

Protection of Indonesian Migrant Workers in China: The Government's Role and Legal Aspects

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Government Accountability Model for the Protection of Indonesian Migrant Workers in China

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Abstract *This study seeks to examine the model of government accountability for protecting Indonesian migrant workers in China. The expected goal of this research is to make a positive contribution to the legal protection system for Indonesian migrant workers in China that is in harmony with justice and can create a sense of peace and security for Indonesian migrant workers in China. This research was carried out with an empirical juridical approach by analyzing primary data by searching for data by going directly to the field and then analyzing it with legal materials, especially primary legal materials and secondary legal materials. Data observation will be carried out using field studies connected with the subject matter studied. The findings and novelties in this study indicate that migrant workers are often objects of human rights violations, such as not getting guaranteed rights and placements when the migrant workers go abroad through illegal labor suppliers. Especially in this case, the crew from Indonesia works on the Chinese ship, the Longxing Ship. This study concludes that problems related to migrant workers must*

get full attention and protection from the Government because it concerns the safety of Indonesian citizens. Therefore, in this case, the Tegal Regency Manpower and Transmigration Office, the Government must provide full protection to Indonesian migrant workers. In particular are crew members from Indonesia who work on Chinese ships.

Keywords Migrant Workers, Ship's Crew, The Government's Responsibility

1. Introduction

The State of Indonesia in the 1945 Constitution in Article 27 paragraph (2) guarantees the rights of every Indonesian citizen about getting a job and a decent living.¹ The requests regarding a decent job and livelihood are also guaranteed in the constitution. In addition, Law Number 13 of 2003 concerning Manpower also states that every worker or laborer has the right to earn an income that meets a decent living for humanity.² In this case, the Government has a vital role in fulfilling the rights of its citizens, especially in terms of fulfilling the request to work and a decent living. The Government in question is not only a written responsibility contained in the Act as described above but also must run with the basic principles of human values.³

¹ Ida Hanifah, "Peran dan Tanggungjawab Negara dalam Perlindungan Hukum Tenaga Kerja Indonesia Yang Bermasalah di Luar Negeri," *Jurnal Ilmu Hukum* 5, no. 1 (2020): 10–23, <https://doi.org/10.30596%2Fdll.v5i1.3303>.

² C.S.T. Kansil, and Christine S.T. Kansil, *Sistem Pemerintahan Indonesia* (Jakarta: Bumi Aksara, 2005).

³ Indonesian House of Representatives, "Workers, Law No. 39 of 2004 Concerning the Placement and Protection of Indonesian Workers Abroad (Indonesian Migrant" (n.d.), <https://peraturan.bpk.go.id/Home/Details/40786/uu-no-39-tahun-2004>.

Indonesia is currently a unitary republic that is considered a developing country in the eyes of the world; this has caused various problems to occur in Indonesia, one of which is the issue of employment. Issues regarding work have multiple causes. If viewed from the origin of this labor problem, the problem can start from the high rate of increase in population every year, which causes the number of employment opportunities to become increasingly narrow, which will also affect the absorption of labor, this is where labor problems arise.

The high number of people who increase every year and the narrow work area will cause unemployment problems. Unemployment is when someone belongs to the labor force and wants to get a job but has not found a job.⁴ This unemployment problem occurs due to significant changes in the number of workers that are not matched by sufficient employment opportunities to accommodate the number of existing workers. This unaccommodated number of workers is due to the low number of job opportunities.⁵

Problems regarding employment are related to the limited number of available jobs. Other assets, such as unemployment, are still a significant concern, especially in developing countries. There is also the problem of Indonesian migrant workers residing abroad, which requires intensive handling from the parties concerned, in this case, the Government. These Migrant Workers are workers who move from one country to another to obtain better economic welfare for themselves and their families. Solimano's report since there is still unemployment, low wages, unclear career prospects, so the worker decides to seek welfare in another country.⁶

⁴ Sadono Sukimo, *Pengantar Ekonomi Makro* (Jakarta: Raja Grafindo Persada, 1994).

⁵ Peter Davies, *Hak-Hak Asasi Manusia* (Jakarta: Yayasan Obor Indonesia, 1994).

⁶ Andreas Solimanto, "International Migration and the Global Economic Order: An Interview," *Policy Research Working Paper* 5, no. 1 (2019): 17–29, <https://doi.org/https://doi.org/10.1596/1813-9450-2720>.

