Study of law on Indonesian migrant fishers’ protection in foreign fishing vessels

A Mustofa¹*, A Solihin², C Desyana¹ and B T Hardianto¹

¹Marine and Fisheries Directorate, Yayasan WWF Indonesia, Gedung Graha Simatupang, Jl. TB Simatupang Kav 38 Pasar Minggu, Jakarta Selatan 12540, Indonesia
²Department of Aquatic Resources Management, Faculty of Fisheries and Marine Sciences, IPB University (Bogor Agricultural University), Jl. Agatis Darmaga Bogor, Bogor 16680, Indonesia

*Corresponding author: amustofa@wwf.id

Abstract. The protection of crew members on foreign fishing vessels is a common concern, both in the world and in Indonesia. This is due to the many cases of violations of Indonesian crew members on foreign fishing vessels. The purpose of this study is to analyze the regulation of crew protection on foreign fishing vessels based on international law and Indonesian laws and regulations, as well as their implementation. This research is descriptive by using normative juridical methods on international law and national law, and comparative juridical which compares international law and national law, as well as empirical juridical on the implementation of human rights protection in Indonesia. The results of this study indicate that international law protects crew members related to certification standards and training standards, ship construction standards, and decent working conditions standards. Meanwhile, Indonesian national law is in accordance with international law, except for the absence of standard ship construction standards. The implementation of human rights protection found that there were violations of human rights related to salaries that were not in accordance with the contract and working hours that exceeded the limit.

Keywords: certification standards; crew protection; decent working conditions standards; foreign fishing vessels; training standards

1. Introduction

World population growth keeps increasing every year. In 2020, world population growth reached 7 billion lives, and it is estimated that world population will reach 8.5 billion lives by 2030, and 9.7 billion lives by 2050 [1]. Sufficient protein supply will be necessary to support this growth, including fish proteins. Indonesia crew members join on the foreign fishing vessels mostly due to the motivation of obtaining decent wages for their living.

Based on FAO report [2], total production of capture fisheries and aquaculture fisheries in 2018 is 178.5 million tons in number, but only 156.4 million tons are consumed. This means, total consumptions are equivalent to estimated annual supply of 20.5 kg per capita.

The increase of fish proteins needs is a chance to build fisheries itself. While, excessive fish exploitations will only accelerate fish scarcity rate [4]. Even [5] study stated that global fisheries will experience a downfall by 2048. However, such opinion is considered inadequate because it neglects some factors such as, national and international laws in creating sustainable global fisheries [6].

Regardless of the debates about fish scarcity threats, capture fisheries are faced with how weak the crew member protections law is, especially those working in foreign vessels. International Labour Organization (ILO) stated that capture fisheries business is the most vulnerable sector in term of human rights violations because it is considered too far from justice system and national surveillance [7]. Similar statement was stated by [8] as ILO has identified that commercial fishing is a dangerous job with quite high accident and death rate in the world. This is because capture fisheries possess high risk
because it operates in the middle of the sea with unpredicted weather, considered dirty as it deals with fish that rot easily, using various fishing gear, and different fishing ground in each trip so that it may go beyond territorial border even it goes to open ocean.

Based on such circumstances, study on regulations in regards to crew members protection, both national and international law is necessary. This research is very important because Migrant Workers Protection Agency (BP2MI) recorded that a total of 30,864 Indonesian migrants are working as seafarers in 2011-2019 [3]. Meanwhile, human rights violations towards Indonesian crew members in foreign vessels are shown in media lately.

2. Research method

This study will be conducted gradually as shown in figure 2. First phase output will be used as input in second phase of the study. Then, second phase output will be used as input in third phase of the study.

First step of the study will be conducted by inventorying international laws related in human rights implementation on board fishing vessels. Data and information accumulation in Step 1 will be acquired from internet conducted by desk study method. During first step of the research, normative juridical method will be used. Normative juridical method is a method used to study law using literature, and secondary sources as materials [9-11]. In this study, normative juridical method will be used to study the substance of international law regarding human rights regulations for seafarers in a fishing vessel.

