



Challenges in Ratifying ILO Convention C188 for the Protection of Indonesian Migrant Fishers: Case Study on Riau Islands Province

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Abstract. Indonesia is a marine-archipelago country, with the maritime industry being one of the country's biggest strengths. The fishing industry is one of the most significant contributors to the country's marine economy and to improving the Indonesian people's livelihood. Most Indonesians work as fishers in domestic and foreign vessels, inside and beyond the Indonesian territory. In the last few years, cases of violations of the human rights of Indonesian fishers started to emerge, namely the case of human rights breach of Indonesian fishers aboard the Chinese-flagged vessel Long Xing 629. The lack of Indonesian legal framework and authority is believed to influence these fishers' endless cases of human rights abuse. Hence, many stakeholders call for the Indonesian government to complement the existing legal framework by ratifying ILO Convention C188. However, disputes amongst governmental bodies and ambiguous systems hinder the ratification process. This article examines Indonesia's current legal safeguards for Indonesian fishers working on foreign vessels. This article also explores the advantages and benefits of Indonesia's ratification of Convention C188. This normative legal research utilized the statute approach, which analyzes several laws on marine human resources to develop a new opinion, to address the legal issue. This article finds that the Indonesian government has utilized several domestic and foreign legal frameworks to tackle the human rights issue experienced by Indonesian fishers and also seeks to ratify the C188 Convention and enhance the level of human rights in general.

Keywords: Convention C188, Human Rights, Indonesia, International Labour Organization, Ratification.

1 Background

Indonesia is a state of the law, as stated in Article 1 Paragraph 3 of the 1945 Constitution, which reads, "the state of Indonesia is a state of law." The rule of law or *rechstaat* regulates all elements of national and state life through binding laws. The Preamble of the 1945 Constitution's fourth paragraph also reflects the idea of Indonesia as a state of law. The fourth paragraph stated, "*then to establish an Indonesian government that protects the entire Indonesian nation and all Indonesian bloodshed and to promote the general welfare, educate the nation's life and participates in implementing world order*

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M. K. bin Abdullah et al. (eds.), *Proceedings of the International Seminar on Border Region (INTSOB 2023)*, Advances in Social Science, Education and Humanities Research 823,

https://doi.org/10.2991/978-2-38476-208-8_30

based on independence, eternal peace." In addition to explaining that Indonesia is a law-based state, it also states Indonesia's commitment to defend its nation and citizens, in this case, the protection of workers.

The issues surrounding workers' rights in Indonesia are endless. These problems are closely related to ensuring the human rights of workers both within and outside the borders of Indonesia's jurisdiction. Human rights protection discourse is always concerned with the extent to which a country pays attention to the rights of its people. Regulation is a vital tool for governing in a legal state. The existence of numerous legal instruments that can support the implementation of human rights protection is thus one of the indicators that can serve as a benchmark for a legal state's appreciation and protection of human rights.

There is a notion of a welfare state incorporated into the idea of statehood. Jan M. Boekman defines *the welfare state* as a combination of economic facts and broad ideas about justice, including the existence and function of law in various spheres of society. Therefore, the welfare state is always interrelated with law, resulting in its primary objective of itself justice. To realize its commitment to the rule of law (*rechstaat*) and welfare state, Indonesia should complement its current legal instruments to defend its citizens' human rights further [1]. It reflects the positivist theory's viewpoint that every citizen has the right to protection from the country based on the established written norms. Therefore, citizens may file a lawsuit or claim if the government waives these rights.

Indonesia is an archipelago country with a large body of water within its territory. With these geographic characteristics, it is impossible to separate the dependence of its people's livelihood from the seas, whereas most Indonesian citizens' economic well-being and way of life depend on the fishing industry. Many countries take advantage of the fisheries industry to ensure food security and the economy. This phenomenon leads many domestic and foreign business owners in the global fishing industry to seek Indonesian fishers [2].

Fishers or ship crew members (often referred to *anak buah kapal* in Indonesian) work on a ship and are responsible for the vessel and its cargo operation and maintenance. It is widely known that fishing vessels worldwide experience fatal accidents at a rate of 80 per 100,000 crew members. International organizations, including the Food and Agriculture Organization (FAO), International Maritime Organization (IMO), and International Labour Organization (ILO), are concerned about the importance of improving employment and safety aboard fishing vessels. These international agencies have established a convention relating to decent labor with the involvement of tripartite parties, consisting of the government, shipowners, and fisheries [2].

One of the cases of human rights violations against Indonesian fishermen occurred in April 2020 aboard the Long Xing 629 ship. This case is one of numerous human rights violations where Indonesian fishers work for foreign vessels. According to the Indonesian Ministry of Foreign Affairs, there were at least 1,095 incidences where Indonesian fishers experienced violence and slavery practices while working in 2019 [3]. The high number of human rights violations experienced by Indonesian crew members raises critical questions regarding the state's role in supervising and providing protection to those working abroad or in foreign vessels.