This migrant worker moves or migrates from one place to another to look for work. In Indonesia, these migrant workers are referred to as Indonesian Migrant Workers according to Law Number 39 of 2004 concerning the Placement and Protection of Indonesian Migrant Workers Abroad. These migrant workers certainly need attention and protection from the state, especially the State of Indonesia, which guarantees the rights and safety of its citizens. In this case, the Government as a representative of the Indonesian state must protect workers, especially migrant workers or Indonesian workers, when a problem occurs when migrant workers work abroad.⁷

When an Indonesian citizen works abroad, problems often occur. This problem regarding Indonesian Migrant Workers is caused by many factors, starting from the departure process, where often Indonesian Migrant Workers who go abroad use the services of illegal labor suppliers. Then there is the problem of dispatching workers, which includes guarantees for Indonesian Workers' rights and placements and obligations. Indonesian migrant workers also often suffer torture or inhuman treatment from their employers or agencies. This problem usually occurs in the public spotlight because many Indonesia actioners defend their rights but violate existing rules.⁸ The next problem is the problem related to the repatriation of Indonesian Migrant Workers from their place of origin for Indonesian Workers to work. This problem is caused by administrative and non-administrative processes that are complicated.

The problems described are a small example of the problems of Indonesian Workers working abroad. Other problems are much more severe and must get

⁷ Muhammad Syarif Budiman, "Penataan Sertifikasi Kompetensi Awak Kapal Penangkap Ikan Di Indonesia," *Jurnal Teknologi Perikanan Dan Kelautan* 7, no. 2 (2018): 149–58, <https://doi.org/10.24319/jtpk.7.145-152>.

⁸ *Ibid.*

serious handling by the Indonesian Government, which will focus on this research which is the problem violates Indonesian workers' human rights who work as ship crew members in China, called the Longxing Ship. ⁹ There are still many cases of crew members receiving inappropriate and inhumane treatment. In this case, Indonesian Migrant Workers experienced several human rights violations committed by the Ship captain.⁹ The first is overworked hours. The working hours of this Ship crew are 18 hours in one day with a break of 6 hours. The next problem is that when the Ship crew dies of illness, their bodies will be thrown into the sea. In this case, three Indonesian Migrant Workers have been killed, and two of them have been thrown into the high seas. The first victims were 19-year-old Alpaka and 24-year-old Sepri, who died while sailing, and their bodies were dumped into the high oceans. The third victim is Ari, who is 24 years old.

The ship crew from Indonesia are also not allowed to drink mineral water from the existing ship supplies but can only drink filtered seawater. According to the confession from the force of the Indonesian Ship, they drank filtered seawater, which caused headaches and worsened their health condition, and eventually died. In addition, the Indonesian crew of the Ship also received an outrageous salary, with 13 months of service but they only got 120 US Dollars or Rp. 1,700,000, and in the sense of Rp. 100,000 per month.¹⁰

The problem regarding Indonesian migrant workers, especially on Chinese ships, must get serious attention from the Indonesian Government; therefore, in this study, researchers are interested in researching the Government's accountability model for Indonesian migrant workers in China.

⁹ M Ghufuran H Kordi K, *HAM Tentang Perbudakan, Peradilan, Kejahatan Kemanusiaan & Perang* (Yogyakarta: Graha Ilmu, 2011).

¹⁰ Cindy Margareta Putri, *Peran ILO Terhadap Pelanggaran HAM Berupa Perdagangan Orang Yang Terjadi Pada Anak Buah Kapal* (Yogyakarta: Universitas Atma Jaya Yogyakarta, 2016).

2. Method

The method used by the researcher is an empirical juridical approach. An empirical juridical approach is an approach by identifying and conceptualizing law as a natural and functional social institution in a wildlife system.¹¹ Empirical research is also intended to invite researchers to think about legal issues that have a normative nature and think about social phenomena and things related to human behavior in the life of an attractive and unique society. To be researched and not only from its prescriptive nature but also descriptive. This approach emphasizes research that aims to obtain legal knowledge empirically by going directly to the object of study, the Government's accountability model for protecting Indonesian migrant workers in China.

