafarers always work on ships with the STCW (Standards Training of Watchkeeping) benchmark that applies to every seafarer if they want to work on a ship and has been ratified by the government through Government Regulation No. 51 of 2012 concerning Seafarer Resource Development.

The Sea Employment Agreement in Article 395 of the Commercial Code states as an agreement made between a shipowner on the one hand and a laborer on the other, by which the latter undertakes to under the orders of the employer to do work for wages either as a skipper or crew member.²⁷ Article 397 of the Commercial Code explains that during the voyage, the skipper represents the shipowner and other employers whose laborers work on the ship under his command in carrying out the work agreement entered into with them.²⁸ However, in accordance with Government Regulation No. 7 of 2000 on Maritime Affairs, all Marine Employment Agreements must be acknowledged by a government official appointed by the Minister of Maritime Affairs.²⁹

In principle, a sea employment agreement must be fulfilled by every seafarer who will work to carry out the service of the crew of a mechanically propelled ship of 100 m³ and above and on a non-mechanically propelled ship of 300 m³ and above gross contents. According to The Code of Commercial Law, a sea employment agreement between employers must be in writing but does not have to be presented to a government official, but a Sea Employment Agreement for a crew must be in writing and made before the government. As mandated by Government Regulation No. 7 Year 2000 on Maritime Affairs, all Sea Employment Agreements must be brought to the attention of a government official appointed by the Minister. Apart from the Sea Employment Agreement in Indonesia, there is also a Collective Employment Agreement or also known as a Joint Working

²⁶ Zahra Aulia Rahmani, “Perlindungan Hukum Terhadap Anak Buah Kapal Menurut Hukum Internasional,” *Soedirman Law Review* 3, no. 3 (2021): 538–548.

²⁷ T. V. Yustisia, *Op. Cit.*, 151.

²⁸ *Ibid.*

²⁹ Emilia Nova Lina Siagian, Reminiser Halawa, and Syah Indrawan, “Perjanjian Kerja Laut Sebagai Jaminan Keselamatan Para Tenaga Kerja Atau Pelaut,” *Aufklarung: Jurnal Pendidikan, Sosial dan Humaniora* 2, no. 4 (2022): 341–347.

Agreement, which is an agreement between one or several shipowners and one or several labor organizations. In Article 400 of The Code of Commercial Law, Conducting a maritime employment agreement between the shipowner and the crew must be made in the presence of the crew, in the presence of the harbourmaster or authorized employee and signed by him, the shipowner and the crew.³⁰

The crew is regulated in the third part (3) of book II of The Code of Commercial Law. What is meant by crew members has been determined in Article 375 of the KUHD, namely people who are appointed by the shipowner to work or perform services on the ship except the skipper. Article 375 paragraph (3) of The Code of Commercial Law states that:³¹

"That other workers on board ship who transport goods from land to ship or from ship to land and those who perform work on a temporary basis only are not included in the definition of crew members."

Article 375 of the Code of Commercial Law must be connected with Article 341 of the Code of Commercial Law, paragraph 4, which generally specifies who is included in the crew of a ship, namely the ship's officers and crew. In order to be called crew members, their names must be mentioned in the nautical register. The skipper here is not included in the definition of crew. The appointment of the skipper, ship's officers and other crew members made by the shipowner is required to be based on a maritime employment agreement.

The nautical register is a list in which all crew names are recorded. The nautical register is made in duplicate by the official appointed by the government for this purpose, in this case the shipping safety inspector who then keeps one copy of the nautical register while the other copy is for the skipper.³²

During the voyage there is a possibility of changes in the addition of personnel, be it the skipper, ship's officers or ship's crew, in

³⁰ *Ibid.*

³¹ T. V. Yustisia, *Op. Cit.*, 143.

³² Wiwoho Soedjono, *Hukum Perkapalan Dan Pengangkutan Laut* (Jakarta: Bina Aksara, 1982) hlm. 42.

this situation to resolve the problem has been regulated in Article 377 of The Code of Commercial Law which states that:³³

"When there is a change of skipper or when there is a change in the composition of the personnel registered in the nautical register or a change in the position held by a crew member who is working on the ship, then at the first port, where it can be done, the nautical register sheet intended for the skipper is amended accordingly in front of the registration officer. The amendment shall be marked by or on behalf of the skipper and by the registry officer of the crew."

However, please note that if a crew member does not do his job properly, under Article 387 of The Code of Commercial Law the skipper is authorized to impose punishment. The contents of Article 387 The Code of Commercial Law are:

"If a crew member leaves the ship without permission, does not return on time, refuses to work, fulfills his duties incompletely, acts indecently towards him, towards a crew member or one of the other passengers and disturbs order, the skipper may impose a fine equal to the wages fixed in money for a period of up to ten days, but the fine shall not amount to more than one third of the voyage period. Within a period of ten days, no fines may be imposed which together amount to more than the highest amount."

