Legal Protection of Docworkers in the Ports of Indonesia

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Abstract: This study aims to analyze the legal protection of Dockworkers working in Indonesian ports. Many problems faced by Dockworkers in carrying out their job duties related to occupational health and safety, welfare, social security, (individual) work agreement, etc. The question is whether Dockworkers obtained adequate legal protection during working in the port normatively and practically? This research gathers data from document study, interview and observation in 6 (six) major ports in Indonesia namely, Belawan, Batam, Tanjung Priok, Balikpapan, Ambon and Tanjung Perak. Data were processed and analyzed by quantitative and qualitative descriptive supported by descriptive statistics. The results of the study indicate that in general, the primary regulations governing the aspects of welfare, occupational safety and health, social security, work time and work agreement for Dockworkers are adequate. However, there are still found the void of rules in its implementing regulations. Therefore the implementation of the basic rule has not completely guaranteed the legal certainty and legal protection for Dockworkers in performing its duties and work. Furthermore, in practice, the regulations governing certain aspects related to Dockworkers have not been consistently implemented by Dockers service users in the ports and thus require more serious law enforcement.he abstract should summarize the content of the paper. Try to keep the abstract below 200 words. Do not make references nor display equations in the abstract. The journal will be printed from the same-sized copy prepared by you. Your manuscript should be printed on A4 paper (21.0 cm x 29.7 cm). It is imperative that the margins and style described below be adhered to carefully. This will enable us to keep uniformity in the final printed copies of the Journal. Please keep in mind that the manuscript you prepare will be photographed and printed as it is received. Readability of copy is of paramount importance.

Keywords: Legal Protection, Dockworkers, Indonesian Ports

I. INTRODUCTION

The problems of occupational safety and work accident have been the concern of managers in around the world for a long time. For example, in early 2000 in the United States (US) there were 5,500 workers died in work accidents and 4.7 million suffer minor injuries. Therefore, roughly out of 100 workers, there were work accidents of 5.1%. According to experts, the number might be greater [1]. Despite considerable attention to occupational safety and accidents, many business actors have yet to be fully serious in administering occupational safety and accidents. Hagan, illustrates that labor will behave less likely to follow safety procedures [2]. Meanwhile, according to Hale, attitudes, beliefs, and perceptions of groups in elaborate the values and norms can control the risk from the source of danger [3].

The risk of work accidents in developing countries such as Indonesia is still very high. If the US is considered not yet serious in paying attention to this matter, Indonesia is even less. Work accident is mostly caused by the absence of knowledge of business actors and the workers themselves. The knowledge and skills of business actors are essential to ensure the safety of the workers, as the primary and non-negotiable aspects. Data from the Ministry of Manpower and Transmigration states until 2013 in Indonesia no less than 6 (six) workers died every day due to accidents. This figure is quite high compared to the European countries where two people died per day due to accidents. Meanwhile, according to data from the International Labor Organization (ILO), there is average of 99.000 cases of work accidents. Of the total number, about 70 percent are fatal, i.e., death and lifelong disability [4]. The data was released from the Institution of Occupational Safety and Health (IOSH) - the official organization for the world's largest health and safety professionals, with 42,000 members spread across 100 countries. By comparison, data released by the Central Bureau of Statistics (Biro Pusat Statistik, BPS) shows that up to 2012 the number of work accidents in Indonesia is 117.949 cases, with 29.544 victims died, 39.704 seriously injured, and 48.701 minor injured [5]. Indonesia became the member of the International Transport Workers' Federation (ITF) after several transportation workers unions are affiliated to ITF, including the Indonesian Seafarers' Union (Kesatuan Pelaut Indonesia, KPI), the Jakarta International Container Terminal Worker Union (Serikat Pekerja Jakarta International Container Terminal, SPJICT), the Terminal Peti Kemas Koja Workers Union (Serikat Pekerja Terminal Peti Kemas Koja), Railway Workers Union, Garuda Indonesia Cabin Crew Association (Ikatan Awak Kabin Garuda Indonesia, IKAGI), and Harbor Labor Union.

The ITF is a London-based transportation worker organization that coordinates some transport workers organizations (land, sea, air) from various countries around the world. The organization concerns to improve the protection and welfare of transport workers by international provisions. There are still many transportation workers receive below-standard salary. Even in Indonesia, there are many seafarers and transport workers whose salary is below the minimum wage. Harbor workers' wage in Indonesia is the lowest wage in the world. Therefore, ITF urges the government to immediately set standard wage for the transportation sector workers. According to Hanafi Rustandi (Chairman of Regional Asia-Pacific ITF Period 2013-2017), the ITF is fighting for the wage of transport workers in Indonesia at a minimum of \$ 340 or around Rp 3,4 million per month. [6].

