

Implementation of Employer Responsibilities for Occupational Health and Safety for Daily Casual Fishermen

Merlien Irene Matitaputty

merlienmatitaputty7087@gmail.com

Faculty Of Law, Pattimura University, Indonesia

Article Info

Received: 2025-02-18

Revised: 2025-03-18

Accepted: 2025-05-20

Keywords:

Entrepreneur Responsibility, Daily Casual Fishermen.

Abstract

Protection of casual workers is to guarantee the basic rights of workers/laborers and guarantee equal opportunities and treatment without discrimination on any basis to realize the welfare of workers/laborers and their families while still paying attention to the development of the progress of the business world. Workers need to be protected by both employers/entrepreneurs and the state through government intervention.

In accordance with the purpose of this study, the type of research used is socio-legal research. Socio-*legal* research, namely a research method that combines doctrinal legal research methods and empirical legal research methods. Doctrinal research is intended to conduct library research by identifying laws and regulations and collecting other data related to the problem being studied.

In reality, casual daily workers who work on bobong ships owned by employers, they work without any guarantee other than a verbal agreement about the income earned every time they go to sea or given every week according to mutual agreement. Casual daily fishermen on these bobong ships do not receive social security in the form of health insurance, accident insurance or death insurance which is their right, in accordance with the laws and regulations governing the matter in question.

I. Introduction

Indonesia is an archipelagic country consisting of 17,508 islands with a coastline of 81,000 km (reduced after East Timor separated from Indonesia) and an ocean area of around 3.1 million km² (0.3 million km² of territorial waters and 2.8 million km² of archipelagic waters), Indonesia has enormous coastal and ocean resource potential. By utilizing the Exclusive Economic Zone (EEZ), Indonesia has sovereign rights over natural resources and various interests in an area of 2.7 km² and the right to participate in utilization in the open sea beyond the 200 mile limit of the EEZ, as well as management and utilization of the seabed of international waters in the continental shelf sea.¹

Indonesia's marine and coastal natural resources include fisheries resources, biological resources (biodiversity) such as mangroves, coral reefs, seagrass beds, and mineral resources such as petroleum and natural gas including other mining materials that have high economic value. In addition to providing these resources, Indonesia's coastal areas have various other functions, such as transportation and ports, industrial areas, agribusiness and agroindustry, recreation and tourism, as well as residential areas and waste disposal sites.

Coastal and marine areas are the greatest potential sources owned by Indonesia with the aim of improving community welfare as mandated in Article 33 paragraph 3 of the 1945 Constitution.

The opening of the 1945 Constitution of the Republic of Indonesia (State Gazette of the Republic of Indonesia Number 75 of 1959, hereinafter referred to as the 1945 Constitution) stipulates that the purpose of establishing the Republic of Indonesia is to protect all Indonesian people and all Indonesian territory and to advance public welfare, educate the nation's life and participate in implementing world order based on independence, eternal peace and social justice. This shows that one of the purposes of establishing the government of the Republic of Indonesia is to protect all Indonesian people.²

From these provisions there are at least four national goals, namely:

1. *Pyroprotection function* , the state protects all of Indonesia's territory;
2. *Welfare function* , the state is obliged to realize welfare for all people;
3. *Educational function* , the state has an obligation to make the nation's life more intelligent; and,
4. *Peacefulness function* , must create peace in national and social life, both internally and externally.

Indonesian workers are part of the Indonesian nation that must be protected. Indonesian workers are every Indonesian citizen who is able to do work to produce goods and/or services either to meet their own needs or for the community. Workers are an important component in the running of a company because the workforce is the

¹RokhiminDahuri, Management of Coastal and Marine Areas in Line with the Implementation of Regional Autonomy, Paper presented at the Seminar and Training on Spatial Planning of Provinces, Districts and Cities in the Framework of Regional Autonomy, Cooperation between the Provincial Bappeda and LPPM Unisba, Bandung 2-3 May 2001

²Merlien Irene Matitaputty; 2024; Postgraduate Dissertation for Law Doctoral Program; P.1

driving force of a company that plays an important role in its activities both producing goods and providing services. The workforce plays a very important role in improving and advancing the company in terms of the company's performance and productivity. The increase or progress of the company in terms of the company's performance and productivity, indirectly also contributes to national development.

Manpower development as an integral part of the development of the Indonesian people as a whole to improve the dignity, honor, and self-esteem of the workforce and to realize a prosperous, just, prosperous, and equitable society, both materially and spiritually, as stipulated in TAP MPR Number II/MPR/1988 concerning the General Guidelines of State Policy (GBHN) that "Manpower development as part of efforts to develop human resources is directed at improving dignity, honor and ability as well as self-confidence. Manpower development is a comprehensive effort in all sectors and regions and is aimed at expanding employment and equalizing employment opportunities, improving quality and ability and protecting the workforce, as a form of manpower development.

