



IMO
INTERNATIONAL MARITIME LAW INSTITUTE
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A specialized agency of the United Nations



A LAW TO INCORPORATE THE MARITIME LABOUR CONVENTION 2006 INTO THE LAWS OF THE REPUBLIC OF INDONESIA

**A Legislation Drafting Project submitted in partial fulfillment of the
requirements for the award of the Degree of Master of Laws (LL.M.) in
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Institute**

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MARITIME LABOUR CONVENTION, 2006

A LAW TO INCORPORATE THE MARITIME LABOUR CONVENTION 2006 INTO THE LAWS OF THE REPUBLIC OF INDONESIA

I. EXPLANATORY NOTE

A. INTRODUCTION

Seafaring is one of the important professions in the world. This is a fact since the presence of skilled and qualified seafarers is very much needed in the shipping industry to support the international trade. The health of the world economy depends on merchant seafarers due to the fact that about 90% of the world trade is transported by sea.¹ Nowadays, there are about 65,000 commercial vessels that navigate the oceans transporting every kind of cargo, with a total of about 1.2 million seafarers aboard coming from various nationalities.

Unlike other professionals that work on land, seafarers are a kind with unique characteristic. Those characteristics that differentiate them from other professionals are²:

1. Seafarers are perhaps the most 'globalized' of the world's worker;
2. Their workplace literally travels around the globe;
3. Their employers are often based in other countries than the seafarers' country; and
4. The ships, where the seafarers work and live, operate under the labour laws of a variety of different countries.

The distinct characteristic of seafarers from those who work on land brings to the fore the issue of protection of seafarer. Special protection is very much needed due to the following reasons:

1. The ship is both workplace and home for seafarer. As a result, they work on board ship at sea, without the possibility of going ashore for prolonged periods of time, therefore this condition requires the establishment of certain standards, such as crew accommodation, food and catering.³

¹ The Year of the Seafarer 2010; leaflet produced by the International Shipping Federation, p. 1.

² Dürler, Reto; "The Maritime Labour Convention 2006, A Major Step Forward in Maritime Law", in *Serving the Rule of International Maritime Law*, Gutierrez, Norman A. Martinez (Ed), Routledge, 2010, p. 299.

³ Christodoulou-Varotsi, Iliana et al; *Maritime Work Law Fundamentals : Responsible Shipowners, Reliable Seafarers*, Springer-Verlag Berlin Heidelberg, 2008, p. 9.

2. The maintenance of ships, which are in constant operation not only at sea but also in port, as well as working in shifts, has resulted in special regulations for hours of work and rest.⁴
3. The possibility faced by seafarers of termination of their employment in location other than their place of residence requires consideration of the issue of transportation to their places of residence, especially for foreign seafarers.⁵
4. The natural, technical and social risks inherent in maritime employment such as perils of the sea, the possibility of the vessel suffering maritime casualty or sinking.⁶ Seafarers are also constantly exposed to many particular technical risks arising from the operation of the ship that can lead to acute and chronic illnesses. Moreover, seafarers also become victims of unfair treatments such as abuse both on board and ashore, abandonment, refused repatriation, unpaid wages, refused medical treatment and so on.

The issue of protection of seafarers has always been a particular concern of the International Labour Organization (ILO). There are many international legal instruments related to seafarers' in the form of Conventions and Recommendations adopted by ILO. The adoption of Conventions and Recommendations is needed considering the unique conditions of the seafarers' work and the necessity for their protection. Since its establishment, 40 maritime labour Conventions, one Protocol and 29 maritime labour Recommendations have been adopted under the auspices of ILO, covering a wide variety of issues, including recruitment and placement, minimum age, hours of work, safety, health and welfare, labour inspection and social security.⁷ Despite the fact that there are many Conventions and Recommendations produced by ILO for the protection of seafarers, not all States ratified them making it difficult for the implementation of those Conventions.

Having considered all those facts, it is deemed important to establish one single legal instrument for the protection of seafarers that is acceptable to and implementable by all States, particularly those States that play an important role in shipping.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid, p. 10.

⁷ Ibid, p. 11.

Responding to the need of a single legal instrument that is acceptable to all stakeholders in the maritime field, in 23 February 2006, during the 94th session of the International Labour Conference at the ILO Headquarters in Geneva a very important Convention was adopted in the field of maritime labour. This Convention is known as the Maritime Labour Convention (MLC) 2006. The Convention was adopted by unanimous votes of the 106 member States attending the Conference without a dissenting vote.

The adoption of the MLC 2006 marked a significant development in the protection of seafarers. This Convention is designed to provide a comprehensive protection of seafarers' working conditions and social rights that are acceptable for all stake holders. The importance of MLC 2006 was also stressed out by the Director General of ILO Juan Somavia, on his statement which stated that "when ILO adopted the "bill of rights" for the world's maritime workers this February, all concerned - governments, seafarers and shipowners - hailed this new labour standard as a landmark development for the world's most globalized sector."⁸

MLC 2006 is also known as "fourth pillar" of the international regulatory regime for quality shipping, complementing the key Conventions of the International Maritime Organization (IMO)⁹, namely the International Convention for the Safety of Life at Sea, 1974 (SOLAS); the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, (STCW) as amended; and the International Convention for the Prevention of Pollution from Ships, 73/78 (MARPOL).

MLC 2006 in general, revised some standards in maritime labour such as: a) the existing requirements in the ILO Conventions and the existing Recommendations, b) establishing minimum requirement for the seafarer working on board ships, c) regulating the working condition, accommodation, recreation facility, foods, health insurance, welfare and social protection for the seafarer, and d) strengthening the enforcement in

⁸ <http://www.ilo.org/public/english/bureau/dgo/speeches/somavia/2006/maritime.pdf>, accessed on 21 December 2011 at 10.12 am.