This type of research is empirical juridical research or sociological law. It can also be referred to as field research, examining applicable legal provisions. What is happening in society can be called research conducted on the actual situation or situation. Real things happen in the community to know and find the facts and data needed, then identify problems, ultimately leading to problem-solving.¹²

This research is field research which is carried out by going directly into the field to find out the actual conditions in the area; therefore, the focus of the location in this study is carried out so that this research can be directed, the direction of the site that is used as the location for research is the Tegal Regency Manpower Office.

According to Mukti Fajar, the data source in empirical research is divided into two parts: primary data, which is used as the primary data, then secondary data or literature.¹³

¹¹ Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI Press, 1986).

¹² Waluyo Bambang, *Penelitian Hukum Dalam Praktek* (Jakarta: Sinar Grafika, 2001).

¹³ Mukti Fajar, *Dualisme Penelitian Hukum Normatif Dan Empiris* (Jogjakarta: Pustaka Belajar, 2015).

1) Primary data

The use of primary data in this study shows that this research must be built from social facts related to the actual operation of the law—observation directly by observation or through questionnaires.

2) Secondary Data

The use of secondary data is usually used as initial data or as a comparison in sociological, legal research. Researchers depart from social facts from books, research results, and scientific journals.

3. Result & Discussion

A. Government and the Responsibilities: Between Theories and Practices

Before discussing the responsibilities of the Government, it should be noted that Government can be interpreted broadly and can also be interpreted narrowly. Government when analyzed in a narrow sense, is only devoted to executing, for example, in the 1945 Constitution, it is stated that the Government is the President and the Vice President and Ministers assist, furthermore in the provisions of the 1950 Law, the Government is the President, the Vice President together with the same as the Ministers. In the RIS Constitution, it is stated that the Government is the President together with the Ministers.¹⁴

Government, if interpreted broadly, includes all state organs, including the House of Representatives. Until now, the well-known forms of Government are monarchy (kingdom) and republican forms of Government; Indonesia adopts a republican form of Government. In every form of Government, some consequences and responsibilities become obligations; in this case, the

¹⁴ C.S.T. Kansil, and Christine S.T. Kansil, *Sistem Pemerintahan Indonesia.*, Opcit.

Government must be responsible for every action taken.¹⁵ In carrying out, its duties, the Government is often faced with conditions of change in society. The demands and dynamics of society, which repeatedly and very rap have changed, have resulted in the emergence of a legal problem, which is included in the Government's responsibility to provide legal protection to every community without exception.¹⁶

Everyone is obliged to do good to others; someone who does terrible things must be held accountable for his actions legally and politically; this also applies to the Government. The Government bears a responsibility; for example, if the Government takes legal action, then the Government's responsibility, in this case, is a responsibility that falls within the realm of law.

There are two theories that state that the Government must carry out legal responsibilities to the community, these theories are:

a. *General Law Theory*

In this theory, everyone in this case, including the Government, must be responsible for every action, whether actions that arise because of an error or without an error (Strict Liability). This theory originates from the emergence of government responsibility in civil, criminal, and state administrative duties. In terms of government accountability, this is carried out before the court.¹⁷

¹⁵ Abdul Rauf Alauddin Said, "Pembagian Kewenangan Pemerintah Pusat-Pemerintah Daerah Dalam Otonomi Seluas-Luasnya," *Jurnal Ilmu Hukum Fiat Justitia* 9, no. 4 (2018): 580–91, <https://doi.org/10.25041/fiatjustisia.v9no4.613>.

¹⁶ Julista Mustamu, "Pertanggungjawaban Hukum Pemerintah (Kajian Tentang Ruang Lingkup Dan Hubungan Dengan Diskresi)," *Jurnal SASI* 20, no. 2 (2020): 21–34, <https://doi.org/10.47268/sasi.v20i2.323>.

¹⁷ Dafuleya G, "Falling Through The Cracks? Migrant Workers and The Global Social Protection Floor," *Global Social Policy* 14, no. 3 (2018): 369–388, <https://doi.org/doi.org/10.1177/1468018114544765>.

b. *Democracy Theory*

In the theory of democracy, it is stated that every Government or person who governs is obliged to account for every action or deed to those who are headed. This is because the power possessed by the Government comes from the community. This theory is the beginning of the emergence of responsibilities that have consequences for impeachment. In contrast to the general law theory, government accountability based on this democratic theory is carried out in front of the parliament with or without the participation of other bodies.

