

## Analysis of Legal Protection on Employment Contracts Between Owner and Ship Crew at One of PT. Pelayaran Samudra Kancana

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**Abstract.** *The problem of sailor protection in its implementation is still far from expectations. This is evident in the practice of employment in the maritime sector, there are still things that are not in accordance with what has been stipulated in the Employment Law. Where employers still make their own rules for the benefit of the company without considering the rights of their workers. This research used the qualitative approach which is a research approach that aims to understand phenomena about what is experienced by research subjects, such as behavior, perception, motivation, actions and so on holistically and by means of description in the form of words and language in a specific context. Based on the results of the study, it was concluded that state protection of maritime workers is still weak and slow from maritime security and safety threats. Other issues such as wages, maritime work contracts, Indonesian maritime professional certification, strikes, unilateral layoffs, severance pay, freedom of association of maritime workers, and foreign sailor workers are issues that have been problems for both shipping companies and Indonesian sailor workers. The state must be fair in the payroll system, the internal supervision function must still have external supervision, there needs to be a ministerial or presidential decision on the salary standards of Indonesian sailors.*

**Keywords:** *Contract; Protection; Seafarers; System.*

### 1. Introduction

Sailors are one of the maritime sector professions that have an important role for every ship sailing in the territory of Indonesia. Every ship that sails holds great responsibility for the crew, passengers and cargo below. In addition, the vast ocean terrain (there are even ships that sail between oceans), the challenges of changing weather while sailing and various other extreme factors make the profession of a sailor very risky, therefore it is not uncommon for work as a sailor to have to fight

with life. The government's obligation to regulate the rights of sailors can be regulated in various legal instruments. To fulfill the state's obligations above, the government is authorized to make laws, policies, and regulations as a tool to implement the policy. Such government authority aims to provide good legal development. Legal development is a conscious, systematic, and continuous effort to build a life in society, nation, and state that is increasingly advanced, prosperous, safe, and peaceful within a just and certain legal framework and foundation.

The next problem is the still low level of government supervision of the shipping sector, especially of ships sailing throughout the territory of Indonesia, both national and foreign ships. Based on Article 136 paragraph (1) of Law Number 17 of 2008 concerning shipping (hereinafter abbreviated as the Shipping Law), all Indonesian-flagged ships are required to use Indonesian sailors, especially for important positions such as captains, KKM and officers. In fact, there was a case of the MV ship. Kayu Putih owned by PT. PANN (Persero) Indonesia, this Indonesian-flagged ship was crewed by 22 people, but most of them were foreigners. Of that number, 12 of them were from the Philippines and India (6 people each) as 11 officers (including the captain and KKM) and 1 oiler, while 10 people from Indonesia were only subordinates. 11 MV. Kayu Putih is just one example of an Indonesian ship that violates national regulations, there are still many other Indonesian ships that prefer to employ sailors from abroad compared to national marine sailors.

Legal protection of employment contracts in the Civil Code is regulated in the Employment Law and other laws and regulations. Employment Law: Law Number 13 of 2003 concerning employment regulates the protection of workers' rights, including contract workers. The high number of violations of employment contracts that occur in Indonesian shipping companies can be found in everyday life, including in the shipping company environment such as seafarers. Referring to a survey conducted by the Ministry of Sea Transportation, the Directorate General of Sea Transportation through the Directorate of Shipping and Maritime Affairs, resolves maritime employment relationship problems by mediating between the owner and the crew. However, some of them do not report the incident because they are worried about the negative stigma.

The shipping company has a major role in resolving issues regarding violations of employment relations which are then supported by the government to realize the legal objectives in the form of protection and enforcement of the Job Creation Law as stated in Article 81 number 24, regulates workers' rights to decent wages. One form of government effort to protect seafarers in violation of employment relations is to create laws and regulations related to the protection of their rights. Explanation: The government can create laws and regulations to protect the rights of seafarers, such as the right to salary, overtime pay, and accident insurance.

The challenge in resolving cases of Violation is that victims do not want or dare not reveal the acts of Violation of employment relations experienced by them. Therefore, it is necessary for

victims to have more courage to speak about the cases they experience. The high number of violations of employment contracts or Violations of employment contracts in shipping companies indicates that shipping companies tend to be unable to deal with cases of violations of employment contracts. By working together, shipping companies can increase the effectiveness of prevention, handling, and support for victims of violations of employment contracts. In addition, collaboration allows shipping companies to advocate together with the government and other stakeholders to encourage better policy changes in handling violations of employment contracts or violations of company employment contracts that occur within the scope of shipping companies.

