

The Settlement of Human Rights Violations Towards Indonesian Maritime Workers in Chinese Ship



Aprilia Dewi Putri¹, Joko Setiyono²

^{1,2}Master of Law, Universitas Diponegoro, Jl. Imam Bardjo No. 1, Pleburan, Semarang Selatan, Jawa Tengah

ABSTRACT: Indonesia is the third largest contributor for Maritime Workers after China and Philippine. The reason for those Indonesian Maritime Workers to work in the foreign ship is to have a decent standard of living. However, those workers are still having to encounter inhumane treatment such as slavery, exploitation, and discrimination from their employers. These inhumane treatment toward Indonesian Maritime Workers in Chinese ship is closely related to the Human Rights Violations. Human Rights is the rights inherited to all human beings since they were in the womb (in a living state) until they are dead and could not be obstructed by others. Therefore, this should be the government responsibility to settle the matter. In order to settle those inhumane treatment towards the Indonesian Maritime Workers, Indonesian Government could implemented the 3 requirement of diplomatic asylum which is An Internation Wrong, Exhaustion of Local Remedies, Link of Nationality as well as delegated a representative agency to sue the employers through legal action and call into court based on precondition of the investigation results which refers to the Indonesia Labor Law as well as International Labor Law.

KEYWORDS: Settlement of Human Rights Violations; Indonesian Ship's crew

I. INTRODUCTION

The crew of the ship (ABK) is a person who is an Indonesian citizen who will be or is being employed on a foreign ship and earn wages. The crew of the ship (ABK), which is often referred to as crew, according to Law No. 18 of 2017 concerning the protection of migrant workers, that crew members are also included as migrant workers. According to the International Labor Organization of the ILO, a migrant worker refers to a person who will, is currently or has performed paid work in a State, then the term seafarer which includes fishermen, refers to a migrant worker employed on a ship registered in a country of which he or she is not a national.¹

Most of the Indonesian people who become workers in the marine and fisheries sector are trying to find work and luck to get a decent living on foreign ships in order to fulfill their needs. Based on its development, every year the number of requests for crew members (ABK) continues to increase and the increase in demand is also an effort to balance the potential for an increase in the number of residents at home and abroad to the growth of the fishing industry and fisheries management. This is evidenced by data showing that in the 2013-2015 period more than 200,000 Indonesian crew members worked on foreign fishing vessels. In 2021, the State of Indonesia is the third largest contributor to maritime labor in the world, after China and the Philippines, with a total of 1.2 million crew members working on foreign ships.²

In 2016, according to the Dit PWN BHI of the Ministry of Foreign Affairs, it was stated that there are factors that encourage someone to want to work on foreign vessels, namely because the wages offered to work on foreign vessels are greater than their previous income when they worked on Indonesian fishing vessels.³ However, even so, it is not unexpected that many Indonesian crew members who have been accepted to work on foreign fishing vessels actually receive inhumane treatment such as fighting, human trafficking, discrimination, acts of violence, non-fulfillment of the rights of the crew members, and not infrequently being exploited by the crew. ship's head. Until now, there are still many reports related to cases of Indonesian crew members being treated inhumanely, such as Indonesian crew members who are employed for 18 hours within 24 hours with inappropriate wages, and they also receive food and drinks that are no longer fit for consumption, in contrast to received by Chinese crew members, this shows that there is discriminatory treatment between Indonesian crew members and Chinese crew members.

¹ Ahriani, Wattimena, Anwar. April 2021. Tanggungjawab Negara Bendera Kapal Terhadap Perbudakan ABK Indonesia. Vol 1 No. 2. Ambon : Universitas Pattimura. Hlm.53

² Ahriani, Wattimena, Anwar. April 2021. Tanggungjawab Negara Bendera Kapal Terhadap Perbudakan ABK Indonesia. Vol 1 No. 2. Ambon : Universitas Pattimura. Hlm.53

³ Dalam Fadilla Octaviani. "Perbaikan Tata Kelola Perlindungan ABK Indonesia di Kapal Ikan Asing" (Jakarta: Webinar Peluncuran Rekomendasi Perbaikan Tata Kelola Perlindungan ABK Indonesia di Kapal Ikan Asing, 18 Juni 2020) hlm.2.

