

## THE NATURE OF LEGAL PROTECTION OF INDONESIAN SEAFARERS' RIGHTS

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### Abstract

This study aims to find out and understand the nature of legal protection for the rights of Indonesian seafarers, to find out the regulation of the rights of Indonesian seafarers in national and international regulations, and to find a model of legal protection for the rights of Indonesian seafarers in the future, both seafarers working on Indonesian-flagged ships and on foreign ships, by analyzing existing national and international regulations, related to legal protection for Indonesian seafarers, after the ratification of the Maritime Labor Convention Year 2006 by the Indonesian Government through Law Number 15 of 2016. Type This research is a normative legal research, using the philosophical approach method (Philosophically Approach), the statutory approach (Statute Approach) and the case approach (Case Approach). The technique of collecting legal materials with documentation studies that are analyzed using systematic interpretation methods, grammatical interpretation and sociological interpretation. The theoretical framework used as an analytical tool is the theory of human rights (HAM), the theory of legal order and the theory of legal protection. The results of the study show that the nature of Legal protection of the rights of Indonesian seafarers is to provide legal certainty in protecting the rights of Indonesian seafarers, to fulfill the basic rights of seafarers and human rights, and to maintain the dignity of Indonesian seafarers and their families.

**Keywords:** Legal Protection, Rights, Indonesian Seafarers.

### INTRODUCTION

Humans have been utilizing the sea for a long time. One of the oldest forms of utilization of the sea is its function as a connecting medium between one place and another.<sup>1</sup> Functions and The role of the sea as a means of communication is demonstrated by archaeological evidence found today, which shows that seafaring in the Mediterranean region began around 11,000 years ago, namely at the end of the Paleolithic era.<sup>2</sup> Meanwhile, in Indonesia, the use of the sea as a connecting medium between islands has begun since people were able to make simple boats or sailing ships until now, where technology has developed so that ships with super large sizes and modern technology can be made.

In terms of geography, Indonesia is a maritime country located in a very strategic position, namely between the Asian continent and the Australian continent, with such a position, transportation facilities, especially sea transportation, have an important and strategic meaning. One of these important meanings is in strengthening the realization of the archipelago insight.<sup>3</sup> The Indonesian archipelago perspective is the perspective and attitude of the Indonesian nation regarding itself and its geographical form as a whole that cannot be separated, thus strengthening national resilience and strengthening relations between nations in an effort to achieve national goals based on Pancasila and the 1945 Constitution.<sup>4</sup> The positive implication of the claim of the archipelagic outlook is that the territory of Indonesia, which was only 2,027,087 km<sup>2</sup> based on the Territoriale Zee en Maritime Kringen Ordonantie

(TZMKO) of 1939, became 5,193,250 km<sup>2</sup> (a combination of land and territorial sea areas), which means that the area of Indonesian waters increased by 3,166,163 km<sup>2</sup> or approximately 145% more than the previous area.<sup>5</sup> This was strengthened by the Government Regulation in Lieu of Law (Perppu) No. 4 of 1960 (State Gazette 1960 No. 22) which was later confirmed as Law No. 4 of 1960. So that the concept of homeland stated in the preamble to the 1954 Constitution and Article 1 paragraph 1 of the 1945 Constitution can truly be realized in Indonesia.<sup>6</sup>

As part of Indonesian citizens, seafarers should receive adequate protection as an embodiment of the rights of citizens as stated in Article 27 paragraph 2 which states: "Every citizen has the right to work and a decent living for humanity". In accordance with the mandate of the 1945 Constitution above which is also a Human Right (HAM), seafarers should receive protection in order to obtain a decent and fair living as dignified human beings.

However, the problems of Indonesian sailors seem never-ending, sailors who are one of the transportation workers in the shipping sector often experience so many tangled problems in the shipping world. This is as conveyed by the Head of Legal Advocacy and Human Rights of the Indonesian Seafarers Movement (PPI), Imam Syafi'i in the Halal Bihalal event of Transportation, Port and Warehouse Workers.<sup>7</sup>

In the event, Imam Syafi'i said, "There are many problems, from inadequate salaries, unclear employment status, social security rights for health and employment that are emasculated, the process of terminating employment that is not in accordance with procedures, guarantees for captains who refuse to sail ships when they find out that the ship is not seaworthy with the threat of dismissal, no severance pay rights when they have served for decades in a company when their employment relationship ends, forced union membership by way of job offers, to the issue of the rampant circulation of fake and fake sailor certificates."

