

## Settlement of Seafarers' Disputes in Maritime Labor Law

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### ABSTRACT

This research aims to legally analyze the system of resolving seafarers' disputes within the framework of maritime labor law in Indonesia, emphasizing role of Manpower, and role of Shipping, as well as internationally ratified provisions, such as the Maritime Labour Convention (MLC) 2006. The normative juridical approach is used with qualitative analysis methods on legislation and analyzes the job protection guarantees for sailors as part of the maritime sector, which has specificities in labor relations that differ from land workers, both in terms of legal regulations, rights protection, and dispute resolution mechanisms. Disputes among sailors generally include issues of wages, termination of employment, working conditions on board, and repatriation after the contract ends. The research results indicate the continued disharmony between national regulations and international standards, as well as the weak supervision and protection of sailors' rights. There is a need to strengthen maritime regulations that are more specific to the industrial relations of seafarers and to provide effective access to labor dispute resolution institutions that understand the nature of maritime work.

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## **INTRODUCTION**

Indonesia is a maritime nation and has the largest number of islands among other archipelagic countries, with around 17,508 islands included within the sovereignty of Indonesia an archipelagic country, Indonesia is one of the largest suppliers of sailors in the world. Indonesia ranks third, after the Philippines and China, with a total of 1.2 million sailors. (Kumparan.com), However, in 2024, the Ministry of Transportation (Kemenhub) reported that there are currently 1.4 million Indonesian sailors spread across various countries. This makes Indonesia one of the five largest contributors of sailors in the world. (Pelaut.indonesia.go.id)

As an archipelagic or maritime nation and the fifth-largest supplier of sailors in the world, Indonesia holds a very strategic position in the maritime transportation business, both national and international shipping, to support the smooth distribution of goods and services and other supporting sectors such as ports and shipbuilding companies. The maritime transportation sector is very important in supporting the country's economic development, especially in driving economic growth in archipelagic countries like Indonesia, because with maritime transportation, the cost of transporting goods becomes cheaper and more efficient compared to other modes of transportation such as land and air transport, which are relatively more expensive and hindered by existing infrastructure.

In the maritime industry, sailors hold a position that is equally important as that of shipping companies because without sailors, shipping companies cannot operate ships to support the company's vision and mission. The importance of the sailor's position as maritime workers can be seen from several regulations that govern them, including the Commercial Code (KUHD), the Republic of Indonesia Law Number 17, 2008 on Shipping, the Republic of Indonesia Law Number 15, 2016 on the Ratification of the Maritime Labour Convention 2006 (MLC 2006), the Government Regulation of the Republic of Indonesia Number 7, 2000 on Seafarers (PP Seafarers), the Government Regulation Number 51, 2012 on Human Resources in the Transportation Sector, Minister of Transportation of Indonesia Regulation Number PM 59, 2021 on Organization of Businesses Related to Water Transport, and the Minister of Transportation of Indonesia Regulation Number PM 26, 2022 on the Manning of Commercial Ships.

The employment relationship between sailors or crew members begins with signing of Sea Work Agreement between crew and shipowner or ship crew agency and inclusion of sailors or crew members in crew certificate/register based on the sign-on letter issued by the shipowner/shipping company. Before signing the Sea Work Agreement, the sailors must meet the minimum manning requirements, where the sailor's competency and skill certificates must match the position they will hold on the ship, whether as a Captain, ship officer, or crew member (ABK).

The Sea Work Agreement must at least include what is in Article 107 paragraph (4) of Regulation of Minister of Transportation of Indonesia Number PM 59, 2021 concerning the Implementation of Related Services in Water

Transportation. Article 107 paragraph (4) above is more comprehensive compared to the content of Work Agreement made in writing regulated in Article 54 of Law Manpower, Number 13, 2003, which only includes : a). the name, address of the company, and type of business, b). the name, gender, age, and address of the worker/laborer, c). position or type of work, d). place of work, e). amount of wages and payment method, f). work conditions that include the rights and obligations of the employer and worker/laborer, g). the start and duration of the work agreement.

The regulation of contents of Sea Work Agreement is expected to legal protection to sailors or crew members, where the contents of Sea Work Agreement include provisions on termination of employment, health protection, and social security, but do not regulate the rights that will be received after the termination of employment.

The lack of regulation regarding rights received by sailors due to termination of employment by shipowners or shipping companies will have a significant impact on the resolution of sailor disputes, resulting in differing interpretations between shipowners and crew members on whether the rights due to termination of employment are based on commercial code (KUHD), Law on Shipping, Government Regulation Number 7, 2000 on Sailors and its derivatives, or based on Law on Manpower as last amended by Law Number 6, 2023 on stipulation of government regulations in lieu of Law Number 2, 2022 on Job Creation and its derivatives.