Until 2022, the Indonesian government has not taken significant actions or attempted to address the rights of Indonesian fishers working on foreign fishing vessels. Ratifying International Labor Organization (ILO) Convention C188 on the protection of fisheries crews is one of the necessary actions to be taken in response to the numerous reports of human rights violations encountered by Indonesian fishers. Convention C188 is an international norm that ensures that fishers of fishing vessels have decent and adequate working conditions, including adherence to the minimum requirements for work, conditions of service, occupational safety and health protection, accommodation and food, medical care, and social security.

The Indonesian government is still determining the decision to ratify convention C188. The initial steps taken by the Indonesian government is to only localize the convention norms into Ministerial Regulation (Maritime Affairs and Fisheries Regulation No. 35 of 2015 on System and Certification of Human Rights in Fisheries Business). However, it should be highlighted that the current ministerial rule still could not fully safeguard the rights and welfare of all Indonesian fishers. As a result, the Indonesian government needs to take actions beyond the localization of international norms to maximize the protection of Indonesian fishers working on foreign vessels to be consistent with the country's commitment to protecting all citizens.

The adoption of Ministerial Regulation No. 35 in 2015 does not signify that the Indonesian government has completed its mission to protect Indonesian crew and fisheries, as the government and Ministry of Marine Affairs and Fisheries were motivated more by economic and political imperatives than by a genuine desire to ratify Convention C188 [4]. This situation demonstrates that the Indonesian Ministry of Marine Affairs and Fisheries does not push the government to approve the ratification of Convention C188 as its primary goal but instead uses the discourse of fisheries and ratification of Convention C188 to establish domestic legitimacy for the issuance to enact the ministerial regulation and short-term international political reputation.

Based on the background above, this article will examine the current type of legal protection in Indonesia for Indonesian fishers. This article aims to analyze what legal safeguards are in place for Indonesian fishers on foreign ships per ILO Convention C188 2007 and the benefits to Indonesia of ratifying ILO Convention 188 2007 to protect Indonesian fishers. This article hopes to contribute knowledge concerning the relationship of Indonesia with international law, marine and fisheries law, and the convention ratification process. This article may also be used as a reference for subsequent research. This article hopes to increase public awareness of the human rights issue of Indonesian fisheries and therefore, influence stakeholders to take appropriate steps to deal with this issue.

2 Method

The research methodology used in this study is normative legal research using a statute approach. According to Waluyo in Muhaimin [5], normative legal research analyzes legal documents, including statutes, court orders, agreements, contracts, legal theories, and other academic works. Marzuki [6] stated that the statute approach analyzes a rule,

principle, or piece of legal doctrine to develop a new argument, theory, or notion that can be used to address a legal issue. One type of normative legal study is the statute approach. This method analyzes all laws and regulations relevant to the examined legal topic [5]. As a result, this normative study aims to examine various legal documents related to maritime and labor issues to find solutions to the challenges of protecting the human rights of Indonesian fishers.

The research draws on a variety of sources. The primary legal material of this study is the national legislation (Indonesia), including government regulations, ministerial regulations, and international legal regulations (conventions) that regulate marine and labor issues. Secondary legal material for this study is legal textbooks and internet sources in the form of scientific articles and news articles that discuss the issue of ratification, maritime and labor law, and cases of human rights violations of Indonesian fishers. Non-legal materials are also used in this study to support the analysis of legal materials. These non-legal materials are a form of statistical data issued by Indonesian government agencies.

3 Conceptual Framework

3.1 Dualism Theory

According to Chiam [7], dualism in international law is a system that places international treaties outside the legal system of states so that international treaties are ostensibly legal systems excluded from state law. The validity of international law in dualistic domestic law is determined by the rules of domestic law that can authorize the application of such international law.

H. Triepel originated the idea of dualism in international law, which numerous other jurists later developed, including D. Anzilotti, L. Oppenheim, and M. Virally. According to Anzilotti in Hillier [8], both international and domestic law have their spheres of application. The basis for the enactment of domestic legal provisions is regulated in the Constitution, while the basis of international law is based on the principle of *pacta sunt servanda*. The term *pacta sunt servanda* means that any applicable agreement is binding on the parties and must be performed by them properly [9]. The provisions of international law cannot impact the validity of the provisions of domestic law and vice versa. Legal acts in both systems (domestic and international) can only be approved at the proper level. International law must be adopted with the proper procedures to be applicable in the domestic legal system because the laws in both legal systems should not be the same or contradictory. This synchronization is possible, as Virally in Marian [10] stated, because international and local law can both recognize the legitimacy of the other.

3.2 Norm Localization

According to Acharya [11], the concept of Norm localization describes a complex process and outcome in which norm-taking builds alignment between transnational norms, including norms previously institutionalized in a region and local beliefs and practices

and local beliefs and practices. Furthermore, according to Acharya [11], the strategy's success and the diffusion process of norms depends on the extent to which they (the governments involved) provide opportunities for localization.

According to Winanti and Hanif [12], the norm localization process plays a vital role in shaping the extent to which global governance norms are adapted at the national or domestic level. Norm localization attempts to establish normative or cognitive alignment of global norms with local identity. Winanti and Hanif [12] also argue that the pattern of Norm localization is highly dependent on the capacity of domestic political leaders to utilize global governance norms (global governance) as a primary instrument to consolidate and strengthen local power.

