



INDONESIA'S EFFORTS TO ADDRESS HUMAN RIGHTS VIOLATIONS AGAINST ITS SEAFARERS ON LONG XING VESSEL

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Abstract.

This paper aims to discuss Indonesia's action in resolving the case of human rights violations of its seafarers on Chinese-flagged Long Xing vessels in 2020. In fact, there were 88 Indonesian seafarers who were distributed to fishing vessels named Long Xing owned by the Dalian Ocean Fishing Co., Ltd group. However, it was revealed that there were violations of the seafarers' human rights on one of the vessels, Long Xing 629. These violations included drinking distilled seawater, working 18 hours per day, and salary deductions that ultimately affected the physical and mental health of the seafarers, leading to death and sea burial. This paper uses descriptive and analytical methods to explain what the Indonesian government did to resolve the violations of the Indonesian seafarers' human rights through diplomacy and law enforcement. As a result, the Indonesian Ministry of Foreign Affairs managed to hold a bilateral meeting with the Chinese Ministry of Foreign Affairs to confirm and conduct a thorough investigation. In addition, the Indonesian National Police named six suspects for distributing seafarers to Long Xing vessels in Indonesia for violating Law No. 21 of 2007. The Indonesian Ministry of Foreign Affairs represented by the Indonesian Embassy in Dakar successfully repatriated 88 Indonesian seafarers who worked at Long Xing vessels to return home safely after negotiations with the Senegalese government. The Indonesian government is committed to preventing similar cases against Indonesian seafarers from reoccurring.

INTRODUCTION

Indonesia encompasses more than 17,000 islands stretching between the Indian Ocean to the Pacific Ocean and the Asia continent to the Australia continent. Indonesia is widely recognized as the largest archipelagic nation in the world with its maritime culture and values forming the country's greatest strength. Having 108,000 kilometers of coastline, maritime connectivity and advancement to all aspects of Indonesian life has been prioritized by the Indonesian government for many years. Many Indonesians have made a living from the maritime field, including working as seafarers. The Maritime Labor Convention 2006 defines a seafarer as any person working or engaged or contracted in any business or vessel-related capacity in accordance with the applicable convention.

Indonesian seafarers are generally divided into three categories: yacht crews, cargo ship crews and fishing boat crews. According to the Indonesian Ministry of Transportation, the number of Indonesian citizens who are crew on vessels as of February 8, 2021 reached 1.2 million people that work under various foreign-flagged vessels around the world. Meanwhile, the Indonesian Ministry of Foreign Affairs released a report that there were >200,000 Indonesian seafarers employed during the 2013-2015 period, the vast majority of them working on vessels owned by Taiwan (217,655 people) and South Korea (31,792 people). With such massive numbers, Indonesian seafarers have become one of the country's economic pillars with foreign exchange potential reaching IDR 151.2 trillion per year. In other words, the existence of Indonesian crew members has significantly enhanced the nation's economic growth annually. (Sudewo, 2023).

In addition, the Indonesian government is responsible for ensuring that its seafarers work in a safe and secure working environment according to the prevailing laws and regulations. As the vessel crew members have the right to receive state protection which is proven by various laws. It ensures that the recruitment process and employment agreements have clear and precise standardization in line with the ILO Conventions to avoid violations of the seafarer's rights until the completion of their employment contract on a foreign vessel. Based on the Indonesian Migrant Workers Protection Agency (B2PMI) in 2020, there were various complaints submitted by Indonesian seafarers, ranging from work accidents, documents withheld by agents, fatalities, unsuccessful departures, work fraud, and the most common is unpaid salaries.

Unfortunately, a news broadcast on May 5, 2020 from Munhwa Broadcasting Corporation (MBC), a South Korean public broadcast service, reported an incident of human rights violations against Indonesian seafarers on a Chinese-flagged fishing vessel. In this five-minute news, there are two unidentified Indonesian seafarers who recount a life of modern slavery on a Chinese-flagged ship through a direct interview by a foreign journalist. They mentioned that they were working in poor living conditions with 18-hour working days that threatened their lives. This is evident from

the deaths of four Indonesian seafarers due to health problems on the same ship within a short period of time. (BBC News Indonesia, 2020).

