

Determining the Time Period of Domestic Fixed Term Seafarer's Employment Agreement under Indonesian Law

Ghalib Alghani Lusarno

Ministry of Transportation Republic of Indonesia, Indonesia

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Corresponding Author:

Email:

ghalibalghani@gmail.com

ABSTRACT

Maritime legal matters in Indonesia have been historically regulated under Indonesian Commercial Code. However, the enactment of Law Number 17 of 2008 concerning Shipping along with its derivative regulations have served as the more specific law that provides guidance for maritime legal aspects in Indonesia, which replaced some maritime-related provisions under the Indonesia Commercial Code. In the scope of maritime law, Seafarer Employment Agreement (SEA) prevails as an agreement made between seafarers and their employer seafarer for the service provided on the ship, in which the Indonesian Commercial Code further specifies into single trip, fixed term, or unfixed term period. However, there is no clear provision concerning the maximum period of a fixed term of SEA both under the Indonesian Commercial Code and Law Number 17 of 2008 concerning Shipping. Resorting to the legal principle of *lex specialis derogat legi generalis*, the existence of Law Number 13 of 2003 concerning Manpower become the general law and legal reference in filling the absence of such provision in the Indonesian Commercial Code and Law Number 17 of 2008 concerning Shipping, and the provision therein is considered to be applicable to a fixed-term SEA due to the close characteristics between the two agreement.

ABSTRAK

Peraturan mengenai hukum maritim di Indonesia sejak jaman dahulu telah diatur dalam Kitab Undang-Undang Hukum Dagang (KUHD). Namun, berlakunya UU Nomor 17 Tahun 2008 tentang Pelayaran beserta peraturan turunannya telah menjadi peraturan yang lebih spesifik yang memberikan pedoman bagi aspek hukum maritim di Indonesia, yang menggantikan beberapa ketentuan terkait kelautan dalam KUH Niaga. Dalam ruang lingkup hukum maritim, perjanjian kerja laut (*Seafarer Employment Agreement*) berlaku sebagai perjanjian yang dibuat antara pelaut dan pihak yang mempekerjakan mereka untuk layanan yang disediakan di kapal, di mana Kitab Undang-Undang Hukum Dagang Indonesia lebih lanjut menetapkan kriteria-kriteria yakni perjanjian kerja laut untuk satu perjalanan, perjanjian kerja laut untuk waktu tertentu, atau perjanjian kerja laut untuk waktu tidak tertentu. Namun, hingga saat ini tidak ada ketentuan yang jelas mengenai jangka waktu maksimum jangka waktu tertentu di perjanjian kerja laut baik menurut KUHD Indonesia maupun UU Pelayaran. Dengan berpegang pada asas hukum *lex specialis derogat legi generalis*, keberadaan Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan menjadi hukum umum dan acuan hukum untuk mengisi kekosongan hukum mengenai peraturan tersebut yang tidak ada dalam KUHD Indonesia dan UU Pelayaran. Ketentuan perjanjian kerja waktu tertentu dalam UU Ketenagakerjaan dianggap berlaku untuk perjanjian kerja laut jangka waktu tertentu karena karakteristik erat antara perjanjian tersebut.

INTRODUCTION

Until now, the uncertainty towards seafarers in Indonesia is still in a devastating condition especially in relation to the seafarers right to have a guarantee for their employment status in the future by way of entitlement status as a permanent seafarer in a shipping company. The condition is reflected because most seafarers in Indonesia who have been working for a long time period of time never have the opportunity to become permanent seafarers, because the laws and regulations allow their agreements to be continuously renewed without limit. This condition occurs due to the lack of clarity by the government of Indonesia in formulating laws and regulation which lack of provisions regarding Seafarer Employment Agreement (hereinafter “SEA”) period.

On the other hand, this lack of clarity is also caused by the presence of various laws and regulations concerning seafarers that resulted in the confusion of the stakeholders specifically the seafarers in finding the legal reference towards prevailing maritime rules and regulations in Indonesia.¹ Government of the Republic of Indonesia must formulate the law or provide legal protection and solution for the seafarers to guarantee their rights to have stable jobs and permanent status in working on a ship so that they can gain their advantages which are mandatory by law.