⁹ Background paper, Preparatory Tripartite MLC 2006 Committee Meeting, Geneva 20 – 22 September 2010, p. 4.

every aspect, including the provision on the complaint procedure for the seafarer, ship owner, supervisor and jurisdiction of the flag State to monitor their vessels as well as inspection for foreign ship in the port. Once the MLC 2006 enters into force, there are 36 Conventions and one Protocol that will be gradually phased out. Those documents are¹⁰:

- Minimum Age (Sea) Convention, 1920 (No. 7)
- Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8)
- Placing of Seamen Convention, 1920 (No. 9)
- Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16)
- Seamen's Articles of Agreement Convention, 1926 (No. 22)
- Repatriation of Seamen Convention, 1926 (No. 23)
- Officers' Competency Certificates Convention, 1936 (No.53)
- Holidays with Pay (Sea) Convention, 1936 (No. 54)
- Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55)
- Sickness Insurance (Sea) Convention, 1936 (No. 56)
- Hours of Work and Manning (Sea) Convention, 1936 (No. 57)
- Minimum Age (Sea) Convention (Revised), 1936 (No. 58)
- Food and Catering (Ships' Crews) Convention, 1946 (No. 68)
- Certification of Ships' Cooks Convention, 1946 (No. 69)
- Social Security (Seafarers) Convention, 1946 (No. 70)
- Paid Vacations (Seafarers) Convention, 1946 (No. 72)
- Medical Examination (Seafarers) Convention, 1946 (No. 73)
- Certification of Able Seamen Convention, 1946 (No. 74)
- Accommodation of Crews Convention, 1946 (No. 75)
- Wages, Hours of Work and Manning (Sea) Convention, 1946 (No. 76)
- Paid Vacations (Seafarers) Convention (Revised), 1949 (No. 91)
- Accommodation of Crews Convention (Revised), 1949 (No. 92)
- Wages, Hours of Work and Manning (Sea) Convention (Revised), 1949 (No.93)
- Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109)
- Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No 133)
- Prevention of Accidents (Seafarers) Convention, 1970 (No. 134)
- Continuity of Employment (Seafarers) Convention, 1976 (No. 145)
- Seafarers' Annual Leave with Pay Convention, 1976 (No. 146)
- Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)
- Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)
- Seafarers' Welfare Convention, 1987 (No. 163)

¹⁰ Article X of the MLC 2006

- Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164)
- Social Security (Seafarers) Convention (Revised), 1987 (No. 165)
- Repatriation of Seafarers Convention (Revised), 1987 (No. 166)
- Labour Inspection (Seafarers) Convention, 1996 (No. 178)
- Recruitment and Placement of Seafarers Convention, 1996 (No. 179)
- Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180)

As stated in the Article VIII (3), the MLC 2006 will come into force 12 months after being ratified by at least 30 States with a total share in the world gross tonnage of ships of 33 per cent. Up to 5 April 2012, 25 States have ratified the MLC 2006 representing 56 percentage of the world gross tonnage. The countries that deposited the instrument of ratification to this Convention and have been communicated to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations are¹¹: Antigua and Barbuda, Australia, Bahamas, Benin, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Denmark, Kiribati, Liberia, Luxembourg, Marshall Islands, Netherlands, Norway, Panama, Saint Vincent and the Grenadines, Singapore, Spain, Switzerland, and Tuvalu. Meanwhile for Gabon, Latvia, Saint Kitts and Nevis, and Togo have even deposited their instrument of ratification, however their registration is pending to the submission of the information required under Standard A. 4.5.10. Pursuant to the said Standard, each member at the time of ratification shall specify the branches of social security protection that they provide.

B. THE STRUCTURE OF THE MARITIME LABOUR CONVENTION 2006

The Maritime Labour Convention 2006 (hereinafter referred to as the Convention) comprises three different but related parts: Articles, Regulations and Code.¹² The Articles and Regulations are meant to set out the core of rights and principles that must be enforced for the protection of the seafarer as well as the obligation of the member States ratifying the Convention to undertake all necessary measures to ensure the implementation and the enforcement of the provisions of the Convention. Meanwhile, the Code contains the details for the implementation of the regulation and it is divided into two : Part A (Standard) and Part B (Guideline). While the provisions contained in

¹¹ www.ilo.org

¹² Explanatory Note to the Regulations and Code of the Maritime Labour Convention, paragraph 2.

the Regulations and of Part A of the Code are mandatory, the provisions of Part B of the Code are not mandatory.

The seafarers' employment and social rights are stipulated in the Article IV of the Convention and elaborated further in Regulations and Code. In principle, Regulations and Code are organized into general areas under 5 (five) Titles. Each Title contains provisions or groups relating to particular right or principle. Title 1 to Title 4 deal with the seafarer rights and principles while Title 5 covers the basic obligation of the Member States. Those five Titles are:

1. Minimum requirements for seafarers to work on ship.

The rights and principles set out under this Title are meant to ensure that: a) no under age persons work on ship, b) all seafarers are medically fit to perform their duties at sea, c) seafarers are trained or qualified to carry out their duties on board, and d) seafarers have access to an efficient well regulated seafarers recruitment and placement system.

2. Condition of Employment.

The rights and principles set out under this Title are meant to ensure that: a) seafarers have a fair employment agreement, b) seafarers are paid for their services, c) seafarers have regulated hours of work and hours of rest, d) seafarers have adequate leave, e) seafarers are able to return home, f) seafarers are compensated when a ship is lost or has foundered, g) seafarers work on board ships with sufficient personnel for the safe, efficient and secure operation of the ship. Furthermore, under Title 2 there is also a provision that is meant to promote career and skill development and employment opportunities for seafarers.

3. Accommodation, recreational facilities, food and catering.

The purpose of the provisions under Title 3 is to ensure that: a) seafarers have decent accommodation and recreational facilities on board, b) seafarers have access to good quality food and drinking water provided under regulated hygienic conditions.