Another problem experienced by Indonesian sailors that has attracted public and world attention lately is the case of exploitation of Indonesian sailors working on a Chinese-flagged ship, the Long Xing 629, where Indonesian sailors on the ship had to work for 18 hours a day and consume unsuitable food. In fact, four Indonesian sailors who were crew members of the ship died. Three bodies of the Indonesian crew members were thrown into the sea and one Indonesian crew member died in hospital.<sup>8</sup>

In addition, there are also problems that befell Indonesian sailors working on other Chinese-flagged ships, namely the Lu Huang Yun Yu 118 ship, where almost every day the Indonesian crew members received acts of violence from Chinese crew members in the form of beatings and abuse not only using bare hands, but using iron, wood, and other equipment on board. The acts of abuse were not only carried out by the foreman but also by the ship's captain. As a result of the actions of the Chinese foreman, one Indonesian crew member from Lampung named Hasan Afriandi died and his body was stored in the ship's freezer. Apart from Hasan Afriandi, there were 22 (twenty-two) Indonesian citizens working on two Chinese fishing vessels from the same company.<sup>9</sup> Coordinator of Destructive Fishing Watch (DSW) Indonesia, Moh Abdi Suhufan suspects that Hasan Afriandi applied to be a crew member through job vacancy

information on Facebook. Moh Abdi Suhufan said that there were no job providers for the crew members of the ship in Lampung. Based on DFW Indonesia's investigation, the facilities offered in the advertisement provided applicants with a sailor's book and basic skills. However, according to Abdi Suhufan, the advertising company is an illegal recruitment company, where the information is not in accordance, be it salary, placement, or fishing location, for example, the information is placed on a ship from another country, but it turns out that he is placed on a ship flying the Chinese flag or others.<sup>10</sup>

Human resources in the field of transportation play an important role because transportation is one of the very important needs in community life, whether in the form of land, sea or air transportation. Even transportation or transportation plays an absolute role,<sup>11</sup> because without transportation the value of an item will not increase. The value of an item does not only depend on the item itself but also on where the item is located,<sup>12</sup> so that transportation will provide added value to goods needed by the community. The role of transportation in community life is so important that it fulfills the needs of life.

The problems of seafarers are very complex considering the long sailing distances and long travel distances and long time intervals. This requires better work and rest and recreation places on board. The Maritime Labor Convention Year 2006, regulates welfare standards, workplace suitability, internationally recognized recruitment and placement processes for ship crews and respect for human rights.

In addition, with Article 77 of Law No. 39 of 2004 concerning the Placement and Protection of Indonesian Migrant Workers Abroad, which states that "every Prospective Indonesian Migrant Worker/Indonesian Migrant Worker has the right to obtain protection in accordance with statutory regulations" and considering that seafarers are part of the Indonesian Migrant Worker, these seafarers must be protected in accordance with Article 62 of Law No. 39 of 2004.<sup>13</sup>

Comprehensive legal protection for seafarers in Indonesia is in fact still low and does not meet international standards. One of the efforts made by the government to realize legal protection for seafarers is through a sea work agreement that is made and signed before seafarers work on board a ship, but this has not yet provided maximum results.

Based on the description of the background, there are several problems that arise that need to be studied, namely regarding "Legal Protection of the Rights of Indonesian Seafarers Post Ratification of the Maritime Labor Convention Year 2006".

## **METHOD**

### ***Types of research***

The type of research used is normative legal research, also called doctrinal legal research. In this type of research, law is often conceptualized as what is written in laws and regulations (law in books) or law that is conceptualized as a rule or norm that is a benchmark for human behavior that is considered appropriate.<sup>14</sup> Johnny Ibrahim stated that one of the ways in which scientific

work is characterized by method.<sup>15</sup>Based on the characteristics of normative legal research, namely research that examines positive law or laws and regulations in force in Indonesia, especially the regulation of legal protection for the rights of Indonesian sailors as workers in the maritime sector after the ratification of the Maritime Labor Convention Year 2006, which includes the nature and system of legal protection, regulation and form of legal protection for the rights of Indonesian sailors after the ratification of the Maritime Labor Convention Year 2006.

### ***Approach Method***

The approach methods used in this research are:

- a) Philosophical Approach is an approach that is carried out by explaining the core, nature, or wisdom of something that is behind its format. Philosophy seeks something fundamental, the principle and the core that is behind the external. problem-solving procedures that are investigated rationally through directed, deep and fundamental reflection/thinking about the nature of something that exists and that may exist, either by using a certain philosophical school of thought or in the form of systematic analysis based on inductive, deductive, phenomenological and other thought patterns and by paying attention to the laws of logical thinking related to legal protection of the rights of Indonesian Seafarers.

- b) Statute Approach

The legislative approach is an analysis that examines laws and regulations and other rules related to the main problem being studied in relation to legal protection of the rights of Indonesian seafarers following the ratification of the 2006 Maritime Labor Convention (Maritime Labor Convention Year 2006).

- c) Case Study approach

Case approach is a research that focuses intensively on a particular object and studies it as a case. In research with this method, an in-depth examination of a situation or event called a case is carried out using systematic methods in conducting observations, collecting data, analyzing information, and reporting the results related to cases that befell sailors and ways to protect the rights of Indonesian sailors, to gain a deep understanding of why something happened and can be the basis for further research. Case studies can be used to generate and test hypotheses.<sup>16</sup>

### **Source/Type of Legal Material**

As a data source, only secondary data consisting of primary legal materials, secondary legal materials, tertiary materials including:

- a) Primary legal materials are legal materials obtained from applicable laws and regulations.<sup>17</sup>
- b) Secondary legal materials, namely materials that have a lot of correlation with primary legal materials and function to help in analyzing and understanding primary legal

materials, which consist of: law books, law journals, scientific writings from experts related to the legal problems or issues being studied, or those related to primary legal materials, including literature, papers, and research results.