The Settlement of Human Rights Violations Towards Indonesian Marintime Workers in Chinese Ship

In 2019 there were reports that there was an alleged exploitation of Indonesian crew on the fishing vessel Long Xing 629 belonging to a Chinese company. The acts of exploitation experienced by the Indonesian crew members are closely related to human rights, where human rights are rights that have been owned by everyone since they were still in the womb (alive) until they died and cannot be contested by anyone, therefore the state is obliged to provide protection to crew members who are working abroad. Then according to the Ministry of Foreign Affairs (Kemlu) also noted that throughout 2020 there were 1,451 reports regarding cases of Indonesian crew members (ABK) on foreign ships, that according to the former Indonesian Ambassador to Jordan and Palestine, detailing 1,451 cases of crew members, 1,211 cases of them related to repatriation, then as many as 465 cases related to wages, as many as 156 cases regarding acts of violence, 70 cases of death, 26 cases related to TIP, and 104 other cases (Republika.co.id 2021). Meanwhile, throughout 2021, the Indonesian Migrant Workers Union (SBMI) has received 188 complaints related to slavery to Indonesian crew members (ABK) who are working on foreign ships. Based on the 188 new cases, 98 of them came from Central Java, 43 from West Java, and the rest came from various other provinces in Indonesia (Greenpeace Indonesia, 2022). As it is known that slavery is an act of gross human rights violation because it degrades human dignity.

Even though international law has been established which regulates in order to guarantee the rights inherent in every human being everywhere, in practice there are still those who do not get their rights in full and receive treatment that leads to acts of exploitation. This inhumane way of working resulted in several crew members falling ill and only being given medical treatment in the form of intravenous injections and expired Chinese medicine, so that not a few crew members eventually died due to this inhumane treatment, there were even reports that their bodies had been found dead. thrown into the sea. The problem in this case has actually happened for a long time to Indonesian crew members who are working on Chinese foreign ships, which is still happening and even the right solution and solution have not been found to prevent the exploitation and slavery from happening again in the past. The next Indonesian crew members (ABK). According to the SBMI (Indonesian Migrant Workers Union), Human Rights Working Group (HRWG) and Greenpeace Indonesia, the President of the Republic of Indonesia as the head of state has the responsibility to stop this exploitation practice, who should be able to act decisively to take the case to the state court. and the perpetrators received sanctions, not as if they were seen as omission and even "contributed" to violating human rights. This is what underlies the author to discuss further about the solutions that can be carried out by the Indonesian government in cases of human rights violations against Indonesian crew members on Chinese foreign ships. Based on the background above, the formulation of the problem can be drawn, namely how to resolve cases of human rights violations against Indonesian crew members on Chinese foreign ships? Based on the formulation of the problem above, this article aims to determine the settlement of cases of human rights violations against Indonesian crew members on Chinese foreign ships.

II. RESEARCH METHODS

The method used in writing this article is by using a normative juridical approach, namely by using studies and secondary data analysis where the data obtained and obtained are not directly at the source. Secondary data mainly uses certain legal materials, namely primary legal materials and secondary legal materials, which lead to legal norms in national legislation and international law. The types and data in this article were obtained through library research, and then the method used by the author to analyze the data was qualitative analysis in which the author tried to analyze the issues raised regarding the settlement of cases of human rights violations against Indonesian crew members on Chinese and foreign ships. studied refers to secondary legal materials related to.

III. DISCUSSION

Human Rights Violations Against Indonesian Crew on Chinese Foreign Vessels in View from International Law and National Law

Problems related to human rights violations experienced by the crew of the ship (ABK) are not a new problem in the world of shipping on foreign ships abroad. The number of ship crew (ABK) workers who work abroad is also increasing, so that forced labor, exploitation, discrimination and human trafficking practices often occur on foreign fishing vessels. Cases of exploitation of Indonesian crew members on fishing vessels are very common among seafarers. The case of Indonesian crew members on the Chinese ship Long Xing which has been very much discussed lately, in which the alleged exploitation and discrimination of the case has become the focus of problems that must be immediately resolved.