3.3 Ratification

According to the Vienna Convention of 1969, a ratification is an act by which a state declares its willingness to be bound by an international convention. An international treaty is concluded between states in written form and governed by international law embodied in one, two, or more instruments [13]. In a bilateral treaty, ratification is carried out by exchanging the necessary instruments, while in the case of a multilateral treaty, the procedure carried out is the collection of ratifications of all countries so that all parties are aware of the content of the agreement. The institution of ratification grants a country the necessary time frame for the treaty to be approved at the domestic level. This period is also used to prepare and enact the necessary legislation to give domestic effect to the treaty [14].

Law No. 24 of 2000 regulates the ratification process in the Indonesian international treaty system. Article 1 of this law defines an international treaty as “an agreement, in a specific form and name, provided for in international law made in writing and giving rise to rights and obligations in the field of public law.” Ratification, accession, acceptance, and approval are some forms of international treaties. This law can approve the ratification procedure if it meets the indicators in Article 10, namely (1) political issues, peace and security of the state; (2) changes in the territory or determination of the Indonesian territory; (3) sovereignty or sovereign rights of the state; (4) human rights and the environment; (5) the establishment of new legal rules and (6) foreign loans or grants. Human rights and environmental indicators may support the importance of the ILO Convention C188 ratification process in protecting Indonesian fishers [15].

Several parties are involved in the ratification process, including the parliament, ministries, courts, human rights groups, NGOs, and the United Nations Office of Legal Affairs. These parties are engaged in a national study, lobbying, and extensive national discussions to encourage ratification. There are two ratification processes for countries with different legal systems: civil law countries and common law and other system countries. Indonesia, a nation with a civil law system, adheres to the two steps of the ratification process: (1) the agreement must be approved by the legislature, and (2) the ratification must be sent to the executive body for promulgation. After clearing these two procedures, ratification is put in the United Nations Secretary-convention General's depository. This process is complete with an agreement to abide by the convention. A convention is a multilateral agreement that binds together all the signatory nations.

Conventions are agreements established under the supervision of international organizations. The benefit of international ratification is that a convention can be directly implemented domestically without adapting to existing domestic law [16].

Stakeholders have different functions and roles in encouraging the process of ratifying the ILO C188 convention in Indonesia. The responsibilities of the executive board (president) in the ratification process include the following:

- Consulting on issues in ratification with relevant ministries
- Holding national meetings
- Reviewing relevant laws and policies
- Analyzing ratification so that it is in accordance with national interests

Parliament or legislative body (DPR, MPR, DPD) role among others, (1) using the authority and legislative procedures to encourage ratification; (2) encouraging discussion of the ratification issue within the legislature itself; (3) raising awareness and urgency of the convention, and the ratification process and (4) mobilize public opinion [16].

Indonesians will understand the significance of ratifying the convention to resolve the fisher's human rights issue due to the government's efforts and focus on the matter. In this case, the crew and the parties working in the scope of shipping have an essential role in voicing their opinions to influence the urgency of ratification of the ILO Convention C188. Indonesians can take several actions, including:

- Joining forces to help ratification,
- Reaching out to national and international NGOs,
- Devising strategies to lobby the government, and
- Creating campaigns through mass media to raise public awareness.

Indonesia's National Human Rights Agency (KOMNAS HAM) plays an essential role in supporting the aspirations of the people by (1) researching human rights issues, in this case, the human rights of Indonesian fishers; (2) reviewing laws and policies; (3) adding the ratification agenda in the annual report to parliament and (4) issuing press releases supporting ratification (UN & OHCHR, n.d.). Lastly, the help of the UN team in Indonesia is required, particularly from organizations such as OHCHR and ILO that are relevant to this situation [16].

Since 1950, Indonesia has ratified 20 ILO conventions, 19 of which are still in effect. There are nine fundamental conventions, two priority conventions (governance), and nine technical conventions are among the twenty [17]. Convention ILO C187 on the framework promotion of the Occupational Safety and Health Convention, 2006 (No. 187), ratified in 2015, is one example of a ratified convention addressing human rights problems in the Indonesian labor system. Indonesia has signed and ratified two conventions that can be utilized to solve the problem experienced by Indonesian fishers: Convention C185 2003 on Seafarers' Identity Documents (amendment 2016, No. 185), ratified in 2008, and the MLC Convention on Maritime Labor 2006, ratified in 2017. The ILO refers to all those working on ships other than warships as seafarers. Both of these conventions emphasize the importance of identity documents for seafarers and

social security benefits, including pension funds, occupational injury funds, and disability benefits. These two conventions can support and strengthen the applicability of Convention C188 once ratified by the Indonesian government.