If the basic rules are available, the protection of harbor workers related to the safety, accident, and welfare might be satisfied. So as in case the system and procedure (including the work protection tools) technically adequate to prevent work accident. Workers in the field of sea transportation, such as crews and harbor workers, both working in conventional terminals and modern terminals (containers), currently allegedly undergo the problems of protection of accidents. Based on data from darwis97.wordpress.com, the number of occupational accidents in the marine transportation sector at the dock and on the ship is quite small compared to elsewhere. From 2008, 2009, 2010 and 2011, the percentage of work accident is only 3 percent, 4 percent, 1 percent, and 5 percent of all work accident percentages respectively. The expansion of work accidents for workers in the field of marine transportation might occur if this study is not taken into account because the cause is unknown cause and thus there will be no prevention efforts through appropriate policies [7].

Based on the illustration above, this research will focus to examine the problems of dockworkers who work in conventional terminals of Indonesian ports. The problem is on: whether dockworkers obtained adequate legal protection in performing their job both normatively and empirically?

II. RESEARCH METHOD

This study uses normative juridical and empirical methods. The normative juridical method is used to study the object based on the applicable legislation. The empirical juridical method is used to study the object from the aspect of the implementation of the applicable regulations. The using both methods aims to discover the gap between the expectation and the reality of the dockworkers' protection and then sought the causal factors of the gap. [8].

The objects study are the dockworkers who work in Indonesian Conventional Ports which have been selected purposively, i.e., Port of Medan, Batam, Surabaya, Balikpapan, and Ambon. Related parties to this research include Ministry of Transportation, Ministry of Manpower, PT Jaminan Sosial Tenaga Kerja (Persero)/ Jamsostek, PT. Pelindo, Stevedoring Company, and Dockworker Cooperative (*Koperasi Tenaga Kerja Bongkar Muat*).

The research data were collected by document/literature study, interview, and observation. Document/literature study collects primary legal materials, i.e. all legislation governing dockworkers and secondary legal materials that related to dockworkers. Interviews were directed to dockworkers and other related parties. Observations were conducted in Conventional Terminal Ports of Medan, Batam, Surabaya, Balikpapan, and Ambon. Collected research data were analyzed descriptive qualitatively and quantitatively based on the data type. The results are presented in tabulation and narration.

III. RESULTS AND DISCUSSION

Dockworkers, especially who work in conventional ports, are covered by the Dockworkers Cooperative. But there are also some dockworkers who do not part of it. They work in conventional ports to handle general cargo stevedoring activities. Their main work scopes are stevedoring, *cargodoring* and delivery, and sometimes being porters of the passenger. Given that there is a containerized tendency for the general cargo, their duty also covers stuffing and stripping containers in freight station containers. Sometimes they are asked to tether and also take off the rope of the ship which about to will leave the port. Port operators also often ask dockworkers to assist them in loading and unloading at the container port [9].

The operational legal basis of dockworkers are: the Decree of the Minister of Transportation of the Republic of Indonesia Number 35 of 2007 concerning Guidelines on the Calculation of Tariff for Service of Stevedoring of Goods from and to Ships in Ports; the Decree of the Minister of Transportation of the Republic of Indonesia Number 14 of 2002 concerning the Establishment and Undertaking of Loading and Unloading Goods from and to Ships; and Joint Decree of the Directorate General of Sea Transportation, Directorate General of Employment Relations of Working Norms and Directorate General of Cooperatives Institution Number UM. 52/1/9-89, KEP 103/BW/89 and 17 SKB/BLK/VI/1989, concerning the Establishment and Development of Cooperative of dockworkers in the Ports. Furthermore, local customs in the ports also become the basis. Although there is already a public basis, the regulation has not reached to technical terms, such as retirement age, the element of welfare coverage, etc. Each Dockworkers Cooperative in the ports has different implementation of the regulation [10].

In general, in the ports where the volume and frequency of stevedoring are high, there applies shift system. Whereas in the ports where the volume and frequency of stevedoring activity are relatively low, the workers take the works completely until they are done, but still considering the rest time. Work procedures or standard operational procedures as guidelines for dockworkers on each port are already exists. However, in conventional terminals, they are carried out more leniently, given the supervision is also more lenient. Unlike in the container terminal that already implements the ISPS Code, work procedures apply in an orderly manner. The understanding of working procedures for operators in container terminals is better than in dockworkers conventional terminals [11].