Before discussing the settlement of this case, the author first describes several human rights violations committed by Chinese foreign ship owners and captains against Indonesian crew members in terms of International Law and National Law. International agreements are one of the sources of international law, where in international agreements there are terms known as conventions, one of which regulates the protection of ABK (Children of Ships) who are migrant workers on foreign ships who are also very vulnerable to being victims of exploitation, forced labour, slavery, discrimination and trafficking in persons. According to the United Nations, there are 3 important elements in trafficking in persons, namely:⁴ Activities: recruiting, transporting, transferring, harboring

⁴ Putri, "Peran ILO Terhadap Pelanggaran HAM Berupa Perdagangan Orang Yang Terjadi Pada Anak Buah Kapal". Hlm:5. (Dalam Jurnal Ahriani,Wattimena, Anwar. 2021."Tanggungjawab Negara Bendera Kapal Terhadap Perbudakan ABK)

The Settlement of Human Rights Violations Towards Indonesian Maritime Workers in Chinese Ship

or receiving people. Means: violence, abduction, fraud, coercion, threats, abuse of power or position of vulnerability. Purpose: exploitation, including forced labour, or removal of organs.

The ILO (International Labor Organization) is one of the specialized agencies of the United Nations (United Nations) which is an international organization formed to eliminate all types of human rights violations, as well as provide health and safety protection to workers including crew or crew. The establishment of the ILO is as a guideline for creating labor laws in the realm of international law relating to the rights and obligations of workers. ILO Convention No. 188 of 2007 concerning work in the field of fisheries which serves as a reference for laws and regulations with the aim of providing eligibility to work on ships for crew members or crew members. The convention binds ships with a length of 24 meters or more, ships sailing at sea for more than seven days, ships with a sea route of more than 200 nautical miles from the coastline, ships with a sea route of more than 200 nautical miles from the coastline. the outermost continents and the labor stationed on fishing vessels.⁵ The following are some acts of human rights violations against Indonesian crew members on Chinese foreign ships referring to the articles in the ILO Convention No. 188 Year 2007:

1) Violation of Article 8 Paragraph 2 points (a) and (b) regarding the responsibilities of fishing vessel owners and skippers for safety and health including preventing fatigue from crew members on board, as well as violations of Article 13 point (b) regarding requirements for crew service and regular and adequate rest periods to maintain safety and health. That there are forced labor practices and exploitation of Indonesian crew members who are forced to work for 20-22 hours per shift, without being given a day off. They said that while working there they were kicked and whipped or beaten with stingray tails when they complained or tried to rest. There are many "slaves" who are physically disabled and even die on the ship

2) Violation of Article 23 regarding crew wages

Whereas the wages for crew members are calculated to be very small, even if they are not paid for the work of pulling nets, each worker is usually paid around US\$1,000. Then they are forced to do work for which the payment of wages is often months or years late without being paid at all.

3) Violations of Article 27 points (a), (b), (c) regarding food and drinking water served or provided on the ship must have sufficient nutritional value, quality and quantity, and are free of charge to the crew. That Indonesian crew members are given consumption that is not the same as Chinese crew members, where Chinese crew members are given ordinary mineral drinking water while Indonesian crew members are given drinking water from sea water distillation which can cause kidney failure, dehydration, acute symptoms, severe diarrhea and even death. if consumed continuously. In addition, Indonesian crew members are also given inappropriate food such as rotten meat and sometimes the captain of the ship gives them meat that is usually used for fish bait, while it is different from Chinese crew members who get new food that is still delicious and fresh.

4) Violation of Article 36 point (a) regarding comprehensive social security protection for seafarers, taking into account the principle of equality of treatment regardless of nationality. That there is discriminatory treatment against Indonesian crew members from ship captains, in which Indonesian crew members are often treated harshly and also receive different facilities from Chinese crew members.

The following are some acts of human rights violations against Indonesian crew members who work on Chinese foreign ships referring to the articles in Law No. 13 of 2003 which contains Employment: Violation of Article 6 that every worker/ laborer has equal opportunities without discrimination from employers. That there is a difference in treatment and facilities received by Indonesian crew and Chinese crew on board, which is more detrimental and miserable for Indonesian crew.

Violation of Article 35 Paragraph (3) in which the employer in employing workers is obliged to provide protection that includes the welfare, safety and health of both mental and physical workers. That the facts show the conditions of poor work patterns and work systems experienced by Indonesian crew on board such as physical violence, malnutrition due to consuming inappropriate food and drinks.