4 Literature Review

Studying and analyzing Indonesia's legal and governmental structures and the ratification procedure from prior ratification initiatives is crucial to promoting Indonesia's ratification of ILO Convention C188. The article "The Dilemma of Reviewing the Ratification Law by the Constitutional Court in the Context of Indonesian Statehood" by Nurhidayatulloh [18] thoroughly assesses Indonesia's legal ratification history. The law that deals with ratification, in general, is Article 11 of the 1945 Constitution, which states that the president declares war, makes peace, and makes agreements with other countries with the approval of the House of Representatives. The Letter of President RI No. 2826/HK/60 published on 22 August 1960 concerning "The Making of Treaties with Other Countries" clarifies this statute. As the millennium approached, this presidential letter was deemed unsuitable and not anymore in accordance with the spirit of reformation. Therefore, Law No. 24 LN 2000 concerning "International Treaty Law" is established. This law governs the process of drafting international treaties, ratifying international treaties, bringing international treaties into force, storing international treaties, and terminating international treaties.

The Indonesian government's ratification process has encountered several difficulties. According to the article "The urgency of the constitutional preview of law on the ratification of international treaty by the Constitutional Court in Indonesia" by Huda et al. [19], this is due to the substance of Law No. 24 of 2000 considered to be contrary to the 1945 Constitution. Therefore, necessitating a constitutional review of Law No. 24 of 2000 by the Constitutional Court. According to Kelsen in Huda et al. [19], this review is required so that the Constitutional Court can ensure that the lower rule of law (Law No. 24 of 2000) is in accordance with the rule of law on it (1945 Constitution). The compatibility of these two laws can ensure the synchronization and harmonization of international accords with the 1945 Constitution's ideals and norms.

Similar issues regarding the need for judicial review of Law No.24 of 2000 are also stated by Sidharta [20] in his article entitled "Laws of Ratification of an International Treaty in Indonesian Laws Hierarchy." Sidharta [20] revealed that the dualism system places international agreements outside the country's legal system and not inside it. Therefore, judicial review is needed to ensure the accuracy of the ratification process to support Indonesia's foreign policy interests.

This article utilized the three sources mentioned above as a basis for this study's analysis of Indonesia's legal system effort in ratifying Convention C188. This study will look into the types of protection applicable to Indonesian fishers that were not covered by the previous three publications. This study also examines how the ILO Convention C188 can provide legal protection for Indonesian fishers and the potential benefits of this convention if Indonesia ratifies it.

5 Findings

Indonesia enforces national and international laws (conventions) to protect Indonesian fishers who work at foreign fishing vessels. These laws are enacted to protect and guarantee fishers' human rights while working at sea. According to a 2016 Indonesian Ministry of Foreign Affairs report, human trafficking is one of the significant problems within the fishing industry. The legal basis governing the issue of human trafficking is Law No. 21 of 2007 on "Eradication of Criminal Acts of Human Trafficking." This law defines human trafficking as "the act of recruiting, transporting, harboring, sending, transferring, or receiving a person under threat of violence, use of force, kidnapping, confinement, forgery, fraud, abuse of power or position of vulnerability, entrapment of debt or giving payment or benefit, to obtain the consent of the person in control of that other person, whether committed within or between countries, for exploitation" [21]. In addition to this law, the Indonesian government also enacted several laws and regulations to protect Indonesian fishers from human trafficking, which are as follows [22].

- Law of The Republic Of Indonesia No. 5 of 2009 on the ratification of the United Nations Convention Against Transnational Organized Crime.
- Law of The Republic Of Indonesia No. 14 of 2009 on the ratification of protocols to prevent, crack down on, and Punish Trafficking in Persons, Especially Women and children.
- Law of The Republic Of Indonesia No. 15 of 2009 on the ratification of the protocol against the smuggling of migrants by land, sea and Air.
- Law No. 31 of 2014 on amendments to Law Number 13 of 2006 on witness and Victim Protection.

The 2016 Indonesian Ministry of Foreign Affairs report provides several indicators that the government can use to determine whether an activity is a form of human trafficking. In the context of protecting Indonesian fishers on foreign vessels, these fourteen indicators are (1) Indonesian fishers do not receive wages or only receive very small wages for the work performed; (2) Indonesian fishers do not have the right to process wages received or must give these wages to third parties; (3) Indonesian fishers are in debt to pay brokerage fees or recruitment; (4) Indonesian fishers are restricted in their freedom and movement; (5) Indonesian fishers are verbally or violently threatened not to stop working; (6) Indonesian fishers are isolated or restricted to make contracts with other parties; (7) Indonesian fishers are detained or do not have access to adequate health and Food Services; (8) Indonesian fishers are blackmailed or receive threats targeting their families or children; (9) Indonesian fishers receive threats of violence; (10) signs of physical violence are found in Indonesian fishers; (11) Indonesian fishers are forced to work in very poor conditions and/or work for a very long time; (12) Indonesian fishers did not pay for and take care of travel documents; (13) Indonesian fishers did not keep their own identity and travel documents and (14) Indonesian fishers was caught using false identities such as passports provided by third parties [22].

Due to Indonesia's dualistic legal system, a variety of national and international regulations can serve as a legal framework to safeguard the rights of Indonesian fishers

working both inside and outside the country. Below are several national legal frameworks that Indonesian law enforcement can implement.