The issue of seafarer itself is very important and urgent. It has been found that seafarers contribute to a country’s economy² especially since Indonesia is an archipelagic country with a maritime focus.³ Indonesia has ratified Maritime Labour Convention 2006 (hereinafter “MLC 2006”) through Law Number 15 of 2016 concerning Ratification of Maritime Labour Convention, 2006, and this provides terms for certain maritime labour matters, including Flag State, Port State, and Labor Supplying State although it has not provided regulations and guidance on certain things such as jurisdiction determination.⁴

As an implementing regulation to this Law, government of Indonesia has provided technical rules through the first echelon level regulation under Ministry of Transportation, namely the Directorate General of Sea Transportation Number HK.103/3/13/DJPL-18 concerning Procedures in the Issuance of Maritime Labour Certificate.

In addition to lacking configuration in jurisdiction determination, such rules and regulations also do not stipulate concerning the maximum period for Fixed Term SEA to be conducted. MLC 2006 only stipulates the following:

- “g) the termination of the agreement and the conditions thereof, including:
 - (i) if the agreement has been made 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

¹ Specific regulations concerning the matter is to be regulated in a Government Regulation as an implementing regulation of the Omnibus Law.

² See further: Ahmad Shuha Bin and Abu Samah, ‘Seafarer Contribution to Malaysia Economy’ (World Maritime University 2018) <https://commons.wmu.se/all_dissertations/643>.

³ Indonesia has adopted new policies to be the “Global Maritime Fulcrum” (*Poros Maritim Dunia*) under the current government. See for example: Mohd Agoes Afiya, ‘Indonesia’s Global Maritime Fulcrum: Contribution in the Indo-Pacific Region’ (2017) 6 *Andalas Journal of International Studies (AJIS)* 143; René L Pattiradjawane and Natalia Soebagjo, ‘Global Maritime Axis: Indonesia, China, and a New Approach to Southeast Asian Regional Resilience’ (2015) 6 *International Journal of China Studies* 175.

⁴ Gang Chen and Desai Shan, ‘Seafarers’ Access to Jurisdictions over Labour Matters’ (2017) 77 *Marine Policy* 1.

- the shipowner than for the seafarer;
- (ii) if the agreement has been made for a definite period, the date fixed for its expiry; and
 - (iii) if the agreement has been made for a voyage, the port of destination and the time which has to expire after arrival before the seafarer should be discharged;”⁵

Referring to the provision stipulated above, the convention focused on the rights and technical competence both to be provided by the employer and seafarers, but it does not have a clear provision that configures types of SEA according to its period of the agreement. therefore, this convention could not become a legal reference in determining the maximum period of Fixed Term SEA.

Under Indonesian prevailing rules and regulation, matters related to labor law, in general, is regulated under Law Number 13 of 2003 concerning Manpower (hereinafter “**Manpower Law**”) that applies to labors under Indonesia jurisdiction. In certain professions specifically concerning seafarer, it has its own prevailing law that is Law Number 17 of 2008 concerning Shipping (hereinafter “**Shipping Law**”) and its derivatives as the enforcing rules and regulation, and previous law that still exist and applicable Indonesia Commercial Code (hereinafter “**ICC**”).

Although almost all matters concerning seafarer have been regulated under Shipping Law⁶ along with its derivatives and the ICC, however, there are several matters that are instead regulated under the Manpower Law. This includes the matter as stated above concerning type SEA with regard to time, and the maximum time period of the seafarer to become a permanent seafarer in a shipping company.

The Shipping Law has regulated SEA which contains rights and obligations of seafarers and shipping company or ship owner, also formal requirement for those parties to be able to conduct shipping activities which are organized by the Ministry of Transportation. However, there is no maximum period of time in such a law. Under the ICC it is stated that there are 3 (three) types of SEA, namely single trip SEA, fixed term SEA, and unfixed term SEA. Such period of time agreement is not specifically mentioned in ICC, and therefore it may cause uncertainty to the seafarers who have been working for a long period of time but will never have the permanent status as permanent seafarers in a shipping company.

The Manpower Law as the general manpower regulation in Indonesia has defined two kinds of working agreement based on its period of time namely fixed-term working agreement and non-fixed term working agreement. The fixed-term agreement shall only apply for maximum of two years and can be extended for a year or renewed for two years, and in the case where it has been expired, the working agreement becomes a non-fixed term working agreement so that the employee can obtain status as a permanent employee.

Indonesia has various rules and regulations that regulating each of the matters in specific as it is obliged under article 5 Law Number 12 of 2011 concerning Establishment of Rules and Regulation as amended through Law Number 15 of 2019 (hereinafter “**Law on**

⁵ Section 4 paragraph g point (i), (ii), and (iii) Standard A2.1 – Seafarers’ Employment Agreements Maritime Labour Convention, 2006.

⁶ For example, see: Randy Aguw, ‘Tanggung Jawab Syahbandar Dalam Keselamatan Pelayaran Ditinjau Dari UU Pelayaran No. 17 Tahun 2008 Tentang Pelayaran’ (2013) 1 Lex Administratum.