Based on the theory above, it can be seen that every action of the Government is required to have accountability. The Government must be based on its functions in carrying out its duties.¹⁸ The Government in administrative law acts as a unit and a body that can determine actions based on administrative law. Therefore, this government action has an impact on legal conditions or circumstances.¹⁹ Government action begins with the existence of authority. This authority itself also refers to the form of accountability of state administrators when there is an odd event or something that deviates from a policy that has been taken.²⁰ Based on Article 2 paragraph (2) of Government Regulation Number 38 of 2007 concerning the Division of Government Affairs, there are three levels: the Central Government, the Provincial Government, and the district or city government. If the authority possessed by this Government when it is not carried out even or

¹⁸ Istianah and Johanna Debora Imelda, "Mekanisme Perlindungan Sosial Bagi Pekerja Migran Indonesia (PMI) Perempuan Di Hongkong," *Jurnal Sosio Konsepsia* 10, no. 2 (2021): 112–21, <https://doi.org/10.33007/ska.v10i2.2222>.

¹⁹ M Ghufuran H Kordi K, *HAM Tentang Perbudakan, Peradilan, Kejahatan Kemanusiaan & Perang*. Opcit

²⁰ Mifta Farid, "Kewenangan Pemerintah Daerah Dan Partisipasi Masyarakat Dalam Pengelolaan Potensi Daerah," *Jurnal Lentera Hukum* 3, no. 2 (2018): 72–84, <https://doi.org/10.19184/ejrh.v4i2.5128>.

adequately has deviated from the laws and regulations or applies arbitrarily, which in this case results in the rights of the community being violated by these actions, then the people who feel disadvantaged their requests are given legal protection (*rechtsbescherming*), for example through administrative justice.²¹

Government authority is a term that is commonly used in the realm of public law. There is a difference between "wewenang" and "kewenangan." Ateng Syarifudin stated that the term "kewenangan" must be distinguished from the meaning of "wewenang" The authority referred to here is a formal power granted by law, in contrast to the authority/wewenang which contains only a tiny part of an authority/kewenangan.²² This authority is included in public legal action and Government but consists of the authority to decide and carry out the duties; the central authority is stipulated in statutory regulation.²³

The Government's authority regarding legal actions, which contains a burden or obligation for the community if associated with a democratic legal state, can only be lawful if it obtains approval from the community through people's representatives in parliament. The Government has a responsibility in terms of community service.²⁴

²¹ R. Agus Abikusna, "Kewenangan Pemerintah Daerah Dalam Perspektif Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah," *Jurnal Sosfilkom* 8, no. 1 (2019): 4–18, <https://doi.org/10.32534/jsfk.v13i01.1453>.

²² Said, "Pembagian Kewenangan Pemerintah Pusat-Pemerintah Daerah Dalam Otonomi Seluas-Luasnya."

²³ Spaan, Ernst, and Ton van Naerssen, "Migration Decision-Making and Migration Industry in the Indonesia–Malaysia Corridor," *Journal of Ethnic and Migration Studies* 44, no. 4 (2017): 680–695, <https://doi.org/10.1080/1369183x.2017.131552>.

²⁴ Muhammad Platt, "Migration, Moralities, and Moratoriums: Female Labour Migrants and the Tensions of Protectionism in Indonesia," *Asian Studies Review* 42, no. 1 (2018): 89–106, <https://doi.org/10.1080/10357823.2017.1408571>.

In addition, the Government must also fulfill human rights Or "the rights to receive" from its citizens. This public service, which is the Government's obligation, means that there must be active government intervention in every life in society.²⁵

Government intervention in public services sometimes cannot be readily determined. Therefore, sometimes, the Government may ignore the problems in the community; for this reason, it is given the authority to exercise discretion. In this case, the discretionary authority is very attached to government organs and their involvement in general. Actively causes the implementation of government service functions to the community quickly and accurately.²⁶ This discretion given to the Government is in line with the principle of the state, which requires the Government to seek welfare for the community.²⁷

B. Government Responsibilities to Migrant Workers

Indonesia is one of the countries with the highest rate of sending citizens abroad globally, either at the request of the country concerned or at the workers' initiative. Migrant workers or commonly referred to as Indonesian Migrant Workers according to Article 1 part (10) of Law Number 39 of 2004 concerning the Placement and Protection of Indonesian Migrant Workers Abroad, from now on referred to as TKI, are defined as every citizen who has fulfilled the requirements to work in a foreign country abroad in a working relationship for a certain period by receiving wages. Indonesian workers as Indonesian citizens must receive protection from the Government while working abroad, be it legal protection,

²⁵ Muhammad Syamsudin, *Norma Perlindungan Dalam Hubungan Industrial* (Jakarta: Sarana Bakti Persada, 2004).