Violation of Article 50 regarding employment relations Paragraph (2) that the work agreement required in writing is carried out in accordance with the applicable laws and regulations. That it is suspected that there has been a violation of the contract made by the Chinese company and the crew before starting to work on the Chinese ship, one of which is the non-fulfillment of the right to obtain appropriate work in the employment contract, the right not to be exploited, the right to freedom not to be treated harshly. or Acts of violence both physically and mentally, the right to a predetermined wage, the right to work health and safety guarantees.

Violation of Article 79 concerning rest periods. Paragraph (1) employers are obliged to give rest and leave time to workers/laborers, in point (a) stating a break between working hours of at least half an hour after working for 4 hours continuously and the rest time does not include working hours. The fact is that Indonesian crew members are employed for 20-22 hours and are given time to rest 2-4 hours per day including meal breaks.

⁵ Dalam Ahriani, Wattimena, Anwar. April 2021. Tanggungjawab Negara Bendera Kapal Terhadap Perbudakan ABK Indonesia. Vol 1 No. 2. Ambon : Universitas Pattimura. Hlm.54

The Settlement of Human Rights Violations Towards Indonesian Marintime Workers in Chinese Ship

Violation of Article 91 Paragraph (1) regarding the wage arrangement stipulated by agreement between the entrepreneur and the worker/ laborer or the trade union/ labor union may not be lower than the wage provisions stipulated by the prevailing laws and regulations. Based on the complaint data received by the SBMI (Indonesian Migrant Workers Union) in 2021, it stated that there was excessive exploitation of marine resources and a reduction in fish populations, this encouraged massive fishing in the high seas, which often resulted in higher operational costs and led to Our fishing crew are more vulnerable to receiving low wages, poor working conditions and an improper life on board as well as getting violent acts which are included in serious violations (Greenpeace Indonesia, 9 December 2021). This is what causes Indonesian crew members on foreign ships to be forced to work indefinitely with wages that are not in accordance with their work.

The following are some acts of human rights violations against Indonesian crew members on Chinese foreign ships referring to the articles in Law no. 39 of 1999 concerning Human Rights:

Violation of Article 3 Paragraph (3) that everyone has the right to the protection of human rights and basic human freedoms, without discrimination. That Indonesian crew members receive different treatment and receive facilities that are not the same as those received by Chinese crew on board, such as intake of food and drinking water that is not fit for consumption given to Indonesian crew members on board, health facilities that are not provided as well as inadequate resting facilities worthy.

Violation of Article 4 concerning the right to life, the right not to be tortured, the right to freedom of person, thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person and equal before the law, and the right not to be prosecuted on the basis of the law. retroactively applied are human rights that cannot be reduced under any circumstances and by anyone. That the Indonesian crew on board the Chinese foreign ship experienced inhumane acts such as acts of coercion, acts of physical violence to disability and even death, exploitation such as being employed for 20-22 hours per day and the wages received were not appropriate, slavery, discrimination, confinement to human trafficking.

Violation of Article 20 Paragraphs (1) and (2) regarding slavery and acts of any kind with similar purposes are prohibited. That Indonesian crew members who work on Chinese foreign ships are employed humanely where they work for 20-22 hours per day and are given only 4 hours of rest per day including meal breaks, they also get wages that are not commensurate with their work and they are often too late to be paid for months or years even until some are not paid.

Violation of Article 33 Paragraph (1) in which everyone has the right to be free from torture, punishment or cruel, inhuman, degrading treatment and dignity, and Paragraph (2) everyone has the right to be free from enforced disappearances and disappearances of life. That there was torture against Indonesian crew members on ships carried out by the captain resulting in serious illness and physical disability even to death and the bodies of the Indonesian crew members being dumped at sea.

This case was also published in the news program of the South Korean Television Station MBC, reporting on the existence of Indonesian citizens with poor working conditions and calling it an act of slavery on a ship. HRWG (Human Rights Working Group) even considers that the exploitation of Indonesian crew members and several other countries in Southeast Asia is part of transnational organized crime, considering that the activities of the global fishing industry involve several countries in the world (Greenpeace Indonesia, 20 March 2022). Cases like this have been reported many times, but there has never been a serious response from the government. The government seems to ignore it, so that similar cases are always repeated and there is no solution.