The dualism of laws and regulations governing employment can be resolved by the existence of Article 337 paragraph (1) and paragraph (2) of Law on Shipping as amended by Law Number 66, 2024 which states that "Employment provisions in shipping sector are implemented in accordance with laws and regulations in the employment sector", and in paragraph (2) it is emphasized again that the Regulations regarding maritime affairs are implemented in accordance with the provisions set out in this law" and in the explanation of Article 337 paragraph (1) of the Law it is emphasized that Employment Provisions in the shipping sector apply generally to workers other than ship crew. The provisions for ship crew based on sea work agreements are specifically regulated in the Commercial Code, Law Number 15, 2016 concerning the Ratification of the Maritime Labor Convention, 2006 (maritime labor convention, 2006) and all laws and regulations in the shipping sector, Article 337 of the Shipping Law cannot directly resolve disputes between sailors resulting from the termination of sea work agreements considering that in labor law we recognize the existence of material law and formal law, does the formulation of Article 337 of the Shipping Law also include formal law for resolving disputes between sailors considering that the Commercial Code, the 2006 Maritime Labor Convention and the Shipping Law do not formally regulate how disputes are resolved seafarers or Maritime Work Agreement.

With the enactment of Law Number 15, 2016, the Ratification of the 2006 Maritime Labor Convention (2006 Maritime Labor Convention), it is hoped that it can resolve the dualism of laws in the field of employment, however, in reality this Law only applies to seafarers working on foreign-flagged ships and seafarers

working on Indonesian-flagged ships and sailing in international waters, the 2006 Maritime Labor Convention only regulates the Principles and standards of maritime labor and does not regulate in more detail the rights of seafarers whose employment is terminated by the Ship's employer / Ship Crew Agency Company.

Authors has formulate problem in this study regarding how to Resolve Seafarer Disputes in Maritime Labor Law in Indonesia.

## **LITERATUR REVIEW**

The 2006 Maritime Labor Convention is an international legal instrument that serves as the primary standard for protecting seafarers' rights globally. This convention regulates working conditions, contracts, wages, working hours, occupational safety, and dispute resolution. Indonesia ratified 2006 MLC through Law Number 15, 2016. The MLC provides international standards for protection of seafarers, including the right to fair and expeditious dispute resolution. However, a study by Ramadhan (2021) shows that although the MLC is part of national law, its implementation remains limited, particularly in the provision of specialized dispute resolution forums and legal services for seafarers. In practice, seafarers often have difficulty accessing dispute resolution institutions, such as official mediation, arbitration, or Industrial Relations Court (PHI). This is due to time constraints and seafarers' work locations, which make it impossible to attend in person. Siregar (2019) stated that the litigation approach is often not adaptive to the needs of seafarers, so that more flexible dispute resolution mechanisms are needed, such as shipboard complaint mechanisms and onboard mediation.

From a legal protection perspective, seafarers require regulations that adhere not only to general labor law but also to the principles of maritime law and international agreements. According to Harahap (2019), a legal protection system for seafarers will be effective if accompanied by: (1) the establishment of a special maritime sector dispute resolution unit, (2) harmonization of the Manpower Law with the MLC, and (3) increasing the human resource capacity of maritime labor inspectors.

In the national legal system, the resolution of industrial relations disputes is regulated by Law Number 2, 2004, Settlement of Industrial Relations Disputes (PPHI), with several channels including bipartite, mediation, conciliation, arbitration, and industrial relations court (PHI). However, as explained by Subekti (2021), these mechanisms have not been effectively implemented in the maritime context due to seafarers' limited access to settlement institutions, weak bargaining power, and minimal understanding of maritime law among officials. Research by Triyono (2020) revealed that seafarers' disputes are often resolved unilaterally by shipping companies, not through formal channels. Furthermore, the absence of a specialized maritime court and the weak role of the Department of Manpower in handling seafarers' cases hinder effective resolution. Discord among national regulations also exacerbates the legal uncertainty faced by seafarers.

## METHODOLOGY

Research Method is a way of solving problems or a way of developing knowledge using scientific methods. (Jonaedi Efendi and Jhony Ibrahim, 2018) This legal research is normative legal research, normative legal research is also called doctrinal legal research, this legal research often conceptualizes law as what is written in statutory regulations (law in book) or law is conceptualized as rules or norms which are benchmarks for human behavior that are considered appropriate. The data sources in this study are secondary data consisting of primary legal materials consisting of norms or basic rules from the preamble to the 1945 Constitution, the 1945 Constitution and laws and regulations related to the research, secondary legal materials, namely materials that provide explanations regarding primary legal materials such as draft laws, research results or opinions of legal experts and tertiary legal materials that provide guidance or explanations to primary and secondary legal materials such as legal dictionaries and encyclopedias. (Amirudin and Zainal Asikin, 2004). The nature of this study is prescriptive because it studies objectives of law, values of justice, validity of legal rules, legal concepts and legal norms. (Peter Mahmud Marzuk, 2005)

## RESEARCH RESULT AND DISCUSSION

The employment relationship between seafarers has unique characteristics that distinguish it from employment relationships in the land-based sector. According to Law on Shipping, seafarers are workers employed on ships under a seafarer employment agreement. This work involves cross-border mobility, high occupational risks, and limited access to legal protection. From an employment law perspective, seafarers' employment relationships are also regulated by Law Number 13, 2003 in conjunction with Law Number 6, 2023, Job Creation, but these provisions do not fully address the complexities of maritime industrial relations. Maritime Labor Agreements Regulations regarding Maritime Labor Agreements can be found in several laws, including commercial code (KUHD), Law Number 15, 2016, Ratification of the Maritime Labor Convention 2006 (Maritime Labor Convention), Government Regulation Number 7, 2000, Maritime Affairs, Regulation of the Minister of Transportation of Indonesia Number PM 59, 2021 concerning the Provision of Services Related to Water Transportation, and Regulation of the Minister of Transportation of Indonesia Number PM 26, 2022 concerning the Manning of Commercial Vessels.