²⁶ Abdul Mahsyar, "Masalah Pelayanan Publik Di Indonesia Dalam Perspektif Administrasi Publik," *Jurnal Konstitusi* 1, no. 2 (2019): 82–98, <https://doi.org/10.26618/ojip.v1i2.22>.

²⁷ Ridwan, *Diskresi Dan Tanggung Jawab Pemerintah* (Jakarta: FH UII Press, 2014).

health, protection of rights, obligations, and others. Therefore, it is regulated in Law Number 39 of 2004 concerning the Placement and Protection of Indonesian Migrant Workers Abroad Article 5 paragraph (1), which states that the Government is tasked with regulating, fostering, implementing, and supervising the placement and protection of Indonesian Migrant Workers abroad.²⁸

The International Labor Organization (ILO) has also guaranteed the protection of the fundamental rights of Indonesian workers by establishing eight basic conventions, which are grouped into four parts, namely:

- 1) Freedom of Association (ILO Conventions No. 87 and No. 98);
- 2) Prohibition of Discrimination (ILO Conventions No. 100 and No. 111);
- 3) Prohibition of Forced Labor (ILO Conventions No. 29 and No. 105);
- 4) Child Protection (ILO Conventions No. 138 and No. 182).²⁹

Indonesia shows its commitment to respecting human rights in the workplace by ratifying the eight basic conventions. Upon confirming the convention, a Manpower Law was established in Indone, Asia, reflecting the appreciation of the eight basic traditions.

In Article 71 of Law Number 39 of 1999 concerning Human Rights, the Government is obliged and responsible for respecting, protecting, enforcing, and promoting human rights. Furthermore, Article 72 states that the obligations and responsibilities of the Government include practical implementation steps in the fields of politics, law, culture, social economy, and state defense and security in other areas. The Indonesian state must provide support facilities in the form of programs that will support the quality of the workforce in Indonesia. Thus, it will implement government responsibilities, especially in employment, and TKI whose

²⁸ Philip Alston and Frans Magnus Suseno, *Hukum Dan Hak Asasi Manusia* (Jakarta: UII Press, 2008).

²⁹ Syamsudin, *Norma Perlindungan Dalam Hubungan Industrial*.

conditions are vulnerable to arbitrary behavior or have their rights violated when working abroad.³⁰

Efforts to increase the protection of Indonesian Migrant Workers by the Government are stated in Article 7 of Law Number 39 of 2004, which says that:

- 1) Ensuring the fulfillment of the rights of prospective TKI both from those who depart from the executor of the placement of TKI or those who leave independently;
- 2) Carry out supervision related to the implementation of the placement of prospective TKI;
- 3) Develop and establish an information system for the placement of prospective TKI abroad;
- 4) Make efforts diplomatically to ensure optimal fulfillment of the rights and protection of Indonesian Migrant Workers abroad;
- 5) Protect Indonesian workers from departure to return to Indonesia.

From the explanation that has been described above, it can be seen that the forms of government responsibility towards migrant workers are clearly stated in the regulations established to protect Indonesian migrant workers in terms of law, protection of rights and obligations, and others.

C. Protection of Indonesian Ship Crews on Chinese Ships

1) The Limitation of Crew Concept in Various Legal Instruments

The crew of the ships is a crew other than the captain. The crew of this Ship consists of two different groups, the first is the officer class, and the other group is the crew group. Based on the provisions in Article 1 letter e of the ILO (International Labor Organization) Convention No. 188 of 2007 concerning

³⁰ Putri, *Peran ILO Terhadap Pelanggaran HAM Berupa Perdagangan Orang Yang Terjadi Pada Anak Buah Kapal*.

