



## **SHIP CREW WELFARE RIGHTS BASED ON ARTICLE 151 PARAGRAPH 1 UU SHIPPING**

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<b>Received:</b> January 10 <sup>th</sup> 2023 <b>Accepted:</b> February 10 <sup>th</sup> 2023 <b>Published:</b> March 11 <sup>th</sup> 2023	Protection of crew members is a law enforcement effort in analyzing the welfare of crew members' rights based on the provisions of Article 151 of Law Number 17 of 2008 concerning Shipping and as a manifestation of the protection of human rights based on the constitution. This is marked by placing the law in the highest position in an effort to protect the whole community, including crew members, from injustice and other interventions, as well as demanding responsibility and an active role from the government. This research uses a normative juridical method with library materials, such as books, laws and regulations and other library materials related to this research, and looks like cases that have occurred recently as a complement to this thesis research. Sources of data used are primary data and secondary data. As well as data analysis techniques using qualitative descriptive analysis to find answers precisely and accurately. Based on the results of the research, the position of ship crew is actually a citizen whose safety and rights must be protected like other citizens guaranteed by laws and regulations. Law Number 17 of 2008 concerning Shipping is a legal substance, in which enforcement requires responsibility from parties who have authority and is something that aims to protect legal subjects through applicable laws and regulations and is enforced with a sanction/penalty.

**Keywords:** Legal Protection, Welfare, Ship Crew.

### **INTRODUCTION**

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia Amendment confirm that the State of Indonesia is Country \_ Law . \_ With refers to the conditions Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia Amendment . The Indonesian Constitution has put law as base state . this \_ means all every deed member public must based law , with put position law \_ highest possible \_ protect whole public without intervention party anywhere including state officials . Everyone who violates purposeful provisions \_ glorious must processed in accordance with the provisions of laws and regulations.

Article 28 D paragraph (1) of the 1945 Constitution confirms that most risky thing to loss in activity economy is must ensure her rights in matter This is embodiment will certainty guaranteed law . Article 28 paragraph (1) of the 1945 Constitution confirms that :

*"(1) Everyone has the right on acknowledgment , guarantee , protection , and certainty fair laws \_ as well as same treatment \_ in front of law . (2) Everyone has the right For Work as well as get fair and proper compensation and treatment \_ in connection work . (3) Every entitled citizens obtain same opportunity \_ in government ."*

Protection of crew members is also something that cannot be overlooked in law enforcement in an effort to analyze welfare rights ship crew and protection of constitutional rights, as stated in the preamble to the regulation of the law Number 17 of 2008 concerning Shipping . Provisions of Article 151 of the Law Number 17 of 2008 About Cruise namely :

*" Welfare sailor covers salary , hours of rest , guarantee departure to place destination and return to place origin , compensation if boat No can operate Because experience accident gift accommodation , food or beverage , maintenance and care , health as well as gift insurance accident work . "*



Agreement Work sea (PKL) is signed agreement \_ handled by Syahbandar that is arrange tree connection Work between Government and crew ship that has arranged in Regulation Government Number 7 of 2000 concerning maritime . Skill or skills possessed by a person crewman boat from time to time . That For ensure safety Cruise as support smoothness Then cross ship at sea . Required exists crewman skilled , capable and skilled ships , with \_ thereby every the ship to be sail must manned with crewman enough and capable ships \_ For do task above \_ boat in accordance with position with consider magnitude ship , arrangement boat and area cruise . on the basis the so arrange it regulation governing government \_ all something related \_ with education , training , license , authority as well as rights and obligations sailor .

However , because there has been no action yet continued from the Government of Indonesia. In principle, the human rights of every citizen receive legal protection from the government. Various excuses such as delayed wages or the unpreparedness of the payroll department are often the reasons for non-payment of crew members' salaries. Problems regarding salary matters that are fundamental and must be fulfilled by the party concerned, namely the employer.