Establishment of Laws and Regulations”) which stated that in drafting rules and regulation must implement the principle of good drafting rules and regulation that are relevantly stated in the point a regarding clear objective, point c regarding conformity of type, hierarchy, and material substance, and point f that is formulation clarity.

As such, the aim of this article is to found out the configuration of the maximum period of time in fixed-term SEA that needs to be converted into unfixed term SEA according to Indonesian prevailing rules and regulation, and the proposed solution in dealing with the conflicting regulations on the SEA period.

METHODS

The method used in writing this paper is the juridical normative legal method. This study uses a statute approach which means research on statutory regulations related to the legal issues discussed. By using the statutes approach, the author can analyze all applicable laws and regulations. The types of legal materials used are primary and secondary legal materials.

The legal materials in the form of Indonesian rules and regulations include the following:

1. Indonesian Commercial Code (*Kitab Undang-Undang Hukum Dagang Indonesia - Wetboek van Koophandel for Indonesie*);
2. Law Number 2 of 2004 concerning Industrial Relation Dispute Settlement (*Undang-Undang Nomor 2 Tahun 2004 tentang Penyelesaian Perselisihan Hubungan Industrial*);
3. Law Number 17 of 2008 concerning Shipping (*Undang-Undang Nomor 17 Tahun 2008 tentang Pelayaran*);
4. Law Number 13 of 2003 concerning Manpower (*Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan*);
5. Law Number 15 of 2016 concerning Ratification of Maritime Labor Convention 2006 (*Undang-Undang Nomor 15 Tahun 2016 tentang Ratifikasi Maritime Labor Convention 2006*);
6. Government Regulation Number 7 of 2000 concerning Seafarer (*Peraturan Pemerintah Nomor 7 Tahun 2000 tentang Kepelautan*);
7. Minister of Transportation Regulation Number 84 of 2013 concerning Recruitment and Assignment of Seafarer (*Peraturan Menteri Perhubungan Nomor 84 Tahun 2013 tentang Perekrutan dan Penempatan Awak Kapal*);
8. Minister of Transportation Regulation Number PM 76 of 2017 concerning Maritime Tribunal Organization and Work Procedure (*Peraturan Menteri Perhubungan Nomor PM 76 Tahun 2017 tentang Organisasi dan Tata Kerja Mahkamah Pelayaran*);
9. Minister of Manpower and Transmigration Decree Number KEP.100/MEN/VI/2004 concerning Provision in the Implementation of Fixed Term Employment Agreement (*Keputusan Menteri Tenaga Kerja dan Transmigrasi Nomor KEP.100/MEN/VI/2004 tentang Ketentuan Pelaksanaan Perjanjian Kerja Waktu Tertentu*); and

10. Director General of Sea Transportation Regulation Number HK.103/3/13/DJPL-18 Concerning Procedures in The Issuance of Maritime Labor Certificate (*Peraturan Direktur Jenderal Perhubungan Laut Nomor HK.103/3/13/DJPL-18 tentang Tata Cara Penerbitan Sertifikat Ketenagakerjaan Maritim*).

Additionally, an element of empirical legal research is used to support the findings from literature and statute, in this case through an interview with a seafarer on the direct experience in dealing with SEA and seafarer employment.

RESULTS AND DISCUSSION

The result and discussion will be further divided into three parts. First, the discussion will talk about the configuration of the maximum working period in fixed-term SEA under Indonesian law. Secondly, the discussion will be concerned further regarding legal principles of *lex specialis derogat legi generalis* in the context of applicability of law between the Manpower Law, the Shipping Law, and the ICC. Last part will determine the prevailing law in order to fulfill the vacant of law, in stipulating a clear period of fixed-term SEA according to prevailing rules and regulation.

1. Configuration of Maximum Working Period in Fixed SEA

In configuring matters related to seafarer under Indonesia rules and regulations, they have been regulated into several rules and regulations. In configuring employment matters in Indonesia is regulated under Law Number 13 of 2003 concerning Manpower and becomes a legal reference to discover specifically employment agreement that consists of fundamental rights and obligation between employer and employee.

With regard to seafarer as a subject to maritime law, the government of Indonesia is specifically regulating maritime law under the Shipping Law which becomes guidance for maritime configuration in Indonesia. Even though Indonesia has regulated maritime law under its specific Law, this law is facing a challenge since the development of maritime law in Indonesia is not entirely covered in the regulation, in the sense that the implementation for some conditions related to the maritime provision refers to the older maritime law in Indonesia which still applicable until now, namely the ICC.