There are several hopes and solutions in handling violations of employment contracts in the scope of shipping companies, namely by means of mediation between the owner and the crew, especially in the PT.Pelayaran Samudera Kencana. This study focuses on the role of the Ministry of Transportation in the Employment Law and what are the current conditions regarding violations of employment contracts that are currently rampant in the shipping company environment. Based on this explanation, it is found that this study is a study by expanding, qualifying or collaborating a number of previously existing activities, so that it can be stated as original.

## **2. Research Methods**

This research used the qualitative approach which is a research approach that aims to understand phenomena about what is experienced by research subjects, such as behavior, perception, motivation, actions and so on holistically and by means of description in the form of words and language in a specific context. In this study, the research model used is a descriptive research model. Descriptive research is a research method that describes the characteristics of the population or phenomenon being studied. So that this research model focuses mainly on explaining the object of research. So that it answers what events or phenomena occur.

## **3. Result and Discussion**

Violation of employment contracts in shipping companies, which should be a space for intellectual and character professional development, has instead become a serious problem that tarnishes the dignity of shipping workers. The rampant cases of violation of employment contracts in shipping companies have become a widespread concern and urgently need to be addressed. Realizing the urgency of this problem, the Ministry of Maritime Transportation (Kemenhub) has taken proactive steps by issuing various legal umbrellas, one of which is the establishment of a Task Force for the Prevention and Handling of Violations of Employment Contracts. The existence of a task force for the protection of employment contract law is

expected to be the vanguard in preventing and handling cases of violations of employment contracts.

### **3.1. The Concept of Legal Protection for Employment Contracts Between Owners and Crew at PT.Pelayaran Samudera Kancana Batam**

The many cases of violations of work contracts that occur in the shipping company environment are very disturbing for the crew, but not only the crew, all crew members (sailors) also feel the same way. The many cases of violations of work contracts that occur in the shipping company environment occur because the legal umbrella that covers cases of prevention of violations of work contracts is not yet strong enough.

One of the shipping companies in Batam-Riau Islands realizes the importance of an organization for first-hand handling of cases of violations of work contracts in the shipping company environment that we often hear with the term SATGAS PPKK (Task Force for Handling and Prevention of Violations of Work Contracts). This organization receives full support from internal institutions of the shipping company such as from the owner and his staff. In addition to preventing and handling cases of violations of work contracts in the shipping company environment, it also serves as a legal umbrella for the victims and the shipping company community.

The company PT.Pelayaran Samudera Kancana itself focuses more on the psychological condition of its victims, and provides psychological protection first before going to the legal realm. Because according to research results, the trauma in the victim will have a more serious impact on the victim in the future. According to the PPKK Task Force PT.Pelayaran Samudera Kancana: Capt. Muh. Sidqon Burhani, MM, M.Mar, usually the character of the victim prefers to remain silent regarding the victim of a violation of the work contract, because the victim is afraid of threats to the victim or the victim's family from the perpetrator on the grounds of a higher power relationship than the victim. In fact, if the victim is like that, then the perpetrators of violations of the shipping company's work contract will be more free and feel that they are free to commit crimes.

The PPKK Task Force Membership Structure itself consists of the chairman and his staff to the members. The task force also involves the ship's crew, in handling cases of violation of work contracts, because it sees the need for a lot of support from related parties within the shipping company.

Legal protection for employment contracts between owners and crew members can be done in various ways, including: Making a written sea work agreement, providing a detailed explanation of the rights and obligations of the crew members, ensuring that the crew members understand the contents of the sea work agreement, ensuring that the crew members meet the

requirements given, ensuring the health and employment of the crew members, ensuring the rights of the crew members, such as the right to leave, leave and overtime pay, ensuring health care for the crew members' families.

A sea work agreement is an individual work agreement made between the owner and the crew members. In this agreement, the crew members agree to work under the owner's orders and receive wages. Several things are regulated in the sea work agreement, including: Employment contract, salary, rest time, leave rights, repatriation to the country of origin, facilities received by the crew members, medical care on board and on land, health and safety protection at work, social security.

Many finding occur that it is difficult to seek justice and legal protection, both in terms of social justice such as ship sinking in the deep sea with all the crew and the ship sinking undetected due to natural factors, sudden large waves, very strong winds and strong water currents, dying on board while the ship is still far out at sea miles from land and the ship is in a state of engine damage and cannot move, which raises the question of where to ask for help ?

### 1. Crew Member Jobs

The job of a ship's crew is to work on the ship, whose job is to operate, maintain and guard the ship and its cargo, except for the captain. The ship's crew consists of several parts and each has its own duties and responsibilities.

### 2. The Purpose of Legal Protection for Ship's Crew Members

The purpose of legal protection is protection using legal means or protection provided by law aimed at a particular interest by making the interest that needs to be protected into a legal right.