This is also the basis for consideration of the stipulation of Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower (State Gazette of the Republic of Indonesia of 2003 Number 39, Supplement to the State Gazette of the Republic of Indonesia Number 4279, hereinafter abbreviated as Law No. 13 of 2003) which stipulates that in the implementation of national development, the workforce has a very important role and position as an actor and goal of development. The role and position of the workforce, workforce development is needed to improve the quality of the workforce and its participation in development and increase the protection of workers and their families in accordance with human dignity and dignity. Protection of workers to guarantee the basic rights of workers/laborers and guarantee equal opportunities and treatment without discrimination on any basis to realize the welfare of workers/laborers and their families while still paying attention to the development of the progress of the business world.³

Workers need to be protected by both employers/businessmen and the state through government intervention. The form of protection provided by the government is to make regulations that bind workers and employers/businessmen, foster and supervise the industrial relations process. The nature of employment law in Indonesia is generally twofold, namely regulatory and coercive. Employment law in Indonesia is regulatory because employment law in Indonesia regulates the relationship between workers/laborers and employers as well as the government.

II. Research Method

In accordance with the objectives of this study, the type of research used is socio-legal research. Socio -*legal* ⁴research , namely a research method that combines doctrinal legal research methods and empirical legal research methods. Doctrinal research is intended to conduct library research by identifying laws and regulations and collecting

³*Ibid* Page 2

⁴Sulistiyowati Irianto , *Introducing Sociolegal Studies and Their Methodological Implementation* , in Sulistiyowaty and Sidharta (eds), *Legal Research Methods Constellation and Reflection* , p. 177. See also in Sulistiyowati Irianto in the same book , *Legal Practice: Sociolegal Perspective* , Obor Foundation, Jakarta, 2009, p. 308

other data related to the problem being studied. Empirical research is intended to identify the Implementation of Employer/Business Responsibilities for Occupational Health and Safety for Daily Casual Fishermen.

III. Results and Discussion

The role and position of the workforce, is needed in the development of employment to improve the quality of the workforce and its participation in the development and improvement of protection of workers and their families in accordance with human dignity and honor. Protection of workers to guarantee the basic rights of workers/laborers and guarantee equal opportunities and treatment without discrimination on any basis to realize the welfare of workers/laborers and their families while still paying attention to the development of the progress of the business world.

In principle, the existence of Law No. 13 of 2003 has regulated the basis, principles, and objectives of manpower development; Manpower planning and manpower information; Provision of equal opportunities and treatment for manpower and workers/laborers; Job training aimed at improving and developing the skills and expertise of the workforce in order to increase work productivity and company productivity; Manpower placement services in order to optimally utilize the workforce and place the workforce in jobs that are in accordance with human dignity as a form of government and community responsibility in efforts to expand employment opportunities; The use of appropriate foreign workers in accordance with the required competencies; Development of industrial relations in accordance with Pancasila values aimed at fostering harmonious, dynamic, and equitable relations between actors in the production process; Development of industrial relations institutions and facilities, including collective labor agreements, bipartite cooperation institutions, tripartite cooperation institutions, socialization of industrial relations and settlement of industrial relations disputes; Protection of workers/laborers, including protection of basic rights of workers/laborers to negotiate with employers, protection of occupational safety and health, special protection for female workers/laborers, children, and the disabled, as well as protection of wages, welfare, and social security for workers; Supervision of labor with the aim that the laws and regulations in the field of labor are truly implemented as they should be.⁵

Law No. 13 of 2003, provides legal protection to workers in carrying out employment relationships. The scope of legal protection for workers/laborers includes:

1. Protection of workers' basic rights to negotiate with employers
2. Protection of occupational safety and health
3. Special protection for women workers, children and people with disabilities and
4. Protection of workers' wages, welfare and social security.

Law No. 13 of 2003 provides legal protection to workers in carrying out work relations. An employment relationship is a relationship between an entrepreneur and a worker/laborer based on a work agreement, which has elements of work, wages and orders. ⁶The employment relationship occurs after there is a work agreement between the worker and the employer, where the worker binds himself to work by receiving

⁵Ibid, General Explanation.

⁶Ibid, Figure 15.

wages from the other party, the employer, who binds himself to employ the worker by paying wages.

An employment relationship is a relationship that involves two legal subjects regarding a job through an employment agreement, both oral and written. The legal subjects carrying out employment relationships are entrepreneurs/employers and workers/laborers. Employment relations are the core of industrial relations. An employment relationship is a relationship between an entrepreneur and a worker/laborer based on a work agreement, which has elements of work, wages and orders.⁷

The presence of the Government in implementing government policies in the field of employment is to ensure the continuity of the employment relationship system between workers and employers, of course, avoiding actions from employers or entrepreneurs that are detrimental to workers/laborers. The presence of the government is not only to create government policies in the field of employment law that protect employers or entrepreneurs, but also workers, because in the field of employment, there are two legal subjects, namely employers or entrepreneurs and workers or laborers.

