

Legal Protection of the Indonesian Fishery Manpower in the South Korea Southwork

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ABSTRACT: The Indonesian Fisheries Workers Legal Protection Study on board the South Korean-flagged vessel aims to know the implementation of the legal responsibilities of Indonesian seafarers' labor force aboard South Korean-flagged vessels. The results show that the implementation of the legal responsibility of fisherman seafarers' labor protection aboard South Korean-flagged vessels, in general the legal basis of seafarers' labor is very adequate. However, for fisheries seafarers still need attention from government and non-government related, the number of institutions that have authority so that there is overlap of authority that if there is a problem is each no one responsible. So in the end the victim is a fisherman worker who actually has the right to be given protection for the responsibility of the state or government as specified in the applicable regulations.

Keyword; :Legal Protection, Man Power

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I. INTRODUCTION

From ancient times until the traditional fishermen who inhabit the coast along the country of Indonesia known tough and dare to face the swift waves. Daily activities as fishermen who earn a living continued to the next generation vigorously though with very simple equipment to meet the necessities of life.

Capitalize the courage, determination and patience then dikenallah motto "Grandmother Mamenangku sailor" for fishery sailors Indonesia. But as global developments, technology and information, can change the mindset of traditional fishermen to switch professions into sailors to work on foreign-flagged vessels for wanting a more promising dollar income.¹

Seafarers' work has a very significant role in the national economic activities as the development and economic actors both individually and in groups, namely increasing the productivity and welfare of the community. Manpower as one of the driving force of economic life and is a resource that is quite abundant indicated by the still high number of unemployed in Indonesia and the low or minimum available job opportunities.

Indonesian Fisheries Sailors who only have the capital of courage and lack of competence are expected, often encounter problems in getting protection on board South Korean-flagged vessels, such as differences in cultural background of the nation at work and lack of foreign language mastery as well as inappropriate competence.

Satjipto Rahardjo argues that to describe Indonesian society there is nothing better and precise than to say that the society is changing rapidly and fairly fundamentally. Indonesia is a society that is undergoing structural transformation from agriculture-based society to industrial base.

The less attractive economic conditions in his own country and substantial and seemingly more attractive earnings working aboard foreign ships have been the trigger for the mobility of international seafarers' labor. Increased revenues in emerging economies allow people in developing countries to cross national borders, global information and ease of transportation also play a role in improving labor mobility internationally.

Law no. 39 of 2004 regulates the placement and protection of Indonesian seafarers' labor abroad. In consideration of the letters c, d and e, it is mentioned that Indonesian seafarers' labor is often used as the object of human trafficking, including slavery and forced labor, victims of violence, arbitrariness, crimes against human dignity and human rights and other violations of human rights. Therefore, the state shall guarantee and

¹ La Porta, Rafael, Lopez-de-Silanes, Florencio, Shleifer, Andrei Vishny, Robert W, Law and Finance, Journal of Political Economy, Vol. 104, issue, 106, 1998. P.1113

protect the human rights of its citizens working both at home and abroad based on the principle of equal rights, democracy, social justice, equality and gender justice, anti-discrimination and anti trafficking.²

The creation of an overseas employment system mechanism is intended to encourage the efficient and efficient deployment of the placement, as the source of the problem often confronts the labor of Indonesian seafarers abroad unnoticed by the person concerne. To minimize the problems faced by overseas workers and to protect the labor and dignity of workers, the arrangement of the Indonesian employment abroad in Law No.39 of 2004 is one of the solutions that need to be studied.

Legal Issue

Based on the background that has been described above, the authors draw a problem formulation, namely, how is the implementation of the legal protection of Indonesian fisherman seafarers' labor aboard the South Korean-flagged vessel?

Discussion

Legal Protection

Hans Kelsen argues that "Law is a provision of a set of rules that govern certain human behavior and this means a system of norms". So the law itself is a provision. According to Utrecht "Law is a set of rules (both in the form of orders and prohibitions) that govern the order in a society and should be obeyed by members of the community concerned". Therefore, violations of such life guidelines may result.³

The law itself determines which behaviors are allowed, prohibited or told to do. The law is also considered a norm that qualifies a particular event or reality into an event or reality that has legal consequences. While the state of law is a state based on the rule of law and which guarantees justice for its citizens.⁴

Definition of protection in the science of law is a form of service that must be implemented by law enforcement officers or security apparatus to provide a sense of security, both physical and mental, to victims and sanctions from threats, disturbances, terror and violence from any party given at the stage of investigation , investigation, prosecution, and on examination in court. Whereas the protection contained in Government Regulation No.2 Year 2002 is a form of service that must be implemented by law enforcement apparatus or security apparatus to provide physical and mental security, to victims and witnesses, from threats, disturbances, terror and violence from any party, provided at the stage of investigation, investigation, prosecution, and or examination in court.