- Law No. 13 of 2003 on Employment
This law regulates labor activities as well as the parties involved in such labor activities. In the context of Indonesian fishers in foreign vessels, article 4 of this law ensures that the labor activities of the crew must be carried out optimally and humanely and obtain protection guarantees to realize and improve the welfare of the fishers and their families. In addition, this law also regulates the placement of labor (chapter 6); labor relations (Chapter 9); protection, wages, and welfare (Chapter 10); surveillance (Chapter 14), and investigation (Chapter 15) (Law on Employment, 2003).
- Law No. 21 of 2007 on "The Eradication of Criminal Acts of Human Trafficking"
- Law No. 17 of 2008 on Seafaring
- Law No. 6 of 2011 on Immigration
- Law No. 18 of 2017 on "The Protection of Indonesian Migrant Workers"
This law is enacted to repeal Law No. 39 of 2004 on "The Placement and Protection of Indonesian Workers Abroad." Indonesian fishers are included as Indonesian Migrant Workers, namely, "every Indonesian citizen who will, is, or has done work by receiving wages outside the territory of the Republic of Indonesia." Article 2 of this law emphasizes that the protection of Indonesian fishers as migrant workers must be based on the principles of (1) integration; (2) equal rights; (3) recognition of human rights; (4) democracy; (5) social justice; (6) gender equality and justice; (7) nondiscrimination; (8) anti-trafficking; (9) transparency; (10) accountability; and (11) sustainability. This migrant protection law is essential to ensure the fulfillment and enforcement of human rights and legal, economic, and social protection for Indonesian fishers (Law on The Protection of Indonesian Migrant Workers, 2017).
- Government Regulation No. 7 of 2000 on Maritime (Seaworthiness)
- Government Regulation No. 20 of 2010 on Marine Transport
- Government Regulation No. 3 of 2013 on "The Protection of Migrant Workers Abroad"
- Regulation of The Minister of Transportation No.84 of 2013 on "Recruitment and Placement of Fishers"
- Regulation of The Minister of Marine Affairs and Fisheries No. 35 / PERMEN-KP/2015 on "Human Rights System and Certification in Fisheries Business."
- Regulation of The Head of BNP2TKI (National Agency for the Placement and Protection of Indonesian Migrant Workers) No. PER.13/ KANII/2009 on "Data Collection of Indonesian Seafarers placement Abroad."
- Regulation of The Head of BNP2TKI No. PER.03/KA/1/2013 on "Procedures for Placement and Protection of Indonesian Seafarers in Foreign-flagged Vessels."
- Regulation of The Head of BNP2TKI No. PER.12/KA/IV/2013 on "Procedures for Recruitment Placement and Protection of Seafarers in Foreign-flagged Vessels."

Some of the laws mentioned above, such as Law No. 13 of 2003 [23], Law No. 17 of 2008 [24], Law No. 6 of 2011, and Law No. 18 of 2017 [25] on the protection of

Indonesian Migrant Workers, have undergone changes based on Law No. 11 of 2020 on Job Creation.

In addition to the Indonesian national laws, there are a series of international legal frameworks the Indonesian government can use to protect Indonesian fishers working abroad. The international legal framework for employment in maritime industries is as follows.

- The United Nations Convention against Transnational Organized Crime (UNTOC)
- ILO Convention No. 98 - Right to Organise and Collective Bargaining
- ILO Convention Maritime Labour Convention (MLC) 2006
- ILO Convention 185 - Seafarers' Identity Documents Convention
- ILO Convention No. 188 - Work in Fishing Convention and Recommendation (No. 199)
- International Maritime Organization (IMO) Safety of Life at Sea (SOLAS) 1974
- International Maritime Organization (IMO) Prevention of Pollution from Ships (MARPOL) 1973/78 and Protocol 1997
- International Maritime Organization (IMO) Standards of Training, Certification and Watch keeping for Seafarers (STCW) 1978

ILO Convention C185 is the first convention that Indonesia ratified on July 16, 2008, which it is still in force today. The substance of this convention regulates seafarers' identity documents in order to facilitate crew members' entry permits into the territory of member nations for the purpose of leave, transit, transfer, or repatriation. The convention applies to fishers and sailors working in commercial logistics and marine fishing.

Article 3 of Convention C185 governs the content and form of seafarers' identities. The seafarer's identity document must be designed simply, durable, and machine-readable. The materials used must be able to prevent document destruction or forgery. The identity document must include the issuing authority's name, contact information, issue date, and place. The document is not a passport and must not exceed the length of a passport. The document must contain (1) full name; (2) gender; (3) place and date of birth; (4) nationality; (5) distinctive physical characteristics that may aid identification; (6) digital or original photograph; and (7) signature. The annex to this convention contains comprehensive information on the specifications for the format and content of seafarer documents. Since the contents comply with international norms, the rules in this convention make it easier for Indonesian crew documents to be recognized by other nations. In addition, the articles of this convention also regulate the storage of such documents in national electronic databases, procedures for the control and evaluation of the quality of documents, and procedures for offshore, transit, and transfer. Amendments to this convention's annex made in 2016 had already been in effect for Indonesia since June 8, 2017 [26].

