

Law Enforcement Against Slavery of Indonesian Crews on Foreign Fishing Vessels

Yunandar A. Supu¹, Fenty U. Puluhulawa², Jufryanto Puluhulawa³

¹ Faculty of Law, Universitas Negeri Gorontalo, Indonesia. E-mail: Nandarasupu@gmail.com

² Faculty of Law, Universitas Negeri Gorontalo, Indonesia. E-mail: Fentypuluhulawa@ung.ac.id

³ Faculty of Law, Universitas Negeri Gorontalo, Indonesia. E-mail: jufryantopuluhulawa@ung.ac.id

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ABSTRACT

This study aims to find out about law enforcement against the slavery of Indonesian crew members on foreign fishing vessels. The method used in this research is a type of normative research that uses a law approach and case studies. The results of this study indicate that international law enforcement related to slavery on foreign fishing vessels against Indonesian crew members has been stated in the Universal Declaration of Human Rights, Convention Against Torture and Other Cruel, In Human or Degrading Treatment or Punishment, Convention on The Elimination. of All Forms of Racial Discrimination, in Fishing Convention, 2007 (No. 188). It is undeniable that these various legal instruments can protect Indonesian crew members who work outside the jurisdiction of Indonesia because the regulations contained therein, such as the ILO Convention Number 188 of 2007 contain requirements for ship conditions, accommodation, food, safety, and health. employment, health services, and social security.

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1. Introduction

Today we cannot deny that society is increasingly being demanded to be able to meet personal and family needs, this certainly increases the desire to always look for a professional or work opportunity in a field that can provide income or income that is expected to be able to cover all the necessities of life from the smallest things to the most. most importantly, some people try their luck to get a job by leaving their homeland in the hope that the salary they receive is greater than what is offered in the country even though it is followed by a higher job risk, as one of the things that are in great demand, call it becoming crew on foreign vessels, especially crew members (ABK) on a foreign fishing vessel (KIA) under the auspices of foreign companies, and in the end this happens a lot, especially for the Indonesian people themselves.

Moreover, Indonesia, which is included in the Southeast Asia region and is one of the countries with more workers in the fishery sector than other countries, has made several companies from various countries, especially those engaged in fisheries, look to Indonesia as a potential country for recruiting the crew of the ship (ABK)."¹

In these circumstances, "Indonesia as a state of law"² must ensure the safety of its citizens and create a legal umbrella to protect their rights and ensure that their citizens do not get unfair treatment in the place where they work, so far the legal umbrella for Indonesian citizens who work as crew members at KIA is very weak and has not can reach crew members who work outside the jurisdiction of Indonesia and result in the position of crew members of Indonesian citizens on foreign fishing vessels being very vulnerable to crimes that injure human rights. Jimly Asshiddiqie in Lisnawaty Badu stated, "Human rights are inherent rights and the essence of human existence as servants of God Almighty and also as a

¹ Fitri Wulandari. 2016. "*Pengaturan Tentang Perlindungan Terhadap Anak Buah Kapal (ABK) Indonesia Pada Kapal Perikanan Asing Berdasarkan Konvensi Ilo No. 188 Tahun 2007 tentang Work In Fishing Dan Implementasinya Di Indonesia*" Thesis. Padang: Universitas Andalas. p. 1

² 1945 Constitution Article 1 Clause 3

gift that must be upheld and protected by the state, law, and all people to maintain the honor and dignity of human beings".³

Susan Herawati as Secretary-General of the People's Coalition for Fisheries Justice (KIARA) emphasized "The Indonesian government is obliged to make a roadmap or roadmap intended for the protection of crew members on ships and foreign companies because cases that cause losses for crew members who work abroad often occur." This statement was also supported by the National Coordinator of Destructive Fishing Watch (DFW) Indonesia, Moh Abdi Suhufan. He revealed that the cause of the weak protection for Indonesian Migrant Workers (TKI) who work as ABK is "because the regulations or legal regulations governing this matter are still relatively weak because the current regulations regarding the protection of ABK are partial and do not regulate the process of placing ABK. from Indonesia from start to finish".⁴

In 2020 ago, there has been a case that proves to all of us, that slavery that has been trying to be eliminated from the face of the earth, in fact still exists and continues to this day following the times, slavery practices continue to emerge and are heard from various directions, in the world.⁵ However, this time the focus of the researcher is on the incident that happened to the crew of an Indonesian citizen on a foreign fishing boat with the Chinese flag Long Xing 629, on the ship suspected of having practiced modern slavery. The incident that has tarnished human values has received a response from the wider community, especially in Indonesia, on the ship it is suspected that they have carried out modern slavery practices or Modern Slavery, this cursed practice is of course part of human rights violations and is contrary to the first paragraph at the Opening of the 1945

³ Lisnawaty Badu. 2010. "Pengaturan Dan Perlindungan HAM Dalam UUD 1945 Serta Aspek Pidana Nasional Dan Internasional" Jurnal Legalitas. Vol. 3. No. 2

⁴ M. Ambari. "Perlindungan ABK Indonesia di Luar Negeri Masih Lemah" <https://www.mongabay.co.id/2019/05/31/perlindungan-abk-indonesia-di-luar-negeri-masih-lemah/>, 6th July 2021.