- c) Tertiary legal materials are legal materials that can provide definitions, descriptions or explanations, either in a foreign language or in Indonesian, for foreign words or difficult words contained in this research.<sup>18</sup>The intended legal materials, such as the Indonesian Dictionary, English Dictionary, Legal Dictionary and Encyclopedia. Encyclopedias are general practitioners in the world of legal research.<sup>19</sup>

### ***Legal Material Collection Tools***

The type of legal material collection tool used in this study is a document study that includes a study of legal materials consisting of primary legal materials, secondary legal materials and tertiary legal materials. Each of these legal materials must be re-examined for validity and reliability, because this greatly determines the results of the study.

### ***Legal Material Analysis***

Secondary data selected by using the activity of "interpreting" legal materials is an activity of collecting and compiling concepts or articles contained in one or several regulations so that the related regulations can be easily traced and traced as well as which articles still need to be regulated further.<sup>20</sup>

## **RESULTS AND DISCUSSION**

### **The Nature of Legal Protection for the Fulfillment of the Rights of Indonesian Seafarers**

Terminologically there are several terms in efforts to protect human rights, such as HAM (human rights) which in English is called "human rights", in French is known as "droits de l'Homme" and in Dutch is known as "menselijke Rechten".<sup>21</sup> Apart from human rights, there is also the term "basic human rights" which in English is called "fundamental rights", in French it is called "droits fondamentaux" and in Dutch it is known as "grondrechten".

Human rights terminology according to Menfrad Nowak<sup>22</sup> has described two terms:

- 1) Human Rights include; a. legal norms for everyone; and b. legal norms for individuals;
- 2) Fundamental Rights (basic rights): a. is a national legal norm that covers the rights of citizens; b. legal norms on the rights of the nation (collective Rights). Examples are the declaration des droit L'Home et du citoyen 1789 (human rights and citizen rights); c. legal norms that only apply to certain groups referred to as vulnerable groups (protection of the disabled, the poor, women and children).

The difference between the two terms is that the term basic human rights is more fundamental than human rights. The term basic rightshuman is a term used in the domain of constitutional law, while human rights is a term used in international law. Fundamental Rights are what is meant by another term as the constitutional rights of citizens.

The initial idea of human rights is the rights that humans have since birth and even in the womb, driven by the idea of natural law, so that the concept of human rights according to scholars is generally formulated as natural rights. According to John Locke, natural human rights are Life, health, liberty, property and the state must guarantee the principle of equality and protection for all humans with their natural rights.<sup>23</sup>

The object of study of human rights is of great interest in the field of law. This is because the basic nature of human rights is natural, universal and eternal. The natural nature of human rights as taught in natural law is based on the scholastic thinking of Thomas Aquinas, Gratianus, John Salisbury, Dante, Pierre Dubois, Marsilius Padua, John Wycliffe and Johannes Haus which provides a way of thinking that natural law is a law that applies universally and eternally which originates from God (irrational) and which originates from human reason (ratio).<sup>24</sup> That there is a close connection between the truth of revelation that comes from God and the truth of human reason, this is like the teachings of Thomas Aquinas' philosophy, for example, which teaches a close connection between his teachings and theology (Divine Science). He acknowledges that besides the truth of revelation there is also the truth of reason.<sup>25</sup> Hugo de Groot alias Grotius<sup>26</sup> gives a conclusion to his theory that: "natural law is obtained by humans from their reason, but it is God who gives the binding power". It is clear that in the teachings of natural law, divinity is inherent in it, so that it is in line with the foundation of the Indonesian state, namely Pancasila, the first principle "Belief in the One Almighty God".

The universal nature of human rights can be found in Miriam Budiardjo's opinion<sup>27</sup> which states that: "human rights are rights that humans have that have been obtained and brought with them since their birth in the life of society". These rights are owned without any distinction on the basis of nation, race, religion or gender, therefore they are fundamental and universal. From the basis of these human rights, humans get the opportunity to develop according to their talents and ideals. In terms of work, it means that everyone has the right to develop their talents according to their ideals in working.

Eternal nature from human rights can also be seen from the definition of HAM in the MPR Decree Number XVII/MPR/1998 concerning Human Rights which states that: "Human Rights are basic rights inherent in humans by nature, universally and eternally as a gift from God Almighty." By nature, it means the original nature that is natural because of the power of God Almighty, Universal means not limited by space, eternal means not limited by time.<sup>28</sup> From this understanding, it can be translated that human rights are natural, original characteristics bestowed by God Almighty upon humans because of His power which is not limited by space and time because of the nature of human existence as His creation.

The basic basis regarding the State's obligations and responsibilities to protect human rights is the Preamble to the 1945 Constitution, paragraph four, which states:

"Then, to form a Government of the State of Indonesia that protects all the Indonesian people and all of Indonesia's territory and to advance public welfare, to improve the life of the nation, and to participate in implementing world order based on freedom, eternal peace and social justice..."

