The Turnkey Project Principle of Ship Workers Protection

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Abstract. This study aims to determine the principle of the implementation of the turnkey project in order to protect ship workers in Indonesia. Another goal is to find out about legal protection arrangements for ship workers in the context of labor law in Indonesia. The turnkey project as one of the means in conducting the knowledge transfer model as an Indonesian labor protection facility is one of the objectives of the utilization of foreign workers in Indonesia. The turnkey project aims to enable Indonesian workers to absorb certain information and expertise from foreign workers who have certain professional expertise. This does not mean that the domestic workforce lacks expertise but because of the limited knowledge of the latest technology from the domestic workforce. The research found turnkey project does not provide protection to the workforce on the ship who is an Indonesian citizen. The principle of Turnkey Project implementation actually intends to protect workers who do not have maximum skill in the implementation of duties as a worker on board. In practice, however, the Government of Indonesia have an instrument to guide the implementation of ship manpower protection. This arrangement is through labor-related regulations, Indonesian law number 13 of 2013. The provisions of the internationally regulated general provisions relating to employment on ships are more dominant than those established by the Indonesian government.

1. Introduction

There is a strategy that the Indonesian government needs to prepare in dealing with free trade is an aspect of labor protection. The problem of employment, labor certification, and labor social security is a problem in the field of employment that requires resolution [1,2]. Jurisdictional main strategies are needed to be resolved by state intervention through the government as a regulator in the field of employment. Related to industrial liberalization is also the main problem that needs to be resolved. Real strategic use of foreign workers is needed in Indonesia so that it is beneficial for Indonesia's labor development.

The use of foreign workers in Indonesia is inseparable from the existence of 2 (two) factors as drivers. First, it is a demand for Indonesia as a member of the World Trade Organization (WTO) with free trade to open labor exchanges in Indonesia. Second, the low number of national workers who have competitive skills or skills for both domestic and foreign needs compared to the ratio of Indonesia's population. Because of these factors, it is inevitable that the government as a regulator to adjust the free trade of labor with needs and demands to continue to prioritize the national workforce. Especially in the second factor, there should be a juridical framework as a strategy to optimize the use of foreign workers in Indonesia for the sake of public welfare. One of them is through a turnkey project activity [3]. This includes foreign workers in the marine sector. One of the main reasons for using foreign labor is because foreign workers are considered skilled, and experts in their fields. As an effort to avoid accidents on ships as described in figure 1.
Based on the figure, when accidents are generally caused by three main things, namely human error, environment (weather), and related to the crew or ship workers. Basically, the use of foreign labor is prohibited, but the regulation of the use of foreign labor in legislation with various strict requirements suggests that the ban is ruled out. Based on the 1945 Indonesian Constitution as stated in its opening that the state through the government has the purpose of one of them to advance public welfare, there has been a philosophical foundation related to how the government should formulate strategic policies in the field of foreign labor.

The prohibition on the use of foreign workers in Indonesia is linked to the noble ideals that the Indonesian Government must realize, the use of foreign workers in Indonesia, in a nutshell, must have the maximum impact and benefits. This includes relating to the use of foreign national ship workers in Indonesia. The use of foreign nationality ship workers in Indonesia must have a positive influence on labor in Indonesia as much as possible. This article will explain the principles of the implementation of the Turnkey Project in order to protect ship workers in Indonesia. this paper will also explain legal protection for the context of labor law in Indonesia.

2. Research Methods
This study is a normative legal research that uses combination data between secondary data and primary data [4,5]. Primary data is obtained from the annual report on the use of foreign workers at the Indonesian Ministry of Manpower and the Ministry of Maritime Affairs and Fisheries of the Republic of Indonesia. Data in the form of foreign labor growth statistics and the presence of foreign labor on Ship. The study also conducted a study of regulations relating to the protection of ship workers. These regulations are: Indonesian Law Number 17 of 2008 concerning Shipping, Indonesian Government Regulation Number 7 of 2000 concerning Maritime Affairs, Book II Chapter 4 of the Criminal Procedure Code concerning Sea Labor Agreements in particular Part One concerning Sea Labor Agreements, vide Article 400 and Article 401 KUHD (Law Commercial Law), and Law Number 13 of 2003 concerning Manpower. While library data obtained from the library of the Faculty of Law, University Diponegoro. Conducting more in-depth studies related to the protection of ship workers based on existing contracts and applicable laws and regulations. After all, data is obtained, qualitative analysis is carried out, to get maximum results in drawing conclusions from the results of this study.

3. Result and Discussion
In this section, two main things will be explained, namely how the implementation principle of the turnkey project in protecting ship workers in Indonesia, and another explanation is how legal protection for ship workers is based on labor law in Indonesia.