The situation within the scope of workers in Indonesia often presents injustice to workers and is not in accordance with established rules, which is generally experienced by workers. Labor problems are basically regulated in Article 151 Law - Law 17 of 2008 concerning cruise . Meanwhile, the problems of injustice experienced by crew members, such as the problem of neglect and their rights not being fulfilled, have not been covered by a legal umbrella in Indonesia. Article 151 Laws \_\_ Number 17 of 2008 concerning Shipping is a legal basis so that the rights of crew members can be fulfilled, to make it real matter This requires efforts to protect the law from the government as a form of accountability answer for the welfare of its people. The law here as a tool to manipulate society.

Julius Stahl developed the elements framework life patriotic main namely : (1) Acknowledge and protect right basic human (2) For protect right basic the so state administrators must based on theory *Triassic Politica* (3) In operate the job is the government based on on law ( *wetmatig bestuur* ) (4) When in operate his job based on Constitution government Still violate right basic ( mix hand government in life personal someone ) then There is court administration to be finish it .

The power of the business owner over his workers is limited by law, but this has not been interpreted optimally, even though the incident of neglect of the ship's crew occurred in Indonesia which is a country of law. In the concept of rule of law, there are characteristics similar to the theory of rule of law put forward by AV Dicey are (1) State power is not

exercised arbitrarily but limited by law ( *supremacy of law* ); (2) Every citizen has an equal position before the law ( *equality before the law* ) ; and (3) The legal process proceeds according to the rules. that has been determined ( *due process of law* ).

Law in Indonesia aims to prevent any problems that have the potential to befall the community, including issues of rights and obligations . The term rights and obligations relates to the scope of work. At every job, always bring up the working relationship contained in a work agreement. Agreement work in Dutch is ***Arbeidsoverenkoms***. Employment agreements occur because of an agreement between the employer and the worker or with the labor supply company where the agreement can be made verbally or in writing.

Protection for ship crews who work for a ship company, it needs to be realized integrated with involving system \_ government center , government regions and society because this concerns the issue of constitutional rights which can have an impact on the stability of the country . On this basis, it is necessary attention and efforts intense and continuous protection from the government by prioritizing law enforcement so that the rights of crew members can be fulfilled in accordance with statutory regulations.

Study This background backed by *research gaps* in studies earlier . Based on research conducted by (1) Amalia Katris Hardin, Pitaya (2016) with title " *Implementation provision about well-being crewman boat as form fulfillment right for worker in accordance with regulation field employment specifically power Work sector transportation sea* ". (2) Clara Indira, Fajar Sugianto, and Graceyana Jennifer (2016) with title " *Failure protection law for crewman Indonesian ship as implication from disharmony mechanism recruitment crewman ship* ". (3) Moh. Lutfi Yanto , Kristina Sulatri , and Humiati (2022) with title " *Principle law in Article 151 paragraph (1) Letter g of the Law Number 17 of 2008 concerning Cruise* " .

## **METHOD**

The research method used in this study is a normative juridical research method, which is a method that aims to provide a systematic, factual and accurate picture of the facts and the relationship between the phenomena studied. The approach is based on the main legal material by examining theories, concepts, principles and laws and regulations for later analysis.

The research approach used in this writing is an analytical descriptive approach, namely research conducted by describing the applicable laws and regulations associated with legal theories and positive law enforcement practices concerning the issues studied. The normative juridical method used in this research is a study of the science of law, especially



public health law. There are 3 (three) approaches to study, namely the statutory approach, the case approach and the conceptual approach.

The method of data analysis used is the method of qualitative juridical analysis, in which the author conducts research and describes every aspect that becomes the unit of analysis and interprets it historically and grammatically according to legal principles and norms with the aim of disclosing the data obtained and the data is arranged systematically to then be analyzed qualitatively to achieve clarity of the problem in question.