4. Health protection, medical care, welfare and social security protection.

The purposes of the provisions under Title 4 are: a) to protect the health of seafarers and ensure their prompt access to medical care on board ships and ashore, b) to ensure that seafarers are protected from financial consequences of sickness, injury and death occurring in connection with their employment, c) to ensure that seafarers' working environment on board ship promotes occupational safety and health, d) to ensure that seafarers working on board a ship have access to shore-based facilities and service to secure their health and well being, e) to ensure that measures are taken with a view to providing seafarers with access to social security protection.

5. Compliance and enforcement.

The provisions under Title 5 underline the obligations of the Member States to ensure that the rights and principles as stipulated in the Convention are properly complied with and enforced. The purposes of Title 5 are: a) to ensure that each Member States fulfills its responsibility under the Convention with respect to ships that fly its flag, b) to enable each Member States to fulfills its responsibilities under the Convention regarding international cooperation in the implementation and enforcement of the Convention's Standards on foreign ships, c) to ensure that each member fulfills its responsibility under the Convention pertaining to seafarers' recruitment and placement and the social protection of seafarers.

There are some important points of the Convention that can be noted as follows:

1. As stated in the Article XIV paragraph 1 of the Convention, the provisions of the Articles and Regulations can only be amended by the General Conference of the ILO in the framework of Article 19 of ILO. Meanwhile, the Code can be amended through the simplified procedure set out in Article XV of the Convention.¹³ Since the Code relates to detailed implementation, amendments to it must remain within the general scope of the Articles and Regulations.¹⁴
2. The Convention provides flexibility, as stated in the Article VI (3), for Member States to implement Part A of the Code through provisions in its laws and

¹³ Explanatory Note to the Regulations and Code of the Maritime Labour Convention, paragraph 4.

¹⁴ Explanatory Note to the Regulations and Code of the Maritime Labour Convention, paragraph 4.

- regulations or other measures which are substantially equivalent to the provisions of Part A.
3. Furthermore, Article VI (4) elaborates any kind of measure taken by Member States which will be considered as substantially equivalent if the Member States satisfies itself that: a) it is conducive to the full achievement of the general object and purpose of the provisions of Part A of the Code concerned, and b) it gives effect to the provisions of Part A of the Code concerned.
 4. The active involvement of the shipowners and seafarers organizations. This Convention gives more roles to the shipowners' and seafarers' organization by establishing a consultation system between them and the relevant Government institutions for any derogation, exemption from or any flexible application of this Convention.
 5. The Convention requires all States that have ratified it to undertake no favorable treatment for ships of a country that have not ratified and implemented this Convention. In this case Port State Control officers of the ratifying States, in accordance with the provisions stipulated in the Convention, must treat all visiting ships equally.

C. THE IMPORTANCE OF THE MARITIME LABOUR CONVENTION 2006 FOR INDONESIA

According to the data received from all Indonesian Embassies abroad, as of June 2011 the number of Indonesian seafarers is estimated to be 198,461 worldwide.¹⁵ In reality, most probably the number of Indonesian seafarers is more than this number because not all Indonesian seafarers abroad have registered themselves at the Indonesian Embassies worldwide.

¹⁵ Data is acquired from the Directorate of the Protection of Indonesian Citizen and Indonesian Corporation, Ministry of Foreign Affairs of the Republic of Indonesia.

The Indonesian seafarers work on board various kinds of vessels such as exclusive cruise ships, cargo vessels, tanker vessels and fishing vessels and the problems they mostly face are related to the fulfillment of their rights such as unpaid wages, substandard working conditions and repatriation to Indonesia. These problems faced by Indonesian seafarers arise because of the following:

- a. Many Indonesian seafarers, both in national and international vessels, work without clear working contract or even without working contract at all or a Collective Bargaining Agreement.
- b. Not all Indonesian seafarers join the Indonesian seafarers union.
- c. Many Indonesian seafarers become victims of fraud by manning brokers.
- d. There is no clear recruitment system and procedures.

Considering all those problems, there is an urgent need for Indonesia to ratify the MLC 2006. The ratification of MLC 2006 will provide many advantages to the Indonesian seafarers and will encourage the Indonesian Government to improve its performance in ensuring the rights of Indonesian seafarers. Once the MLC 2006 comes into force and is effectively implemented in all countries with maritime interest, Indonesian seafarers will have the following advantages:

- a. Indonesian seafarers, serving on a ship to which the Convention applies, whatever flag it flies, will have decent working and living conditions and an ability to have their concerns addressed where conditions do not meet the requirements of the Convention;
- b. Indonesian seafarers, to the greatest extent possible, will be assured that all requirements under the Convention are respected through various mechanisms, even if they work on the ship that flies the flag of countries that have not ratified the Convention;

D. THE RATIFICATION OF MARITIME LABOUR CONVENTION 2006 IN INDONESIA

The ratification of international convention in Indonesia is governed by the Law number 24, Year 2000 regarding International Treaties. This Law, in general, adopted the principles enshrined in the 1969 Vienna Convention on the Law of Treaties, although Indonesia is not party to this Convention.

According to the Article 9 (1) of the Law number 24, Year 2000, the ratification of an international treaty by the Indonesian Government will be made as long as it is required by the Treaties. When ratification is required by the Convention, then it will be decided whether to ratify it by Law or by Presidential Regulation based on the character of the Convention. Article 10 states that ratification shall be conducted by way of law in respect of: a) matters pertaining to politics, peace, defense and state security, b) alteration to or delimitation of the territory of the Republic of Indonesia, c) sovereignty or sovereign rights of a State, d) human rights and environment, e) the formation of a new legal norm, f) foreign loans and/or grants aid. Meanwhile, other matters outside those stipulated in Article 10 will be ratified using the Presidential Regulation. MLC 2006 is considered as seafarers' bill of rights since its purpose is to protect the seafarers' rights, therefore the ratification of MLC 2006 falls under the Article 10 (d), and thus it should be done by Law.