Maritime Work Agreement based on Article 395, Commercial Code (KUHD) is agreement made between shipping entrepreneur on one party and worker on the other party, where the latter binds himself to carry out work in the service of the shipping entrepreneur in exchange for wages as captain or crew member. In addition to the definition of maritime employment agreement regulated in commercial code (KUHD), the definition of a maritime employment agreement can also be found in Kartasapoetra et al.'s book, "Labor Law in Indonesia Based on Pancasila," which defines maritime employment agreement as an agreement between a shipping company on one side and a worker on the other. The latter binds himself to work for shipping company as captain or sailor for wages. (Kartasapoetra et al., 1988).

The Commercial Code (KUHD) distinguishes between a shipping company and a worker as captain, or between a shipping company and a worker as crew (ABK). Maritime employment agreements between these two positions have different legal consequences based on the formulation of Articles 399 and 400.

Maritime Work Agreement based on Article 395 of the Commercial Code (KUHD) is an agreement made between a shipping entrepreneur on one party and a worker on the other party, where the latter binds himself to carry out work in the service of the shipping entrepreneur in exchange for wages as a captain or crew member. In addition to the definition of a maritime employment agreement regulated in the Commercial Code (KUHD), the definition of a maritime employment agreement can also be found in Kartasapoetra et al.'s book, "Labor Law in Indonesia Based on Pancasila," which defines a maritime employment agreement as an agreement between a shipping company on one side and a worker on the other. The latter binds himself to work for the shipping company as a captain or sailor for wages. (Kartasapoetra et al., 1988).

The Commercial Code (KUHD) distinguishes between a shipping company and a worker as captain, or between a shipping company and a worker as crew (ABK). Maritime employment agreements between these two positions have different legal consequences based on the formulation of Articles 399 and 400.

Law Number 17, 2008, Shipping which revokes the existence of Law Number 21, 1992 concerning Shipping only slightly regulates maritime Work Agreements and in Article 153, Law Number 17, 2008, Shipping states that further provisions regarding Work Agreements and Passenger Health Facility Requirements are regulated by government regulations, where the government regulation referred to in Article 153 is Government Regulation Number 7, 2000, Shipping which is the implementing regulation of Law Number 21, 1992 and is in effect as the Implementing of Law Number 17, 2008, Shipping based on Article 353 which states that when this law comes into effect all implementing of Law Number 21, 1992, Shipping are not conflict or have not been replaced by new ones based on this law.

The term "Seafarer" as regulated in Law Number 21, 1992, Shipping and Government Regulation Number 7, 2000, Maritime Affairs has been replaced with the term "Ship Crew" as explained in Article 1 number 40 which provides the understanding that the ship's crew is a person who works or is employed on a ship by owner or operator of ship to carry out duties on board according to their position listed in Ship's Crew Certificate (monsterrol) which is a list that contains and explains ship's crew complete with their respective ranks and positions. (Djihari Santosa, 2023)

The definition of Sea Work Agreement, besides being regulated in the Maritime Trade Law (KUHD), is also described in Article 1 number 5, Government Regulation Number 7, 2000, Maritime Affairs which explains that Sea Work Agreement is an individual Work Agreement signed by an Indonesian seafarer with water transportation entrepreneur, while definition of Sea Work Agreement on the Regulation of Minister of Transportation of Indonesia Number 59, 2021, Provision of Services Related to Water Transportation, Article 1 Number 33, an Individual Employment Agreement made by Shipping

Company or Ship Crew Agency Business entity with sailor who will be employed as ship's crew.

There is an expansion of Legal Subjects in the Maritime Work Agreement in the Regulation of the Minister of Transportation Number PM. 59, 2021, Provision of Services Related to Water Transportation with the definition provided by Government Regulation Number 7, 2000, Seafarers where not only ship owners can enter into Maritime Work Agreements but also ship crew agency companies that can enter into maritime work agreements. There is a very principled difference in understanding between ship agency companies and ship manning agencies in the Regulation of the Minister of Transportation Number 59, 2021 which is in Article 1 number 12 which provides definition of Ship manning agency business is ship crew agency service business that includes recruitment and placement of ships according to qualifications while definition of Ship Agency Business is service business activity to manage the interests of foreign and/or national sea transportation company ships while in Indonesia.