Under the ICC, it is specified that SEA according to its time which is not regulated under Shipping Law. However, the ICC does not mention in its provision for how long one of its types of agreement namely Fixed Term SEA could be conducted, as it makes uncertainty for the employment term of seafarers.

The Manpower Law is the general law that configures general labor matters in Indonesia so that it is the *lex generalis* for employment in Indonesia.⁷ Nevertheless with regard to seafarer as a specific profession or occupation, there are two laws in the same level which roled as the *lex specialis* of seafarers employment in Indonesia which are the Shipping Law and the ICC, however referring to the principle of *lex posterior derogate legi priori*, ICC is older and earlier prevailing law compared to the Shipping Law. As a result, some

⁷ Abdul Rachmad Budiono, 'Makna "Perintah" Sebagai Salah Satu Unsur Hubungan Kerja Menurut Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan' (2012) 5 Arena Hukum 137.

provisions under the ICC which have been regulated under Shipping Law are ruled out. Until now ICC is still in effect, and under ICC there are several provisions regarding SEA according to the period of time that is not regulated under the Shipping Law.

1.1. Provisions of SEA Under ICC

Historically, configuration related to any matters of Indonesia shipping law is formerly regulated under ICC specifically Book Two concerning rights and obligations arising from shipping.⁸ In ICC, SEA defines as an agreement made between ship employer and employee, in which the employee as the party undertakes the order of the ship employer to fulfill the obligation with a certain salary, whether as ship captain or seafarer.⁹ The agreement is divided into three kinds of agreement based on its period of time, which are as follows:

1. Single or few trips SEA

The single or few trips agreement is conducted according to the trip of the voyage, which the parties agree to end the agreement in the destination port or the port where the parties agreed upon to dismount the seafarer.¹⁰

2. Fixed-term SEA

The agreement that is conducted for a certain period of time where if the agreement was ended during the trip of the voyage or where the seafarer is still on the trip so that the working calculation is ended at the first port to dock.¹¹ The status of seafarer under this agreement is not permanent because it only held for a certain period of time.

3. Unfixed term SEA

The agreement undertakes by the ship employer and seafarer for an unlimited period of time.¹² The agreement gives the permanent status of the seafarer in the company or ship employer's ship.

According to the stipulation of the fixed term SEA, there is no provision that explicitly states the time period of fixed-term SEA, therefore the ship employer could employ seafarers for an unspecified time on contractual basis only, and during that time the seafarers status remain as non-permanent seafarer employee. This can cause uncertainty for the seafarers employment period in a certain employer.

1.2. Provisions of SEA Under Law Shipping Law and Its Derivatives

The application of Shipping Law becomes the specific reference of law and regulations in the implementation of maritime aspects in Indonesia. Related to seafarer this law configures protection of seafarers¹³, certification of seafarer's book, the standard minimum clause of SEA, and rights and obligation of seafarer and ship employer or shipowner.

⁸ Tri Cahyadi, 'Perlindungan Hukum Pelaut Di Kapal Indonesia Berbasis Nilai Keadilan' (2017) 4 Jurnal Pembaharuan Hukum 97.

⁹ Article 395 of the Indonesian Commercial Code.

¹⁰ Article 401 point 9 letter b of the Indonesian Commercial Code.

¹¹ Article 448 of the Indonesian Commercial Code.

¹² Article 450 of the Indonesian Commercial Code.

¹³ Suhartoyo Suhartoyo, 'Perlindungan Dan Keselamatan Kerja Dikapal: Suatu Tinjauan Normatif' (2018) 1 Administrative Law and Governance Journal 306.

However, this law does not contain any provision regarding fixed-term SEA and unfixed term SEA. The absence of such provision is deemed to point out that interested parties must look for reference to another law which regulate regarding the maximum period of time in fixed-term SEA and the mechanism for a seafarer with temporary status to be promoted as a permanent seafarer by ship employer.

Although the Shipping law is a *lex specialis* that regulates regarding maritime in Indonesian legal system, however as stated by Bagir Manan “provisions under general law remain applicable, except it specifically regulated under such specific law,”¹⁴ therefore the issue of seafarer employment agreement based on a period of time refers to general labor law of Indonesia which is the Manpower Law.