Employment in Fishing, states the meaning of crew on a ship, which is any person who works or is employed in any capacity or does work on a ship that has a function to catch fish, including those who work on ships and are given wages based on catches but not including marine personnel, officers, and other persons with permanent government services, as well as those with a land base who carry out tufas on fishing vessels and observers of ship crews. The crew or crew of this Ship consists of various fields; each field has duties and responsibilities.³¹

The crew has responsibilities to the Ship officers, but it depends on their respective companies. The highest leader of this crew is the Mualim 1 or commonly called the Chief officer, who is in the department deck. Mualim 1 has responsibility for the captain of the ships. In a voyage, the primary responsibility with a comprehensive nature in both the engine department and the deck department lies with the Master.³² He is commonly referred to as the Ship Captain.

Law Number 17 of 2008 concerning Shipping states that what is meant by ship crew or ship crew are people who do work or are employed on ships by ship owners or ship operators and serve on boats by the positions they carry as listed in certificate book.³³ The certificate book is a list of "Monsterol," which contains the names of the Ship officers and the Ship crew or crew. What is meant by the team here are all crew members under the Ship officers. The Ship certificate book is formed in two copies and made before the Crew Registrar's Employee, commonly referred to as the Kesyahbandaran Employee. The first copy is shown for

³¹ Amalia et al., *Perlindungan Hak Anak Buah Kapal Dalam Kerangka Hukum Nasional Dan Hukum Internasional* (Bandar Lampung: Prasa Wijaya, 2018).

³² Andres Solimano, "International Migration and the Global Economic Order: An Interview," *Policy Research Working Paper* 6, no. 1 (2018): 124–35, <https://doi.org/10.1596/1813-9450-2720>.

³³ Indonesian House of Representatives, "Law Number 13 of 2003 Concerning Employment," Pub. L. No. <https://peraturan.bpk.go.id/Home/Details/43013> (n.d.).

registrant employees, and the other document is offered for the Ship Master. This is regulated in Article 224 of Law Number 17 of 2008.³⁴

The Ship certificate book is made and signed by the captain and crew registrar. Several things are regulated in the Ship certificate book, namely:

1. the name of the Ship crew;
2. the name of the vessel concerned;
3. Name of Ship Entrepreneur and Master;
4. the position of each crew member in carrying out the service of the Ship crew;
5. Appointment, Upon Who Is Given The Trust To Become A Ship Officer.

In a ship, it has been regulated in the Ship certificate book that there are four groups of workers on the boat, namely:

1. Group I: the first group contains crew members who procure sea work agreements with ship entrepreneurs. The crew members are officers and crew members of the ships where the names of those parties are listed in the Monsterol and carry out the crew's service;
2. Group II: in the second group, crew members enter into general labor agreements with the employer and not with the Ship entrepreneur. This second party is also listed in Monsterol.
3. Group III: in the third group, there are loading and unloading workers, as well as workers who are temporarily carrying out work on ships, for example, carpenters, painters, and others. This third group is not included in the Monsterol but is recorded in a separate list signed by the Master and the Registrar's Employee of the Ship crew. This third group does not carry out crew service.

³⁴ Anis Widyawati, "Legal Protection Model for Indonesian Migrant Workers," *JILS (Journal of Indonesian Legal Studies)* 3, no. 2 (2018): 291–304, <https://doi.org/10.15294/jils.v3i02.27557>.

4. Category IV: this fourth group contains several parties, such as stowaway passengers, where stowaways mean passengers who do not have tickets and cannot afford to pay for ship transportation. In this case, the captain has the right to employ these stowaways based on their abilities in the service of the Ship crew to the first port to disembark from the boat. Then there are substitute workers who are accepted during the trip and can be employed in the Ship service until the first port of call. This third group must make a sea work agreement before the harbormaster or registrar enters the Ship certificate book. Furthermore, some passengers are in an emergency working on ship work and are not included in the certificate book, which results in the work carried out by these passengers not being included in the crew's service.³⁵

The crew owns several obligations and rights, the rights of the crew include the right to receive wages, the right to receive hours of work and rest hours, the right to receive food and lodging on board, the right to take leave, the right to receive treatment when sick on board, the right to receive complimentary transportation to the place of origin and destination, the right to receive compensation if the Ship is unable to operate due to an accident, as well as the right to develop a career.³⁶

The crew's obligations are to obey the company's orders, work according to the period specified in the agreement, and carry out tasks according to predetermined working hours; the company's right is to employ seafarers following the deal that has been made. Apart from the rights and obligations of the crew, some duties must be carried out by the company, fulfilling all the

³⁵ I Dewa Rai Astawa, "Aspel Perlindungan Hukum Hak-Hak Tenaga Kerja Indonesia Di Luar Negeri" (Universitas Diponegoro, 2015).