The manifestation of Convention C185 in Indonesia is the Seaman's Book (*Buku Pelaut*). The seaman's book is a document issued by the Directorate General of Sea Transportation, Ministry of Transportation, that contains the seafarer's identity per the recommendation of the annex in Convention C185. Furthermore, this book includes

certification data (mustered), health records, photo and seafarer codes, and a page stating that the seaman's book is valid globally. There is a table with several columns on the certification data page that can contain information such as (1) vessel name, gross tonnage, main engine power, and ship owner; (2) position; (3) shipping area; (4) flag; (5) place and date of boarding certificate; (6) place and date of boarding certificate; (7) seaman's personality (skills and behavior); (8) reason for boarding certificate and (9) signature. On the health record page, there are pieces of information on the seaman's health, such as (1) eye vision; (2) hearing; (3) general health conditions; (4) expiration date, and (5) notes [27].

In addition to the ILO Convention C185, the seaman's book is also based on Law No. 17 of 2008 on Seafaring. This law defines the term 'seafarer's document' as a seafarer's identity document and marine work agreement consisting of a seaman's book and a seafarer's identity card. Article 224 of this law states, "*every person working on a ship in any position must have competence, seafaring documents, and be certified by the Harbormaster.*" In addition, Article 145 also states, "everyone is prohibited from employing a person on a ship in any position without being certified and without having the required competence and skills and seafaring documents" (Law on Seafaring, 2008). As of December 20, 2022, the Department of Transportation website has recorded 1,347,425 seafarers with documents, of which 850,107 are active seafarers' accounts. By gender, 1,313,954 were male sailors, and 33,371 were female sailors. Under Law No.17 of 2008, The Directorate General of Sea Transportation is responsible for issuing a document certifying the position and competence of a sailor, namely a certificate. Certificates issued by the directorate include a certificate of competence, proficiency, endorsement, and fish vessel certificate. In addition, the directorate also issued certificates of expertise, namely nautical experts level I-V and D, nautical management experts Level III-V, technical experts level I-V and D, technical management experts Level III-V and other forms of ratings [28].

Convention C188 of the International Labor Organization governs labor activities in the fishing industry. This convention regulates all processes and parties involved in commercial fishing, including [29],

- Provisions for carrying out commercial fishing activities,
- The authority and responsibility of fishing vessel owners,
- Qualification of fishers.
- Regulation of work agreements of fishermen/crew, and
- The process of recruitment and placement services for fishers.

The purpose of this convention is to ensure that fishers have the rights of:

- Decent working conditions on board fishing vessels, including lodging and food;
- Occupational health and safety protection; and
- Access to medical care and social security.

Adopting ILO Convention C188 by Indonesia may provide stronger legal safeguards for Indonesian fishers, reducing the likelihood of human rights breaches in the fishing industry.

The Indonesian government intends to ratify Convention C188 to protect Indonesian fishermen. The urge to ratify C188 emerged in 2020 after the South Korean *Munhwa Broadcasting Company* reported the sea burial of an Indonesian fisher working on a Chinese-flagged fishing vessel, Long Xing 629, encouraging the Indonesian government to accelerate the ratification of the convention [30]. Furthermore, Long Xing 629, which employs more than 10 Indonesian fishers, was discovered in South Korean waters engaging in illegal, unreported, and unregulated (IUU) fishing operations [31]. In response to the sea burial and later found several human rights violations, the Indonesian government, through the Coordinating Ministry for Maritime Affairs and Investment, expressed the commitment to accelerate the ratification of Convention C188 as a form of governance and effort to protect Indonesian fishers working in foreign vessels.

The plan reemerged in 2021 when Basilio Dias Araujo, Deputy for Maritime Sovereignty and Energy Coordination of the Coordinating Ministry for Maritime and Investment, stated that he had encouraged the Indonesian Ministry of Manpower and other related ministries and institutions to ratify Convention C188 immediately [32]. The Indonesian Ministry of Foreign Affairs stated that Indonesia is preparing a road map to ratify Convention C188 as the protection of Indonesian fishers has become a government priority [33].

In line with this, there are many incentives carried out by many parties, especially from civil society organizations and academics who have overseen the ratification discourse even before 2021. In 2017, Hanif Dhakiri, Minister of Manpower (2014-2019), stated that he was preparing to ratify Convention C188 as an effort to provide adequate and internationally guaranteed legal certainty, especially for workers in the fisheries industry. Dhakiri further believes that by ratifying Convention C188, it will be able to resolve the issue of ministries and related entities having overlapping regulations, primary duties, and responsibilities. Susi Pandjiastuti, Minister of Marine Affairs and Fisheries (2014-2019), also encouraged and supported the government's plan to ratify Convention C188 in 2017. According to Pudjiastuti, the ratification of the convention is advantageous and effective in regulating the administration of Indonesian fisheries law [34].