Under this law, it obliges any SEA to be acknowledged and validated by harbormaster where the agreement is made by the parties and contained in SEA.¹⁵ Such law has attributed configuration of validation, manning of a ship, and seafarer’s document to the Ministry of Transportation Regulation, in this case, SEA is included in seafarers document.¹⁶ The attribution to such matters is regulated under the Minister of Transportation Regulation Number 84 of 2013 concerning Recruitment and Assignment of Seafarer (hereinafter “**Minister of Transportation Regulation**”). However, the ministry regulation does not state or clarify regarding fixed-term SEA and unfixed term SEA matters though it regulates the chapter of standard minimum clause of SEA which include termination of SEA, and any provisions under national law, if any.¹⁷

The provisions stipulated under the agreement must not be lower than the standard minimum clause set under the Minister of Transportation Regulation. The harbormaster or authorized official must not validate such agreement if it is lower than the set standard minimum clause.¹⁸ The settlement of disputes arising from SEA is settled through industrial relation court.¹⁹ The Minister of Transportation Regulation has provided legal basis for employers to put other clauses as long as the minimum standard set under the clause is fulfilled, and the other clauses refer to the Manpower law as the general national law. As such, the prevailing minimum standard follows the Minister of Transportation Regulation.

Other derivatives of the Shipping Law include Government Regulation Number 7 of 2000 concerning Seamanship (hereinafter “**Seamanship Government Regulation**”) however it does not provide the time period of SEA. This regulation is related to matters such as certification, education, and examination of seafarers, requirements to work on the ship, rights, and obligation of seafarer, and termination of SEA.

1.3. Provisions of Employment Agreement Under the Manpower Law

Under the Manpower Law, employment agreement is further divided into fixed-term employment agreement and unfixed term employment agreement. A fixed-term

¹⁴ Bagir Manan, *Hukum Positif Indonesia* (FH UII Press 2014).

¹⁵ Article 224 of Law Number 17 of 2008 concerning Shipping (Shipping Law).

¹⁶ Article 146 of Law Number 17 of 2008 concerning Shipping (Shipping Law).

¹⁷ Article 21 paragraph 3 point n and p of Ministry of Transportation Regulation Number 84 of 2013.

¹⁸ Article 23 of Law Number 17 of 2008 concerning Shipping (Shipping Law).

¹⁹ Article 36 of Law Number 17 of 2008 concerning Shipping (Shipping Law).

employment agreement is the agreement made between employee and employer based on a certain period of time, with a maximum length for 2 (two) years and only available to be extended 1 (one) time for 1 (one) year or to be renewed for only 1 (one) time with maximum length 2 (two) years of time. The undertaking of the agreement is limited to a certain job according to its kinds and characteristics that are going to finish in a certain time, and unable to be made for permanent kinds of jobs. Non-compliance of the aforementioned provision would automatically convert the agreement to become unfixed term employment agreement for the sake of the law.²⁰

Such kinds and characteristics of a certain job consist of a one-time completion or provisional job characteristic, a short period job with estimated completion up to 3 (three) years, seasonal job, job-related to a new product, new activity, or an additional product that still under experiment.²¹ The main difference between this kind of agreement compared to an unfixed term employment agreement is the existence of a contract working period clause.²²

Unfixed term employment agreement refers to an agreement with no limitation of time, in which the employee under this agreement acquire status as a permanent employee in the employer's company or workplace, the termination of this agreement occurred in terms of the death of an employee, bankruptcy of employer legal business entity, the existence of industrial relation court verdict related to matters between the employee and employer, and termination by one of the parties in the agreement according to prevailing rules and regulation.²³ The advantages of an unfixed term employment agreement rather than a fixed-term employment agreement are that no limitation of the agreement period (except if the worker dies or retires), rights to severance pay, and rights to settle disputes arising from such unfixed term agreement through industrial relation dispute settlement court.

2. Uncertainty in the Legal Framework of Seafarer Work Agreement

Over time, the role of ICC has been taken by Shipping Law as the most recent maritime law of Indonesia, but the Shipping Law does not regulate on the types of SEA or maximum period of fixed-term SEA. Nevertheless, the Shipping Law delegates the matter of seafarer book validation to the Ministry of Transportation as "Further provisions on validation, manning of ships, and documents for sailors shall be governed by Minister [of Transportation] Regulation."²⁴ In validating the seafarer book, relevant Ministry of Transportation authority, usually the Harbormaster, will conduct a checking on the content of the SEA. As such in this process, the Harbormaster will ensure that the SEA terms is not lower than the standard minimum clause set under the Minister of Transportation Regulation.

²⁰ Article 59 of Law Number 13 of 2003 concerning Manpower (Manpower Law). See also: Apri Amalia and others, 'Analisis Yuridis Perjanjian Kerja Waktu Tertentu Berdasarkan Undang-Undang Ketenagakerjaan Dan Hukum Perjanjian' (2017) 5 USU Law Journal 66.