## **Legal Protection of the Basic Rights of Indonesian Seafarers**

Sailorascatures of God Almighty who also have basic rights. One form of basic rights of seafarers is to receive guarantees to be protected in accordance with religious and humanitarian values as well as Pancasila and the goals of the State as stated in the 1945 Constitution. Protection of seafarers is intended to guarantee basic workers' rights and guarantee equal opportunities and treatment without discrimination of any kind to realize the welfare of seafarers and their families while still paying attention to the development of the progress of the business world and the interests of entrepreneurs.

Legal protection and human rights for workers are fulfillment basic rights inherent in and protected by the constitution as regulated in article 27 paragraph (2) of the 1945 Constitution which states that "Every citizen has the right to work and a living that is worthy of humanity", Article 33 paragraph (1) which states that "The economy is structured as a joint family effort", thus violations of basic rights protected by the constitution constitute a violation of human rights.

Human rights as stated in the provisions of the 1945 Constitution are contained in Article 28. Article 28 A of the 1945 Constitution states that "Everyone has the right to live and has the right to defend his life and existence". Article 28 D of the 1945 Constitution states that (1). Everyone has the right to recognition, guarantees, protection and certainty of fair law and equal treatment before the law. Paragraph (2) states that Everyone has the right to work and receive fair and proper compensation and treatment in employment relations. Article 28 G of the 1945 Constitution states that (1) Everyone has the right to protection of themselves, their families, honor, dignity and property under their control, and has the right to a sense of security and protection from the threat of fear to do or not do something that is a basic human right. (2). Everyone has the right to be free from torture or treatment that degrades human dignity and has the right to obtain political asylum from another country.

Article 28 H paragraph (3) of the 1945 Constitution states that everyone has the right to social security that allows for the full development of oneself as a dignified human being.

Article 28 I paragraph (2) of the 1945 Constitution states that everyone has the right to be free from discriminatory treatment on any basis and has the right to receive protection against such discriminatory treatment. Meanwhile, paragraph (4) states that the protection, advancement, enforcement and fulfillment of human rights is the responsibility of the state, especially the government. Article 28 J paragraph (1) of the 1945 Constitution states that everyone is obliged to respect the human rights of others in orderly life in society and the state. Meanwhile, paragraph (2) states that in exercising their rights and freedoms, everyone is obliged to submit to the restrictions stipulated by law with the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others and to fulfill just demands in accordance with moral considerations, religious values, security and public order in a democratic society.

As explained in the previous chapters on legal protection put forward by Philipus M. Hadjon (1987:2) that: legal protection for the people is divided into two types, namely: (1) preventive legal protection and (2) repressive legal protection. In preventive legal protection, the people

are given the opportunity to file objections (inspraak) or their opinions before a government decision gets a definitive form. Thus, preventive legal protection aims to prevent disputes from occurring, conversely, repressive legal protection aims to resolve disputes. Preventive legal protection is very important for government actions that are based on freedom of action, because with preventive legal protection the government is encouraged to be careful in making decisions based on discretion. With this understanding, the handling of legal protection for the people by the government and society is included in the category of preventive and repressive legal protection.

MeansprotectionRepressive laws for sailors are intended to provide legal protection in terms of obtaining decent work, in accordance with their dignity and status as human beings. Confessionand the protection of human rights which is used as the main element of a state based on law is an elaboration of the constitution, that this state is based on law and not on power, so protection is a guarantee that human dignity and honor will have a proper place before the law and government, and in this position humans are subjects who receive guaranteed protection of their human rights.

### **Legal Protection of Human Rights of Indonesian Seafarers**

Based on what was stated above, it is actually clear that protectiontosailors is an effort to fulfill the human rights of sailors, where one important aspect of the implementation of a legal rule is law enforcement. A legal instrument is said to be effective if the law can be implemented with sanctions and can be enforced if the law is violated. The essence of legal protection for the rights of Indonesian sailors is to guarantee the fulfillment and enforcement of human rights as citizens and Indonesian sailors and their families in realizing the guarantee of the fulfillment of their rights in all activities before working, during work, and after working in legal, economic, and social aspects according to Article 1 of the PPMI Law. The rights of the families of Indonesian sailors who work on foreign ships, hereinafter referred to as the rights of the families of Indonesian migrant workers in this case the families of Indonesian sailors are:<sup>29</sup>

- a) obtain information regarding the conditions, problems and return of Indonesian Migrant Workers;
- b) receive all the property of Indonesian Migrant Workers who die abroad;
- c) obtain copies of documents and Employment Agreements for Prospective Indonesian Migrant Workers and/or Indonesian Migrant Workers; and obtain access to communicate.

As for the purpose ofprotectionwhich is given to Indonesian sailors working abroad, in this case also referred to as Indonesian Migrant Workers, aims to:

- a) guarantee the fulfillment and enforcement of human rights as citizens and Indonesian Migrant Workers; and
- b) guarantee legal, economic and social protection for Indonesian Migrant Workers and their families.



In the implementation of the protection of Indonesian Migrant Workers, strict supervision and law enforcement are needed. Supervision includes protection before work, during work, and after work. Law enforcement includes administrative sanctions and criminal sanctions.