The ratification procedure in Indonesia must be seen from two different but inter-related procedures, namely internal and external. From the perspective of internal procedure, ratification of international treaties is a matter of Indonesian national law that governs the rights of executive and legislative authorities in concluding international treaties and determines the legal document to be used as the basis for Indonesia to undertake external procedure.¹⁶ On the other hand, from the perspective of external procedure, ratification of international treaties is the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty.¹⁷

In the case of the ratification of MLC 2006, the internal procedure can be described as all the steps undertaken by the Ministry concerned that lead up to the drafting of Law regarding the ratification of the MLC 2006. This Law thus becomes a basis for the Indonesian Government to submit the Instrument of Ratification to the Depository of the MLC 2006. The submission of the Instrument of Ratification is the external procedure conducted by the Indonesian Government.

The procedures of ratification of MLC 2006 can be described as follows:

1. The initiating institution (usually the Ministry which is in charge with the substance of the Convention) will submit a request of permission from the President, through the Minister of Foreign Affairs. This request shall be

¹⁶ Agusman, Damos Dumoli, *Hukum Perjanjian Internasional, Kajian Teori dan Praktik Indonesia*, PT. Refika Aditama, 2010, p. 61.

¹⁷ *Ibid.*

- accompanied with the background paper explaining the importance of the Convention to be ratified by Indonesia. Thus, the Minister of Foreign Affairs will convey the said request to the President and provide consideration as well as the Certified True Copy of the Convention, through the Secretariat of State.
2. If the President agrees, the Secretariat of State will issue the approval letter on behalf of the President and convey it to the Minister of Foreign Affairs. Copy of the letter will also be sent to the Vice-President and related Ministers.
 3. After receiving the approval of the President, the initiating institution will establish a committee comprising of the representative of the Ministries concerned such as Ministry of Foreign Affairs, Secretariat of State, Ministry of Justice and Human Rights, Secretarial of Cabinet and the initiating Ministry.
 4. The Committee will prepare all the documents such as the draft Law, explanatory note regarding the Convention, and the translation of the Convention. After all the documents are prepared, the initiating institution will circulate all the documents to the concerned Ministry in order to have official approval. The approval must be given within 14 working days. In the event that there is an objection from a certain Ministry, the initiating institution must coordinate with the Ministries concerned to observe and review the whole documents. In case no absolute approval is reached, the leading Ministry must submit a written report to the President for his decision. If approval from the President is granted, the ratification process will continue to the next step. However if the President doesn't give his approval, the ratification process is terminated.
 5. After all the approval is received, the initiating institution submits all the documents to the President through Minister of Foreign Affairs. In practice, the documents to be submitted are: a) the draft Law, b) certified true copy of the MLC 2006 (certified by the Ministry of Foreign Affairs), c) explanatory note, d) copy of the original version of the MLC 2006, and e) the translation of MLC 2006 in the Indonesian language. The Ministry of Foreign Affairs thus will verify all the documents before Minister of Foreign Affairs submits them to the President through the Secretariat of State

6. The next step is that the President will write to the Parliament informing the intention of the Indonesian Government to ratify the MLC 2006. And at the same time the President will appoint one Minister to represent the Government on the deliberation of the ratification of MLC 2006 with the Parliament.
7. After the deliberation and understanding has been reached between the Government and the Parliament regarding the importance for Indonesia to ratify the MLC 2006, the Parliament will send the letter to the President as an official approval.
8. The President thus will sign the draft Law and endorse it. The Law then will be published at the State Gazette. Based on this Law, the Indonesian Government then will submit the Instrument of Ratification to the Director General of ILO as Depository, which is signed by the Minister for Foreign Affairs.

E. THE INCORPORATION OF MARITIME LABOUR CONVENTION 2006 INTO DOMESTIC LAW IN INDONESIA

In principle, Indonesia is a country with dualist system, therefore to enable a Convention to be enforced in Indonesia, the provisions enshrined in that convention must be transformed into domestic law. In practice, the transformation of the provisions contained in the Convention into domestic law can be done after the ratification process. However, in certain circumstances, the transformation is done even before the ratification. This step is taken in order to ensure that Indonesia is ready to implement the provisions of the Convention once it ratifies the Convention.

Seafaring is a kind of profession that has unique characteristics and has to be considered as “*lex specialis*”. The legal instrument for the protection of the seafarers’ right must be established at the highest level possible. In Indonesia, the legal instruments concerning seafarers are scattered and not unified in one legal instrument. The regulations of seafarers can be found in the Commercial Code, the Law number 17, Year 2008 concerning Voyage and Government Regulation number 7, Year 2000 concerning Seamanship.

The Government Regulation number 7, Year 2000 basically addresses the rights of seafarers. It covers the basic rights of seafarers, however it is not as comprehensive as those rights and principles covered by the MLC 2006. Furthermore, the MLC 2006 also encourages the Member States to take all necessary measures to ensure that the provisions of the MLC 2006 be domesticated and implemented.

Having considered that the MLC 2006 contains broad and comprehensive provisions, its implementation at the national level will involve more than one institution; therefore the provisions on the protection of the rights of seafarers will be general in nature. The Law thus will also act as an umbrella and provide a basis for related institutions to elaborate further all the provisions in technical details as considered necessary.

As mentioned at the beginning, seafaring profession should be treated as “*lex specialis*”, and therefore should be regulated at the highest level possible to give legal effect. In Indonesia, a high level Law comes after the Constitution. The only reason that can be used to void the Law is if the said Law is inconsistent or against the principles or provisions as stipulated in the Constitution. The other reason to support the idea why the seafaring shall be regulated in the form of a Law is that the existing regulation concerning manpower in general is in the form of a Law, as well as the draft of regulation concerning decent work for domestic worker. In other word, the subject of manpower, whether it is general manpower or specific manpower such as domestic worker and seafarers shall be treated with high importance since it deals with the rights of every human being to have fair and just treatment in their work.