The chronology begins with the Indonesian crew members working on board Long Xing 629 in the western Pacific Ocean region of Samoa for more than 13 months. The vessel belongs to the Dalian Ocean Fishing Co., Ltd group, a fishing company that markets tuna products in China and operates under the Chinese flag, that employs 88 Indonesian seafarers in total, distributed among fishing vessels of Long Xing (621, 622, 623, 625, 626, 627, and 628). Initially there were two Indonesian crew members, namely Alfatah (19 years old) and Sefri (24 years old) experiencing pain with swelling in the chest followed by shortness of breath. After being sick for 45 days, the two crew members passed away in December 2019 and their bodies were dumped into the sea. Later, a crew member named Ari (24 years old) also suffered from the same symptoms and was transferred to the Tian Yu 8 ship to receive medical assistance. However, Ari was declared dead on March 30, 2020 when the ship had not arrived at the port and his body was also thrown into the sea. Similarly, another victim, Effendi, died while docked in Busan, South Korea. Effendi had actually felt the same symptoms of illness as the three other crew members who had died earlier two months before docking. His condition worsened and he was rushed to the Busan Medical Center ER on April 26, 2020. Effendi's health became more critical until he finally passed away on April 27, 2020 morning Busan time at the hospital.

These unfortunate events are definitely not presented for no reason. Instead, there are violations of the rights of Indonesian seafarers during their work. Notably, Indonesian crew members work for 18 hours a day, even 48 hours non-stop when the fish catch is abundant. The discriminatory rules on the ship only allow Indonesian crew members to drink distilled water from the sea, unlike other crew members who are allowed to drink mineral water. This clearly worsens their health in the midst of hard work to the point that they experience modern slavery. (Dewanto, Gozal, & Tarigan, 2022) Additionally, Indonesian seafarers reported that they only received a salary of USD 190 or IDR 1.8 million rupiah for 13 months sailing in the Pacific Ocean waters. Whereas every Indonesian crew member who worked on the Long Xin 629 and other ships operated by the Dalian Ocean Fishing Co., Ltd group was originally promised USD 4,200 or IDR 67 million rupiah for one sailing period, which is around 13-14 months. (Kompas, 2020).

LITERATURE REVIEW

Human Rights of Labor

Human rights are essential to human beings from the moment they are born. Leif Wenar argues that a right is an authority to do or not to do an action or to be in a desirable situation (Iskandar, 2012). To underline that human rights are given by God, human rights cannot be ignored and must be enjoyed by everyone (Gunawan & Arumbinang, 2021). It was mentioned by Arnold that human rights can be categorized

into two categories, namely basic rights and aspirational rights. The difference lies in the authority of human rights, where basic rights are rights that are guaranteed by everyone, such as physical integrity and freedom of conscience, which cannot be relinquished by anyone to anyone else. Meanwhile, aspirational rights are rights that are difficult to be obtained universally for all humans, such as the right to decent work, quality education, and access to health (Arnold, 2010)

Moreover, human rights have become the primary issue for every global government to achieve the ideal fulfillment of human rights. It is recognized that there is a universally applicable human rights regime, namely the International Bill of Human Rights (IBHR), which consists of the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR). Additionally, Article 1 of the UDHR clearly affirms that everyone is born free and equal in rights and dignity. This is further explained in articles 4 and 5 that no human being has the right to be in slavery or servitude and inhumane or cruel acts of torture.

However, although every human being is thought to be born free and equal in right and dignity, the ability to live with rights is heavily influenced by their pursuit of life. Everyone's rights may differ in their assurance depending on their spatial location or social structures. Therefore, it is common to find people who struggle to obtain their rights, i.e., laborers. Labor rights are the instruments granted to individuals when they become workers. These rights are exercised individually and collectively, such as the right to choose their job freely, the right to privacy protection, the right to fair wages, protection from arbitrary and unjustified disemployment, and the right to be part of and be represented by a trade union (Mantouvalou, 2012).

Labor rights are fundamental rights owed by states and other actors who employ workers. Labor rights are deeply rooted in various international treaties and laws (Dawkins, 2022). Whereas in the UDHR, article 23 explicitly states that everyone has the right to work with freedom of choice, the right to equal pay for equal work without discrimination, the right to a just salary commensurate with work performance to ensure a dignified life for himself and his family, and the right to join and form trade unions for the protection of his rights. It further explained in article 24 that everyone has the right to rest and leisure, including reasonable limitations of working hours and periodic leaves with pay. The International Labour Organization (ILO), a UN Agency dedicated to labor, has drafted various conventions and laws to protect labor rights as human rights. The ILO issued the Declaration of Fundamental Principles and Rights at Work in 1998 which is followed by other relevant labor conventions. On the other side, the European Union Charter of Fundamental Rights (EUCFR) which is legally binding under the 2009 Lisbon Treaty has put forward the fulfillment of labor rights which includes the right to information and consultation, and prohibition of unfair dismissal and forced labor.