Law and human rights cannot be separated, where with the existence of concrete laws that can be enforced objectively and consistently, human rights feel protected. Human rights are an effort to translate beliefs about human dignity into concrete legal language with the aim that these rights can be fully enforced in court. It should be noted that the regulation of human rights in the constitution or laws, even in lower regulations, must not reduce or weaken the enforcement of human rights. Until now, there are still people who argue that human rights are limited to things that can be enforced in the legal process, even the lack of clarity in some definitions of economic, social and cultural rights has caused critics to assert that because the law cannot be enforced in a court of law, it cannot be considered a human right at all (Peter Devies, 1994:201)<sup>30</sup>

In the literature, several definitions of what rights are are found. The term rights in English is called right, in Continental European literature rights and law are stated with the same terms such as ius (Latin), droit (French), recht (German), recht (Dutch), the term rights is used as subjective right and law as objective right.<sup>31</sup> Subjective right seems to emphasize it from an individual point of view so that it is a right for individuals, while objective right looks at it from an objective point of view (applies generally or to all individuals), so it is called law.

Hans Kelsen stated:<sup>32</sup>

*“The right to behave in a certain way is often interpreted as permission. That I have a right to do or omit doing something is also expressed by the saying that the law allows me to do or omit doing it.”*

Rights are the freedom that individuals have to do something or not do something that is permitted by law. Rights for an individual are an obligation for others to respect them. Therefore, the definition of rights in the context of human rights according to Yudana Sumanang is:<sup>33</sup>

"an environment, condition or area of freedom of action where the government does not impose restrictions, thus allowing individuals or individuals to choose for themselves whether to use it or not", therefore rights have the meaning of limiting the sovereign power of the government."

According to Law Number 39 of 1999 concerning Human Rights, Article 1 paragraph 1 states that:

"Human Rights are a set of rights that are inherent in the essence of human existence as creatures of God Almighty and are gifts that must be respected, upheld and protected by the state, law, government and everyone for the sake of honor and protection of human dignity."

Ramdlon Naning formulated:<sup>34</sup>

"Human rights are rights inherent in human dignity that are inherent in them as human beings created by Almighty God. Human rights are rights that humans have by nature, which cannot be separated from their essence."

The understanding adopted by the Human Rights Law, the scholars above and the UDHR (Universal Declaration on Human Rights) clearly emphasizes that its source is the natural rights of humans, so that human rights are natural rights, which cannot be reduced by anyone. This understanding emphasizes that the source of human rights is God or nature/ not a gift from humans or kings/ rulers/ governments.

Leach Levin explains the concept of human rights into two, namely: Human rights as natural rights (Natural Rights) and human rights as rights according to law (Positive Rights).<sup>35</sup> The first concept views that human rights are a set of rights owned by humans since birth, even when still in the womb and these rights cannot be reduced, because if reduced then humans will lose their dignity and honor as humans. This view emphasizes that human rights are not gifts or gifts from someone or the government, but are a gift from God Almighty (Natural Rights).

The second concept of human rights is legal rights, which are created through the process of forming laws from the society itself, both nationally and internationally. The basis of these rights is the consent of the governed, namely the citizens, who are subject to those rights and not only natural which is the basis of the first meaning. It can be said that the second meaning is broader because the law, besides protecting basic rights, also protects other rights that are not fundamental, so that human rights are not absolute or unlimited, but are limited by law with the intention of guaranteeing recognition and respect for the rights and freedoms of others and to meet just demands according to moral considerations, religious values, security, and public order in a society.

James W Nickel<sup>36</sup> formulates that human rights are freedoms that are owned by humans solely because they are humans without any discrimination, whether they are citizens or foreigners. In a country, there are indeed differences in rights and obligations between citizens and foreigners, but their basic rights are the same according to the principle of equality/equality between fellow human beings.

Human rights are an integral part of human existence in the world, in fact human rights are inherent and integrated into humans as dignified beings and are normative elements that function as guidelines for human behavior while protecting freedom, immunity and guaranteeing respect for human dignity.<sup>37</sup>

Meanwhile, according to Agus Santoso, the view of equal treatment based on dignity is a comprehensive view of human life and life as such that it is already a shared life recognized by the universe, because of its natural nature and supports the upholding of human rights. Humanization of life in modern times is interpreted as humanizing humans and is then referred

to as respect for human rights which must be respected not only for citizens but must also be carried out by everyone in a country, both citizens themselves and citizens of other countries.<sup>38</sup>

Thus it becomes clear that there is a close or reciprocal relationship between human rights law as an integral part of upholding a legal state based on justice and community participation in realizing a welfare state. In this case, if the human rights law of Indonesian seafarers is enforced as fairly as possible, it is not impossible to realize the welfare of Indonesian Seafarers.