Data collection method used in second phase of the study is still the same as used in first step of the study. However, national laws and regulations are the only data and information collected during this phase. Studying documents of each ministry/institution on their respective networking. During this phase, comparative juridical method will also be used in addition to normative juridical method, to compare the substance of international laws and that of national laws. Comparative juridical method is also used to create a comparison between international and national regulations in regards to human rights implementations in a fishing vessel.

Third step is a strategy formulation and recommendations. During this step, data and information collection will be conducted by purposive sampling. [12] stated that purposive sampling is a sample collection method by determining certain criteria. For this study, respondents are policy maker, fisherman who were once seafarers in foreign vessels, human rights NGO, and agent company and its associations. Data is collected by in depth interview. Empirical juridical method is used in this last stage of the study. Empirical approach (law as a social, cultural, and das sein reality), because this study uses primary data obtained from field observation. Empirical research study applicable law and what is
3. Result and discussion strengthened by literature

3.1 International law on ship crew member protection

Various international law in regard to fishing vessel crews are mentioned below:

(1) International convention on standards of training certification and watchkeeping for fishing vessel personnel, 1995
[15] is a result of IMO conference back in July 7th 1995. Indonesian government ratified this convention into Presidential Decree No.18 of 2019. Some responsibility considered to be given more attention by Indonesia as ratifying country are as followings:

1) Establish processes and procedures for the thorough investigation of any reported incompetency, act or negligence, that may pose a direct threat to safety of life or property at sea, or to the marine environment by the certificate holders.

2) Develop consultation with the assistance of the organization, supporting states which in need of technical assistance for the followings:
   a) Training of administrative and technical personnel;
   b) Establishment of institutions for training of fishing vessel personnel;
   c) Supply of equipment and facilities for training institutions;
   d) Development of adequate training programmes, including practical training on seagoing fishing vessel; and
   e) Facilitation of other measures and arrangements to enhance the qualifications of fishing vessel personnel.

(2) The Cape Town Agreement of 2012 on the implementation of the provisions of the Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessel [16].

Indonesian government has yet to ratify this protocol. Even though [16] set seaworthiness standards for fishing vessel in order to improve safety and minimize casualties. Regulations that are included in [16]: ship constructions, impermeability tools, electrical installations, safety

Figure 2. Research framework.
equipments of a fishing vessel. In accordance to crew protections, [16] is more specifics in ship construction standards to ensure personnels’ safety [3].

(3) *ILO Convention C-188 – Work in Fishing Convention 2007 (C-188 2007).*

The C-188 2007 [17] sets standards to ensure crew members have decent working conditions when working on board ships. Matters regulated in C-188 2007 include: mandatory medical tests, minimum age limit, standard sea work agreements, and accommodation and food. The Indonesian government has not ratified the Convention. The legal substance regulated in C-188 2007 related to crew members is fundamental rights related to forced labor, freedom of association and protection of the right to organize, the right to organize and bargain collectively, equal pay, the abolition of forced labor, and discrimination.

3.2 *Discussion on national law on ship crews’ protection strengthened by literature*

Some Indonesian regulations about ship personnel are mentioned below:

(1) [18] on Assignment and Overseas Indonesian Labor

This act regulates about Indonesian labors working in foreign countries. Therefore, this act can also be applied to ship personnel working under foreign flagged fishing vessels operating outside Indonesia. As for the rights in regards to ship personnel are as follows:

a. Pre-assignment activity

Pre-assignment activity of Indonesian labors in foreign countries are: education and work training; medical and psychological examinations; competency test, and final pre-departure briefing.

b. Work Training

Prospective migrant workers must have working competency in accordance to qualification of a certain position. Therefore, adequate training and education must be given to prospective migrant workers by employers.

c. Protection

Every prospective migrant worker has the right to receive protection in accordance to law and regulations. Protection is enforced since pre-assignment, assignment phase, until post-assignment.

(2) [19] on Maritim Labour Convention 2006 Enactment

This convention applies to every ship both owned by publics or individuals, that is normally used in commercial activity besides those used in fisheries activities or similar activities and ships that were built in traditional way such as, dhowes andn junk. This convention does not apply on battleship or navy ships. To provide protections to seafarers and ship personnels in regard to basic right fulfillment, such as wages, working conditions such as active working hours and break times, medical treatments, health insurance, recruitment and assignment, training, and surveillance, government needs to create the guidelines that will be used as a guide for ship owners, ship personnels, and seafarers. The guidelines that is deemed necessare are as follow: Working Requirements and Conditions Protections Guidelines; Recruitment and Assignment Guidelines; Work Training and Competence Guidelines; Law Enforcement Guidelines.