Indonesia's Law on Seafarers

The presence of the state is essential to ensure legal protection for every citizen to live in a safe, peaceful and secure state. One of the legal protections is the protection of laborers, to guarantee an integrated work environment with security, insurance, and administrative systems that protect all the rights of workers. The objective of labor law is to achieve the welfare of workers in order to maintain work productivity, allowing economic growth to continue expanding. Indonesia as a sovereign state mandates the Preamble of the 1945 Indonesian Constitution through one of its sentences which reads "Protect the entire Indonesian nation and the entire Indonesian bloodline". This sentence provides the state's commitment in ensuring full protection of all the rights of Indonesian laborers.

In the last 20 years, Indonesia has significantly developed substantial policies on laborprotection. The Manpower Law No. 13 of 2003 was the first step taken by the Indonesian government, which stipulates the preservation of workers' welfare and rights that are vital to the country's development. It also regulates the pattern of collective bargaining, equal opportunity to work, and minimum wages. In addition, Law No.18 of 2017 gives the Indonesian Migrant Worker Placement Company the right to help Indonesian migrant workers find jobs in other countries, which will be the responsibility of the government and the Indonesian Migrant Worker Placement Company for occupation. On the other hand, Shipping Law No.17 of 2008, amended by Minister of Transport Regulation No. 84 of 2003, clarifies that shipping agents are mandated to arrange the placement of Indonesian seafarers to operate in foreign companies abroad. (Gunawan & Syamsu, 2023).

The protection of Indonesian seafarers is reflected in the Criminal Code (KUHP), which has the principle of passive nationality in Article 4 of the Criminal Code. This principle provides the applicability of Indonesian criminal law for every Indonesian citizen or foreign citizen who commits a criminal offense outside the territory of Indonesia when the violation of the criminal offense harms the interests of Indonesia. The criminal offense referred to is anything that threatens Indonesian state law, such as currency offenses, the dignity of the head of state, and acts of trafficking in persons abroad. Article 568 of the Criminal Code provides that "Any person outside the territory of the Republic of Indonesia who provides assistance, facilities, means or information for the commission of a criminal act of trafficking in persons, shall be punished with the same punishment as the perpetrator as referred to in Article 555". Although this article cannot charge foreign national perpetrators, it can only charge the helpers of the criminal act of trafficking in person at domestic level.

Moreover, there are several other laws that regulate the protection of Indonesian seafarers working abroad. First, Law No.18 of 2017 which guarantees the fulfillment of the rights of Indonesian migrant workers before, during, and after work in legal, economic, and social aspects. Second, Law No. 17 of 2018 which regulates the requirements and classification of seafarers, which in article 310 provides a

maximum imprisonment of 2 years and a maximum fine of IDR 300 million for every person who employs seafarers without fulfilling the requirements and qualifications as referred to in article 135. Third, Law No.15 of 2016 which ratifies the Maritime Labor Convention of 2006, where this law regulates the work and social rights of seafarers. Fourth, Law No.21 of 2007 which provides general protection for every citizen from becoming a victim of human trafficking. Fifth, the Regulation of the Minister of Transportation No.84 of 2013 concerning Recruitment and Placement of Ship Crew provides administrative sanctions through Article 32 paragraph (1) which reads: "Ship crew agency companies that recruit and place seafarers not in accordance with laws and regulations, do not fulfill their obligations and or responsibilities according to the Sea Work Agreement are subject to administrative sanctions" and paragraph (2) regulates the types of sanctions, which are written warnings 3 (three times), temporary suspension of business licenses, or revocation of business licenses (Suriyanto & Kurnia, 2021).

The protection and placement of Indonesian seafarers remains an unsolved issue within Indonesia's legal framework. There are many key agencies involved in the placement of Indonesian migrant seafarers, such as the Ministry of Manpower, the Indonesian Labor Protection Agency, the Ministry of Transportation, and the Ministry of Maritime Affairs and Fisheries, yet they still lack proper guidance. As a result, there are still many violations against Indonesian seafarers cases that occur continuously and have not been addressed. (Gunawan & Syamsu, 2023).

RESEARCH METHOD

This article uses qualitative research methods that are descriptive and analytical. This research describes the causality of a particular phenomenon, idea or symptom. It also describes the data or facts found during the research objectively. The technique used to collect data in this article is a literature study sourced from theses, journals, online news, articles, and reports. Data is collected from reference sources related to the problem to be studied. The research steps taken are identifying problems and analyzing the data and facts found. Finally, it performs explanations and arguments based on the conceptual framework and the data found.