Maritime Work Agreement based on Article 398, commercial code (KUHD) in conjunction with Article 107 of the Regulation of the Minister of Transportation Number PM. 59, 2021, the Implementation of Related Service Businesses is divided into 3 (three) Agreements, namely the Maritime Work Agreement (PKL) which is carried out for 1 (one) Trip or more, a certain time and an indefinite time or until termination of Maritime Work Agreement, termination of Work Agreement must be stated in Maritime Work Agreement Letter signed by both parties in Article 401 paragraph (9) : a). If Maritime Work Agreement is for a certain time, day of termination of work relationship by mentioning contents of Article 448 of commercial code (KUHD) which states that if the work relationship is held for a certain time, and this ends when the ship where crew member is serving is on its way, work relationship ends at first port the ship stops at, where is Crew Member registration officer stationed; b). If Agreement is made according to the agreed port journey according to provisions of Article 449 which states that relationship made according to the journey, ends when journey made for work relationship have been completed; c). If agreement is made for an indefinite period, the contents of Article 450, first paragraph, state that each party, while crew member is serving on ship, with notice of dismissal, by observing time period determined for that at each port where ship loads or unloads, where there is crew registration officer. Unless an agreement is made for a longer period, then it is 3 x 24 hours.

The termination of above Maritime Work Agreement requires that it be carried out at the first port where ship docks and there is a harbormaster's office because characteristics of Maritime Work Agreement begin at the port where Seafarer boards the ship and sea work agreement is ratified or acknowledged by harbormaster and certified when seafarer is already on board ship mentioned in sea work agreement regulated in the Commercial Code, Shipping Law and Government Regulation Number 7, 2000, Maritime Affairs is different from Work Agreement regulated in Law Number 13, 2003, Manpower and Government Regulation Number 35, 2021, Fixed Term Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment, Work

Agreement in Commercial Code specifically regulates Sea Work Agreement in commercial code is held for 3 (three) Work Agreements is Sea Work Agreement for a Certain Time.

Sea Work Agreement for 1 or more Trips and Sea Work Agreement for an indefinite period or until termination of employment, while in Employment Law there are 2 (two) work agreements is a Fixed Term Work Agreement and an Indefinite Term Work Agreement. The difference between these two Agreements has different legal consequences. The difference between a Sea Work Agreement (PKL) for a certain period of time as regulated in the commercial code, Shipping Law and Maritime Regulation with a Certain Period Work Agreement (PKWT) regulated in Manpower Law and PP No. 35 of 2021 lies in meaning of a certain period of time, in Sea Work Agreement, the time is determined while the Certain Period Work Agreement (PKWT) in Manpower Law has a limited or temporary meaning, a Certain Period Work Agreement (PKWT) in the Manpower Law is limited to a maximum of 5 (five) years as regulated in Article 8 paragraph (1) of Government Regulation Number 35, 2021 and if it is more than 5 (five) years then the status of the work agreement becomes an Indefinite Period Work Agreement (PKWTT) and the status of the worker/laborer changes to a permanent worker while in a sea work agreement for a certain period of time there is no time limit so that Sea Work Agreement can be carried out for more than 5 years as regulated in the Sea Work Agreement.

The next difference between a Sea Work Agreement for a certain period (PKL WT) and a Work Agreement for a certain period (PKWT) is Registration Agency where Indefinite Term Work Agreement (PKWT) is registered with the ministry that organizes government affairs in field of employment as regulated in Article 14 of Government Regulation Number 35, 2021, Work Agreements for a certain period, outsourcing, working time and rest time and Termination of Employment, Work Agreement for a Certain Period (PKWT), Work Agreement for a Certain Period does not require a trial period as regulated in Article 12 of Government Regulation Number 35, 2021 concerning Work Agreements for a certain period, Outsourcing, Working time and Rest time and Termination of Employment in a Sea Work Agreement for a Certain Period (PKL WT) is made for a maximum of 12 (twelve) months and is not limited to number of times sea work agreement is made, second difference is that all Sea Work Agreement or approved by an official appointed by minister in this case by harbor master at place where sailor or crew boarded (signed on) on the ship.

The next difference between Sea Work Agreement for certain period (PKL WT) and Work Agreement for certain period (PKWT) is the Registration Agency where the Indefinite Term Work Agreement (PKWT) is registered with the ministry that organizes government affairs in field of employment in Article 14 of Government Regulation Number 35, 2021, Work Agreements for certain period, Outsourcing, Working time and Rest time and Termination of Employment, Work Agreement for Certain Period (PKWT), Work Agreement for a Certain Period does not require a trial period as regulated in Article 12 of Government Regulation Number 35, 2021, Work Agreements for certain period, Outsourcing, Working time and Rest time and Termination of Employment in

Sea Work Agreement for Certain Period (PKL WT) is made for a maximum of 12 (twelve) months and is not limited to number of times sea work agreement is made, the second difference is that all Sea Work Agreements must be known or approved by an official appointed by minister in this case by harbor master at place where sailor or crew boarded (signed on) on ship.