(3) Government Regulation No 7 of 2000 on Seamanship [20]

Every ship personnel must have seafarers’ certificate, consisting of: Seafarer Basic Competency and Specialist Competency Certificate. One of the most important certificates for fishing vessel personnel is Basic Safety Training Certificate. Meanwhile seafarers’ book is an effort in fishing vessel personnel protections. Salary and working hours are also examples of protection.

(4) Transportation of the Republic of Indonesia [21] on Recruitment and Assignment of Ship personnel

Based on Article 11 paragraph subsection (1), ship personnel agency company must have standardized quality management applied within the company organization. The qualifications that needs to be fulfilled by agency company in regard to fishing vessel personnel are: (a) obligations to pay crews’ full salary; (b) ship crews agency must complete compensation
payment for every late salary payment of seafarers, bonus, and any other issues mentioned in contract agreement signed by both parties; (c) reparation of deceased crews; (d) obligations to assist in administering the rights of deceased sailor; (d) labor union; (e) owner/ship operator that is outside of Indonesian jurisdiction who will recruit and assign Indonesian sailors on board, must have Collective Labor Agreement (KKB) with union before appointing ship agency to carry out activities.; and (f) obligations to pay additional compensations.

(5) Minister Of Marine Affairs and Fisheries [22] on Human Rights Certifications in Fisheries Sector
Based on Article 11 paragraph subsection (1), every fisheries company must carry out Fisheries Human Rights System which contains:

a. Human Rights Policy
   Human Rights Policy in form of statement of commitment in which the company will at least take things listed below as their commitments:
   (a) Respecting every parties’ human rights to whom got their rights violated in fisheries activities;
   (b) Respecting the right for fair and proper working conditions, as follow; (1) remuneration, enough and proper break time; (2) proper standard of living, including accommodation, food and beverage; (3) receiving medications; (4) obtaining social security assurance; (5) receiving protection from working risks; and (6) special rights for women, children, and person with disabilities.
   (c) Applying marine employment agreement for labors and for fishing vessel crews with decent salary standards.
   (d) Avoiding forced labour, in the forms of: abusing vulnerability, restrictions of wiggle room, fraudulence, alienation, sexual or physical violence, possession of labor’s identity documents against their will, withholding salary, being indebted, torturing working conditions and life, excessive overtime works.
   (e) Carrying out Human Rights Due Diligence.
   (f) Carrying out Human Rights Restoration
   (g) Providing training on Fisheries Human Rights System to labours and fishing vessel crews continuously

b. Human Rights Due Diligence (HRDD)
   Human Rights Due Diligence must be carried out by Fisheries Company by identifying and evaluating the impact of every human right violation occurring and those that might be occurring in the future that is caused by Fisheries Company related to every fisheries activity carried out. During Human Rights Due Diligence (HRDD). Fisheries company must fulfill the criteria of fisheries human rights system during Human Rights Due Diligence. Such criterions are:
   (a) Occupational Health and Safety Procedures in fisheries, are as follows; (1) the availability of procedures to ensure occupational health and safety during activity; (2) occupational health safety experts availability; (3) proper accommodation and nutritional adequacy for labours and ship crews; (4) fully standardized equipments to ensure occupational health safety protocols and (5) occupational health safety (OHS) training for labours and fishing vessel personnels;
   (b) Labor and fishing vessel crew recruitment system must at least be: (1) procedure ensuring labor and ship crew recruitment; (2) fulfilment in competency requirements and minimum age for labor and ship crews; and (3) application of employment agreement and marine employment agreement.
   (c) Employment system must at least contain: (1) fulfilment in employment agreement or company rules; (2) fulfilment of health and work accident insurance for labor; and (3) fulfilment of social security agreement
(d) Obligations of community development must at least contain: (1) job creation for surrounding community; and (2) improvement of livelihood of surrounding community.