Settlement of Human Rights Violation Cases Against Indonesian Crew on Chinese Foreign Ships

The number of Indonesian migrant workers is quite large, so special attention is needed in handling legal problems by state representatives. According to Article 1 of Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers, that where an Indonesian worker works abroad means he has immigrated so that he deserves the rights as migrant workers and foreigners as stated in the legal instruments whose scope is universal and in national legislation regarding Indonesian workers. Many efforts by the State Government, both in Laws, Government Regulations, International Law as well as legal protection measures such as diplomatic functions and counselor functions, have been carried out to protect Indonesian migrant workers from legal problems in the form of human rights violations against Indonesian migrant workers abroad. However, these efforts will not be sufficient to resolve the human rights violations against Indonesian migrant workers abroad if they are not dealt with firmly and brought the case to the state court of law. Such is the case with the case of human rights violations against Indonesian crew members on Chinese foreign ships, which until now has not been resolved. Daniel Awigra as a human rights and HRWG activist also said that "without making guarantees of legal protection and continuing to strive for maximum protection, the government is in the same way as allowing the practice of slavery to crew members" (Greenpeace Indonesia, 9 December 2021). Therefore, the President must immediately send his cabinets to immediately resolve the case to protect migrant workers including crew members through the Law on the Protection of Indonesian Migrant Workers (UU PPMI), Laws related to Human Rights, Laws related to employment, Laws relating to the Protection of Indonesian Migrant Workers. Laws related to international relations, Ministerial Regulations related to the recruitment and placement of crew and international law contained in the ILO (International Labor Organization) Convention No. 188 Year 2007.

Basically, Indonesian crew members have carried out their obligations as workers on ships by carrying out the duties and responsibilities that were instructed to them. However, the rights of Indonesian crew members that should be granted to them are

The Settlement of Human Rights Violations Towards Indonesian Maritime Workers in Chinese Ship

often not fulfilled fairly by the shipowners and their superiors on board, and they receive arbitrary treatment from their superiors. Steps that can be taken in resolving human rights violations against Indonesian crew members on Chinese foreign ships are by referring to the regulations for the protection of Indonesian migrant workers, which are not only contained in Ministerial Regulation Number PER-19/MEN/V/2006 which is the reference for laws and regulations, because if it is arranged hierarchically, then we can look at the top which is the basis contained in the Preamble to the 1945 Constitution of the Republic of Indonesia, especially in paragraph IV which states that one of the goals of the state is to protect the entire nation and the entire homeland of Indonesia, and It is also stated in Article 28D of the 1945 Constitution of the Republic of Indonesia which reads "that every citizen has the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law". So it is very clear that Indonesian crew members who work on foreign vessels both in Indonesia and outside Indonesia must get protection from the state.

Just as the Indonesian government has tried to protect the rights of migrant workers on foreign ships (in this case, crew members), the Indonesian government can also firmly resolve this case with 3 conditions for diplomatic protection for citizens, in this case migrant workers including Indonesian crew members, namely (Suryono, & Arisoendha, 1986): An International Wrong, that the state must provide protection to its citizens who are abroad in the event of a violation of international law against its citizens. Based on international law, there are several factors that have important characteristics in state accountability: first, between two countries there are still international legal obligations that still apply between them; second, the occurrence of an act or omission which is deemed to have violated the obligation; third, the result of negligence or the act causes loss or loss (Malcolm, 2013: 774). State responsibility can also be determined by international norms (although in certain branches it can include national norms) but it also depends on the extent to which an act or omission is considered unlawful (Starke, 1988: 275). As is the case in this case, Indonesia as a ship crew sending country is obliged to provide protection, one of which is by urging businessmen or ship owners, namely China, to be responsible for human rights violations against Indonesian crew on board. As stated in Law no. 39 of 1999 concerning Human Rights Article 7 Paragraph (1) states that "everyone has the right to use all national legal remedies and international forums for all violations of human rights guaranteed by Indonesian law and international law regarding human rights that have been accepted by the Republic of Indonesia. Indonesia", as well as Paragraph (2) in which "international law provisions that have been accepted by the Republic of Indonesia concerning human rights are primarily the responsibility of the Government."