⁵ Tommy Kurnia. "Dugaan Perbudakan ABK WNI di Kapal China, Apa Langkah Hukumnya?" <https://www.liputan6.com/global/read/4250831/headline-dugaan-perbudakan-abk-wni-di-kapal-china-apa-langkah-hukum-selanjutnya>, 6th July 2021.

Constitution and the second principle of Pancasila, namely just and civilized humanity.

The working system on the ship resulted in the exploitation of the crew, the situation was described as even worse when they found out that reports of differences in mineral water consumption were only given to the Chinese crew, while Indonesian crew members were given filtered seawater drinks. Regarding the issue of working hours, the crew members are forced to work up to 18 hours a day with no more than 6 hours of rest. Not only that, the wages they receive on average per month are only around Rp. 100,000 for 13 months. The exploitation practices that occurred on the ship caused the death of 4 Indonesian crew members, 3 of whom were at sea and 1 person died in Busan, South Korea. The Indonesian Ministry of Foreign Affairs found that two ships had docked in Busan, South Korea, namely Long Xing 605 and Tian Yu 8. The two ships carried 46 Indonesian crew members including 15 from the Long Xing 629 ship. Of the 15 people who arrived in Busan, 14 others have managed to return to Indonesia.⁶

The above practice certainly violates the provisions of the International Labor Organization (ILO) Convention No. 188 concerning Work in Fishing). The convention is an international instrument that regulates the protection of fishing vessel crews, this convention only came into force in 2016 but was ratified much earlier, namely on June 14, 2007. In the ILO convention no. 188 it is stated that food and drink must be following the nutrition, quality, quantity, and type. Furthermore, the issue of working hours, it is stated that the minimum rest time is 10 hours in 1 day or 77 hours for 7 days. However, it should be reiterated that the ILO convention no. 188 has not yet been ratified by Indonesia.

Indonesia expressly opposes all forms of slavery that existed in this world, this is evidenced by the contents of the 1945 Constitution in Article 28D (2) which reads:

⁶ Raden Trimutia Hatta. 2020. "Dugaan Perbudakan ABK WNI di Kapal China, Apa Langkah Hukum Selanjutnya?" <https://www.liputan6.com/global/read/4250831/headline-dugaan-perbudakan-abk-wni-di-kapal-china-apa-langkah-hukum-selanjutnya>, 13th September 2021.

“Everyone has the right to work and receive fair and proper remuneration and treatment in an employment relationship.” The use of the word "everyone" reveals that what is meant in the article is a human who is on earth as a whole without exception to get their rights in the world of work. The right not to be enslaved and the right not to be tortured are also contained in Law no. 39 of 1999 concerning Human Rights, meanwhile, in Law no. 21 of 2007 concerning the Crime of Trafficking in Persons, a threat has been stated for everyone who exploits humans. However, it should be noted that some of the above regulations cannot reach the perpetrators of the practice of slavery onboard the Long Xing 629 against Indonesian crew members because the place where the incident took place is not within the jurisdiction of the Republic of Indonesia, and the Government of Indonesia has not ratified the ILO Convention No. 188.

2. Research Questions

Based on what has been described in the discussion above, the researcher formulates a problem formulation regarding how to enforce the law against the enslavement of Indonesian crew members on foreign fishing vessels.

3. Research Method

The research method that the researcher uses this time is a normative research type because it is very appropriate if it is associated with the research being carried out by the researcher considering that normative legal research uses case studies of literature by examining library materials related to the research in question.

4. Law Enforcement Against the Slavery of Indonesian Citizens on Ship's Crews on Foreign Fishing Vessels

In enforcing the law against the slavery of crew members of Indonesian citizens, an international legal instrument is needed so that it can reach not only limited one country, the legal instruments in question are as follows:

a. Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) is a standard for all nations or countries in the world. The Universal Declaration of Human Rights is intended

for everyone because it is useful for providing education and respect for the rights and freedoms of all human beings. Based on the consideration that the United Nations has affirmed their belief in every fundamental human right, and has also determined to continue to support social progress and a better standard of living than ever before in greater freedom.⁷