According to the Indonesian Constitution, the authority to make the Law rest in the President together with the Parliament. In this respect, the subject matter to be discussed can come either from the initiative of the Parliament or the Government. When the initiative comes from the Parliament, the draft of the Law including the academic paper will be prepared by the Parliament. In preparing the draft, the Parliament usually considers any input coming from many sources such as universities and non-governmental organization. The same thing applies when the initiative comes from the Government. The President will designate the Ministry that is in charge of the subject to

act as the representative of the Government in discussing the draft Law at the Parliament House. Regarding MLC 2006, the Ministry of Manpower and Transmigration will become the focal point.

The Ministry of Manpower and Transmigration will form a special committee comprising of the representative of the Ministry of Manpower and Transmigration as well as representatives of other related Ministries. This special committee will prepare the draft Law together with academic paper explaining the substance of the draft Law and the importance of the matters covered as well as the interest for Indonesia to establish the said Law. The draft Law and the academic paper will be submitted officially to the Parliament accompanied by the President's letter stating the Minister that has been appointed to discuss the draft Law with the Parliament.

The next step to be undertaken is the deliberation in the Parliament House between the Government and the Parliament. The deliberation may take some period of time but also can be short depending on many aspects such as the sensitivity and the importance of the issue as well as the pressure from the public. After the common understanding has been reached between the Government and the Parliament and the official approval of the draft Law from the Parliament has been received, the Government, in this case the President, will sign the draft Law, endorse it and then orders its publication in the State Gazette.

F. CONCLUSION

It is sufficient enough to believe that the MLC 2006 provides comprehensive protection of seafarers' working conditions and social rights. It does not only set out rights and principles that must be enforced for the protection of the seafarer, but also lay down obligation to the member States ratifying the Convention to undertake all necessary measures to ensure the implementation and the enforcement of the provisions of the Convention.

For Indonesia, the ratification of MLC 2006 will provide many advantages for Indonesian seafarers worldwide and minimize the abuse of their rights. As a country with dualist system, Indonesia must transform the provisions enshrined in that convention into domestic law to enable a Convention to be enforced in Indonesia. Therefore the

following sections will present draft Law regarding the Ratification of MLC 2006, draft Instrument of Ratification signed by the Ministry of Foreign Affairs, and draft Law regarding the Protection of the Rights of Seafarers.

II. DRAFT LAW TO RATIFY THE MARITIME LABOUR CONVENTION

THE LAW OF THE REPUBLIC OF INDONESIA
NUMBER YEAR.....
REGARDING
THE RATIFICATION OF MARITIME LABOUR CONVENTION, 2006

WITH THE BLESS OF THE ALMIGHTY GOD

PRESIDENT OF THE REPUBLIC OF INDONESIA,

- Considering :
- a. that there is a need for the establishment of a legal instrument for the protection of the rights of the Indonesian seafarers that are working on board a ship;
 - b. that in Geneva, Switzerland, on the twenty-third day of February of the year two thousand and six the International Labour Conference has adopted Maritime Labour Convention, 2006, resulted from Ninety-fourth Session of the Governing Body of International Labour Organization;
 - c. that it is necessary to ratify the aforesaid Convention with the Law;
- Bearing in mind :
- 1. Article 4(1) and Article 11 of the 1945 Constitution of the Republic of Indonesia;
 - 2. Law Number 24 Year 2000 regarding International Treaties (State Gazette Year 2000 Number 185, additional

State Gazette Number 4012);

3. Law Number 12 Year 2011 regarding the Formation of the Laws and Regulations (State Gazette Year 2004 Number 53, additional State Gazette Number 4389);

Upon the joint approval

THE HOUSE OF REPRESENTATIVES

And

THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

HAVE DECIDED TO

Enact : LAW ON THE RATIFICATION OF THE MARITIME
LABOUR CONVENTION, 2006

Article 1

The Government of the Republic of Indonesia ratifies the International Maritime Labour Convention 2006.

Article 2

The original version of the International Maritime Labour Convention 2006 in the English language and the translation in the Indonesian language version are attached herewith. Both documents form an integral part of this Law.

Article 3

In case of inconsistency in the interpretation of the documents of the Convention as mentioned in the Article 2, the original version of the Convention in the English language shall prevail.

Article 4

This Law shall apply from the date of its enactment.

Let it be known, this Law shall be promulgated in the State Gazette of the Republic of Indonesia.

Done in Jakarta

On(dd/mm/yy)

PRESIDENT OF THE REPUBLIC OF

INDONESIA,

signed

DR. H. SUSILO BAMBANG

YUDHOYONO

Enacted in Jakarta

On....(dd/mm/yy)

MINISTER OF JUSTICE AND HUMAN RIGHTS

OF THE REPUBLIC OF INDONESIA,

signed

AMIR SYAMSUDDIN

STATE GAZETTE OF THE REPUBLIC OF INDONESIA YEAR NUMBER

III. DRAFT INSTRUMENT OF RATIFICATION OF THE REPUBLIC OF INDONESIA TO THE MARITIME LABOUR CONVENTION 2006

INSTRUMENT OF RATIFICATION

WHEREAS, the Maritime Labour Convention 2006 was adopted at the 94th International Labour Conference in Geneva, on 23rd February 2006;

AND WHEREAS, the Government of the Republic of Indonesia, having examined and considered the aforesaid Convention, and in accordance with the provision of Article VIII of the Convention, has decided to ratify the said Convention;

NOW THEREFORE, BE IT KNOWN, that the Government of the Republic of Indonesia hereby confirms and carries out all the stipulations contained therein;

IN WITNESS WHEREOF, this Instrument of Ratification is signed and sealed by the Minister for Foreign Affairs of the Republic of Indonesia;