In several laws and regulations governing Maritime Work Agreements (PKL), there is still an inconsistency in regulation of Maritime Work Agreements, whether the Maritime Work Agreement is acknowledged or approved by harbormaster. This is because two terms have different legal consequences. If Maritime Work Agreement (PKL) is only acknowledged, it is an Agreement between the Parties (Partai acta), whereas if Maritime Work Agreement (PKL) is approved, it is an Agreement made by an Official. The validity of Maritime Work Agreement still requires approval from Harbormaster, and Harbormaster is also responsible for contents of the maritime work agreement. The inconsistency that Maritime Work Agreement (PKL) is acknowledged or approved by Harbormaster can be seen in several laws and regulations below:

- a. Government Regulation Number 7, 2000, Seafarers, Article 18 paragraph (4) "The Maritime Work Agreement must be acknowledged by Government Official appointed by the Minister."
- b. Regulation of Minister of Transportation Number 59, 2021, the Implementation of Service Businesses Related to Transportation in Waters.
  - Article 108 paragraph (2) "The Maritime Work Agreement (PKL) must be signed by seafarer and the ship owner/operator/ship agent and must be acknowledged by Director General or Harbor Master."
  - Article 113 paragraph (1) "The ratification of Sea Work Agreement and seal of the Seafarer's Book must be carried out before seafarer is placed on the ship by Director General/Harbor Master."
  - Article 113 paragraph (2) Applications for Maritime Work Agreement (PKL) seal and seal of the Seafarer's Book may be submitted by:"
    - a. Circular Letter of the Ministry of Transportation, Directorate General of Sea Transportation Number: SE-DJPL 17, 2024, the Implementation of Ship Manning Agency Licensing at point 5 of Circular Letter, letter f, paragraph (1) The Port Authority Head carries out Certification on Seafarers' Book and Maritime Work Agreement (PKL) Endorsement: Ensuring the Requirements for Certification and Maritime Work Agreement Endorsement are complete: CBA, MCU, Insurance or Social Security. The Circular Letter of the Director General of Sea Transportation Number SE-DJPL 17, 2024 regulates licensing of ship manning agency businesses. This circular letter was issued on May 30, 2024, regulating licensing process for companies engaged in ship manning agency, which are responsible for recruiting and placing crew members for shipping companies. The existence of differences in several regulations governing sea labor agreements, whether their registration at the harbor master's office is known or acknowledged, should not occur if the government is consistent with the regulations governing seafarers' labor agreements. If we refer to Government Regulation Number 7, 2000,

Maritime Affairs, which is the implementing regulation of Law Number 17, 2008, Shipping, any normative conflicts between Government Regulations and subordinate regulations should be resolved based on principle of *lex superior derogat legi inferiori*.

- b. Circular Letter of Ministry of Transportation, Directorate of Sea Transportation Number: SE -DJPL 17, 2024 concerning the Implementation of Ship Manning Agency Licensing in point 5 Circular Contents letter f paragraph (1) The Head of Harbor Master carries out certification of Seafarer's book and Maritime Work Agreement Approval: Ensure that the certificate requirements and Maritime Work Agreement Approval are equipped with: CBA, MCU, Insurance or Social Security. Circular Letter of Director General of Sea Transportation Number SE-DJPL 17, 2024, the implementation of ship manning agency business licensing. This circular was issued on May 30, 2024, licensing process for companies engaged in field of ship manning agencies, which are responsible for recruiting and placing ship crew for shipping companies.

The existence of differences in several laws and regulations governing sea work agreements, registration of which is at harbormaster's office, whether known or legalized, should not have occurred if government was consistent with the laws seafarers. Sea work agreements, if we refer to Government Regulation Number 7, 2000 concerning Maritime Affairs, which is the implementing regulation of Law Number 17, 2008 concerning Shipping, so that if there is a conflict of norms between the Government Regulation and the Regulations below it, it is resolved with the principle of *lex superiori derogat legi inferiori* where applicable regulation is Government Regulation Number 7, 2000 which stipulates that Maritime Employment Agreement made by parties must be acknowledged by harbormaster.

The next difference between Maritime Employment Agreement (PKL) for an Indefinite Period and Indefinite Period Employment Agreement (PKWTT) in Manpower Law, Maritime Employment Agreement for an Indefinite Period (PKL WTT) is interpreted as time is not specified in the contents of Maritime Employment Agreement, so termination of employment relationship is terminated with a statement or *opzegging* carried out properly and appropriately, the meaning of proper and appropriate can be seen in formulation of Article 450 of Commercial Law Code (KUHD) which states that Employment Relationship held for an Indefinite Period, can be terminated by each party while the Crew member is serving on ship, with notice of termination, by observing time period determined for that at each port where ship loads or discharges, where there is a Crew Member Registration Officer. Unless an agreement is made for a longer period, then it is 3x24 hours, while an Indefinite Term Employment Agreement (PKWTT) is an Employment Agreement between a Worker/Laborer and an Employer to establish a Permanent Employment Relationship.

In the sea work agreement, there is no recognition of permanent work or temporary work because all crew members registered in certificate book are sailors or crew members other than sailors/crew members will not be included in certificate book and will not sign sea work agreement so that term core

business or non-core business is not relevant in relation to sea work agreement because characteristics of sea work agreement and work agreement regulated in Law Number 13, 2003, Manpower are clearly very different where in Article 51 paragraph (2) and explanation of Law Number 13, 2003, Manpower also recognizes the existence of Sea Work Agreement which states that Work Agreement which requires it to be in writing is carried out in accordance with applicable laws and regulations, work agreement which requires it to be in writing must be in accordance with the applicable laws, including fixed term work agreement (PKWT), between work between regions, between work between religions and Sea Work Agreement (PKL).