(e) Security system must at least consist of: (1) carrying out human rights training for security personnel; and (2) human right aspect integrated in safety work protocols.

(f) Environment management system must at least carry out: (1) prevention of environmental pollutions; and (2) preservation of biodiversity.

(g) Land acquisition system, must at least contain: (1) fulfillment of requirements for avoid forced land expropriation; and (2) Fulfillment of the above requirements

(6) Minister Of Marine Affairs and Fisheries [23] on Marine Employment Agreement for Fishing Vessel Crews

Marine employment agreement is an arrangement which purpose is to ensure working requirements, conditions, wages, health insurance, working accident insurance, disaster, death, legal security, and security and safety assurance for fishing vessel crew are fulfilled. Therefore, marine employment agreement is arranged to ensure: (a) protection and well-beingness of fishing vessel crew; and (b) fishing vessel crew has the required competency, documents related, and is ready to work. Marine employment agreement arrangement in order to provide protection for crew from working risk and fishing vessel owner, operator, manning agency, or skipper from business risk. Business risk and work risk includes: (a) uncertain and longer work hour; (b) unstandardized work hours and/or break time; (c) fishing season that requires the crews to work non-stop; (d) dangerous wave and weather in the fishing ground; (e) limited food supply on board fishing vessel; (f) work accidents; dan (g) haul uncertainty during operations.

3.3 Discussion on implementation of crew protection strengthened by literature

3.3.1. Recruitment and placement. Regulations about fishing vessel crew is still stumbled upon legal conflicts. As mentioned earlier, problem on Indonesian labor is regulated in [24]. While [24] is ineffective for overseas worker. As mentioned in Article 34, that regulations on migrant-worker overseas regulated in Article 33 point b is regulated by law.

Based on Article 34 mentioned before, [24] on Placement and Protection of Indonesian Migrant-Worker in Foreign Country. In other word, [24] is a strong legal basis in regulating migrant-workers in foreign country, including fishing vessel crew. Referred in Article 28, further provision on Indonesian migrant-worker placement on certain job and position is regulated by Ministerial Regulations. The term ‘certain job or position’ in this article include the job of sailor. This article is a strong legal basis that sailor, including fishermen working onboard fishing vessel are included.

This means, Ministry of Manpower is appointed by [24] to regulate on Indonesian ship crew’s placement onboard foreign fishing vessels. However, legal vacuum occurred in the span time from 2004 to 2013 as issued in the constitution. Before [24] was enacted, [20] on Article 19 paragraph (6) stated that the terms on sailor placement procedure as referred in paragraph (1) and (2), regulated by the decree of ministry in charge of labor after hearing legal opinion from the minister. This means that Ministry of Manpower is appointed to enact the regulation on Indonesian ship crew onboard foreign vessel. Therefore, Head of National Board of Labor Protection and Placement enacted Head of Board Regulations Per-12/KA/IV/2013 on the Recruitment, Placement, and Protection of Indonesian Sailors in Foreign Flagged Ship. As it should be, Ministry of Manpower is appointed as the regulator as promulgated in [24].

Legal uncertainty mentioned earlier is affecting the permission system. As of now, there are three effective permissions on Indonesian ship crew placement onboard foreign vessel [3]: Firstly, manning agency that possess Recruitment and Placement Business Permit (SIUPPAK) from Ministry of Transportation. As reffered in Ministry of Transportation Ministerial Regulations No. 84 of 2013 on Recruitment and Placement of Ship Crew. SIUPPAK is also used as a permit to place Indonesian sailors in foreign flagged ship operating overseas. Secondly, manning agency that possess Indonesian Migrant-Workers Placement Company Permits (SIP3MI) obtained from Ministry of Labor and Indonesian Migrant-Worker Recruitment Permits (SIP2MI) obtained from BP2MI. Mentioned permits are reffered
in Ministry of Labor Ministerial Regulations No. 41 of 2015 on Working Plan of Recruitment and Protection of Indonesian Migrant-Worker, Infrastructure of Indonesian Migrant-Worker Placement; and Ministry of Labor Ministerial Regulations No. 42 of 2015 on Indonesian Migrant-Workers Placement Company Permits Administration, Extension, and Revocation. Both Ministerial Regulations has been repealed and declared ineffective at the time Ministry of Labor Ministerial Regulations No. 10 of 2019 on Indonesian Migrant-Worker Placement Company Administration Procedure was enacted. Lastly, manning agency that possess Trade Permits (SIUP) obtained from Ministry of Trade or Department of Trade of Regional Government.