As a part of the international community, the Indonesian people respect and appreciate, and uphold the goals and principles of the United Nations Charter (UN) and the Universal Declaration of Human Rights. The purpose of the UN Charter, among others, states that to develop relations between nations based on respect for the equality of rights included in the above principles, as well as self-determination that comes from the people to achieve international cooperation in the declaration and also to continue to encourage respect for human rights as well. for fundamental freedoms for all human beings regardless of race, gender, language, or religion. The various human rights provisions of this Charter, which is a part of the treaty which has binding force from the legal aspect itself, contains elements of legal obligations, the promises that have been agreed upon by various countries when they become participants in this charter have represented far more than just a moral statement, and also the clause of domestic jurisdiction does not apply because human rights, such as whatever alienation they have enjoyed in the past, are no longer considered as problems that fall into the domestic jurisdiction of various countries.⁸

There are 30 articles, each of which regulates the prohibition against violating human rights in national law or international law. Through a resolution of 217 A (III). There is an article in the declaration that is very fitting if it is intended as protection for Indonesian crew members working on the Long Xing 629 ship, namely Article 4 which says that :

⁷ Henly Jai Rahman. 2019. "Tinjauan Yuridis Tentang Larangan Perbudakan Menurut Instrumen Hukum HAM Internasional Dan Hukum Nasional" LEX ET SOCIETIS Vol. 7. No. 3.Maret 2019.p. 110

⁸*Ibid.* p. 110

"No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their form"

If we take the case experienced by Indonesian crew members on the Long Xing 629 ship, where they often receive treatment classified as slavery because Indonesian crew members start their work at 10:00 in the morning and only stop at 04:00 the next morning, it means that the total hours' Indonesian crew members work 18 hours a day.

Then article 5, where it is stated that :

"No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment"

In the statement given by RF, they always feel inhumane acts because Indonesian crew members are given improper consumption such as food that has exceeded its expiration date, food that should be used for fish is instead used as food for Indonesian crew members, drinking is forced to drink seawater that is distilled.

Article 24 stated :

"Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay"

Article 24 is contrary to what happened to Indonesian crew members, where after working 18 hours a day they only get 15 minutes of rest every 6 hours.

The Declaration protects life, liberty, and personal security, guarantees freedom of expression, peaceful assembly, association, and religious belief, and freedom of movement prohibits slavery, and gets a fair and fair trial.⁹

As a reference for the implementation of freedom for every nation and state, the United Nations, which has agreed to the Universal Declaration of Human Rights, that every human right needs to be given legal protection with the aim of teaching and educating to raise recognition for every right and freedom of all people and also various bodies in the international community, accompanied by

⁹ Peter Davies. 1994. *Hak-Hak Asasi Manusia*. Jakarta : Yayasan Obor Indonesia. p. 11

national and international progressive paths or activities to ensure, protect and strive for effectiveness for every nation in their circle of the rule of law.

The list of various human rights that have been described in the UDHR, which was then fully agreed upon by the General Assembly on December 10, 1948, is almost no less than the number of traditional political and civil rights which are considered important in various constitutions and national legal systems, which also contain equality before the law, protection for arbitrary arrest, the right to a fair trial, freedom from criminal law "ex post facto" the right to own property, freedom of thought, conscience and religion, freedom of opinion and expression, as well as freedom of assembly and peaceful association.¹⁰

Slavery and acts similar to slavery become a complicated and complex problem because so many people deny slavery itself, but in reality, it returns to the implementation of national-level agreements. Developments in the effort to eliminate these actions rely more on the breadth of education from a general perspective and socio-economic changes.¹¹

b. Convention Against Torture and Other Cruel, in Human or Degrading Treatment or /CAT

If viewed based on the CAT, which is designed to eliminate torture, followed by treatment or punishment that is cruel, inhuman, and also tramples on human dignity. As stated in Article 1, it is explained :

"For this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions"

Article 2 of this convention states :

¹⁰*Op Cit.* Henly Jai Rahman. p. 111

¹¹ Leah Levin. 1987. *Hak-Hak Asasi Manusia: Tanya/Jawab*. Jakarta: PT. Pradnya Paramita. p. 50

- 1) *"Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction"*
- 2) *"No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture"*
- 3) *"An order from a superior officer or a public authority may not be invoked as a justification of torture"*

So when an incident occurs related to what is stated in the articles above, each country takes legislative, administrative, legal, and other effective steps to prevent torture practices that occur within its territory. However, if the torture has taken place, the state concerned is obliged to investigate as stated in Article 6 paragraph (2) which states: *"Such State shall immediately make a preliminary inquiry into the facts"* about the torture. Given that the fishing vessel where the Indonesian crew members work has a Chinese flag and is anchored in Busan, South Korea, then in line with what is contained in the CAT Convention, China as the ship's flag state must take steps as described in Article 2 to anticipate acts of torture within its jurisdiction as the responsibility of China itself. If the shipping company, captain, and crew of the Long Xing 629 are proven to have practiced slavery against Indonesian crew members, China is obliged to take legal action to investigate and investigate the case in question. However, if China is reluctant to act according to legal channels or steps or even allows the incident, then as a country whose citizens have been physically and mentally harmed, Indonesia can demand accountability from China.