³⁶ Hari Utomo, "Siapa Yang Bertanggungjawab Menurut Hukum Dalam Kecelakaan Kapal," *Jurnal Legislasi Indonesia* 14, no. 1 (2018): 57-70, <https://doi.org/10.54629/jli.v14i1.75>.

requests of the seafarers following the agreement on the rights and obligations of the entrepreneur and the crew listed in the sea work agreement.³⁷

2) Protection of Overseas Crews

Human Rights are naturally owned by every human being, where violations of these human rights can significantly threaten a country's security, peace, and stability.³⁸ Human rights violations, in another sense, are said to be acts of negligence by the state against norms that have not been regulated in national criminal law because these human rights have been recognized internationally.³⁹ From this explanation, it can be seen that the problems related to human rights violations are not the individual's responsibility but are the Government's responsibility, which is representative of the state. The state is responsible for implementing protection for every citizen without exception at home and abroad.⁴⁰

Problems regarding Indonesian migrant workers in other countries have often occurred. Therefore, the International Labor Organization (ILO) was formed to protect the interests of workers while being employed in a country other than their own country of origin.⁴¹ In Indonesia itself, it is regulated in the 1945

³⁷ Budiman, "Penataan Sertifikasi Kompetensi Awak Kapal Penangkap Ikan Di Indonesia."

³⁸ Alston and Suseno, *Hukum Dan Hak Asasi Manusia*.

³⁹ C. De Rover, *To Serve And To Protect (International Of Committee Of The Red Cross)* (Jakarta: Raja Grafindo Persada, 2000).

⁴⁰ Spaan, Ernst, and Naerssen, "Migration Decision-Making and Migration Industry in the Indonesia–Malaysia Corridor."

⁴¹ Indonesian House of Representatives, Workers, Law No. 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad (Indonesian Migrant).

Constitution of the Republic of Indonesia in Article 27 paragraph (2), which states that every citizen has the right to get a job and a decent living for humanity.⁴²

Indonesian Migrant Workers who work as crew members in other countries, especially Chinese fishing vessels, often get unpleasant treatment and violate human rights.⁴³ Indonesian crew members often receive treatments that include being treated as enslaved people, discrimination, and human trafficking. The Government representing the state must provide a role that is the Government's responsibility and protect crew members whose human rights are violated.

Indonesia ratified the "Maritime Labor Convention" (MLC) in 2006. However, human rights violations afflict migrant workers from Indonesia who work as crew members in China. When considering the rights and obligations of Indonesian crew members, Indonesia should ratify the MLC and approve the ILO Convention No. 188 on "work in fishing." Bearing in mind that the contents of this convention regulate in more detail the protections for crew members working in the fisheries sector. By ratifying this convention, the Government in charge of implementing the responsibility for protecting the human rights of every citizen can be assessed as reducing human rights violations that often occur to date, especially to Indonesian crew members on Chinese ships.

⁴² International Labour Organization, "ILO Convention Ratification Number 111 Concerning Discrimination in Work and Position through Law Number 21 of 1999" (n.d.), <https://peraturan.bpk.go.id/Home/Details/45326>.

⁴³ Indah Prisnasari, "Modern Slavery Pada Anak Buah Kapal (ABK) Perikanan Dalam Perspektif Hak Asasi Manusia," *Jurist-Diction* 2, no. 2 (2019): 477-86, <https://doi.org/10.20473/jd.v2i2.14229>.

3) Responsibilities of Manpower and Transmigration Agency for Indonesian Crews on Chinese Ships (Case of Tegal Regency, Central Java, Indonesia)

Migrant workers have to get complete protection from the Indonesian Government because the Indonesian Government must protect every citizen. This study was conducted to determine the role of the Tegal Regency Manpower and Transmigration Office in protecting Indonesian migrant workers, especially Indonesian crew members on Chinese ships. In carrying out this research, the research team conducted interviews with the Tegal Regency Manpower and Transmigration Office, Mr. Widi.