Table 1 shows the number of dockworkers and the minimum wage in 6 (six) Major Ports in Indonesia.

Table 1. A number of dockworkers and minimum wage in 6 Major Ports of Indonesia, 2015

No	Ports	Number of Dockworkers	Minimum Wage	Average Income/month (Rp)
		(person)	(Rp)	
1	Belawan	3.500	1.197.000	3.000.000
		active 1.498		
2	Batam	666	2.422.092	3.500.000 - 6.000.000
		active 466		
3	Balikpapan	860	2.300.000	3.000.000
		active 516		
4	Ambon	404	1.400.000	3.500.000
		active 265		
5	Tanjung Perak	4.381	2.200.000	3.500.000
	v	active 2.497		
6	Tanjung Priok	3.568	2.441.000	3.500.000
		active 3.032		

Source: Secondary data which processed in the Ports of Belawan, Batam, Balikpapan, Ambon, Tj. Priok dan Tj. Perak.

The more specific table 2 shows the profile of dockworkers in several ports of Indonesia observed from their age, education, work period and training experience.

Table 2. The profile of dockworkers in 6 Major Ports of Indonesia, 2015

	Age (year)				Education				Work Period (year)			Training Experience		
Ports	< 16	16- 30	30- 40	> 40	SD	SMP	SM U	PT	< 1	1-3	3-5	> 5	Ne ver	Ever/ Of ten
Belawan	0	5	5	23	5	10	16	2	3	5	5	20	0	33
Batam	3	5	5	12	5	6	11	3	1	3	7	14	0	25
Tj. Priok	3	3	7	25	6	6	14	2	3	5	8	12	1	27
Tj.Perak	2	2	5	16	7	6	12	0	2	4	8	11	1	24
Balikpapan	1	5	5	9	0	6	12	2	1	2	4	13	0	20
Ambon	0	3	6	9	2	7	8	1	1	3	4	10	0	18
Sum	9	23	33	84	25	31	83	10	11	22	36	80	2	147
Percentage (%)	6.0 4	15.4 3	22.1 4	56.3 7	16.7 7	20.80	55.7 0	6.7 1	7.38	14.7 6	24.16	53.6 9	1.34	98.66

Source:

Secondary data processed in the Ports of Belawan, Batam, Balikpapan, Ambon, Tj. Priok dan Tj. Perak.

Table 2 shows that in general the age of dockworkers is 40-year-old and over, (56.37%); the level of education is high school (55.70%), and the working period is generally above 5 years (53.69%). In general, they often get training to improve their performance (98.66%). Although their income is above the local minimum wage, their income is uncertain depending on their volume and frequency of stevedoring activities. In general, they are still complaining about their welfare, complaining about the monopoly of activities by locally PT. Pelindo. In some ports, there is an oversupply of dockworkers compared to the volume and frequency of stevedoring activities. This has an impact on the continuity of their income.

Speaking on the adequacy of regulations related to dockworkers, the laws and regulations governing the protection of dockworkers are fairly adequate. At the international level, there are many conventions aimed at protecting dockworkers in carrying out their work activities. At the national level, there are also an adequate regulations to protect dockworkers, both the main laws and their implementing rules applicable within the jurisdiction of Indonesia. However, the implementation still shows the existence of various gaps/legal gap between the expectation (das sollen) and the reality (das sein). Of course, there are many factors causing the non-implementation of the rules and regulations or the implementation of the rules and regulations but not as expected. For example,

Dockworkers Cooperative has prepared Standard Operational Procedure (SOP) for dockworkers in doing their job, but they do not apply the SOP as considered troublesome, complicated and takes a long time.

There are also some prominent problems that are often faced by dockworkers. The Dockworkers Cooperative perceives those problems include: (1) the severance pay for unproductive dockworkers as above 50 years old. For Dockworkers Cooperative, unproductive workers are very burdening the entity as it still should give the dockworkers' right as the member of the entity. The number of dockworkers are quite a lot. If the severance pay is not adequate, consequently they have to be waiting until they die. If they die, they will get a death benefit for his heirs of Rp30.000.000,-(thirty million rupiah). According to the Dockworkers Cooperative, it is not the fact that they are unwilling to be dismissed. They would be fine to be dismissed if the severance pay is equal to the death benefit of Rp30.000.000; (thirty million rupiah). This demand is very burdensome Dockworkers Cooperative. To overcome this, the Dockworkers Cooperative of Tanjung Perak Surabaya has ever proposed to the relevant parties, especially the PT. Pelindo that based on the results of the simulated calculation, to cover severance pay for unproductive dockworkers the owner of goods can be charged to pay approximately Rp50 / ton. It will not be burdensome the owner of goods. To implement this idea it requires a normative binding rules from the government as regulator, so it has a binding force against all related parties. However, there has been no regulation in question until now.