### 3. Role of the State

The state has an obligation to protect victims of unilateral work contracts due to work accidents on board ships and provide equal access to justice. The judicial process is one way to ensure this protection. Through the judicial process, the state can enforce the law and provide appropriate sanctions to perpetrators of unilateral civil work contracts.

There are three types of legal protection, namely economic protection, social protection and technical protection. In the context of legal protection for crew members, the function of Field Work Practice is interpreted as a preventive measure. Field work practice according to article 399 of the Commercial Code must be made in writing, if it is not made in writing the agreement is declared void. Based on the analysis of the results of research on the substance of field work practice, it is known that several aspects are the main focus of achieving the welfare of crew members, namely as follows; Aspect of wages, wages can be stated in the form of money or in other forms as long as they have been agreed upon by the parties. Wages are currently considered as property rights, anyone has the right to demand payment for the rights they have.

Often in employment relationships, owners are often found to be negligent towards wages for crew members who are not paid upon arrival at the end of the journey. The impact of unpaid wages can be in the form of criminal sanctions for the owner and losses for the crew.

### **3.2. The Civil Code Job Creation Legal Protection System**

Legal protection for employment contracts in the Civil Code is regulated in the Employment Law and other laws and regulations. Employment Law:

1. Law Number 13 of 2003 concerning employment regulates the protection of workers' rights, including contract workers.
2. Article 88 paragraph (1) of Law No. 13/2003 states that workers have the right to receive protection regarding safety, health, morals, morality and treatment in accordance with human dignity and honor.

The results of the study show that legal protection for workers in the national labor law system includes: 1) Protection of wages, welfare, social security for workers; 2) Protection of occupational safety and health; 3) Legal protection to form and become members of a labor union; 4) Protection of the basic rights of workers to negotiate with employers.

Legal protection for employment contracts in Indonesia is regulated in the Civil Code (KUH Perdata) and the Employment Law:

1. Article 1313 of the Civil Code defines a contract as an act of binding one or more parties to another party.
2. Article 1320 of the Civil Code regulates the legal consequences of agreements for both parties.
3. Article 1338 paragraph (3) of the Civil Code stipulates that contracts must be carried out in good faith.

### **Legal protection in the Employment Act**

The Employment Law protects workers' rights, including workers who work under a fixed-term work contract (PKWT).

Article 88 paragraph (1) of Law No. 13/2003 states that workers have the right to receive protection for occupational safety, health, morals, morality and treatment in accordance with human dignity

Law No. 2 of 2004 regulates the settlement of industrial relations disputes.

### **Employer's Obligations**



1. Employers are required to protect workers' rights, including the right to leave, protection from discrimination, and the right to organize.
2. Employers are obliged to provide clear information regarding workers' rights and obligations.

The employment contract between the owner and the crew really needs legal protection because a peaceful forum or through deliberation cannot be a guarantee that the existing dispute will be resolved. Therefore, legal protection is needed to provide solutions and clarity regarding the resolution of existing disputes or those that have the potential to occur after the agreement is agreed.

The remedies for breach of contract between the owner and the crew are; Potential remedies for breach of contract claims can include compensatory damages, specific performance, an injunction to cancel the damages that have been stipulated, and nominal damages. If someone breaches a contract with you or your company. You have the right to justice.

The form of dispute resolution in the employment contract between the owner and the crew is as follows: By means of negotiation, mediation, consolidation, and arbitration. More clearly, negotiation aims to unite opinions, decide on mutual agreements, resolve problems and obtain cooperation. Employment contract disputes must be resolved by negotiating a peaceful settlement, often the best way to resolve employment contract disputes, the parties facing the dispute must consider the benefits of negotiation and they must weigh these benefits with the potential benefits of going through mediation, arbitration or trial. The process of resolving disputes in an employment contract between the owner and the crew is as follows: The employment contract may contain a DR clause that sets out the method to be used to resolve the dispute. The DR method produces a binding decision that must be complied with by the parties (subject to the appeal process). The court process is the most well-known form, but others include arbitration and expert determination.

#### **4. Conclusion**

Legal protection for crew members (ABK) in work contracts with ship owners (owners) is regulated through a Maritime Work Agreement (PKL). This PKL must be made in writing and legally, containing provisions that protect ABK, such as wages, health insurance, work safety, and other rights. The ship owner is responsible for ensuring the implementation of the PKL and providing legal protection to ABK in accordance with applicable provisions. Maritime work agreement (PKL): PKL is an agreement made between the ship owner (ship operator) and the crew, which regulates the conditions of work on the ship, including wages, benefits, working hours and work safety guarantees. Legal protection of street vendors guarantees legal protection for ABK. This includes their rights, such as the right to receive decent wages, health insurance, work safety, and protection from unfair treatment.

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