²¹ Article 59 paragraph 1 of Law Number 13 of 2003 concerning Manpower (Manpower Law).

²² Article 54 paragraph 1 point g of Law Number 13 of 2003 concerning Manpower (Manpower Law).

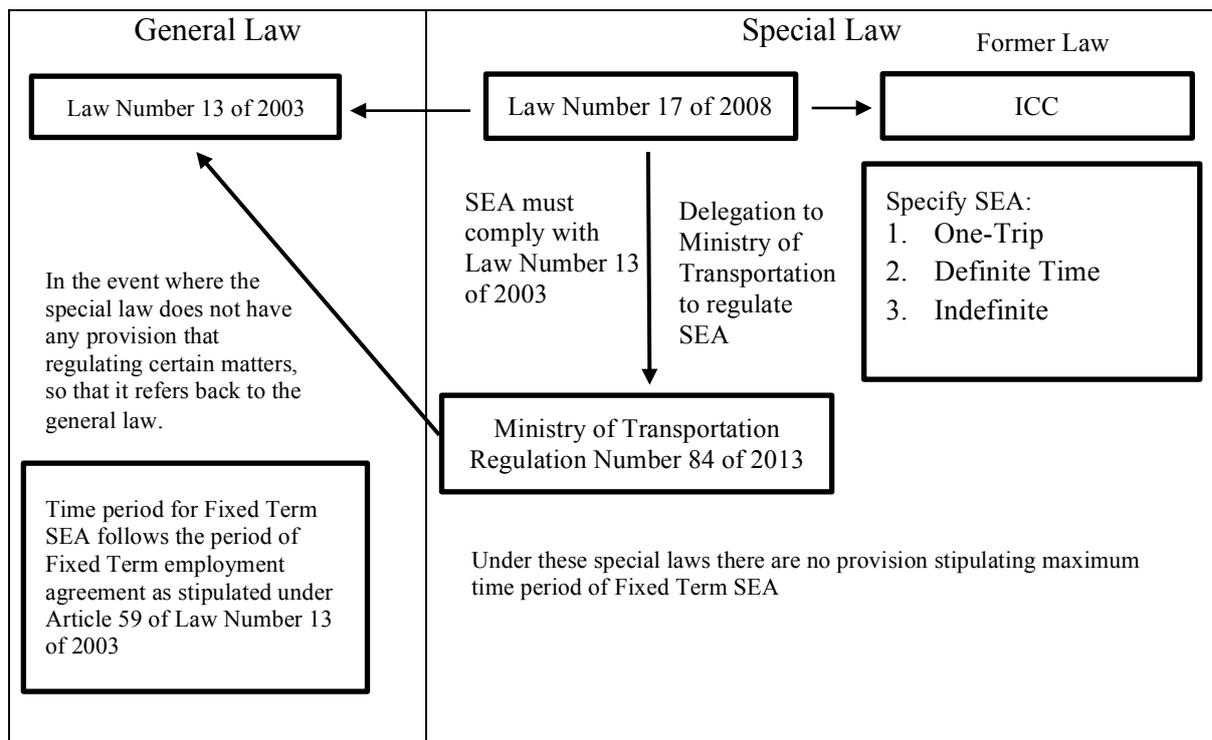
²³ Article 61 of Law Number 13 of 2003 concerning Manpower (Manpower Law).

²⁴ Article 224 of Law Number 17 of 2008 concerning Shipping (Shipping Law).

The Shipping Law, however, also provides a delegation concerning any employment matter in the maritime field to be implemented in accordance with the prevailing employment rules and regulation under Indonesian Law. Article 337 of the Shipping Law states that “terms of employment in the field of shipping shall be carried out in accordance with the laws and regulations in the field of employment.” This, again, gives the general rule to the Manpower Law as the general law which configures regarding employment matters in Indonesia, and as such, seafarer employment may refer to the fixed-term and unfixd term agreement provided under the Manpower Law.

Since there are multiple delegations pointing to different laws and regulations, and analysis of the legal principles need to be carried out to find out which laws and regulations actually apply to the SEA regime. First and foremost, there is the *lex posterior derogat legi priori* principle, and applying this principle will cause the ICC to prevail as the earliest law compared to the Manpower Law that is much newer. The ICC also regulates other matter relevant to maritime law, such as about ship hypothec, and conflicting laws and regulations concerning the ICC’s status as the oldest prevailing law has been put on discussion.²⁵

Further, an analysis can be carried out using the legal principle of *lex specialis derogat legi generalis*, and reflecting back to Bagir Manan’s statement that “provision under general rules and regulation prevail except it is specifically regulated under the specific rules and regulation.” The general rule in this sense refer to the Manpower Law, and as such, there is vagueness and unclarity in determining which regulation prevails.