(2) In case during the dockworkers taking a rest yet they have to work, there shall be a shifting system for them to work therefore there will be no idle workers. (3) During rain, dockworkers shall have right to stop working at the moment, if they remain work there shall be compensation costs. The shifting system payment shall apply to the dockworkers who work less than 90 minutes. In case they work more than 90 minutes, there needs overtime payment for them and shall be deemed equal to 3 hours of work. (4) The Dockworkers Cooperative feels very aggrieved as it has given education and training to the workers but after several years of working then PT Berlian Jasa Terminal Indonesia (BJTI) recruits the workers without any compensation to the cooperative.

On the other hand, from the perspective of the dockworkers' service user, PT Pelindo, there are some issues that require more attention and solution, inter alia: (1) Dockworkers Cooperative who manager the dockworkers has no competitor. This would likely cause unfair competition. The user must accept the existing dockworkers and has no opportunity to find any other alternative; (2) Recruitment system of dockworkers is still using the traditional/kinship or hereditary way and is not based on the skills. Therefore it is necessary to change the system of recruitment to be based on rational and objective measures; (3) Dockworkers performance seems to have no clear target as they work on shift rules. Their performance would be better on the tariff/per-box size measure, and this is more apparent and more rational and also might increase work productivity. This measure is also to anticipate the long queue of vessels (congestion) which is much influenced by the performance of dockworkers led by Head of Working Team (*Kepala Regu Kerja*, KRK) or Foreman. Therefore, there needs binding regulation governing the performance of dockworkers, whereas the tariff is based on the agreement between the service user and dockworkers based on proper measurement;

(4) The urgency of official organization to the personnel (commonly 4 persons per ship) who tight and loose the straps of ship and the nurturement for them as being the personnel out from the dockworkers; (5) For dockworkers who made a mistake in carrying out work which harming the loaded and unloaded goods, dockworkers company must take the responsibility. In practice, PT Pelindo is the one who should compensate and cover the claim.

In regards to regulation, there are strong international and national regulations protecting the dockworkers. The issue is about the implementation or the enforcement of the rules. Dockworkers obtained training for development from the Dockworkers Cooperative which is carried out by the Ministry of Cooperatives and the Ministry of Transportation through the Port Authority. Referring to the Act Number 17 Year 2008 concerning Shipping, the stevedoring activity is permissible for Stevedoring Company (*Perusahaan Bongkar Muat*, PBM) only which was established for stevedoring activities. However, in reality, PT Pelindo itself also executes stevedoring, and thus it is harmful to the dockworkers.

In one side, the nurturement of dockworkers in the form of cooperatives carries out the togetherness. On the other side, this system is lack of competition and skills development compare to the demands in the limited liability company system. If for decades this cooperation form does not show the enhancement performance of dockworkers, this form is better to be converted into Limited Liability Company. This will obviously increase the competency and job performance competition, as the limited liability company will be professionally managed with clear rules. The problem is it requires a strong willingness from the government and its readiness for reduction risk of dockworkers along with the spirit of containerization, meaning the government needs to pay the cost of this fundamental policy. Outsourcing, another form of policy, also leads to the professionalism of work. This policy may also reduce the number of dockworkers. As under outsourcing model, there would be a termination of employment for dockworkers who have been incorporated in Dockworkers Cooperative. This policy model will surely flare up temporary, but as time goes by dockworkers

will adjust the demands of professionalism. The most appropriate outsourcing body is also a limited liability company, which has professional behavior. Under this policy, dockworkers will increase their competence and will run the SOP more consistently.

This study also results in some findings of problems and presented in this Table 3 below along with the recommendation of the solution.

Table 3 Findings and Recommendations for the Improvement Dockworkers in Several Major Ports of Indonesia