### **Results and Discussion**

Results and discussion served in One composed part \_ from a number of paragraph . this section is the most dominant part from whole articles , that is 60%. To facilitate understanding and reading, the research results are described first, followed by the discussion section. The results and discussion subtitles are presented separately.

### **Results and Discussion \_**

#### **A. Ship Crew Position Based on Law Number 17 of 2008 Concerning Shipping**

The true position of the ship's crew is that of citizens whose safety and rights must be protected as other citizens are guaranteed through the constitution and laws and regulations, in the context of protecting their safety it is the responsibility of the ship which delegates these obligations to the part or person appointed , namely the skipper. Master is leader at the top responsible ship \_ answer full on safety ships , passengers and goods payload during the shipping process from harbor loading arrived at the port purpose .

Based on Article 1 number 36 of the Shipping Law , Ship is watercraft with \_ shape and type certain , driven with power wind , power mechanics , energy others , withdrawn or postponed , incl powerful vehicle \_ support dynamic , the vehicle below water surface , as well tool floats and buildings floating which is not moving around . Captain's responsibility can seen in Article 1 number 41 of the Shipping Law , namely Master boat is one \_ from Crewman The ship that became leader tallest on the ship and has authority and responsibility answer certain in accordance with provision regulation legislation .

A skipper is principally a supervisor ( *supervisor* ) or representative of a ship company in supervising a shipping activity. A ship's crew clearly has a position under the captain. So in this case, *strict liability can apply*, if there is a violation that purely comes from the skipper. Also, *vicarious liability* may apply , which is liability punishment imposed by a

person to other party for his fault. ( *the legal responsibility of one person for the wrongful acts of another* ). (Romli, 2000:47) In this case, it is the ship company that must be responsible if it neglects or even gives orders to the skipper to commit an offense.

### **B. Government Responsibilities to Crews**

The involvement of the government in totality in all aspects of national and state life to bring about justice and general welfare for all levels of society is the government's obligation. (Hotma, 2020: 50) The government is obliged to implement laws that guarantee justice and legal certainty itself, and then fulfill all the needs of the people who are the subjects that make up the state and the source of government power as state administrators.

If a problem has just occurred suddenly, then the government cannot be passive for any reason, including the arbitrariness that befell the crew of the SPOB Persada XXVII ship. Government oversight at the time crew working above \_ boat difficult done Because the location be in the middle sea , so No easy supervised by the authorities government nor apparatus enforcer law .

Based on the agenda of the Union the United Nations (UN) for The Sustainable Development Goals exist \_ \_ \_ 2 ( two ) relevant goals \_ with protection for crew members, including: the goal of economic development by creating decent jobs and the goal of strong peace and justice. (Fikri, 2016:10) For Indonesia, this protection still has to be fought for and improved by the government.

Forms of government accountability for the protection of crew members must start early. kindly general , one consequence if the Government of Indonesia has not ratify a number instrument law international the is exists demands / obligations for Indonesia to follow applicable standards and procedures \_ in a manner international , with limited rights \_ For set standard different .

Legal protection for ship crews is actually the government's responsibility. Nonetheless, legal instruments as substance must receive strict guard from the legal structure so that they can synergize and provide mechanism adequate protection i . Judging from the case that happened to the crew of the SPOB Persada XXVII ship, they were continuously forced to work and their rights were not fulfilled by the employers, including human rights violations.

Violation \_ right basic man is action from deed somebody or a group of people including also by the agency government well done \_ with on purpose or No with on purpose nor action negligence Where action the can categorized as as



action oppose law as a barrier or barrier, even the revocation of the rights of a group of people guaranteed by laws and regulations. (Surya, 2012:64)

Draft not quite enough responsibility in this regard \_ have meaning that not quite enough answer No only form obligation to \_ \_ \_ fulfil what ever \_ done related decision , expertise , as well ability a person , but also ability For restore ( *restitution* ) against losses made . \_ in other words , that *responsibility* No only covers not quite enough answer law , however including liability \_ moral responsibility , with thereby not quite enough answer No can released from meaning obligation , then than that \_ not quite enough answer often interpreted The same its use with term obligation .