#### *Settlement of Seafarer Disputes*

Seafarer Disputes often occur due to the Termination of Employment Relationships between Seafarers and Ship Owners, whether under a Seafarer Employment Agreement for a fixed term or an indefinite term. Although Seafarer Employment Agreement regulates the Termination of the Employment Relationship as mandated by Article 401 of the Commercial Code (KUHD) and Article 107 (4), Minister of Transportation Regulation Number PM 59, 2021, Provision of Service Businesses Related to Water Transportation, which requires contents of Seafarer Employment Agreement (PKL) to also include Termination of Employment Relationship, in practice, Seafarer Employment Agreement still takes form of a blank deed in which Agreement Clauses have been prepared by harbormaster, thus parties have little freedom in determining contents of seafarer employment agreement.

Often the parties who enter into Maritime Work Agreement still consider that Maritime Work Agreement is same as Work Agreement in Law Number 13, 2003, Manpower by referring to formulation of Article 337, Law Number 17, 2008 Shipping which states that provisions of employment in shipping sector are implemented in accordance with regulations in field of employment, does formulation of Article 337 refer to Law Number 13, 2003, Manpower or refers to Commercial Code (KUHD), with existence of Law Number 66, 2024 concerning the Third Amendment to Law Number 17, 2008, Shipping, provisions of Article 337 were changed which consist of 2 paragraphs and are accompanied by a statement in the paragraph that paragraph (1) "Regulations regarding Manpower in field of Manpower in shipping sector are implemented in accordance with provisions of laws in field of employment and paragraph (2) "Regulations regarding maritime affairs are carried out in accordance with provisions set out in this Law". In the explanation of paragraph (1) it is stated that employment provisions in shipping sector apply generally to workers other than ship's crew.

The provisions for the employment of ship crew based on the Maritime Work Agreement are specifically regulated in the Commercial Law Code (Wet Borepublikek Van Koophandel), Law Number 15, 2016 concerning the Ratification of the Maritime Labor Convention, 2006 (Maritime Labor Convention, 2006) and all laws in the shipping sector. The explanation of Article 337 paragraph (1) of above law clarifies Article 337 which has been interpreted by many groups that shipping law and its derivatives are subject to labor law

regulated by Law Number 13, 2003 because only Law Number 13, 2003 regulates labor in general.

While the shipping law only regulates a small part of employment, especially maritime employment, if we want to be honest, actually maritime or sea employment is completely regulated in Commercial Law Code and also the most recent is regulated in the 2006 Maritime Labor Convention, even though this Maritime Labor Convention was only ratified in 2016 with Law Number 15, 2016 which regulates in principle maritime labor norms, even though it only applies to foreign-flagged ships sailing in Indonesia or Indonesian-flagged ships sailing outside Indonesian waters with provisions of Article 337 in third amendment to Shipping Law explaining that in shipping companies there are 2 workers who are subject to different labor regulations where employees other than sailors who work on ships are subject to labor in shipping sector, but for sailors who work on ships are subject to Maritime Labor Agreement, the Commercial Law Code, Law Number 15, 2006, the ratification of the 2006 maritime convention and all regulations in shipping sector, term employment in shipping sector refers to several shipping industries where employees are not sailors who work on ships, such as shipping industry, shipyard industry, port industry, port support service industry such as stevedoring workers at ports, whose employment is regulated in Law Number 13, 2003.

The formulation of Article 337 of Shipping Law as last amended by Law Number 66, 2024 emphasizes material regulations for resolving seafarer disputes and formal regulations on how to resolve seafarers in Regulation of Minister of Transportation Number PM 59, 2021, the Implementation of Service Businesses Related to Water Transportation, which in Article 111 states that in event of differences of opinion/disputes between parties within validity period of Sea Work Agreement (PKL) and problem cannot be resolved until validity period of Sea Work Agreement ends, parties can resolve it through industrial relations court by referring to Sea Work Agreement that has been signed by both parties and other supporting documents so that formal law for resolving seafarer disputes refers to Law Number 2, 2004, the Settlement of Industrial Relations Disputes.

The affirmation of the Settlement of Seafarer Disputes through the Industrial Relations Court can also be seen in the eighth section regarding the Settlement of Seafarer Disputes Article 122 paragraph (1) and paragraph (2) of Regulation of the Minister of Transportation PM 59, 2021, the Implementation of service businesses related to water transportation which states in paragraph (1) that Ship Crew Agency Companies are required to convey disputes arising between seafarers and ship owners or their proxies, or seafarers and ship agency companies through deliberation and paragraph (2) in the event that resolution of disputes through deliberation as referred to in paragraph (1) cannot be resolved, then the dispute resolution is carried out through the industrial relations court or outside the court by referring to Sea Work Agreement which has been signed by the parties and other supporting documents.