3.1. The principle of implementing the turnkey project
Contracts originating from the English language are contracts. Whereas in Dutch it is called overeenkomst namely agreement. The principle of the contract is an event where someone promises to someone else where two people promise each other to do something. The contract contains a series of promises, but what is meant by the promise is expressly stated is a promise that has legal consequences and if violated its fulfillment can be prosecuted in court. A contract is an agreement that can be implemented or maintained before a court [6]. Functional contracts are divided into two types,
namely juridical functions and economic functions. The juridical function of the contract is a function that can provide legal certainty for the parties. Whereas the economic function is to move (property rights) resources from lower use values to higher values. One form of contract is a turnkey project contract.

Turnkey type contracts are commonly used in industrial and mining jobs, in this case, the job owner will not issue capital if he is not sure of their factory/mine construction work they are ready to produce [7]. The owner gets the opportunity to play capital in advance until the work is finished so that it may gain profits from the capital turnover. The situation is certainly lighter than if there must be a standby fund for its construction work. Turnkey refers to something that is ready to be used immediately, generally used in the sale or supply of goods or services [8] [9].

Turnkey is often used to describe a house built on the ground of the developer with the developer financing everything until it is ready to be occupied by customers/buyers. If a contractor builds a house/building with a "turnkey" they will work on the frame structure and finish the interior. Everything is complete including cabinets and carpets. Turnkey is generally used in the construction industry, for example, where it refers to the bundling of materials and labor with sub-contractors. The turnkey project agreement is very similar to the build design contract. Build design contracts are possible to separate design work from construction even if it is done by one service provider. Service providers can immediately get paid if using the payment scheme turns out to be in accordance with the volume of work that has been completed. The description of foreign workers in Indonesia is as shown in Figure 2.

![Foreign workers in Indonesia](image)

**Figure 2.** Foreign workers in Indonesia [10]

Based on Figure 2, the number of foreign workers in Indonesia is quite large. This fact provides input for the government to carry out policies and arrangements in the field of foreign labor. Arrangements that are oriented towards protecting Indonesian workers. Including in the workforce of the ship, the rigidity of the knowledge transfer relationship is one of the important factors that influence knowledge transfer between workers in the turnkey project. Transferring knowledge requires repeated interactions between the people involved. The success of the interaction depends on the quality of the relationship. The stiffness of relationships (arduous relationship) is defined as an emotionally difficult relationship and a distant relationship between the source and a recipient, affecting the ability of the source to transfer the knowledge needed and for the recipient to learn and use that knowledge. Therefore, the rigidity of the relationship between the source and the recipient has
a negative impact on the effectiveness of knowledge transfer. Relationship rigidity has a negative effect on ease of transfer of knowledge.

The model of knowledge transfer as a means of protecting Indonesian workers in the field of ship labor is one of the objectives of the use of foreign workers in Indonesia, with the aim that Indonesian workers can absorb certain information and expertise from professional foreign workers. This does not mean that domestic workers do not have expertise but because of the limited knowledge of the latest technology from domestic workers. Every entrepreneur who employs foreign workers must have written permission from the Minister or officials who have administrative authority. However, individual independent entrepreneurs (not companies) are prohibited from employing foreign workers. Foreign workers can be employed in Indonesia only in employment relations for certain positions and at certain times. Provisions regarding certain positions and certain times are stipulated by a Minister's decree. Foreign workers whose work period has expired and cannot be extended can be replaced by other foreign workers. The following Figure 3 describes the number of foreign workers in Indonesia.

![Figure 3. Foreign Workers in Indonesia, 2011-2015](image)

Employers who use foreign workers must have plans for the use of foreign workers authorized by the Minister or appointed officials. The plan for the use of foreign workers must at least contain information: a. reasons for the use of foreign workers; b. position and/or position of foreign workers in the organizational structure of the company concerned; c. the period of use of foreign workers; and d. appointment of Indonesian citizens as a single labor companion employed.

### 3.2. Legal protection for ship workers in Indonesia

Legal protection for ship workers in Indonesia, in general, is carried out through labor policies based on labor development based on the provisions of Article 4 of Indonesian Law Number 13 of 2003: a. Empower and utilize the workforce optimally and humanely; b. Realizing equitable employment opportunities and providing labor in accordance with national and regional development needs; c. Providing protection to workers in realizing prosperity and; d. Improve the welfare of workers and their families.

In addition to being based on policies in the field of employment, legal protection for ship workers in Indonesia must also be based on principles of good governance as the basis for the administration of the government [11]. In general, the forms of Shipbuilding Protection have been regulated in Indonesian Law Number 13 of 2003 concerning Labor which consists of three things:

a) Occupational safety and health. Juridically, occupational health insurance is regulated in Law No. 1 of 1970 concerning Occupational Safety. These rules aim to protect the safety of workers in order to
realize optimal work productivity. The protection is carried out in accordance with applicable laws and regulations.

b) Wages. Article 1 number 30 Indonesian Law No. 13 of 2003 concerning Manpower provides the definition of wages is workers' rights received and expressed in the form of money as compensation from employers or employers to workers/laborers which are stipulated and paid according to a work agreement, agreement, or statutory regulation.

c) Workforce social security program. Other forms of workers’ legal protection are stated in Indonesian Law Number 24 of 2011 concerning the Social Security Organizing Agency. Labor social security is a protection for workers in the form of compensation in the form of money in lieu of part of lost or reduced income and services as a result of events or conditions experienced by workers, namely accidents, disabilities, health, old age, and death.