The ratification of Convention C188 was always under discussion during 2015–2021, despite numerous case-by-case complaints of human rights abuses against Indonesian fishers and persistent calls for accelerating ratification from various parties. Given these circumstances, concerns arise over the Indonesian government's intentions to ratify C188 and synchronize it into domestic law. According to Juwana [35], the state has at least two obligations before selecting to ratify a convention. The government must first ensure that international conventions and agreements are in accordance with the 1945 Constitution. In the first stage, it is crucial to consider how the public and government perceive Convention C188. Furthermore, the government must ensure that international norms are aligned with Indonesia's national interests rather than simply being a member of other countries' underlying interests. Second, the government must transform international treaties or conventions into national law. This transformation occurs at conventions that provide the terms for implementing international norms in positive federal law.

The Ministry of Marine Affairs and Fisheries of the Republic of Indonesia enacted the Regulation of the Minister of Marine Affairs and Fisheries No. 35 of 2015 on "The system and certification of Human Rights in fisheries business." Although somewhat imperfect due to various other significant standards, this regulation had set specific essential issues mentioned in Convention C188 (see Table 1).

Table 1. Comparison between The Regulation of the Minister of Marine Affairs and Fisheries No. 35 of 2015 and ILO Convention C188 [36].

No.	Issues in ILO Convention C188	The Regulation of the Minister of Marine Affairs and Fisheries No. 35 of 2015
1.	Minimum age to work on fishing vessels	
2.	Responsibility of fishing vessel owners and captains for the safety of seafarers and their vessels	
3.	Periodic medical examinations for workers on fishing vessels	
4.	Vessels are adequately and efficiently manned and under continuous control of a competent skipper	
5.	Proportionate and sufficient rest time	
6.	Have a crew list and must have a signed marine work agreement	
7.	The fishers have the right to be repatriated when the employment agreement expires	
8.	Forbidding to pay anything for the sake of securing their jobs or from being blacklisted for any reason	
9.	Regulation and control towards private recruitment and placement services company and private employment agency	
10.	Fishers wage system	
11.	Establish detailed minimum and standards for accommodation and food standards on board	
12.	Establish minimum requirements for occupational safety and health	
13.	Emphasizing the need for medical care on fishing vessels	
14.	Benefit from social provision	

Based on the table above (Table 1), we can infer that Minister Regulation No. 35 of 2015 used Convention C188 as a reference and that its adoption represents an effort to localize the convention without ratifying it. Human rights violation cases of Indonesian

fishers in Benjina and Ambon also influence the enactment of the minister regulation [37]. The regulation was a practical step in enhancing Indonesia's legal framework for fisheries. International stakeholders responded positively to the regulation as it successfully promotes human rights in the Indonesian fishing industry. The regulation especially obtained positive responses from Indonesia's neighboring countries, which actively engaged in the fishing sector.

Although Minister Regulation No. 35/2015 has covered many issues and indicators to protect the human rights of Indonesian fishers in foreign vessels, there are still several points in the C188 convention that is yet to be present in this ministerial regulation. The first issue still unaddressed is the recruitment and placement of crew and the operation of private recruitment and placement services described in Article 22 of Convention C188. Article 22 regulates several issues, namely (1) prohibiting recruitment and placement services that use means or mechanisms intended to prevent or hinder crew members from working; (2) prohibiting any additional fees or charges, whether directly or indirectly, or in whole or in part, for the recruitment or placement of crew and (3) the license, certificate, or authorization of the private recruitment or placement service may be suspended or revoked in case of violation of relevant laws or regulations. This article also covers the operations of private recruitment and placement services of crew members.

The absence of regulation on private recruitment and placement services is one of the issues found in the case of violations of the human rights of Indonesian fishers aboard the Long Xing 629 vessel. The Indonesian government successfully arrested three suspects from three different private companies involved in the case. The three companies recruited and promised the Indonesian fishers to legally work on a South Korean-flagged ship and promised a salary of USD 42000 for 14 months. However, Indonesian authorities discovered that one of these companies did not pay the Indonesian fisher's salary; the next company only paid USD 1350 for 14 months, while the other company cut the fisher's salary so that only USD 650 was received (Halim, 2020). The companies involved are unregistered with the Ministry of Transportation and Ministry of Manpower and have a history of document forgery and human trafficking. In resolving the Long Xing 629 case, the inadequate legal system and the absence of strict legal authority disappointed the victims. The three private companies involved received low sentences without having to pay restitution and compensation. One company was able to escape punishment. In addition, Indonesian fishers only receive salaries for their work, which the companies pay them in installments without bonuses or compensation [38].

The next issue that is yet to be addressed in the ministerial regulation is the issue of social security or social welfare provisions. This issue is addressed in articles 34-37 of convention C188. Article 34 indicates that the Indonesian government should be able to ensure that the fishers who reside in its territory are entitled to social welfare. Subject on social provision is regulated in Law No. 40 of 2004 on the "National Social Security System" and Law No. 40 of 2011 on the "Social Security Agency (BPJS)." Social welfare must be distributed fairly like other professions/workers in the region. Article 35 of this convention encourages the Indonesian government to create comprehensive so-

cial security protection for all fishers residing on its territory based on national circumstances. Additionally, Article 36 encourages the Indonesian government to collaborate with neighboring nations through bilateral or multilateral agreements to: (1) ensure the implementation of comprehensive social welfare for migrant workers, considering the principle of equal treatment regardless of migrant workers' nationality; and (2) ensure the maintenance of social welfare rights that have been acquired or are in the process of acquisition by all migrant workers. Article 37 also allows Indonesia to enact other laws on the fisher's social welfare entitlements under terms adopted within the context of the regional economic organization, notably ASEAN.