ANALYSIS AND RESULT

Indonesia's commitment to providing the protection of its seafarers continues to be improved from year to year through various stakeholders. According to the Indonesian Ministry of Foreign Affairs, there were more than 3,400 cases of Indonesian seafarers' issues during 2017-2019. Similarly, the Ministry of Foreign Affairs' Director of Protection of Indonesian Citizens and Indonesian Legal Materials (BHI) Joedha Nugraha said that his office had handled around 1,200 cases of Indonesian seafarers in each of 2017 and 2018. He added that in 2019, there were 1,095 cases related to fishing vessel crew members. Furthermore, Joedha Nugraha

explained that the issue of Indonesian crew members has become a major concern of the Ministry of Foreign Affairs, where this problem must be resolved thoroughly from its roots. He argued that the problem can be caused by poor migration management in the seafarer recruitment process, resulting in numerous cases of Indonesian seafarers being recruited unofficially, which ultimately impacts the inaccuracy of data and poor competence of Indonesian seafarers. Another issue is law enforcement, in which the implementation of Law No. 21 of 2007 on the Crime of Trafficking in Persons must be comprehensive to provide a deterrent effect. Public awareness of migrant work procedures is also an important point, because self-protection is the first action to prevent exploitation cases of seafarers from occurring. The Indonesian Ministry of Foreign Affairs is committed to continuing to work on improving the management of placement, repairing sea work agreements, increasing competence, and law enforcement (Kompas, 2020).

The Indonesian government first received information about the death of the Indonesian seafarers working on the Long Xing ship in January 3, 2020, followed by an inter-ministerial coordination meeting held at the request of the Ministry of Foreign Affairs on January 7, 2020. One of the agreements of the meeting was to inform the families of the dead crew members through the Makassar Center for Placement and Protection of Indonesian Migrant Workers (BP3TKI). Then, the Ministry of Foreign Affairs also contacted the Indonesian Embassy in Wellington to investigate data and information in Samoan waterways where Long Xing vessels operate. Next, the Ministry of Foreign Affairs sent a diplomatic note to the Chinese Ministry of Foreign Affairs, with the intention of calling for the settlement of the Indonesian seafarers case. On May 7, 2020, the Indonesian Ministry of Foreign Affairs asked the Chinese Ambassador to Indonesia at that time, Xiao Qian, to confirm the mistreatment of Indonesian seafarers on board Chinese-flagged ships that caused deaths and sea burials. There was a further meeting between the Indonesian Ambassador to Beijing and the Director General of Asia at the Chinese Ministry of Foreign Affairs on May 9, 2020 to enforce the commitment of both parties to conduct a complete investigation into Chinese fishing companies that have contracts with Indonesian seafarers. Additionally, the sea burial was given special concern by the Indonesian Ministry of Foreign Affairs. Based on the ILO's Seafarer's Service Regulations, sea burial can be authorized if it is the last option and meets the requirements of the regulation. However, when investigated by the Ministry of Foreign Affairs, there were indications of falsification of the permission letter for the sea burial approved by the family. This was discovered after the lawyer of the victim's family, named Aziz, revealed this during a mediation from the Ministry of Foreign Affairs on May 13, 2020 for the victim's family and the crew supplier, PT Karunia. He believed that the letter of permission to bury at sea on behalf of Ari received by the Ministry of Foreign Affairs dated March 31 was fake, because PT Karunia first contacted the family on April 9, 2020, and the new permit letter was made only as of April 14, 2020 (Tirto ID, 2020).