The seafarer dispute resolution mechanism must refer to Law 2, 2004, Settlement of Industrial Relations Disputes where before submitting settlement

through industrial relations court, it must first go through an out-of-court settlement mechanism, namely bipartite settlement, then tripartite and finally through industrial relations court by filing a lawsuit through Head of Industrial Relations Court at District Court where Sea Work Agreement was made and signed and approved or acknowledged by harbormaster. The out-of-court settlement can also be resolved by Harbormaster in form of mediation as a government official at port appointed by minister and representing highest authority to implement and supervise fulfillment of the provisions of laws and regulations to ensure safety and security of shipping considering that Sea Work Agreement is one of work requirements for seafarers to be able to be certified and work on board ships in addition to requirements for a seafarer's expertise certificate and a seafarer's skills certificate that must be held by seafarers in accordance with Regulation of the Minister of Transportation of Indonesia Number PM 26, 2022, the Manning of Commercial Ships;

Settlement of Seafarer Disputes through Mediation carried out by Harbormaster is a mandate of Article 122 paragraph (2) of the Regulation of the Minister of Transportation because one who knows or ratifies existence of Sea Work Agreement is the Harbormaster and this is reinforced by Circular Letter of Ministry of Transportation, Directorate General of Sea Transportation Number: SE-DJPL 17, 2024, the Implementation of Ship Manning Agency Business Licensing in number 5 of the Circular Contents letter f paragraph (2) which states that Heads of Harbormaster Office and Main Port Authority, Heads of the Harbormaster Office and Batam Special Port Authority, Heads of Harbormaster Office and Batam Special Port Authority, Heads of Harbormaster Office and Port Authority and Heads of Port Organizing Unit Offices should Facilitate the Settlement of Disputes Outside Court between the ship's crew and/or their attorneys if dispute has been carried out through deliberation between disputing parties but failed to reach an agreement by bringing related evidence.

The contents of the circular have given authority to harbormaster to become a third party or mediator to resolve disputes between sailors and shipping entrepreneurs but have not ordered what legal products must be issued by the harbormaster if there is no agreement on settlement of dispute and parties will file a lawsuit in court then dispute must also be recorded at local labor office to get recommendations and or minutes of mediation so that tripartite process involving a third party twice, so that there is no tripartite resolution 2 (two) times there needs to be a statutory regulation stating that Head of Harbormaster or Harbormaster Employee can become a Special Mediator in sailor disputes so that if there is no agreement in mediation conducted before harbormaster can issue written recommendations and minutes of mediation as one of conditions for one or parties to register their lawsuit with industrial relations court.

The Settlement of Seafarer Disputes in Article 111 - Article 122 paragraph (2) of PM 59, 2021, Provision of Service Businesses Related to Water Transportation, requires that dispute resolution, whether in court or out of court, refer to Sea Work Agreement (PKL) signed by both parties and other supporting documents. This means that Work Agreement must comply with provisions of

Sea Work Agreement as stipulated in Article 107 paragraph (4), which states that Sea Work Agreement must contain at least:

- a. Identity of Parties
- b. Place and date of agreement.
- c. Capacity of worker to be employed
- d. Wages or other forms of compensation (amount or formula used);
- e. Paid annual leave and holidays (amount or formula used);
- f. Method of payment of wages (date, currency, and specific circumstances);
- g. Working hours and rest breaks on board vessel; Terms of employment (the period of employment of the worker on board the vessel shall not exceed 12 months);
- h. Perpan: Not to be carried out if seafarer is still working on ship during voyage;
- i. Termination of employment;
- j. Health protection and social security (medical care, injury/illness or work accident, disability or death compensation);
- k. Repatriation;
- l. Complaint procedures and disciplinary provisions;
- m. CLA referrals;
- n. Other provisions stipulated in event of detention due to piracy or armed robbery of a ship or voyage in conflict-prone areas, etc.; and
- o. Signature and stamp of harbor master

What if the contents of Maritime Work Agreement (PKL) do not regulate Termination of Employment (PHK) or mechanism of PHK, of course we will return to referring to formulation of Article 337 of Shipping Law in conjunction with Article 111 - Article 122 of PM 59, 2021 which emphasizes that seafarer disputes are carried out in the Industrial Relations Court and regarding mechanism for resolving industrial relations disputes regulated in Law Number 2, 2004, Settlement of industrial relations disputes but related to rights of Seafarers due to Termination of Employment (PHK) which have not been comprehensively regulated in legislation in maritime labor sector which is inadequate because reasons for PHK and Rights obtained by Seafarers due to Termination of Employment (PHK) are not same as reasons for Termination of Employment (PHK) and rights regulated in Employment Law. The reasons for layoffs regulated by Maritime Manpower Laws and Regulations in Maritime Manpower sector, apart from being regulated in Maritime Work Agreement, can also occur because Ship is Destroyed/Sunk and Ship is idle/sold as regulated in Article 27, Government Regulation Number 7, 2000 Concerning Seafarers which states in paragraph (1). If a layoff occurs by a water transportation entrepreneur because ship is destroyed or sunk, water transportation entrepreneur is obliged to pay severance pay to crew of ship concerned in amount of 2 (two) times last month's salary and other rights in accordance with applicable provisions and in paragraph (2).