Parties in Employment Relations

In day-to-day practice there are several related groups with regard to Employment. The groups are Workers, Employers, Workers 'Organizations, Employers' Organizations and Governments.

Workers' Rights and Obligations

Regarding the rights of workers we can see in Law No. 13 of 2003 on Employment Article 3, Article 4, Article 5, Article 9 - Article 30, Article 79, Article 88 - Article 98, Article 104, Article 150 - Article 172.	
Obligations of Workers In addition to having the rights as described above, labor also has the following obligations: a. Compulsory to perform / work for the government; b. Compulsory compliance with company regulations; c. Compulsory to comply with the employment agreement; d. Compulsory to comply with labor agreements; e. Must keep company secrets; f. Compulsory to comply with government regulations;	Government Obligation in Occupational Safety and Health: a. To supervise the implementation of safety and health legislation in particular, and generally to supervise the implementation of the law in the field of manpower. b. Conducting coaching together with the management of companies, employers and labor to prevent the occurrence of work accidents. c. Provide sanctions in accordance with its authority over violations of the implementation of the law in the field of employment generally, and specifically in the field of occupational safety and

² See, Rosenfeld, Michel Sajó, András, *The Oxford Handbook of Comparative Constitutional Law*, Mendeley, 2012, p.15

³ Fariás Soto, Javiera Constanza, *Recensión "The Guardian of the Constitution: Hans Kelsen and Carl Schmitt on the limits of constitutional law"*, Journal, Revista Ars Boni et Aequi, 2016, Vol. 12, Issue, 1 p. 6

⁴ Rosenfeld, Michel, *the Rule of Law and the Legitimacy of Constitutional Democracy*, Journal, Southern California Law Review, 1992, Vol. 35, Issue, 1995, p.7

g. Obligated to fulfill all obligations as long as the permit has not been granted in the event of an appeal that has not been verified.	health.
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In practice Indonesian Seafarers working on board of Korean-flagged vessels often experience unsuitable treatment in marine working agreements, to reduce the risk of such treatment on board that is not in accordance with humanitarian or workplace seafarers' rights and obligations. Thus, seafarers of job seekers who are interested in working abroad, should pay close attention to the profile of the company that will distribute to work aboard abroad in accordance with procedures established by applicable legislation. Therefore, it is stipulated in Article 4 of Law No.39 of 2004 on the Placement and Protection of Indonesian Migrant Workers abroad. Prospective Indonesian Seafarers who are currently attending education and training are prohibited from being employed.

II. DISCUSSION

Forms of Fisheries Sailors Fisheries Protection

The administrative problem-solving mechanism aboard the vessel becomes the authority of the Captain as the supreme superior and performs the duties in accordance with the flag rule of the ship and coordinates with agents and shipowners, administrative problem settlement such as salary payments, Bonuses, contract renewals, transfer of positions and displacement on the ship.

a. Handling of Non Litigation Cases

1).Negotiation⁵

Negotiation is one of the processes to reach agreement with another party, which is a two-way communication designed to reach agreement when the parties have different interests or interests without the involvement of a third party as a mediator. In problem solving is often influenced by several factors, among others, need to determine there is a standard agreement that needs to be fulfilled by the parties as known Best Alternative to a Negotiated Agreement (BATNA.)

The Best Alternative to a Negotiated Agreement (BATNA.) Is a standard in negotiating the needs of the parties to a standard that establishes the agreement what needs to be done. This BATNA may protect the parties from accepting unsatisfactory conditions and may refuse conditions that are inconsistent with the interests of the parties.

Because parties are sometimes hesitant and do not use BATNA, even the parties are more likely to negotiate settlements due to a commonly used way to seafarers with companies and or shipowners based on musyawarah to mupakat resolve issues between owners of ship owners / owners with seafarers.