Seeing the complexity of the case, the Indonesian government launched an investigation into the Indonesian companies that distributed Indonesian seafarers to work on Chinese-flagged vessels. Eva Trisiana, who is the Director of Overseas Labor Protection at the Ministry of Manpower, informed that there are four companies that sent Indonesian seafarers to Long Xing 629, namely PT Karunia Bahari Samudera, PT Lakemba Perkasa Bahari, PT Alfira Perdana Jaya, and PT Sinar Muara Gemilang. Later, it was found that there were only two companies that had official licenses as Indonesian migrant worker placement companies, namely PT Alfira from the Ministry of Manpower and PT Lakemba from the Ministry of Transportation. While the other two companies only have business licenses, not placement licenses. Finally, after months of investigations, the Indonesian police arrested three representatives of the crew on May 16, 2020, namely William Gozaly as a staff of PT Alfira Pratama Jaya, Kiagus Muhammad Firdaus as a staff of PT Lakemba Perkasa Bahari, and Joni Kasiyanto as Director of PT Sinar Muara Gemilang. The three were charged with article 4 of Law 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons (Tirto ID, 2020). The following press conference on June 22, 2020 led by National Police Headquarters Brigadier General Awi Setiyono informed that the other three suspects were initials Z as the former Director of PT Sinar Muara Gemilang, initials MK as the Director of PT Lakemba Perkasa Bahari, and initials S as a crew member at PT Lakemba Perkasa Bahari. The three suspects went through the investigation process which will then be sent to the first phase of the court, namely the Public Prosecutor (JPU). Thus, the Indonesian police had named a total of six suspects for the case of mistreatment of Indonesian seafarers and sea burial that occurred on the Long Xing Ship (Merdeka.com, 2020).

Furthermore, the Indonesian government, represented by the Minister of Foreign Affairs, Retno Marsudi, gave a statement through a virtual press briefing on September 17, 2020. Retno stated that Indonesia had held a dialog with the Chinese government in July and August 2020 to urge them to investigate the case of Indonesian seafarers who were tortured on Chinese-flagged ships. She also revealed that Indonesia government has been actively communicating and cooperating with the Chinese government on the cases of Indonesian seafarers working on Chinese-owned fishing vessels. The objective of the dialog between the Indonesian government and the Chinese government is to resolve all issues related to human rights violations of Indonesian seafarers that occurred on Chinese-flagged ships and prevent the same cases from arising again in the future. Retno also said that the Chinese government's response was positive and sportive to this issue. The Chinese government represented by the Chinese Foreign Minister is committed to resolving this issue by repatriating Indonesian crew members who are stranded in various regions of the world, then the salary issue will be resolved, and they will draft a guideline for ship owners for the process of handling crew members if they die at sea.

China was also open to taking Mutual Legal Assistance cooperation if needed (Detik News, 2020).

Another action taken by the Indonesian government is to facilitate the repatriation of Indonesia's seafarers who worked on the Long Xing ship to receive special treatment for mental and physical health recovery. This repatriation process was the outcome of bilateral meetings between Indonesian Foreign Minister Retno Marsudi and Chinese Foreign Minister Wang Yi in July and August 2020. The repatriation of Indonesian crew members was carried out in three stages. The first stage succeeded in repatriating 33 crew members on October 27, 2020, followed by the second stage which succeeded in repatriating 42 crew members on November 4, 2020. The last stage then repatriated 13 Indonesian crew members who successfully arrived in Jakarta on November 10, 2020. This repatriation process was carried out by the Indonesian Embassy in Dakar, which asked permission from the Senegalese government to grant maritime authority for Indonesian seafarers who were operating around Senegalese territorial waters to be repatriated by plane. The success of the Indonesian government in protecting Indonesian seafarers work in Long Xing vessels and facilitating repatriation was the result of coordination between ministries and other agencies that participated in resolving the case of mistreatment of Indonesian seafarers on the Chinese-flagged Long Xing vessel (Kemhub, 2020).

CONCLUSION

Having hundreds of thousands Indonesian seafarers working around the world, the Indonesian government must maximize efforts to prevent and resolve violations of its seafarers' rights. Unfortunately, a news report dated May 5, 2020 from South Korea reported on the violation of Indonesian seafarers' rights on the Long Xing 629 ship. They received inhumane treatment, such as drinking distilled sea water, working hours of up to 18 hours per day, and wage deductions that left them vulnerable to mental and physical illness. This led to four deaths of Indonesian seafarers, worsened by the fact that three of them were buried at sea. These actions certainly violate the ILO convention on Seafarers rights and it is necessary for the Indonesian Government to take responsibility for resolving the case.

The Indonesian government immediately conducted a series of coordination between ministries after first receiving reports of the case. It started when the Indonesian foreign ministry held a bilateral meeting with the Chinese foreign ministry to request an investigation of Chinese vessels and strengthen the commitment to resolve the case. The Indonesian police named six suspects from four companies distributing Indonesian seafarers who were placed on Long Xing ships, who were charged with violating Law No. 21 of 2007. In addition, the Indonesian government through the Indonesian Embassy in Dakar negotiated with the Senegalese government to repatriate 88 Indonesian seafarers on Long Xing ships by air, when the ships crossed Senegalese territory. Finally, the Indonesian government successfully

repatriated the seafarers in three waves of repatriation from October to November 2020.

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