### ***C. History of Ship Crews in Indonesia***

Indonesia is an archipelagic country with more than 70% of its territory in the form of waters or it can be said as a maritime country. With conditions geographical that , make a portion big Indonesian people depend on the sea for their lives, such as being fishermen or sailors, including ship crews and other professions related to Indonesia's abundant marine natural wealth.

Height profession Indonesian society as sailors and crew neither regardless based on history long Indonesian people thousands year then . Grandma ancestor Indonesian people , namely sailors has sail wade various ocean until samud e ra . In Historically , the Indonesian nation is also known to have famous sailors such as Hang Tuah, Abdul Gani, Hasanudin and others.

Long before the era of Vasco da Gama and Columbus, actually Indonesian sailors had crossed the seas to the southern part of the African continent. This is shown by the community Madagascar fluent \_ speak with the Austronesian language is like the people in eastern Indonesia. In addition, there was also found a similar canoe by boat typical of South Sulawesi, namely pinisi.

History does not mention in detail about the fame of Indonesian sailors, as is the case with stories about the greatness and courage of sailors from Europe and China. However, on the other hand, the international media have reported other things about Indonesian 'seafarers' who have experienced torture and human rights violations, both from foreign ships and even from Indonesian ships themselves.

The maritime profession of the Indonesian nation cannot be separated from migration, namely movement from one place to another. (Anton, 2009:179) In other words, the Indonesian nation has do migration for a long time , can go outside

the island or abroad . Migration decision power Indonesian workers abroad actually \_ Already happen since government Dutch Colonial . On government Dutch Colonial , migration power Indonesian workers were placed in Suriname which was also a Dutch colony.

Activity delivery power Indonesian work by the government Dutch East Indies in 1890 to 1939. Along walk n yes time , delivery power Indonesian work is not only placed in the country of Suriname , but also in other countries located on the Continent of Central America and South America. Delivery power Indonesian work as slaves during the reign Dutch colonial also happened in the ships owned by government Dutch colonial as crew members .

Indonesia became independent in 1945, after that the government formed managing agency \_ problem manpower , namely the Ministry of Labor . Then, in 1969 during the order new the Indonesian government issued laws and regulations related to manpower, namely Law Number 14 of 1969. At that time, the surge in Indonesian labor was dominated by workers domestic as laborer freelancers , construction workers and crew members. Until the Reformation era, the government began to pay attention to the fate of workers, including ship crews, by passing Law Number 13 of 2003 concerning Manpower and Law Number 17 of 2008 concerning Shipping.

### **CONCLUSION**

Based on the analyzes that have been presented in the chapters before , as something effort in answer problematic in study this , then in the end writer conclude as following :

1. position Indonesian citizens who become crewman boat is one of the options to meet daily needs in life public maritime as in the United States Republic of Indonesia. it \_ also not done by one citizen use \_ going to gate welfare as the hope of all citizens in Indonesia. The government has also issued laws Number 17 of 2008 concerning Cruise which is general is guarantee so every crewman boat get protection law . Whereas in Article 151, according to special is implementation from mandate The 1945 Constitution of the Republic of Indonesia which guarantees well-being for each working citizen \_ as crewman ship .
2. Form accountability Indonesian government over violations right crewman ships carried out by the parties is with do effort preventive form endorsement to regulation related new \_ with protection rights the rights of the crew ship , where inside it be included about drop strict



sanctions ( criminal ) for the perpetrators \_  
Because violation right basic crewman boat is  
crime humanity . Related case SPOB Persada  
XXVII Ship , Govt should put forward principle  
*strict liability* , where not quite enough answer  
absolute must addressed to SPOB Persada  
XXVII company with fulfil rights crewman his  
ship and make statement request Sorry in a  
manner open .

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