### **Legal Protection of the Rights of Indonesian Seafarers in Maintaining the Honor and Dignity of Indonesian Seafarers and Their Families**

Legal protection can be provided by a state based on law. The furthest roots of the early development of the idea of a state of law are in Ancient Greece, where according to Jimly Assidique (1994:11) the Ancient Greek tradition of the state became the source of the existence and sovereignty of law. In Ancient Greece, the idea of a state of law received enough attention from intellectuals and thinkers, especially about the idea of the state and law, which was developed by great philosophers such as Socrates, Plato and Aristotle. According to Plato, there are basically two types of state government that can be organized, namely (1) a government that is formed and run based on law where this kind of government is run by scholars and a government that is implemented by prioritizing the interests of the people, (2) a government that is formed not through legal means where this kind of government is a tyrannical government that oppresses the people. Meanwhile, a state of law according to Aristotle is a state that stands above the law which guarantees justice to its citizens.<sup>39</sup>

According to Hans Nawiasky, a state of law is a state that stands on the law that guarantees justice to its citizens. The idea of a state of law was actually born as a reaction to the police state (polizeistaat) which was the type of state adopted at that time, where according to Moh. Kusnandi and Harmaly Ibrahim, a police state is a type of state that enforces the principle of *alles voor het volk, maar niet door het volk* (the king determines everything for his people, but not by the people themselves), and the principle of *legibus salutus est, salus publica suprema lex* (public interest overcomes all laws). So, in a police state, the people have no rights against the king and everything is determined by the king.<sup>40</sup> So the idea of the concept of a state based on law emerged as a form of reaction to arbitrary actions carried out by the authorities.

Plato, a philosopher from Ancient Greece (429-347 BC), introduced the term *naomi*, taken from the title of Plato's book, meaning law, which states that good governance is based on regulation (law), where the term *naomi* today refers to the concept of a state of law. Then Aristotle (384-322 BC), who was Plato's student, continued Plato's ideals in *naomi*. According to Aristotle, a good state is a state governed by a constitution and the sovereignty of law.<sup>41</sup>

Plato and Aristotle, adherents of the idealist philosophy, introduced a state of law as a state governed by a just state. In their philosophy, both of them touched on human dreams (ideals) that correspond to the absolute world called:<sup>42</sup>

- 1) The ideal of pursuing truth (idea of the warhead);
- 2) The ideal of pursuing morality (idea of morality);

- 3) The human ideal of pursuing beauty (idee der schonheid);
- 4) The ideal of pursuing justice (idea of justice).

According to Aristotle, justice can be communicative (carrying out justice) and distributive (giving justice), that the law that is expected is a just law and can provide welfare for society, a law that is not a coercion from the ruler but according to the will of the citizens, and to regulate this law a constitution is needed that contains the rules for living in a state.<sup>43</sup>

The term “legal state”, which is a translation of rechtsstaat, is a new term in the realm of state administration which emerged around the 19th century, compared to the terms democracy, constitution, or sovereignty.<sup>44</sup>

The initial idea of the concept of a state of law in history began with the Magna Carta in 1215, only developing in the 17th century and serious discussions about a state of law were held.<sup>45</sup> Starting from the life of a country that has an absolute monarchy (kingdom) government. Therefore, to stem the arbitrariness of power that practices an absolute system and ignores the rights of the people, the idea of the birth of a state of law emerged.<sup>46</sup>

The essence of the rule of law is based on the concept of the theory of State Sovereignty (Soverignty) which in principle states that the highest power in a country is the law. All state apparatuses, whatever their name, including citizens must submit and obey and uphold the law without exception.<sup>47</sup>

The development of the concept of a state of law has undergone different formulations, the concept of a state of law is considered a universal concept, at the implementation stage it turns out to have various characteristics. This is due to the influences of history, national philosophy, state ideology, and others. On that basis, historically and practically, the concept of a state of law appears in various models of the concept of a state of law, including:

#### 1. Continental European concept of rule of law (rechtsstaat).

The concept of a state of law was born from a struggle against absolutism, so it is revolutionary in nature.<sup>48</sup> The concept of rechtsstaat is based on the Continental Legal system called civil law. The characteristics of civil law are administrative.<sup>49</sup>

#### 2. Anglo Saxon concept of rule of law

The concept of rule of law developed evolutionarily.<sup>50</sup> The concept of the rule of law rests on a legal system called common law. The characteristic of common law is judicial.<sup>51</sup>

#### 3. State of Law socialist legality concept

*Social legality* is a concept adopted in communist/socialist countries which seems to be intended to balance the rule of law concept pioneered by Anglo-Saxon countries.<sup>52</sup>

#### 4. The rule of law concept of Islamic nomocracy.

The concept of Islamic nomocracy is based on the values contained in the Qur'an and the Sunnah. Islamic nomocracy is a state of law that has the following general principles (the

principle of power as a mandate, the principle of deliberation, the principle of justice, the principle of equality, the principle of recognition and protection of all human rights, the principle of an independent judiciary, the principle of peace, the principle of welfare, and the principle of obedience to the people).<sup>53</sup>

#### 5. Indonesian Legal State, the concept of the Pancasila legal state

Indonesia is a country based on law, this phrase/statement is the text of Article 1 Paragraph 3 of the 1945 Constitution. The development of the concept of a country based on law is a product of history, the formulation of its meaning continues to develop following the history of the development of society in the state. As with the statement of the rule of law in the 1945 Constitution, there have been changes since it was first ratified by the PPPKI (Preparatory Committee for Indonesian Independence) on August 18, 1945. These changes include since December 27, 1949, the RIS has been in effect in the Indonesian Constitution, and since August 17, 1950, the UUDS 1950 has been in effect in Indonesia. The Presidential Decree of July 5, 1959 re-enacted the 1945 Constitution, with it being confirmed by acclamation by the DPR on July 22, 1959. In the period 1999-2002 after the reform era, the 1945 Constitution underwent 4 amendments, namely: the first amendment on October 19, 1999, the second amendment on August 18, 2000, the third amendment on November 9, 2001 and the fourth amendment on August 10, 2002.