In essence, labor social security is intended to provide certainty of the ongoing flow of family income as a partial or total replacement of lost income. Besides that, the workforce social security program has several aspects, including: the First, Providing basic protection to meet the minimum living needs of workers and their families; and Secondly, as an award for workers who have worked well with the company they work for. In accordance with the mandate of this law, on January 1, 2014, PT Jamsostek turned into a Public Legal Entity. PT Jamsostek (Persero) changed to Social Security Agency (BPJS-Badan Penyelenggara Jaminan Sosial) Employment. It is BPJS that organizes workforce social security programs, which include Work Accident Insurance (JKK-Jaminan Kecelakaan Kerja), Death Insurance (JKM-Jaminan Kematian), Old Age Insurance (JHT-Jaminan Hari Tua) with the addition of Pension Insurance starting July 1, 2015.

The involvement of the government in providing social security to labor [12], including the workforce of the ship is an actualization of the role of the state as a regulator, executor, and supervisor in the field of labor [13]. This was done as part of the state's duty in order to ensure the country's goal to protect all the Indonesian people as the opening of the constitution of the Republic of Indonesia. Including the form of protection for workers who work in the field of fisheries resources is the limitation of granting licenses, on the other hand, one of the objectives of licensing is to prevent environmental damage, licensing restrictions also occur in all sectors of fisheries, environment, and mining [14] given in order to limit foreign workers in Indonesia, through a turnkey project.

4. Conclusion

From the whole discussion, a conclusion can be drawn that the principle of Turnkey Project implementation actually intends to protect workers who do not have maximum skill in the implementation of duties as a worker on board. In practice, however, the Government of Indonesia have an instrument to guide the implementation of ship manpower protection. This arrangement is through labor-related regulations, Indonesian law number 13 of 2013. The provisions of the internationally regulated general provisions relating to employment on ships are more dominant than those established by the Indonesian government.

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References

[1] Brodjonegoro B P and Nazara S 2016 Policy challenges in Indonesian social security Age Related Pension Expenditure and Fiscal Space: Modelling techniques and case studies from East Asia ed M G Asher and F Zen (Routledge) pp 153–67

[2] Suryahadi A, Febrifiany V and Yumna A 2017 Expanding Social Security in Indonesia: The Current Processes and Challenges Towards Universal Health Care in Emerging Economies (London: Palgrave Macmillan) pp 373–403

[3] Tiong R L K 1990 Comparative Study of BOT Projects J. Manag. Eng. 6 107–22
[4] Samuel G 2013 Comparative law ant its methodology Research Methods in Law (Routledge)

[5] Dobinsori I and Johns F 2017 Legal Research as Qualitative Research Research Methods for Law ed M McConville and W H Chui (Edinburgh: Edinburgh University Press)

[6] Fried C 2015 Contract as promise: A theory of contractual obligation (USA: Oxford University Press)

[7] Basuki B 2009 Kajian Sistem Kontrak Turn-Key Ditinjau dari Aspek Hukum [Legal Review of the Turnkey Contract System] J. Teodolita (Jurnal Fak. Tek. 10 635–46

[8] Hardjomuljadi S 2015 Epc/Turnkey Contract, Lumpsum Fixed Price Subject to Adjustments J. Konstr. 6 11–23

[9] Merna A and Smith N 1990 Project Managers and The Use of Turnkey Contracts Int. J. Proj. Manag. 8 183–9

[10] PR office of Manpower Ministry 2016 Illegal foreign workers, rule breakers face immediate deportation: Manpower minister. Access in http://www.thejakartapost.com/longform/2016/07/26/illegal-foreign-workers-rule-breakers-face-immediate-deportation-manpower-minister.html Jakarta Post

[11] Azhar M 2015 Relevansi Asas-Asas Umum Pemerintahan yang Baik dalam Sistem Penyelenggaraan Administrasi Negara [Relevance of the General Principles of Good Governance in the System of Organizing State Administration] Notarius 8 274–86

[12] Mboi N 2015 Indonesia: On the Way to Universal Health Care Heal. Syst. Reform 1 91–7

[13] Azhar M, Suhartoyo S, Suharso P, Herawati V E and Trihastuti N 2018 Prospect on Implementation of National Fish Logistics System: case in Indonesia E3S Web Conf. SCiFiMaS 2018 47 1–6

[14] Azhar M, Solechan S, Saraswati R and Suharso P 2018 The New Renewable Energy Consumption Policy of Rare Earth Metals to Build Indonesia’s National Energy Security E3S Web Conf. 1st SRICOENV 68 1–10