Furthermore, Exhaustion of Local Remedies, that if a citizen of a country is currently or has taken local legal remedies in the recipient country, then the country of origin has the responsibility to provide legal assistance to sue and resolve legal problems that occur. As known in Law no. 37 of 1999 concerning Foreign Relations Article 19 point (b) it is known that "Representatives of the Republic of Indonesia are obliged to provide protection, protection and legal assistance for Indonesian citizens and legal entities abroad, in accordance with national laws and regulations as well as international laws and customs. ", then it has become an obligation for the state to protect its citizens abroad including Indonesian migrant workers who live and work outside the territory of the Republic of Indonesia to receive protection from the state through its organs such as the Embassy of the Republic of Indonesia (KBRI), Consulate General Republic of Indonesia (KJRI) which are diplomatic and consular representatives owned by Indonesia (Suryokusumo, 2004). The Directorate of Protection of Indonesian Citizens and BHI (Indonesian Legal Aid) which is a special Directorate of the Ministry of Foreign Affairs as a representative or Government Envoy who has the obligation to handle issues related to policies and technical standardization in the field of legal assistance for Indonesian citizens or Indonesian Legal Entities (BHI) (Rahmawati , 2019). Therefore, the Indonesian government can appoint state representatives in the field to provide assistance not only through mediation and deliberation but also take decisive steps through legal channels and state courts in resolving cases of human rights violations against Indonesian crew members on Chinese foreign ships based on the results of the investigation conducted. have been done.

Then the Link of Nationality, that diplomatic protection is given to citizens in the event of an act of violation of international law by another country. Therefore, the Government of Indonesia may send representatives of countries abroad to immediately take decisive steps in litigating cases of human rights violations that occurred to Indonesian crew members on Chinese foreign ships based on the results of investigations at state court institutions with reference to relevant sources of national law and international law. with this case include the following: Law no. 39 of 2004 concerning the Placement and Protection of Indonesian Migrant Workers who are working and residing abroad. Referring to this law, the placement and protection of prospective Indonesian Migrant Workers (TKI) must be based on integration, equality of rights, democracy, social justice, gender equality and justice, anti-discrimination and anti-trafficking. With this law, the government can sue for acts of physical violence, arbitrary treatment, inappropriate wages, uninsured occupational health and safety, inadequate facilities and acts of exploitation that are very cruel as crew members get while working on ships. Chinese foreign.

Law No. 13 of 2003 which contains related to Manpower in regulating work agreements between employees and companies and determines several agreements that will be made by employees concerned with a company as well as regarding wage regulations. With this law, the government can sue regarding breaches of contracts that have been made and agreed upon by Indonesian crew members with Chinese companies before starting to work on ships of the Chinese companies and violations of the right to obtain decent work without any acts of exploitation, and prosecute fines for non-compliance with wages received by Indonesian crew members based on a certain percentage of wages and unpaid wages.

The Settlement of Human Rights Violations Towards Indonesian Marintime Workers in Chinese Ship

Based on international law, namely that contained in the ILO (International Labor Organization) Convention No.188 of 2007 concerning Employment in Fishing, which this Convention was made to ensure that seafarers get decent working conditions and systems on fishing vessels both in terms of minimum requirements for working on ships, standard terms of service, accommodation and food facilities, rights to protection and care related to health, work safety, and employment social security. With the ILO Convention No.188 of 2007, the government can prosecute all inappropriate treatment and actions experienced by Indonesian crew members, ranging from forced labor, physical violence, disposal of corpses into the sea without agreement, exploitation, discrimination, up to wages. unpaid.⁶

Law No. 39 of 1999 concerning Human Rights as a guideline for protecting, guaranteeing and upholding human rights and basic human freedoms, including for Indonesian crew members as migrant workers on foreign ships, as a legal basis for obtaining fair and correct legal remedies for violations of human rights committed. occur based on the applicable legal mechanism and avoid the occurrence of human rights violations again. With this law the government can prosecute all acts of human rights violations experienced by Indonesian crew members on Chinese foreign ships, namely violations of the right not to be tortured and exploited, the right to personal freedom (Indonesian crew members do not get a decent life on foreign ships), for the right not to be enslaved, for the right to receive equal protection and treatment without discrimination between Indonesian crew members and Chinese crew members and for the right to live (Indonesian crew members do not receive occupational health and safety guarantees).

Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers states that “migrant workers must be protected from human trafficking, slavery and forced labor, victims of violence, arbitrariness, crimes against human dignity and other treatment that violates human rights.” With this law, the government can sue for the absence of protection and fulfillment of the rights of Indonesian crew members as migrant workers, as evidenced by the treatment that violates the human rights of the ship's crew against crew members on board such as physical violence, forced labor, inappropriate wages, hours of work that exceeds the limit, there is no guarantee of protection for the safety and security of returning Indonesian crew members to their area of origin, not getting health insurance, there are acts of discrimination and confinement that are not in accordance with procedures.

Ministerial Regulation Number 84 of 2013 concerning Recruitment and Placement of Crews in the second part of Article 14 to Article 20 concerning the responsibilities of agency companies for crew members. With this Ministerial Regulation, the government can sue for the responsibility of the ship's entrepreneur, the captain of the ship and the actors involved in this case for the non-compliance with the obligations and responsibilities of the ship's entrepreneur for the fulfillment of the rights of their workers, especially Indonesian crew members while working on ships.

The Indonesian government has taken several steps in dealing with this problem, both dealing with victims, looking for perpetrators, handling affairs with the countries concerned in this matter, namely Korea and China and others, the Indonesian government also remains responsible for doing its best to protect its citizens by continue to investigate this case to completion even though the results have not yet been found, and it is hoped that the results can be more decisive in deciding this case and imposing sanctions on the perpetrators who committed crimes against human rights violations on Indonesian crew on board the ship based on the relevant laws above.

IV. CLOSING

That the steps that have been taken by the Indonesian government in an effort to provide protection to Indonesian crew members have been regulated by national law applicable in Indonesia as well as international law relating to work in the fishery sector. Just as the Indonesian government has tried to protect the rights of migrant workers on foreign ships (in this case, crew members), the Indonesian government can also firmly resolve this case with 3 conditions for diplomatic protection for citizens who work as migrant workers including Indonesian crew members, namely: : 1. An International Wrong (the protection provided by the country of origin is the responsibility of the Government in the event of a violation of international law, which in this case of human rights violations against Indonesian crew members the Government can sue with reference to the National Law and related government regulations with this case of human rights violations); 2. Exhaustion of Local Remedies (legal assistance from the government by appointing state representatives and technical fields to immediately provide assistance in resolving cases of human rights violations against Indonesian crew members through legal channels and courts with claims based on the results of investigations that have been carried out); 3. Link of Nationality (Diplomatic protection for citizens who are abroad, in which the Indonesian government can immediately send state representatives to prosecute cases of human rights violations experienced by Indonesian crew members on Chinese foreign ships based on the results of the investigation by referring to the national law applicable in Indonesia). Indonesia and related international law).

The President can immediately send his cabinets to immediately resolve cases through the Law related to the Protection of Indonesian Migrant Workers (PPMI Law No. 39 of 2004), Laws related to Human Rights (Law No. 39 of 1999), Laws related to employment (Law No. 39 of 1999). Law No. 13 of 2003), Laws related to international relations, Ministerial Regulations related to the recruitment and placement of crew members (PM No. 84 of 2013) and international law in the ILO (International Labor

⁶ Samudra Rof-rof Galih. *ABK (Nelayan) Didalam Kapal Cina*. Banteng : UIN Banten

The Settlement of Human Rights Violations Towards Indonesian Marintime Workers in Chinese Ship

Organization) Convention No. 188 of 2007. Based on the law, government representatives abroad who are sent to resolve this case can sue for physical violence, slavery, exploitation, discrimination, inappropriate wages, breach of work contracts, work hours and rest that are not in accordance with the law and escape. The government can also sue for the responsibility of the ship's entrepreneur, the captain of the ship, and the perpetrators involved in this case who intentionally did not fulfill and give the Indonesian crew members their rights while working on the ship, so that the state government could immediately impose sanctions on the perpetrators.

REFERENCES

BOOK

- 1) Suryono, Edy., & Arisoendha, Moenir. (1986). *Hukum Diplomatik, Kekebalan dan Keistimewaannya*, Bandung: Angkasa.
- 2) Suryokusumo, S. (2004). *Hukum Diplomatik : Teori dan Kasus*. Bandung : Alumni.
- 3) Shaw, Malcolm N QC. *Hukum Internasional, Edisi Keenam*, Cet-1, Nusa Media, Bandung, 2013.
- 4) Starke, J.G. *Pengantar Hukum Internasional*, Edisi Ke-9, Aksara Persada Indonesia, Jakarta, 1988.