The Tegal Regency Manpower and Transmigration Office stated that in protecting migrant workers or Indonesian crew members on Chinese ships, there were several obstacles and obstacles. The Tegal Regency Manpower and Transmigration Office noted that basically, the Indonesian Government did not allow its citizens to become crew members on Chinese ships due to a case some time ago related to the bodies of Indonesian crew members being dumped into the sea on orders from one of the captains of a Chinese ship. The reality is that there are still many citizens, namely prospective migrant workers, who are desperate to go through unscrupulous TKI agents. These illegal TKI agents are an agency that distributes and assigns TKI to work abroad. Still, the difference is that this agency was formed illegally because the Manpower and Transmigration Office did not know about the establishment.

The Manpower and Transmigration Office of Tegal Regency stated that in carrying out its duties to protect Indonesian migrant workers, especially Indonesian crew members in China, there were several obstacles related to placement. In terms of the order, there is a dualism in managing licensing for the post of migrant workers, namely by the Manpower and Transmigration Office and Hubla or Sea Transportation through the Ministry of Sea Transportation.

Prospective migrant workers, if they register through the Tegal Regency Manpower and Transmigration Office, will be channeled through P3MI. The problem related to the placement of migrant workers is the tug of war between the Manpower and Transmigration Office and the Ministry of Sea Transportation.

If a migrant worker departs with a permit from the Ministry of Sea Transportation, usually the departure of this migrant worker is channeled through a manning agent. With this manning agent, prospective migrant workers will be given training, and a marine book or certificate will be made, which will then be offered to foreign ships, especially Chinese ships. The problem in the field is that when these prospective migrant workers are provided to foreign ships, especially Chinese ships, the manning agent who makes offers to these alien ships does not report to the Manpower and Transmigration Office. This failure to report the manning agent to the Disnakertrans has made it difficult for the Tegal Regency Disnakertrans to protect prospective migrant workers who will be dispatched because Disnakertrans does not have data related to the future migrant workers who will be sent. Of course, this makes the Tegal Regency Manpower and Transmigration Office unable to take any action related to the protection of migrant workers.

To anticipate this, the Tegal Regency Manpower and Transmigration Office took proactive actions so that the Manpower and Transmigration Office still had information related to departed migrant workers. This pro-active action is in the form of asking questions to migrant workers who come to the Manpower and Transmigration Office to seek legal protection. The Tegal Regency Manpower and Transmigration Office is often seen as a garbage can, where when a problem occurs related to migrant workers, the party concerned will come to the Manpower and Transmigration Office to ask for protection, whereas previously related to registration administration, migrant workers who had the problem did not

register through the Manpower and Transmigration Office. On the other hand, by reporting migrant workers who have this problem, Disnakertrans has the opportunity and opportunity to explore information related to migrant workers who were dispatched without going through the approval of the Manpower and Transmigration Office.

In contrast to sea transportation, prospective migrant workers who register through the Manpower and Transmigration Office will be channeled through P3MI. Through this P3MI future migrant workers will be given complete protection from pre- during placement and post-placement.

4. Conclusion

Problems regarding employment are related to the limited number of available jobs and other issues such as the problem of Indonesian migrant workers residing abroad, which requires intensive handling from the parties concerned, in this case, the Government. This migrant worker moves or migrates from one place to another to work or look for work. When an Indonesian citizen works abroad, problems often occur. This problem regarding Indonesian Migrant Workers is caused by many factors, starting from the departure process, where often Indonesian Migrant Workers who go abroad to work use the services of illegal labor suppliers. Then there is the problem of dispatching workers, which includes guarantees for Indonesian Workers' rights and placements and obligations. Other issues are much more severe and must get serious handling by the Indonesian Government, which will focus on this research. This problem violates Indonesian workers' human rights ⁹ who work as crew members in China, the Longxing Ship. The problem regarding Indonesian migrant workers, especially on Chinese ships, must receive serious attention from the Indonesian Government. One form of the role of the Government is that Indonesia now ratified the *"Maritime Labor*

Convention" (MLC) convention in 2006. Indonesia should confirm the MLC and approve the ILO Convention No. 188 on "*work in fishing*." They are bearing in mind that the contents of this convention regulate in more detail the protections for crew members working in the fisheries sector. In addition, if a migrant worker registers through the Manpower and Transmigration Office, which will be channeled through P3MI, the prospective migrant worker will receive legal protection during pre-placement, placement, and post-placement.

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The authors state that there is no conflict of interest in the publication of this article.

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Migrant workers have helped build our roads, homes and offices. We cannot stand and watch them be homeless.

Sonu Sood

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