The existence of such legal basis caused conflict of laws and permits issuing institutions. Hence, Act No. 18 of 2017 on Indonesian Migrant-Worker Protection is expected to resolve the overlapping jurisdiction on issuing permits to manning agency. As referred in Act No. 18 of 2017 which strengthen the jurisdiction of Ministry of Labor in issuing Indonesian Migrant-Workers Placement Company Permits (SIP3MI) dan Board of Indonesian Migrant-Worker Protection (BP2MI) jurisdiction in issuing Indonesian Migrant-Worker Recruitment Permits (SIP2MI).

3.3.2. Education, certification and training. According to informations obtained from ship crew who once sailed in foreign fishing vessel and informations from manning agency, that one of the documents that is necessary for fishing vessel crew is basic safety training fisheries (BST-F). Possession of this BST-F certificate is very important for ship crew as form of work protection. As for the competency taught in the training are as follow: (1) Personal Survival Technique, which demonstrate and explain every safety equipment on board and its purposes.; (2) Fire Prevention and Fire Fighting, this subject is taught in order to prevent fire hazard onboard and its countermeasures. The purpose of this subject is to put out fire on board using light fire extinguisher, such as CO gas, foam, dry chemical and water so that sailor can differ each type of fire and how to put it out; and (3) Elementary First Aid, to provide the conception and first aid protocol when an accident or health problems onboard.

On top of that, ship crews working onboard fishing vessel are required to have competency in operating fishing gear. However, dispatched crews mostly do not possess the basic knowledge of it. Especially for some fishing gear, like longline. Therefore, manning agency are expecting that there are special courses on fishing gear operations followed by simulations of the gear. This is necessary, because prospective ship crews barely have knowledge on fishing gear operations procedure. Most people want to be sailor because they are tempted by high salary rates from their acquaintances who work in foreign fishing vessel.

Meanwhile other necessary documents are seaman’s book and certificate. Seaman’s book is a country’s official document in form of a book which contains track record of a sailor (sailing experience of a sailor). Seaman book can be used for international sailor. Regulations on seaman’s book is enacted in Minister of Transportation Ministerial Regulations No. KM 30 of 2008 on Sailor Identity Documents.

3.3.3. Healthcare. Every fishing vessel have medications on board. In other words, first aid onboard is carried out by taking available medications on board, managed by skipper. If referral is necessary, ship crew will be carried by loading vessel or will be examined once they land in nearest port.

3.3.4. Ship crew welfare. In terms of ship crew welfare, two main issues are found, they are: firstly, salary issues. Sometimes the salary received by crews is not in accordance to what is written on contract. This is caused by two reasons, they are: (1) fraudulent foreign manning agent, where some foreign agency takes a small portion of the salary given by ship owner to sailor, hence sailor doesn’t receive what they should have received as written in the contract; and/or (2) domestic agency potentially does the same to that of foreign agency.

Secondly, work hours. Catch fishing vessel from china does not abide work hour policy. Because working hours of ship crew depend on how long does it take for a vessel from the setting process the fishing gear to hauling. This is causing ship crew working in china flagged ship to have potential
excessive working hours. But this extra working hours is not followed by compensation for overtime work. Overtime works are only found in Korean and Japanese flagged fishing vessels.

3.3.5. **Counseling.** Before departing, ship crew does not get special debriefing from manning agency. Up until now, debriefing is only provided by NGO who cares about prospective ship crew’s circumstances. Meanwhile, when they start working abroad, every Consulate General of the Republic of Indonesia has communication channel to every submitted complains. But the problem is that there is no media communication channel like WIFI on board a fishing vessel, thus every complain will be submitted whenever they are in ports. This hardship is also experienced by ship crews when they are trying to contact their family member.