Aspect	gs and Recommendations for the Improvement Doe Findings	Recommendation
Welfare	 The wage rates of dockworkers are still low; Dockworkers monthly income is uncertain; The coverage of the guarantee of welfare from Dockworkers Cooperative is little; Skills training has not adequate for all dockworkers; In the regional ports, the total salary of dockworkers per month is more than the Minimum Wage. However, in the Port of Tanjung Priok is less than the Minimum Wage. It is caused by the containerization which reduces the function of dockworkers; There is a deduction of the income from the stevedoring activities for dockworkers includes:(a) For PT. Pelindo; (b) For Dockworkers Cooperatives. The deduction is varied in each port. 	 There needs a clear regulation on the elements of wage deduction so as not to harm dockworkers; There requires mandatory training which proven by certification for all dockworkers, and the Ministry of Cooperatives shall fund the training; The needs for law enforcement related to the welfare of dockworkers consistently as regulated in the Act Number 40 Year 2014 concerning the National Social Security System; the Act Number 24 Year 2011 concerning the Social Security Administering Body, and the Act Number 13 Year 2003 concerning Manpower.
Occupational safety	 Guarantees for the use of equipment for the safety of dockworkers are not yet completely provided or have been provided but not used; Many tools, used by dockworkers, are obsolete; The dockworkers does not fully consider the procedure for using the equipment; No tool feasibility audit; As there are many members of dockworkers, not all of them obtain skills training. 	 Required audit of working tools in Stevedoring Companies; Required the use of mandatory protective equipment of work for the dockworkers; Required regular upgrading and training which are proven by certificate; The dockworkers training shall be free of costs and shall be funded by the State Budget through (Ministry of Manpower).
Occupational Health	 Dockworkers occupational health condition is varied and not up to standard; The dockworkers' health inspection routine is not yet optimal, some of which have not yet existed; Dockworkers still do not fully understand about occupational health such as not wearing mask on handling of dusty load; The Provision of nutritious food has not run. 	 Dockworkers Cooperative needs to hold regular checks of health for dockworkers. The needs of socialization of health regulations to dockworkers.
Social Security	There is no certainty of old age insurance for dockworkers considering there is no limit of working age; Death benefit and children's education guarantees already exist, but only in some ports.	Require entirety implementation of Social Security System regulations which include: old-age benefits, death benefit and children's educational guarantees towards the dockworkers.
Work Agreement	The parties to the work agreement are Dockworkers Cooperative and Stevedoring Company (Perusahaan Bongkar Muat, PBM). In practice dockworkers will only execute the instruction from the Dockworkers Cooperative, so dockworkers do not understand the essence of the contract regarding the rights and obligations; Dockworkers position is weak and uncertain, and also vulnerable to labor disputes;	 Require the implementation of the Act Number 13 year 2003 concerning Manpower related to work agreement; The urgency to establish legal counseling to the dockworkers about the work agreement. Thus they can know their rights and obligations.
Working time	 Dockworkers' working time is based on wholesale and there also based on shift which a day consists of 3 shifts and each shift is 4 hours; Working hours per week or month is uncertain, depending on whether there is work; No rules about overtime hours; Weekly/monthly and annual days off do not exist; 	Require the implementation of Act Number 13 Year 2003 concerning Manpower and the Act number 1/1970 concerning the Occupational Safety related to working time, so that dockworkers does not suffer much loss in doing work.
Socialization of work protection	The lack of regular socialization of dockworkers'-related regulations, whereas this is important for employers and employee (dockworkers)	The needs of at least annual socialization of work protection by the Employer/ Dockworkers Cooperative in conventional terminals.

Source:

Primary Data of the Result of Observation are being processed at Belawan, Batam, Balikpapan, Ambon, Tj. Priok and Tj. Silver Ports.

IV. CONCLUSION

Based on the results and discussion of the problems above, this study concludes as follows:

First, in general, the main regulations governing the aspects of welfare, occupational safety and health, social security, worktime and work agreement for dockworkers are adequate. However, there is still found the void of implementing the regulation which then causes the implementation of the main regulation has not fully guaranteed the certainty and legal protection for dockworkers in carrying out their duties and jobs. Furthermore, several dockworkers' service users in the Ports have not applied consistently some regulations governing the aspects related to dockworkers.

Secondly, the specific required-improvement matters in relation to dockworkers are: (1) the needs of clear implementing rules related to the wage deduction so as not to harm dockworkers; (2) the requirement of mandatory training established by the Ministry of Cooperatives in order to improve the performance of dockworkers; (3) the urgency of consistent legal enforcement related to the welfare of dockworkers as regulated in the Act Number 40 Year 2014 concerning the National Social Security System; the Act Number 24 Year 2011 concerning the Social Security Administering Body, and the Act Number 13 Year 2003 concerning Manpower; (4) the needs of dockworkers regular checks of health which held by Dockworkers Cooperative; (5) the necessity of complete implementation of the Social Security System regulation which includes: old-age benefits, death guarantees and child's educational guarantees towards dockworkers as a whole; (6) the requirement of the implementation of the Act Number 13 Year 2003 concerning Manpower and the Act Number 1 Year 1970 concerning Occupational Safety related to working time so that dockworkers do not undergo much loss and their safety in doing the work is guaranteed.

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