2) Mediation

The problem solving experienced by seafarers abroad is mediated through the Indonesian Embassy (KBRI) or the Consulate General of the Republic of Indonesia (KJRI) in the Port State of the ship anchored or loading and unloading docks that may undo and or raise the sailor to work on board, If it turns out to dipelabuhan place where the ship is docked there is no embassy and Consulate will be prosecuted in the nearest State where possible reached by the authority of the Embassy and the nearest Consulate.

3) Conciliation

A conciliation settlement involves a third party in this case the State on the election of both parties who have problems and both parties are called and to be heard explaining and the conciliation party gives an opinion but is not an obligation to be accepted by both parties if the matter can be solved by through kosaliasi from the conciliation commission will be recorded as the settlement and achieved the word mupakat both parties then the conciliation commission mecatat agreement and kept by both parties.

4) Arbitration

Troubleshooting through the Arbitration Agreement in accordance with the agreement of the parties and contained in the work contract with the seafarers or seafarers' representatives shall be entitled to vote arbitrarily on the basis of a jointly signed contract.

b. Handling Cases Through the Court (Litigation)

The settlement of cases through legal channels in accordance with the provisions of the 1945 Constitution article 26 letters (a) on the protection that every citizen is entitled to protection wherever located

⁵ Rose, C M, Who owns native culture?, Yale Law Journal, 2005, Vol. 114, Issue, 5. P.991

with the explanation of the article gives the right to every citizen get protection especially those who are abroad (seafarers) Indonesia who is outside the State of the settlement of cases which through legal means but rarely occur abroad but if there are any seafarers or Indonesian citizens who are treated or acts inconsistent with the provisions of Indonesian law and the laws of the State where work or residence, the State is entitled to defend the interests of citizens state by appealing to the authorities of the country and / or applying for the settlement of international law.

Procedure of Employment Procedure of Indonesian Fisheries Seafarers above the South Korean Flag.

Requirements to be fulfilled by Indonesian Fisheries Seafarers on South Korean flagged ships. Fisherman Seafar who will work on board South Korean-flagged ships must have:

1) Passport already on endors his work as a seaman based on the book of sailors owned. 2) The Sailor's Book 3) BST minimum sailor certificate.

The Indonesian Seafarers' Employment Mechanism of South Korean flagged ships. a) Recruitment b) Training of seafarers c) File management. d) Signing The employment agreement is made by a recruitment company together with a seafarer who will work on board in accordance with e) Placement on board according to a system implemented by Indonesian seafarers 'entity (Data source from Indonesian Seafarers' Association 2014)

The role of the Government

The duties and authorities of the relevant government institution in accordance with the provisions of Law no. 39 of 2004 concerning the Placement and Protection of Indonesian Migrant Workers Abroad, Article 5 states: (1) The Government is responsible for organizing, fostering, implementing and overseeing the deployment and protection of Indonesian seafarers' labor abroad. (2) In performing the duties referred to in paragraph (1), the Government may delegate some of its powers and / or duties to the local government in accordance with the laws and regulations.

Regarding the protection of Indonesian seafarers 'labor, the government is responsible for organizing, fostering, implementing and supervising the organization and placement of Indonesian seafarers' Workers abroad, may delegate some of their powers and / or tasks to the local government in accordance with the laws and regulations.

On the other hand, because the problem of placement and protection of Indonesian workers is directly related to the problem of life and honor that is very basic for human, the related private institutions must be those who are able both from the aspect of commitment, professionalism and economically, can guarantee the rights of human citizens working abroad and / or aboard to remain protected.

III. CONCLUSION

Implementation of the legal responsibilities of marine fisherman labor protection aboard South Korean-flagged vessels, in general the legal basis of seafarers' labor is sufficient. However, the number of institutions that have the authority so that there is an overlap of authority that if there is a problem is each no one is responsible. So in the end the victim will be the fisherman worker who actually has the right to be given protection for the responsibility of the state or government as specified in the applicable regulations.

Suggestions

There needs to be one-stop service system to service and labor of seafarers by giving roles to stakeholders or institutions that terkait with fisherman work of fisherman who will be placed on foreign flag ship (South Korean ship flag) in order to give the same perception in the legal protection of the Indonesian Fisheries Sailor's work aboard a foreign-flagged vessel in this case a South Korean-flagged vessel.

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