The concept of a state of law in the 1945 Constitution is mentioned in explanation of the original version of the 1945 Constitution in the sub-chapter on the State Government System:

"The state government system as stated in the Constitution is:

- 1) Indonesia is a country based on law (Rechtsstaat).
- 2) The Indonesian state is based on law (Rechtsstaat) and not merely on power (Machtsstaat)."<sup>54</sup>

"The system of government of the country affirmed in the Constitution is Indonesia, a country based on Law (Rechtsstaat). The State of Indonesia is based on Law (Rechtsstaat) not based on mere power (Machtsstaat)."<sup>55</sup>

After the 1945 Constitution was amended, the explanation was removed because it was considered very constitutive so that its normative content was included in the articles, so that the term "rechtsstaat" was also removed. In the third amendment to the 1945 Constitution, the principle of the concept of a state of law was then stated firmly in Article 1 paragraph (3) which reads: "Indonesia is a State of Law" without mentioning the term "rechtsstaat".

The meaning of the rule of law is that no one is above the law and the law is powerful. The implementation of government power must be based on law. The state and other institutions in whatever action they take must be based on law and can be legally accountable. The power to run government is based on legal sovereignty (rule of law) and aims to maintain legal order.<sup>56</sup> To achieve this goal, there are 3 (three) basic principles that must be upheld by every citizen, namely, the supremacy of law, equality before the law, and law enforcement in ways that do not conflict with the law.<sup>57</sup>

Immanuel Kant's opinion, Law is the totality of conditions for people's free will to be able to adapt to the free will of other people, by following the rules regarding freedom.<sup>58</sup>

According to JCT Simorangkir and Woerjono Sastro Pranoto, law is mandatory regulations made by authorized official bodies, which determine human behavior in the social environment, violation of these regulations results in punitive action being taken.<sup>59</sup>

According to Satjipto Raharjo, law is a rule that contains an assessment regarding certain actions. This is clearly visible in the form of commands and prohibitions. Rules are expressed in the form of instructions for behavior. Therefore, legal rules are called behavioral instructions about what can and what cannot be done accompanied by sanctions. These legal rules originate from the community itself or from other sources whose validity is recognized by the highest authority in that community. If these rules are violated, this will give the highest authority the authority to impose sanctions. So that with these sanctions the community is expected to always be in a good corridor, and avoid acts that violate the law, in order to create peace in society.<sup>60</sup>

According to Sabine, law is a manifestation of the collective wisdom of citizens, so the role of citizens is needed in its formation.<sup>61</sup> In line with this statement, Indonesia needs a legal concept that is based on the noble values of the nation, diversity, family and mutual cooperation as well as the beliefs held by the Indonesian people so that the legal norms that are crystallized into laws ultimately have a legal objective that makes its people happy, so that it is able to present legal products that contain the values of social justice.<sup>62</sup>

From Sabine's opinion, we can see that the concept of a state of law that is actually adopted by the Indonesian state is by looking at the Preamble and the Articles in the 1945 Constitution as the source of all sources of Indonesian legal politics. What is the basis for affirming both as sources of national legal politics is first, the preamble and Articles in the 1945 Constitution contain the goals, foundations, legal ideals, and basic norms of the Indonesian state which must be the goals and foundations of Indonesian legal politics and second, the preamble and articles in the 1945 Constitution contain unique values that originate from the views and culture of the Indonesian nation inherited from the ancestors of the Indonesian nation.<sup>63</sup>

Indonesian legal state Based on Article 28I paragraph (5) of the 1945 Constitution, Indonesia is a democratic state based on law (*demokratische rechtstaat*), meaning that the Indonesian state based on law combines the concept of *rechtstaat* and the concept of rule of law, as stated by Mahfud MD that "the Indonesian state based on law based on Pancasila and the 1945 Constitution takes a prismatic or integrative concept from two concepts of the state based on law (*Rechtsstaat* and the Rule of Law)".<sup>64</sup>

Country law is a country in which there are various aspects of regulations that are mandatory and have strict sanctions if violated, meaning that all state life must be based on law, so that the concept of a state of law is truly implemented, and can achieve the goal of the state is to create a safe, peaceful and law-abiding country and a just and prosperous society based on Pancasila. A condition is needed which is a requirement to maintain order, security, peace and legal certainty that can protect the Indonesian people. then there are two things that must be attempted by the Indonesian state, namely legal protection and law enforcement.

From the description above, the rule of law adopted in Indonesia is a rule of law based on Pancasila which is the basis for realizing social justice for all Indonesian people, including Indonesian sailors. This basis provides legal certainty to protect the rights of Indonesian sailors.

Protection according to Sudikno Mertokusomo, that in its function as protection of human interests, the law has goals and targets to be achieved, the main goal of the law is to create an orderly social order, create order and balance, with the creation of order based on legal principles with the aim of human interests that will receive protection.<sup>65</sup>Sailors are legal subjects who have interests they wish to achieve, so it is only right that they receive protection in achieving their goals.