Graph 1: Legal Framework of Seafarer Employment Agreement Regulations

²⁵ Aktieva Tri Tjitrawati, ‘Penataan Aturan Hipotik Kapal Setelah Berlakunya Undang-Undang Nomor 17 Tahun 2008 Tentang Pelayaran’ (2010) 25 Yuridika.

Referring to a condition where uncertainty occurs in terms of seafarer does not achieve permanent employment status after working for more than 3 (three) years, has given the fact that there are an indefinite rule and regulation in configuring clearly regarding maximum length period of fixed-term SEA. Under the ICC, it clarifies three types of SEA, one of them is fixed-term SEA, however, there is no further provision and explanation for how long such an agreement could be implemented.

Seafarer's job comprises of carrying out the obligations as set in the SEA as well as carrying out the Ship Captain's order, in which the term can be taking the form of Fixed Term agreement, single trip agreement, or according to the time agreed upon between seafarer's and sea employer. Therefore, fixed-term SEA can be temporary, and there is no clear provision for the maximum time of such agreement under ICC and Shipping Law. In practice, several seafarers have worked for more than five years with fixed-term SEA in which they do not have certainty at their retirements.²⁶ The lack of maximum term for the fixed-term SEA allows the employer to renew the agreement indefinitely each time the agreement has expired.

According to the provision under Article 59 paragraph (1a) and (1b) of the Manpower Law and Article 3 paragraph (1) of Minister of Manpower and Transmigration Decree KEP.100/MEN/VI/2004 concerning Provision in the Implementation of Fixed Term Employment Agreement ("**Minister of Manpower Decree**"), Fixed Term Employment Agreement is meant for a once-finished or temporary job which underlies the completion of a certain job. Referring to such provisions, so that single-trip SEA is meant for once-finished job and fixed-term SEA is meant for a temporary job which means they are Fixed Term Employment Agreement based on the completion of certain assignment/work, or in this case, is a sea-service or working on the ship based on several requirements.

However, referring to the characteristics of the jobs or occupations that are allowed to be made through fixed-term employment, namely once finished or temporary jobs, the time estimation of completion is supposed to be a short period of time and as a result, the maximum period is 3 (three) years.²⁷

By using the same legal reasoning, therefore fixed-term SEA shall also only apply for a short period of time and for the maximum period of 3 (three) years. Further, the options for a seafarer's job includes a single-trip service, service while chartered along with the ship, and short term service. Therefore these two can be interpreted as inline or relevant with each other, and in the event of implementation, should be referred to the provision under the Manpower Law. This is going back to the Manpower Law as the general law.

3. Relevant Authority in Disputes Related to Seafarer Employment Agreement

The authority held by the government in providing protection to seafarer is enforceable both in preventive or repressive manner according to applicable rules and regulations. In the preventive manner, Ministry of Transportation c.q. Harbor Master of Directorate

²⁶ Testimony of Adian Rahmat as a seafarer in Indonesia, interview taken in Jakarta on October 10th 2019.

²⁷ Article 59 paragraph 1 of Law Number 13 of 2003 concerning Manpower (Manpower Law)

General of Sea Transportation has the authority to validate seafarer's book²⁸ which contains the SEA. The Shipping Law states that:

Article 145

"anyone is prohibited to employ someone on a ship in any ranking without mustering and without any competence and skill along with required seafarer's documents".

Article 224

- "(1) anyone working on a ship with any ranking must own competence, seafarer's documents, and mustered by harbormaster.
- (2) mustering of seafarer as stipulated in paragraph (1) conducted through stages as follow:
- a. Signatory of seafarer's employment agreement conducted by seafarer and shipping company with acknowledgement of harbormaster;
 - b. According to the signatory of seafarer's employment agreement, ship captain subsumes name and seafarer's rank in accordance with his competence into roll book that has been validated by harbormaster"

Pursuant to these articles, harbormaster must not put validation in mustering seafarer's book in case the SEA does not fulfill prevailing rules and regulations both in maritime law and employment law, specifically under employment law in which if the agreement in fixed-term was conducted exceeding stipulated time and mechanism. The fixed-term agreement that has violated the term period under Article 59 of Manpower Law must be converted or made in the unfixed term so that the mustering could be conducted and sea work is eligibly proceeded by parties under the agreement. With regard to the agreement is part of seafarer's welfare which becomes one of the requirements of seaworthiness that must be fulfilled, where if the agreement is not mustered, may cause unavailability of a ship to sail or operate.²⁹