DONE at Jakarta on this day of in the year two thousand and

Dr. R.M. Marty M. Natalegawa

IV. DRAFT LAW OF THE REPUBLIC OF INDONESIA REGARDING THE PROTECTION OF THE RIGHTS OF SEAFARERS

DRAFT LAW OF THE REPUBLIC OF INDONESIA
NUMBER YEAR.....
REGARDING
THE PROTECTION OF THE RIGHTS OF SEAFARERS

WITH THE BLESS OF THE ALMIGHTY GOD

PRESIDENT OF THE REPUBLIC OF INDONESIA,

Considering : a. that seafaring is a unique profession that needs special protection;
b. that Indonesia has ratified the Maritime Labour

Convention, 2006 and needs to incorporate it into domestic law;

- c. that it is necessary to promulgate the Law regarding the Protection of the Rights of Seafarers;

- Bearing in mind : 1. Article 4(1) and Article 11 of the 1945 Constitution of the Republic of Indonesia;
2. Law Number 17 Year 2008 regarding Voyage

Upon the joint approval
THE HOUSE OF REPRESENTATIVES
And
THE PRESIDENT OF THE REPUBLIC OF INDONESIA

HAVE DECIDED TO

- Enact : LAW ON THE PROTECTION OF THE RIGHTS OF SEAFARER

CHAPTER I GENERAL PROVISIONS

Article 1

For the purpose of the present Law:

- a. Seafarer means any person who is employed or engaged or works in any capacity on board ship.
- b. Shipowner means the owner of the ship or another organization or person who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowner.
- c. Employment Agreement means a document signed between the seafarer and shipowner or representative of the shipowner that clearly states the rights and obligations of the parties.
- d. Collective Bargaining Agreement means a collective agreement between shipowner and one or more union of seafarers which functions as labour contract.
- e. Working Place means the ship or any place where seafarer regularly performs tasks related to his part of the employment agreement.
- f. Maritime Labour Certificate means document issued by the competent authority stating that the working and living conditions of seafarers on ship comply with the national laws and regulations.

- g. Wages means payment that is received by seafarer for normal hours of work.
- h. Benefits means payment that is received by seafarer other than wages, which include overtime worked, bonuses, allowances, paid leave or any other additional remuneration.
- i. Consolidated wage means remuneration that is received by seafarer which includes wages and benefits.
- j. Normal Working Hour means period of time during which the seafarer is at the disposal of the employer to perform tasks in accordance with employment agreement.
- k. Overtime means any work performed outside normal working hour.
- l. Competent Authority means the minister, government department or other authority having power to issue and enforce regulations, orders or other instructions having the force of law in respect of the subject matter of the provision concerned.

CHAPTER II SCOPE OF APPLICATION

Article 2

- 1. The provisions of this Law apply to:
 - a. seafarers working under public or private entity;
 - b. ships engaged in commercial activities, whether publicly or privately owned.
- 2. Ships engaged in fishing, ship of traditional build and warship or naval auxiliaries are excluded from the application of the provisions of this Law.

CHAPTER III MINIMUM REQUIREMENTS FOR SEAFARERS TO WORK ON A SHIP

Article 3

- 1. No person under the age of 16 shall be employed or engaged or work on ship.
- 2. Seafarers under the age of 18 shall be prohibited to work on the night shift, unless for the purpose of training.
- 3. No seafarer under the age of 18 shall be employed or engaged or work as ship's cook.

Article 4

1. Seafarers who work on a ship shall hold a valid medical certificate.
2. The medical certificate shall be issued by a duly qualified medical practitioner.
3. In the case of a certificate concerning eyesight, a person recognized by the competent authority as qualified to issue such certificate can issue it.
4. The medical certificate shall state that the followings are satisfactory:
 - a. The hearing and sight of the seafarer,
 - b. The colour vision in the case of seafarer to be employed in capacities where fitness for the work to be performed is liable to be affected by defective colour vision,
 - c. The seafarer is not suffering from any medical condition likely to be aggravated by service at sea or to endanger the health of other person on board.
5. The medical certificate shall be valid for a maximum period of two years.
6. A certification of colour vision shall be valid for a maximum period of six years.
7. Seafarers who work on a ship ordinarily engaged on international voyage must provide a medical certificate in English language.

Article 5

1. Seafarers shall have a certificate of training or qualification to work on board a ship.
2. Seafarers shall undertake training for personal safety on board a ship before working on board a ship.

CHAPTER IV RECRUITMENT AND PLACEMENT

Article 6

1. Seafarers shall have access to an efficient, adequate and accountable system for finding employment on board ship without charge to the seafarers.
2. Seafarers shall be recruited and placed to work in the field where they are qualified in accordance with their skill and qualification.

CHAPTER V CONDITIONS OF EMPLOYMENT

Article 7

1. Seafarers shall have employment agreement signed by the seafarer and the shipowner or a representative of the shipowner.
2. Seafarers may have collective bargaining agreement.
3. The employment agreement shall contain the following particulars:
 - a. The seafarer's full name, date of birth, and birthplace;
 - b. The shipowner's name and address;
 - c. The place and date when the seafarers' employment agreement is concluded;
 - d. The capacity in which the seafarer is to be employed;
 - e. The amount of seafarer's wages;
 - f. The amount of paid annual leave;
 - g. The termination of the agreement and the condition thereof, including:
 - (1) If the agreement is for an indefinite period, the conditions entitling either party to terminate it, as well as the required notice period, which shall not be less for the shipowner than for the seafarer;
 - (2) If the agreement is for a definite period, the date fixed for its expiry;
 - (3) If the agreement is for a voyage, the port of destination and the time which has to expire after arrival before the seafarer should be discharged;
 - h. The health and social security protection to be provided to the seafarer by the shipowner;
 - i. The seafarers' entitlement to repatriation;
 - j. The choice of law and choice of forum in case of dispute between shipowner and seafarer;
 - k. Reference to the collective bargaining agreement, if applicable;
 - l. Any other particulars deemed necessary for the protection of seafarers' rights.