The skipper in imposing penalties on the crew must be based on Article 390 of The Code of Commercial Law, namely:³⁴

"Before passing sentence, the skipper is obliged to hear the person concerned as well as the witnesses who witnessed the incident and if possible two ship's officers as designated for that purpose in the nautical register are present."

However, if the employment relationship is directly terminated by the skipper as mandated by Article 389 of The Code of Commercial Law,

³³ T. V. Yustisia, *Op. Cit.*, 144.

³⁴ T. V. Yustisia, *Op. Cit.*, 148.

the crew member cannot be punished.

In positive law in Indonesia, crew members as human resources in the transportation sector also have the right to obtain work protection in the form of (1) welfare, (2) occupational safety, and (3) occupational health which must be provided by the employer in accordance with the provisions of laws and regulations and work agreements as stipulated in Article 35 paragraphs (1) and (2) of Government Regulation No. 51/2012. Article 39 then provides a mandate to oblige the employer to provide socialization regarding employment protection to human resources in the transportation sector that it employs at least once a year. Work protection in the form of welfare is further regulated in Article 36 paragraph (1) which explains that protection of welfare is provided at least in the form of:

1. wages or salaries in accordance with the provisions of laws and regulations;
2. training costs to maintain or improve competence in the field of transportation; and
3. insurance for workers who work in high-risk fields in the transportation sector in addition to labor social security.

In addition, Article 35 paragraph (1) letter b of Government Regulation No. 51/2012 mandates to provide work protection in the form of work safety to every human resource in the transportation sector. The minimum form of protection for work safety is regulated in Article 37 paragraph (2) which is at least in the form of:

1. Provision of work safety equipment in transportation infrastructure and facilities in accordance with the provisions of laws and regulations; and
2. Continuous job training and training to deal with emergency conditions and transportation accidents.

Meanwhile, the protection of workers in the transportation sector in the form of protection against health is regulated in Article 38 paragraph (1). This protection is in the form of:

1. general health services and occupational health;
2. protection from health risk factors contained in transportation infrastructure and facilities or in the workplace;
3. health checks that must be carried out in accordance with the

- provisions of laws and regulations in the field of transportation;
4. provision of nutritious food in accordance with the workload; and/or
 5. arrangement of working time and adequate rest time.

As previously stated, Article 18 paragraphs (1), (2), and (3) of Government Regulation No. 7 of 2007 explains that receiving salaries, overtime pay, holiday pay, delegation pay, transportation costs and wages at the end of work are seafarers' rights that must be included in the Sea Labor Agreement. Furthermore, Article 22 paragraph (1) explains that the minimum wage for the crew with the lowest position is determined by the minister responsible for labor.

In the Appendix to the Regulation of the Minister of Transportation of the Republic of Indonesia Number PM 10 of 2021, it explains the costs and salaries of crew members as operational costs in the cost and revenue components calculated in the implementation of public service obligations in the field of sea transportation. The cost and salary components of crew members in this regulation are as follows:

1. **Basic Salary**

Costs incurred as a reward given to the Skipper and crew according to the rank and class of employees whose amount is determined by the National Sea Transportation Executive in accordance with the provisions of the Laws and Regulations.

2. **Fixed Allowance**

The allowance given to the Skipper and crew every month by taking into account the class of position and is not influenced by attendance (sailing) and work performance.

3. **Command Allowance**

An allowance given to skippers and crew members with certain positions, including skipper, chief, chief mate 1 and machinist 1, which is given every month, the amount of which is determined by the National Sea Transportation Executive.

4. **Professional Allowance**

Special allowances given to doctors and nurses assigned to

ships whose amount is determined by the National Sea Transportation Executive.

5. Leave Allowance

Allowance given to the skipper and crew for annual leave given at the end of the year proportionally.

6. Income Tax Allowance

Allowance given to skipper and crew for payment of PPH (gross up method) amounting to the amount of income tax payable each month.

7. Operational Allowance for Lebaran, Christmas and New Year Transportation Services

Allowances to Shipmasters and crew who provide services to passengers to support Lebaran, Christmas and New Year transportation.

8. Education Allowance

An allowance given to the skipper and crew which is at least one time the total salary (Take Home Pay) of the last month given in the middle of the year during the new school year proportionally.

9. Work Performance Incentive Allowance

A fixed allowance given to Ship's Captains and crew members, which is calculated based on the class of position and the level of employee attendance. The amount of Work Achievement Incentive Allowance is determined by the national sea transportation implementer after being reported to the Director General of Sea Transportation no later than 5 (five) working days before it is determined.