Repressive legal protection can be carried out by the Ministry of Transportation is conducted by putting administrative sanction to sea employer if any conduct or unfulfillment of seafarer's welfare under the agreement, in which the administrative sanction conducted in form of non-compliance letter, license suspension or revocation of business license or port clearance. In case of such violation cause ship collision, maritime tribunal as an organizational unit under Ministry of Transportation has the authority to investigate the cause of the collision, if it was proven that it occurs due to unfulfillment of the welfare then it may become a consideration for the maritime tribunal to determine sea employer is held liable and burdened the administrative sanctioned in accordance with the result of the investigation.³⁰

In relation to employment legal protection, the Ministry of Manpower has a duty to enforce the preventive measures, wherein the occurrence of a dispute caused by infringement of seafarer's rights in the conversion of a fixed-term period of SEA to become an unfixed-term period of SEA.³¹

²⁸ Article 209 point h of Law Number 17 of 2008 concerning Shipping (Shipping Law).

²⁹ Article 117 paragraph 2 point e jo. Article 219 paragraph 3 of Law Number 17 of 2008 concerning Shipping (Shipping Law).

³⁰ Minister of Transportation Regulation Number PM 76 of 2017 concerning Maritime Tribunal Organization and Work Procedure

³¹ Article 59 of Law Number 13 of 2003 concerning Manpower (Manpower Law)

Another measure is carried out by ensuring the dispute settlement has been conducted through bipartite mechanism³², and if it fails, the sea employer and seafarer will be sent to conduct a mediation³³ in which Industrial Relation Mediator which has been determined from the Minister of Manpower³⁴ becomes the mediator in the mediation phase. If the mediation still unable to achieve peace or mutual consent between parties, then the Ministry must provide a written recommendation,³⁵ however, such recommendation is not mandatory in which it does not oblige the parties to obey. The stipulated dispute settlement mechanisms are steps to be taken prior to being filed at Industrial Relation Court or arbitration as regulated under Law Number 2 of 2004 concerning Industrial Relation Dispute Settlement.

The dispute settlement mechanism follows the general procedural method in the Industrial Relation Court³⁶ since up to now, there is no specific court that deals with seafarer employment dispute. However, it is important to note that in conducting legal finding, the judge should take into account the conflict between the aforementioned laws as well as the possible analysis of legal principles with regard to determining the SEA.

CONCLUSION

The ICC serves as the legal basis for Fixed Term SEA, but it has not yet regulated the maximum term for the continuous renewal of such agreement. Looking at Indonesia's Shipping Law, it does not provide regulation for SEA and its time. The detailed regulation of fixed-term employment agreement is rather regulated under the Manpower Law, and these three regulations are conflicting with each other as the Shipping Law provides delegation to the Ministry of Transportation in determining the standard minimum clause of employment agreement, but also provides delegation to the employment laws and regulations.

The principle of *lex specialis derogat legi generalis* states that in the event where the special law does not specify concerning such matters, the general law will be referred back, whereas in this case the Manpower Law acts as a general law regulating employment matter that prevails. Period of Fixed Term SEA then follows provision under Article 59 the Manpower Law in which it only can be conducted for the longest of 2 (two) years and only be able to be extended for once for 1 (one) years or could be renewed after exceeding 30 (thirty) days of the agreement ends that only can be conducted for once and for the longest of 2 (two) years. Further, it can also be concluded that if there is non-compliance with regard to the fixed-term SEA, the agreement can be regarded as a permanent SEA for the sake of law.

³² In accordance to Article 3 of Law Number 2 of 2004 concerning Industrial Relation Dispute Settlement

³³ In accordance to Article 8 of Law Number 2 of 2004 concerning Industrial Relation Dispute Settlement

³⁴ Article 1 Number 12 of Law Number 2 of 2004 concerning Industrial Relation Dispute Settlement

³⁵ Article 13 Paragraph 2 of Law Number 2 of 2004 concerning Industrial Relation Dispute Settlement

³⁶ For example, see: Arofatus Siddiqiyah and Masidin Masidin, 'Tinjauan Yuridis Pemutusan Hubungan Kerja (Phk) Secara Lisan Terhadap Nakhoda Kapal Pt. Internusa Bahari Persada (Studi Kasus Ma Nomor 52 K/Pdt.Sus.Phi/2018)' (2020) 2 National Journal of Law 157 <<http://journal.unas.ac.id/law/article/view/816/672>>.

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