Article 8

1. Seafarers shall be paid for their work regularly and in full in accordance with their employment agreement.
2. The payment shall include wage and benefit.
3. The shipowner shall provide measures that enable seafarers to transmit all or part of their consolidated wage to their families or dependants or legal beneficiaries.
4. Measures to ensure that seafarers are able to transmit their consolidated wage as stated in paragraph 2 include:
 - a. a system for enabling seafarers, at the time of their entering employment or during it, to allot, if they so desire, a proportion of their wages for remittance at regular intervals by bank transfers or similar means; and
 - b. a requirement that allotments should be remitted in due time and directly to the person or persons nominated by seafarers.
5. The shipowner may charge for the service under paragraph 3 a reasonable amount and such additional charge shall be informed in advance to seafarers.

Article 9

1. The maximum hours of work for seafarer shall not exceed 14 (fourteen) hours a day in any 24 (twenty four) hours period.
2. The maximum hours of work for seafarers in any seven-day period shall not exceed 72 (seventy two) hours.
3. The seafarer shall have hours of rest not less than 10 (ten) hours in any 24 (twenty four) hours period.
4. The hours of rest may be divided into no more than two periods, one of which shall be at least 6 (six) hours in length. The interval between consecutive periods of rest shall not exceed 14 (fourteen) hours.
5. The minimum hours of rest for seafarers in any seven-day period shall be not less than 77 (seventy seven) hours.
6. Seafarer shall have 1 (one) day off every week.
7. For a seafarer under age of 18 the following provisions shall apply:
 - a. working hours shall not exceed 8 (eight) hours per day and 40 (forty) hours per week and overtime shall be worked only where unavoidable for safety reasons;
 - b. sufficient time shall be allowed for all meals;
 - c. a break of at least 1 (one) hour for the main meals of the day;
 - d. a 15 (fifteen) minute rest for each two hours of continuous work.
8. The provision of paragraph 7 may be waived when:
 - a. they are impracticable for young seafarers in the deck, engine room and catering departments assigned to watch keeping duties or working on a rostered shift-work system; or
 - b. the effective training of young seafarers in accordance with established programs and schedules would be impaired.
9. Such exceptional situation as mentioned in paragraph 8 shall be recorded, with reasons, and signed by the master.

Article 10

1. Seafarers shall have annual leave with pay entitlement at least 30 (thirty) calendar days per year of employment.
2. Upon request of the shipowner and agreed by seafarer, annual leave can be substitute with compensation if the seafarer is requested to stay on board a ship.
3. The following situation shall not be considered as part of annual leave with pay:
 - a. public and customary holidays recognized as such in the flag State;
 - b. periods of incapacity for work resulting from illness or injury, or from maternity;
 - c. temporary shore leave granted to a seafarer while under an employment agreement;

- d. compensatory leave of any kind.

Article 11

1. The shipowner shall repatriate a seafarer at the cost of shipowner in the following conditions:
 - a. the seafarer's employment agreement expires while they are abroad;
 - b. the seafater's employment agreement is terminated either by shipowner or by seafarer for justified reasons;
 - c. the seafarer is no longer able to carry out their duties under their employment agreement or cannot be expected to carry out their duties in the specific circumstances.
2. The application of paragraph 1(b) and (c) shall satisfy the following conditions:
 - a. in the event of illness or injury or other medical condition which requires their repatriation when found medically fit to travel;
 - b. in the event of shipwreck;
 - c. in the event of the shipowner not being able to continue to fulfill their legal or contractual obligations as an employer of the seafarers by reason of insolvency, sale of ship, change of ship's registration or any other similar reason;
 - d. in the event of a ship being bound for a war zone;
 - e. in the event of termination or interruption of employment in accordance with an industrial award or collective agreement, or termination of employment for any other similar reason.
3. The cost of repatriation that shall be borne by the shipowners are:
 - a. passage to the destination using appropriate and expeditious means;
 - b. accommodation and food from the moment the seafarers leave the ship until they reach the repatriation destination;
 - c. pay and allowances from the moment the seafarers leave the ship until they reach the repatriation destination;
 - d. transportation of 30 (thirty) kilograms of the seafarers' personal luggage to the repatriation destination;
 - e. medical treatment, when necessary, until the seafarers are medically fit to travel to the repatriation destination.
4. Seafarer shall have the right to choose from among the prescribed destinations the place to which they are to be repatriated.

Article 12

1. Seafarer shall have adequate compensation in the case of injury, loss or unemployment arising from the ship's loss or foundering.
2. The shipowner shall pay such compensation for the days during which the seafarer remains in fact unemployed at the same rate as the wages payable under the employment agreement for a maximum of 2 (two) months' wages.

Article 13

1. The shipowner shall employ sufficient number of seafarers to work on board a ship for the safe, efficient and secure operation of the ship.
2. Sufficient number of seafarers shall satisfy the manning levels in accordance with the principles in International Maritime Organization's instruments on manning levels.

Article 14

1. The shipowner shall encourage career and skill development of seafarers during the period of their engagement.
2. Seafarers shall have access to further training and education of seafarers both on board and ashore to improve individual employment prospects and to meet the changing technology and labour market conditions of maritime industry

CHAPTER VI ACCOMMODATIONS, RECREATIONAL FACILITIES, FOOD AND CATERING

Article 15

1. The shipowner shall provide decent accommodation and recreational facilities for seafarers working or living on board taking into account the promotion of seafarers' health and well-being.
2. The decent accommodation and recreational facilities shall satisfy the following conditions depending on the size of the ship:
 - a. appropriate size of rooms;
 - b. appropriate heating and ventilation system;
 - c. noise and vibrations proof;
 - d. appropriate sanitary facilities;
 - e. proper lighting and sufficient drainage;
 - f. hospital accommodation;
 - g. the materials used to construct internal bulkheads, paneling and sheeting, floors and joining shall be suitable for the purpose and conducive to ensuring a healthy environment.