If there is termination of employment by water transportation entrepreneur because ship is idle or sold, water transportation entrepreneur is obliged to pay

severance pay to ship's crew in accordance with applicable laws. From the provisions of Article 27 of Government Regulation Number 7, 2000 concerning Maritime Affairs, there are only 2 (two) reasons for termination of employment (PHK) and the provision of severance pay is only 2 (two) times the last month's salary and other rights obtained by seafarers, but for ships that are idle or sold, amount of severance pay is in accordance with applicable laws and regulations, the laws and regulations referred to in this article are commercial law Code (KUHD) and Regulation of Minister of Transportation and Law Number 15, 2016, Ratification of the 2006 Maritime Labor Convention, but this law only applies to Indonesian seafarers who work on foreign-flagged or Indonesian-flagged ships and sail in international waters, in law does not regulate further about the amount of severance pay and reasons for Termination of Employment, which is regulated in law is provision of compensation because ship is lost or sunk and amount of compensation is limited to two months' wages, but compensation for ships that are idle or sold is not regulated.

The reasons for termination of employment and amount of severance pay in commercial code (KUHD) and Maritime Manpower Laws that are different from those regulated in labour law do not mean that reasons for termination of employment and severance pay are no longer relevant to be applied to termination of employment in Maritime Work Agreement because terms of characteristics of Maritime Work Agreement it is different from employment agreement regulated in Labour Law because maritime work agreement is determined for a certain time, based on journey and for an indefinite time, termination time of which is determined based on a statement. This provision applies because the maritime work agreement is special in nature so that principle of *lex specialis derogat lex generalis* applies to general employment regulations even though Law Number 13, 2003 applies after commercial code and this does not mean that Law 13, 2003, Employment defeats the Commercial Code, especially second book, because what applies is *meta principal*, namely "*lex posterior generalis non derogat lex priori specialist*". [Philipus M Hadjon, Titiek Sri Djatmiati, Legal Argumentation, Gadjah Mada University Press, Yogyakarta, 2014 Page 54] Where the meaning of free is that new provisions that regulate in general do not defeat old provisions that regulate specifically.

In Commercial Code and Laws in the field of Maritime Manpower, in addition to being regulated regarding reasons for termination of employment and severance pay, other rights are also regulated in Article 452, paragraphs three and four of Commercial Code, which states that in addition to Travel Costs, Ship Entrepreneurs must pay ABK wages based on time stipulated in work agreement according to the length of time, along with living expenses and if necessary accommodation costs (Commercial Code 403), in addition to the rights regulated in article, there is also known compensation/restitution in Article 29 of Government Regulation Number 7, 2000, Maritime Affairs, which states that amount of compensation for loss of goods belonging to the crew of a ship that sinks or burns is in accordance with the value of the goods that are reasonably owned by them that are lost or burned. In addition to rights in form of severance pay, compensation or compensation due to termination of employment in

Maritime Work Agreement, there is also a payment of compensation for sailors who die either due to illness or due to work accident which is regulated in Article 31, Government Regulation Number 7, 2000, Maritime Affairs which states that (1) if a ship's crew dies on board ship, water transportation company is obliged to bear costs of repatriation and burial of body to a place desired by family concerned as long as circumstances permit. (2) if a ship's crew dies, water transportation company is obliged to pay compensation: a). For death due to illness, minimum compensation is Rp. 100,000,000 (one hundred million rupiah). b). For death due to work accident, minimum compensation is Rp. 150,000,000 (one hundred and fifty million rupiah). Paragraph (3) states that compensation referred to paragraph (2) paid to heirs in accordance with applicable provisions.

## **CONCLUSION AND RECOMMENDATION**

From the description above, we can understand that laws of Maritime Work Agreement with Laws of Work Agreement are different Regulations, especially with the third Amendment to Shipping Law Number 66 of 2024 and Law Number 15 of 2016, Ratification of the 2006 Maritime Labor Convention. In different laws, the characteristics of Agreement are also different between Maritime Work Agreement and Work Agreement, apart from these two differences, the difference between the two agreements lies in the institution responsible for recording or ratification. In addition to the existence of different laws and regulations that materially regulate Maritime Employment, there are also similarities between Settlement of Seafarer Disputes and industrial relations disputes in Law Number 2, 2004, Settlement of industrial relations disputes, namely the Settlement of Seafarer Disputes is resolved through non litigation or resolved in industrial relations court on Article 337 of Law Number 17, 2008, Shipping in conjunction with Article 111 and Article 122 paragraph (2) of Regulation of the Minister of Transportation Number PM 59, 2021, the Implementation of Service Businesses Related to Transportation in Waters.

With the absence of provisions governing termination of employment and consequences thereof between Seafarers and Shipowners, separate regulations regarding Maritime Employment Agreements and Termination of Employment are needed, regulated in Government Regulations Number 7, 2000, Seafarers is no longer relevant to the development of maritime world, which is in line with technological and transportation advancements, especially as Indonesia becomes a global maritime axis, where Indonesian seafarers must be professional and prosperous. In addition to amending legislation, there is also a need to strengthen institution, namely harbormaster, who should be given authority to resolve seafarers' disputes through non-litigation. This includes acting as a Special Mediator for maritime labor. In resolving seafarers' disputes, he can issue recommendations that can serve as administrative requirements for disputing parties to file a lawsuit with industrial relations court. If mediation conducted by harbormaster fails to reach an agreement, the parties can immediately file a lawsuit with industrial relations court, attaching the recommendations and/or minutes of the Special Mediator/Harbormaster Employee.

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