THESIS

- 1) R Emilio Timmie K. 2021. Sripsi. *Tinjauan Hukum Internasional Tentang Pelarangan Anak Buah Kapal (Studi Kasus Pelarangan Anak Buah Kapal Indonesia Dari Kapal Cina)*. Medan : Universitas Sumatera Utara.
- 2) Sumber: <https://repositori.usu.ac.id/handle/123456789/32879> (Accessed on Sunday 3 April 2022, 15:25 WIB)
- 3) Samudra Rof-rof Galih. *ABK (Nelayan) Didalam Kapal Cina*. Banteng : UIN Banten
- 4) Sumber: <https://osf.io/pw86a/download> (Accessed on Sunday 3 April 2022, 15:25 WIB)

JOURNAL

- 1) Ahriani, Wattimena, Anwar. April 2021. *Tanggungjawab Negara Bendera Kapal Terhadap Perbudakan ABK Indonesia*. Vol 1 No. 2. Ambon : Universitas Pattimura.
- 2) Sumber: <https://fhukum.unpatti.ac.id/jurnal/tatohi/article/view/548/0> (Accessed on Sunday 3 April 2022, 15:25 WIB)
- 3) Manurung Salmon Abertnego, Nabitatus Sa'adah. 2020. *Hukum Internasional dan Diplomasi Indonesia Dalam Perlindungan Tenaga Kerja Migran Indonesia*. Jurnal Pembangunan Hukum Indonesia Vol 2 No. 1. Semarang : MIH Undip
- 4) Sumber: <https://core.ac.uk/download/pdf/287170562.pdf> (Accessed on Sunday 3 April 2022, 15:25 WIB)
- 5) Suriyanto Daniel, Kurnia Ida. Juni 2021. *Perlindungan Hukum ABK Indonesia Di Kapal Asing Dalam Perspektif Hukum Nasional*. Vol 4 No.1. Universitas Tarumanagara.
- 6) Sumber: <https://journal.untar.ac.id/index.php/adigama/article/viewFile/12034/7721> (Accessed on Sunday 3 April 2022, 15:25 WIB)

WEBINAR LINK

- 1) Octaviani, Fadilla. "Perbaikan Tata Kelola Perlindungan ABK Indonesia di Kapal Ikan Asing" (Webinar : Webinar Peluncuran Rekomendasi Perbaikan Tata Kelola Perlindungan ABK Indonesia di Kapal Ikan Asing, 18 Juni 2020). Dalam Jurnal Suriyanto Daniel & Kurnia Ida. 2021. Vol. 4 No 1. Hlm : 1668.
- 2) Sumber:
- 3) <https://journal.untar.ac.id/index.php/adigama/article/viewFile/12034/7721> (Accessed on Sunday 3 April 2022, 15:25 WIB)

NEWS LINK

- 1) Greenpeace Indonesia (2021). *ABK tereksplotasi, Presiden Melanggar HAM?*.
- 2) Sumber : [ABK Tereksplotasi, Presiden Melanggar HAM? - Greenpeace Indonesia](#) (Accessed on Sunday 3 April 2022, 15:25 WIB)
- 3) Greenpeace Indonesia (2021, Desember 9). *ABK Terjaring Perbudakan, Siapa Pelanggar HAM?*.
- 4) Sumber : <https://www.greenpeace.org/indonesia/siaran-pers/46020/abk-tereksploitasi-presiden-melanggar-ham/> (Accessed on Sunday 3 April 2022, 15:25 WIB)
- 5) Republika.co.id (2021, April 15). *Kemlu Catat Hingga 1.451 Kasus ABK Indonesia di Kapal Asing*.
- 6) Sumber : [Kemlu Catat Hingga 1.451 Kasus ABK Indonesia di Kapal Asing | Republika Online](#) (Accessed on Sunday 3 April 2022, 15:25 WIB)



There is an Open Access article, distributed under the term of the Creative Commons Attribution-Non Commercial 4.0 International (CC BY-NC 4.0) (<https://creativecommons.org/licenses/by-nc/4.0/>), which permits remixing, adapting and building upon the work for non-commercial use, provided the original work is properly cited.