10. Telecommunication Allowance

An allowance given to Captains and crew members of vessels with certain positions including Captains, Chiefs, Chiefs of Staff 1 and Machinists 1 who are given every month, the amount of which is determined by the National Sea Transportation Executive.

11. Costs for Education, Training and Certification of Shipmasters and Ship's Men

The cost of organizing Education and Training and Certification for skippers and crew members to meet

regulatory requirements and improve competence, among others:

- 1) Cost of organizing education/training/certification/scholarship
- 2) Education allowance
- 3) The cost of providing Education and Training and Certification for Ship Captains and Ship's crew is determined by the national sea transportation operator after being reported to the Director General of Sea Transportation no later than 5 (five) working days before it is determined.

12. Death Allowance

Compensation provided to the heirs of the skipper and crew due to the death of the skipper and crew.

13. Pension and Dismissal Allowance

Money paid by the company to non-vessel crew employees who are terminated and resign from the company in accordance with labor laws and regulations and Collective Labor Agreements.

14. Religious Holiday Allowance

Allowance given to the skipper and crew in the context of religious holidays with a minimum amount of 1 (one) times the last month's salary (Take Home Pay) proportionally.

15. Food and Drink Allowance

Food and beverage allowances along with equipment provided to the skipper and crew while on duty on the ship. The amount of food and drink allowance is determined by the national sea transportation operator after being reported to the Director General of Sea Transportation no later than 5 (five) working days before it is determined.

16. Clean Water Allowance

Provision of clean water to the skipper and crew while on duty on the ship.

17. Service Travel Allowance

Compensation given to the skipper and crew for official travel to and from the ship, the amount of which is determined by the National Sea Transportation Executive.

18. Skipper and crew premium

Premiums given to skippers and crew members who serve on ships according to the type of ship and position. The amount of the skipper and crew premium is determined by the national sea transportation executive after being reported to the Director General of Sea Transportation no later than 5 (five) working days before it is determined.

19. Skipper and crew insurance

The cost of insurance premiums for the skipper and crew to transfer the risk of unwanted things due to work accidents.

20. Pass Service Liability Allowance

Allowances related to the participation of the pension program for skipper and crew in the context of adjusting the basic rate of pension contributions.ippers and crew members who serve on ships according to the type of ship and position. The amount of the skipper and crew premium is determined by the national sea transportation executive after being reported to the Director General of Sea Transportation no later than 5 (five) working days before it is determined.

21. Non-habitable Allowance

Compensation given to Captains and crew members on board vessels that are carrying out Floating Repair and Docking (FRD) and fumigation due to uninhabitable accommodation on board.

The cost components and salaries of crew members in the Minister of Transportation Regulation Number PM 10 of 2021 have been regulated in detail and clearly. This regulation aims to provide legal certainty for public service obligation transport operators in the sea transportation sector in calculating operational costs. The explanation of the cost components and crew salaries in the Appendix to the Minister of Transportation Regulation Number PM 10 of 2021 should be a reference for operators of public service obligations in the field of sea transportation in calculating operational costs. Operators need to pay attention to these components so that transportation operations can run smoothly and efficiently..

D. Conclusion

Based on the comprehensive analysis that the author has done, the author draws the following conclusions:

1. In its application in Indonesia, the employment agreement is used as a means of fulfilling the rights and obligations of workers and employers that must be implemented properly because in its implementation there are often violations from employers as employers who in fact can intervene their subordinates. Sea Work Agreement as an individual work agreement signed by Indonesian seafarers with transportation employers in waters involving parties are employers / ship agents, skippers, crew members, and harbourmaster. The types of work bonds of the Sea Labor Agreement itself are divided into Periodic Sea Labor Agreement, Indefinite Time Sea Labor Agreement, and Sea Labor Agreement for one or several trips. In addition, regulations regarding Marine Employment Agreements in Indonesia are contained in separate rules, namely The Code of Commercial Law, Law No. 17 of 2008, Government Regulation No. 7 of 2000, Law No. 6 of 2023, and Government Regulation No. 51 of 2012.
2. Sea Labor Agreement is an agreement that must be recognized by a government official appointed by the Minister. The crew as human resources in the field of transportation also has the right to obtain work protection in the form of (1) welfare, (2) occupational safety, and (3) occupational health which must be provided by the employer in accordance with the provisions of laws and regulations and work agreements as stipulated in Article 35 paragraph (1) and (2) of Government Regulation No. 51/2012. Protection of the crew in the Sea Work Agreement is also in the form of salaries, overtime pay, holiday pay, delegation pay, transportation costs and wages at the end of work are seafarers' rights that must be included in the Sea Work Agreement as stipulated in Article 18 paragraphs (1), (2), and (3) of Government Regulation No. 7 Year 2007.

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