Article 16

1. The shipowner shall provide food and drinking water of appropriate quantity, quality and nutritional value for seafarer working or living on board a ship.
2. The shipowner shall consider the differing cultural and religious background of the

seafarers in providing food and drinking water.

3. The shipowner shall employ trained and qualified person as ship's cook to be responsible for the preparation of the food.

CHAPTER VII
HEALTH PROTECTION, MEDICAL CARE, WELFARE
AND SOCIAL SECURITY PROTECTION

Article 17

1. The shipowner shall provide the seafarers working on board a ship with the followings:
 - a. occupational health protection and medical care relevant to their duties as comparable as possible to that which is generally available to workers ashore;
 - b. prompt access to the necessary medicines, medical equipment and facilities for diagnosis and treatment and to medical information and expertise;
 - c. the right to visit a qualified medical doctor or dentist without delay in ports of call, where practicable;
 - d. health promotion and health education programs.
2. The shipowner shall extend health protection and medical care to the direct family (spouse and children) of the seafarer.

Article 18

1. The shipowner shall bear the cost for seafarers working on board a ship in respect of sickness and injury of the seafarers occurring between the date of commencing duty and the date upon which they are deemed duly repatriated.
2. The shipowner shall provide compensation in the event of the death or long-term disability of seafarer due to an occupational injury, illness or hazard.
3. The shipowner shall bear the expense of medical care, including medical treatment and provide the supply of the necessary medicines and therapeutic appliances as well as board and lodging until the sick or injured seafarer has recovered, or until the sickness or incapacity has been declared of a permanent character.
4. The shipowner shall bear the cost of burial expenses of the seafarer in the case of death occurring on board or ashore during the period of employment.
5. Where the sickness or injury results in incapacity for work, the shipowner shall pay full wages as long as the sick or injured seafarers remains on board or until the seafarers have been repatriated.

Article 19

1. The shipowner shall take reasonable precautions to prevent occupational accidents, injuries and disease on board ship.
2. The shipowner shall promote on-board programs for the prevention of occupational accidents, injuries and disease on board ship.
3. The shipowner shall undertake continuous improvement in occupational safety and health protection, involving seafarers' representative and all other persons concerned in their implementation.

Article 20

The shore-based facilities such as welfare, cultural, recreational, and information facilities and services are open for seafarers irrespective of their nationality, race, colour, sex, religion, political opinion and social origin as well as irrespective of the flag State of the ship on which they are employed or engaged or work.

Article 21

1. Foreign seafarers shall have the right of access to consuls of their State of nationality.
2. In case of detention, foreign seafarers have the right to request the competent authority to immediately inform the flag State and the State of nationality of the seafarers.

CHAPTER VIII COMPLIANCE AND ENFORCEMENT

Article 22

1. Each ship shall have a maritime labour certificate that is complemented by a declaration of maritime labour compliance.
2. The competent authority will issue a maritime labour certificate after the ship has been duly inspected.
3. The purpose of the inspection is to ensure that the working and living condition for seafarers on ship meet the requirements of this Law.

Article 23

Each ship shall have the copy of the Maritime Labour Convention, 2006 available on board for seafarers.

Article 24

1. The competent authority, when it is considered necessary, may at any time to undertake inspection onboard ship to verify the proper compliance and application of the provisions of this Law.
2. The inspection shall cover the followings:
 - a. minimum age;
 - b. medical certification;
 - c. qualification of seafarers;
 - d. use of any licensed or certified or regulated private recruitment and placement service;
 - e. hours of work and hours of rest;
 - f. manning level for the ship;
 - g. accommodation;
 - h. on-board recreational facilities;
 - i. food and catering;
 - j. health and safety and accident prevention;
 - k. on-board medical care;
 - l. on-board complaint procedures; and
 - m. payment of wages.

CHAPTER IX MISCELLANEOUS

Article 25

Seafarer who works on a ship engaged on international voyage shall report to the nearest Indonesian Embassy.

Article 26

The details of requirement contained in the provisions of this Law will be elaborated further in the Government Regulations.

CHAPTER X FINAL PROVISIONS

Article 27

Upon the promulgation of this Law, in case of any inconsistency with the existing regulations regarding seafarer, this Law shall prevail.

Article 28

This Law shall enter into force upon the date of its enactment.

Let it be known, this Law shall be promulgated in the State Gazette of the Republic of Indonesia.

Done in Jakarta
On(dd/mm/yy)

PRESIDENT OF THE REPUBLIC OF
INDONESIA,

DR. H. ^{signed} SUSILO BAMBANG
YUDHOYONO

Enacted in Jakarta
On....(dd/mm/yy)

MINISTER OF JUSTICE AND HUMAN RIGHTS
OF THE REPUBLIC OF INDONESIA,
signed

AMIR SYAMSUDDIN

STATE GAZETTE OF THE REPUBLIC OF INDONESIA YEAR NUMBER

BIBLIOGRAPHY

Books :

1. Agusman, Damos Dumoli, Hukum Perjanjian Internasional, Kajian Teori dan Praktik Indonesia, PT. Refika Aditama, 2010.
2. Christodoulou-Varotsi, Iliana et al; Maritime Work Law Fundamentals : Responsible Shipowners, Reliable Seafarers, Springer-Verlag Berlin Heidelberg, 2008.
3. Dürler, Reto; “The Maritime Labour Convention 2006, A Major Step Forward in Maritime Law”, in Serving the Rule of International Maritime Law, Gutierrez, Norman A. Martinez (Ed), Routledge, 2010.

Convention :

4. Maritime Labour Convention, 2006 and Explanatory Note to the Regulations and Code of the Maritime Labour Convention.

Paper :

5. Background paper, Preparatory Tripartite MLC 2006 Committee Meeting, Geneva 20 – 22 September 2010.

Website :

6. <http://www.ilo.org>

Leaflet :

7. The Year of the Seafarer 2010; leaflet produced by the International Shipping Federation.