c. *Convention on The Elimination of All Forms Of Racial Discrimination/CERD*

This convention relates to the case of slavery that afflicts Indonesian crew members because it contains articles that protect racial or ethnic groups and individuals from racial discrimination, racial discrimination itself has been described in Article 1 paragraph (1) that :

"In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition,

enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”

All countries condemn acts of discrimination, but this condemnation does not necessarily eliminate discriminatory behavior. For example, this deviant behavior still afflicts Indonesian crew members who work on the Long Xing 629 ship, some of these discriminatory treatments even go to the point of killing the crew members. Based on the testimony given by one of the Indonesian crew members by the name of RF, he said that the crew from Indonesia consumed different foods and drinks compared to the crew from China. While Indonesian crew members only consume food that is not proper, even drink distilled water and smells of iron, causing chest pain, Chinese crew members get fresh consumption such as vegetables and packaged drinks that are stocked in the cooler.

d. *Work in Fishing Convention, 2007 (No. 188)*

To uphold justice and eliminate acts of slavery against workers, in this case, the crew members, it is then necessary to implement regulations that pay special attention to human factors. Things that have an important influence in realizing this are education, regulations, government, and organizations such as the International Maritime Organization (IMO) and the International Labor Organization (ILO) which can pressure shipping companies to pay attention to their employees.

The ILO is an international organization created to eliminate forms of human rights violations, and also to protect the health and safety of workers, especially crew members. ILO Convention No. 188 of 2007 concerning work in fishing is a convention made to guarantee the feasibility of working on ships for crew members. This convention is binding on ships whose length is not less than 24 meters, ships carrying out voyages of more than 1 week, ships whose sea routes are within 200 miles of the coastline, ships whose sea routes are more than the

outermost line of the continental shelf as well as existing workers. on a fishing boat.¹²

The ILO itself is a specialized agency of the United Nations, to be the basis of reference when making labor regulations or laws relating to all kinds of rights and obligations of crew members. If you look at what RF said in an interview conducted by Kumparan, the Indonesian crew members who worked on the ship in question had carried out their obligations as they should, but these crew members were still treated and acted on by slavery practices. by the superiors of the crew. As stated in its constitution that one of the objectives of the ILO is to protect the rights and interests of workers who work outside their own country.

This convention also contains rules regarding the health and safety of crew members that must be respected by ship captains (Article 8 (paragraph 2) b). Because of its implementation, it was found that violence was committed by the captain of the ship himself. The Maritime Labor Convention is also a convention that can regulate crew members. This convention contains 5 clauses, including minimum requirements, working conditions, accommodation for seafarers, health and safety, and state responsibilities. The minimum requirements regulate the age limit for ABK, health conditions, what training is followed, as well as mandatory ABK placement per applicable regulations. Working conditions highlight the contracts, salaries, and working conditions of seafarers while on board, this includes contracts that must be clear, rest periods, the right to leave, and also repatriation to the country of origin. Accommodation here describes the facilities received by ABK in the form of a place to stay, recreational facilities as well as food and catering provided to ABK. Health and safety include medical care on board and ashore, protection of occupational health and safety, and social security. The responsibility of the state is the last one where this clause discusses the responsibility of the flag state of the ship to carry out operations to ensure the

¹² Cindy Margareta Putri. 2016. *Peran ILO Terhadap Pelanggaran HAM Berupa Perdagangan Orang Yang Terjadi Pada Anak Buah Kapal*. Yogyakarta: Universitas Atma Jaya. p. 5

implementation of existing rules for ships that use its flag. Each ship is required to have a complaint procedure for all crew members and must investigate complaints.¹³

5. Conclusion

Based on the results of the above discussion and research by the researcher, it can be concluded that in law enforcement efforts against Indonesian crew members who are victims of slavery on foreign fishing vessels, international legal instruments that can be used as references include, among others :

- a. UDHR (Universal Declaration of Human Rights),
- b. CAT (*Convention Against Torture and Other Cruel, in Human or Degrading Treatment*),
- c. CERD (*Convention on The Elimination of All Forms Of Racial Discrimination*),
- d. ILO (*International Labour Organization*). 2007 (No 188)

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¹³Amalia Fitriani, Sujadmiko. 2020. *Perlindungan Hak Anak Buah Kapal Dalam Kerangka Hukum Nasional Dan Hukum*.p. 6

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