Legal protection is providing protection for human rights that are harmed by others and this protection is given to the community so that they can enjoy all the rights granted by law or in other words, legal protection is various legal efforts that must be provided by law enforcement officers to provide a sense of security, both mentally and physically, from disturbances and various threats from any party.<sup>66</sup>Legal protection given to Seafarers is currently not optimal. This is proven by the many cases experienced by Seafarers that cause feelings of insecurity and disturb both physically and mentally. One of the causes of the less than optimal protection received by Seafarers is the weak supervision and law enforcement by law enforcement officers.

Harjono stated that legal protection in English is called legal protection, while in Dutch it is called rechtsbecherming. Harjono defines legal protection as protection using legal means or protection provided by law to then be directed at protecting certain interests, namely by making the interests that need to be protected into a legal right.<sup>67</sup>Legal protection for Seafarers is protection using legal means or protection provided by law. The legal means/instruments can be in the form of laws and regulations that apply nationally and internationally that regulate the rights or interests of Seafarers provided by law.

According to CST Kansil, "legal protection is all legal efforts that must be provided by law enforcement officers in order to provide a sense of security, both mentally and physically, from disturbances and various threats from any party."<sup>68</sup>Legal protection for sailors must be attempted by law enforcement officers, so that sailors have a sense of security while working, free from interference and threats from any party.

### **The Nature of Legal Protection for the Rights of Indonesian Seafarers in Providing Legal Certainty**

According to Philipus M. Hadjon, legal protection is an action to protect or provide assistance to legal subjects, by using legal instruments.<sup>69</sup>legal protection for Indonesian sailors means an action given to protect or provide assistance to Indonesian sailors who experience legal problems by using legal instruments. Such assistance can be in the form of law enforcement when problems occur to Indonesian sailors or resolution when legal disputes/problems occur.

Still according to Philipus M. Hadjon, legal protection is the protection of dignity and honor, as well as recognition of human rights owned by legal subjects based on legal provisions from

arbitrariness or as a collection of regulations or rules that will be able to protect one thing from another. This means that the law provides protection for a person's rights against something that results in the non-fulfillment of those rights.<sup>70</sup>

Thus, legal protection for Indonesian sailors is carried out by using legal means aimed at protecting the dignity and honor of sailors and their families, as well as recognition of the human rights possessed by every legal subject, in this case sailors.

When connected to the state of Indonesia, legal protection for Indonesian sailors must be based on the principle of recognition and protection of the dignity and honor of sailors which is based on Pancasila. As a country of law, Indonesia is obliged to provide legal protection to all its citizens without exception, including sailors.

Because legal protection is a human right owned by every Indonesian citizen and Indonesian sailors are Indonesian citizens. The right of every Indonesian citizen to obtain legal protection has been regulated in Article 28 D paragraph (1) of the 1945 Constitution, which states: "Everyone has the right to recognition, guarantee, protection, and certainty of fair law and equal treatment before the law."

In harmony with legal protection relating to a person's right to be under legal protection and the right to a sense of security as stated in article 28 G paragraph (1) of the 1945 Constitution which reads: "Everyone has the right to personal protection, family, honor, dignity, and property under his control, and has the right to a sense of security and protection from the threat of fear of doing or not doing something which is a human right."

Philipus M. Hadjon argues, because the nature and purpose of law according to him is to provide protection (protection) to society, which must be realized in the form of legal certainty. Legal protection is an action that is preventive and repressive.<sup>71</sup> The explanation of the two means of legal protection is:

- a. Means of Preventive Legal Protection. In this preventive legal protection, legal subjects are given the opportunity to submit objections or opinions before a government decision gets a definitive form. The goal is to prevent disputes from occurring.
- b. Repressive Legal Protection Facilities. Repressive legal protection aims to resolve disputes. Handling of legal protection by the General Court and Administrative Court in Indonesia is included in this category of legal protection. The second principle underlying legal protection against government actions is the principle of the rule of law. Associated with the recognition and protection of human rights, the recognition and protection of human rights have a primary place and can be associated with the objectives of the rule of law.<sup>72</sup>

From the description above, the essence of legal protection provided to Indonesian sailors in a state of law is the existence of legal certainty in providing protection for the dignity and honor of Indonesian sailors which is based on Pancasila and the 1945 Constitution as well as recognition of the human rights of Indonesian sailors through preventive and repressive legal protection facilities to ensure the fulfillment of the rights of Indonesian sailors.



## CONCLUSION

Legal protection for the rights of Indonesian Seafarers, in essence, is to provide legal certainty for the rights of Seafarers, to fulfill the basic rights of Seafarers and the human rights of Seafarers, and to maintain the dignity of Indonesian Seafarers and their families so that they are protected from cruel and inhumane treatment as has happened so far. The protection provided includes protection before work, during work, and after work/repatriation. Before work includes guaranteeing rights in recruitment and placement. While working related to wages, social security and insurance, decent food and accommodation, occupational safety and health, working hours, rest and leave in accordance with applicable regulations. And protection after work includes old age security and pensions

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