4. **Discussion and conclusion**

Based on this research, even though Indonesia has just ratified STCWF 1995, Indonesian laws and constitutions are in accordance to international law, except that there is legal vacuum on safety protection in terms of ship construction standard as referred in CTA 2012. However, human rights violations to Indonesian crew onboard foreign fishing vessel are still found, like the problem with received salary is not in accordance to what was written in the contract, and excessive working hours. Therefore, government regulation that regulates specifically on placement and protection of merchant vessel or fishing vessel Indonesian crew as promulgated in Article 64 of Indonesian Constitution No. 18 of 2017 on Indonesian Migrant-Worker Protection.

**References**

[1] United Nations Department of Economic and Social Affairs Population Division, World Population Prospects The 2017 Revision: Highlights 2019

[2] FAO 2020 The State of World Fisheries and Aquaculture 2020 Sustainability in action Rome

[3] Indonesia Ocean Justice Initiative (IOJI) 2020 Improving the Governance for the Protection of Indonesian Crews on Foreign Fishing Vessels Policy Brief 3

[4] Wiryawan B dan Solihin A 2015 Fishing Areas: In the Perspective of Indonesian Fisheries Management Bandung CV Nuansa Aulia

[5] Worm B, Edward B B, Nicola B, J. Emmett Duffy, Carl F, Benjamin S H, Jeremy B C J, Heike K L, Fiorenza M, Stephen R P, Enric S, Kimberley A S, John J S and Reg W 2006 Impact of Biodiversity Loss on Ocean Ecosystem Services Science 314 787-790.

[6] Branch T A 2008 Not all fisheries will be collapsed in 2048 Marine Policy 32 38-39.

[7] Adam L 2016 Indonesian Capture Fisheries Workers Protection Policy Research 21 321 – 338.

[8] Suwardjo D, et al. 2010 Study on Fatal Accident Rates, Prevention and Mitigation of Accidents for Fishing Vessels Based on Operations at PPP Tegalsari, PPN Pekalongan and PPS Cilacap, Journal of Fisheries & Marine Technology, Bogor Agricultural University. 10 61-62.

[9] Soekanto S and Mahmudi S 1994 Normative Legal Research a Brief Overview Jakarta CV Radjawali

[10] Soemitro R H 1998 Law and Legal Research Jakarta Ghalia Indonesia

[11] Amirudin and Asikin Z 2004 Introduction to Legal Research Methods Jakarta: Raja Grafindo Persada

[12] Sugiyono 2008 Qualitative Quantitative Research Methods and R&D Bandung: ALFABETA

[13] Arikunto S 2012 Prosedur Penelitian Jakarta: Rineka Cipta
[14] Muhammad A 2004 Law and Legal Research Bandung: PT. Citra Aditya Bakti
[15] International Convention on Standards of Training Certification and Watchkeeping for Fishing Vessel Personnel, 1995
[16] The Cape Town Agreement of 2012 on the Implementation of the Provisions of the Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessel (CTA 2012).
[17] International Labour Convention Work in Fishing Convention 2007.
[18] Law (UU) Number 39 of 2004 concerning the Placement and Protection of Indonesian Migrant Workers Abroad
[19] Law (UU) Number 15 of 2016 on the Ratification of the Maritime Labor Convention 2006
[20] Government Regulation No. 7 of 2000. Government Regulation (PP) Number 7 of 2000 concerning Marine Affairs
[21] Regulation of the Minister of Transportation (Permenhub) Number 84 of 2013 about Recruitment and Deployment of Crews
[22] Ministerial Regulations No.35/Permen-KP/2015 on Human Rights Certifications in Fisheries Sector. Minister of Marine Affairs and Fisheries Regulation (Permen KP) No 35/Permen-KP/2015 on Human Rights Certification in the fisheries sector
[23] Ministerial Regulations No.42/Permen-KP/2016 on Marine Employment Agreement for Fishing Vessel Crews. Minister of Marine Affairs and Fisheries Regulation (Permen KP) No 42/Permen-KP/2016 on the Sea Work Agreement for the Crew of a Fishing Vessel
[24] Act No. 13/2003. Law (UU) Number 13 Number 2003 concerning Manpower.