Ratification of Convention C188 is essential in completing Indonesia's incomplete domestic legal system. Convention C188, however, has more of an impact on Indonesia than just enhancing domestic law. According to Baird's assessment [39], ratifying the C188 Convention will benefit and develop the human rights of individuals and the Indonesian fishing community in general. This convention has the opportunity to encourage the Indonesian government to protect and empower Indonesian migrant workers and contribute to creating a safer and more inclusive fishing industry environment. In particular, Nielsen and Simmons [40] argue that a state can receive tangible and intangible benefits from ratifying a human rights convention. According to OHCHR, private investors and trading partners prefer to invest in countries with a solid commitment to human rights because of the stability and security guarantees by the country. This advantage will generate economic benefits, which are tangible rewards. This benefit could be proven by Indonesia's attempts to strengthen worker human rights in Minister Regulation No. 35/2015, which importing countries have positively accepted. In addition, ratifying the C188 convention will boost Indonesia's perception and standing in the global environment as a country that upholds human rights. Indonesia's improving reputation is a form of intangible reward. However, the extent of benefits gained by Indonesia from ratifying Convention C188 remains influenced by the intensity of the implementation of the convention by stakeholders.

6 Discussions

The ratification of Convention C188 is a political decision made by the Indonesian government and a process of converting international law into a positive national law. Regarding the principle of localization of Acharya [11], Winanti, and Hanif [12], the Indonesian government possesses the political authority to ratify Convention C188 or align the convention with national legislation. This option exists as the government must consider the potential of Convention C188 serving domestic interests and the advantages and disadvantages of Indonesia ratifying Convention C188. In addition to this consideration, the data obtained from statements made by the two ministries (Ministry of Manpower and Ministry of Maritime Affairs and Fisheries) also showed that Indonesia needs to consider immediately ratifying Convention C188 to protect Indonesian fishers working in foreign vessels [41].

The ratification of the C188 convention by the Indonesian government is also a form of dualism legal system in force in Indonesia. This system demonstrates that Indonesian

authorities can utilize domestic and international legislation to prevent human rights crimes from happening to Indonesian fishers working on foreign vessels. The absence of domestic regulation on several concerns heightens the need to ratify the C188 Convention swiftly. In accordance with Chiam's opinion, the C188 convention's legality in Indonesian domestic law is authorized by existing domestic legal laws and must be familiarized in compliance with current procedures to be applicable in the domestic legal system. Referring to Virally's opinion on dualism, the C188 Convention and Indonesian domestic law must be synchronized so that they do not contradict one another and can recognize each other's validity. As a result, Indonesia's acceptance of the C188 Convention will help to complement and enhance the existing domestic legal framework.

7 Conclusions

The Indonesian government must pay urgent attention to protecting the human rights of Indonesian migrant workers, particularly Indonesian fishers, in the context of social welfare and human trafficking while working in foreign vessels. The Indonesian government has implemented national and international legal frameworks to safeguard the Indonesian fisher's rights. However, as evidenced by the case study of human rights breaches experienced by Indonesian crew members on the foreign Long Xing 629 vessel, several concerns remain unresolved under domestic law, necessitating synchronization with the international legal system.

Ratifying the ILO Convention C188 2007 on labor in the fisheries industry can help maximize Indonesia's domestic law's effect. Indonesia has ratified several ILO conventions related to maritime affairs and human resources to complement existing laws, government regulations, and ministerial regulations. One of the results of ratifying an ILO convention is the enactment of seafarer identity policy by Indonesian authorities, namely the seaman's book. Ratification of Convention C188 is vital to regulate issues that have yet to be addressed in Ministerial Regulation No.25/2015 on the operation of private companies' recruitment and placement services and the fishers' social welfare. Both of these issues were present in the Long Xing 629 case of human rights breaches, where the lack of rules or regulations resulted in minimal or even zero punishments for the private enterprises involved in the human trafficking of Indonesian fishers. In order to successfully prevent such cases, the Indonesian government must appropriately enforce the convention and legal system by ratifying or localizing it. Even after the successful ratification of Convention C188, the Indonesian government must continue to monitor and evaluate its implementation. In addition, the Indonesian legal authorities and other stakeholders are also very significant in the effectiveness and outcome of the implementation of the ratified convention. The improvement of Indonesia's overall human rights situation—which will have other positive effects—will be a benefit of ratifying Convention C188. These positive effects include boosting the Indonesian economy by attracting more foreign investors to the fisheries industry (tangible benefits) and enhancing Indonesia's standing as a nation that promotes human values abroad (intangible rewards).

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