Legal protection from the government for workers/laborers is through various legal actions or policies in the form of the formation of laws and regulations as guidelines for action that bind workers/laborers as well as employers or companies. This is a form of implementing the state's function as *a regulator* as stated by Friedman. Friedman said that there are 4 (four) functions of the state, including (1) the state as *a Provider*, namely the State is responsible for and guarantees a minimum standard of living as a whole and provides other social security; (2) the State as *a Regulator*, namely the State establishes rules for national life; (3) the State as *an Entrepreneur*, namely the State runs the economic sector through state/regional owned enterprises and creates a conducive atmosphere for the development of business sectors. (4) The State as *Umpire*, namely the State sets fair standards for parties operating in the economic sector, especially between the State sector and the private sector or between certain business sectors.⁸

The government in carrying out its state function protects workers through its *regulatory function* by establishing legal regulations in the field of employment to protect workers and employers so that there are no violations of workers' rights including unilateral termination of employment by companies for various reasons, one of which is an emergency. The implementation of the *regulatory function* by the government in the form of establishing laws and regulations in the field of employment as a guideline or basis for action for workers or laborers and employers or companies is a consequence of the determination of the state of Indonesia as a state of law.

As for employment laws in Indonesia, they are imperative (compulsory), meaning they are laws that must be obeyed absolutely and cannot be violated, as follows:⁹

- a) Internships carried out outside the territory of Indonesia must obtain permission from the minister or appointed official (Article 25 of Law Number 13 of 2003 concerning Manpower);
- b) Employers as referred to in paragraph (1) in employing workers are obliged to provide protection that includes the welfare, safety and health, both mental

⁷Article 1 number 15 of Law Number 13 of 2003

⁸Romli Librayanto, 2013, *State Science: An Introduction*, Arus Timur, Makassar, p. 143.

⁹Muhamad Sadi Ls, et al., *Employment Law in Indonesia*, Kencana, 2020, Jakarta, p.35

- and physical, of the workers (Article 35 paragraph [3] of Law Number 13 of 2003 concerning Manpower);
- c) Every employer who employs foreign workers is required to have a permit from the minister or appointed official (Article 42 paragraph [1] of Law Number 13 of 2003 concerning Manpower);
 - d) Employers of foreign workers are required to make provisions regarding applicable positions and competency standards (Article 44 paragraph [1] of Law Number 13 of 2003 concerning Manpower);
 - e) Employers are required to pay compensation for every foreign worker they employ (Article 47 paragraph [1] of Law Number 13 of 2003 concerning Employment);
 - f) Employment agreements for a fixed period of time are made in writing and use Indonesian and Latin script (Article 57 paragraph [1] of Law Number 13 of 2003 concerning Employment);
 - g) A work agreement for a fixed period cannot stipulate a trial period (Article 58 paragraph [1] of Law Number 13 of 2003 concerning Manpower);
 - h) Provisions regarding the creation of a work agreement for a fixed period (PKWT) (Article 59 paragraph [1] of Law Number 13 of 2003 concerning Manpower);
 - i) During the probationary period as referred to in paragraph (1), employers are prohibited from paying wages below the applicable minimum wage (Article 60 paragraph [2] of Law Number 13 of 2003 concerning Manpower);
 - j) The obligation to pay compensation to a party who terminates an employment relationship before the end of the period stipulated in the employment agreement for a certain period of time (Article 62 of Law Number 13 of 2003 concerning Employment);
 - k) Provisions regarding the employment of female workers/laborers (Article 76 of Law Number 13 of 2003 concerning Employment);
 - l) Provisions regarding overtime working hours (Article 78 of Law Number 13 of 2003 concerning Manpower);
 - m) Employers are required to provide rest time and leave to workers/laborers (Article 79 paragraph [1] of Law Number 13 of 2003 concerning Employment);
 - n) Employers are required to provide sufficient opportunities for workers/laborers to carry out religious duties required by their religion (Article 80 of Law Number 13 of 2003 concerning Employment);
 - o) Employers are prohibited from paying wages lower than the minimum wage as referred to in Article 89 (Article 90 paragraph [1] of Law Number 13 of 2003 concerning Manpower);
 - p) Obligation to ensure that there is no termination of employment (Article 151 of Law Number 13 of 2003 concerning Employment);
 - q) Prohibition on carrying out layoffs in certain cases (Article 153 paragraph [1] of Law Number 13 of 2003 concerning Manpower);
 - r) Termination of employment without a determination as referred to in Article 151 paragraph (3) is void by law (Article 155 paragraph [1] of Law Number 13 of 2003 concerning Employment);

- s) Employers are required to include their workers/laborers in the Jamsostek program (Article 4 paragraph [1] of Law Number 13 of 1992 concerning Social Security for Workers).

The workforce can be classified based on various things, such as:¹⁰

1) Based on employment status

Labor can be classified into casual workers, contract workers and permanent workers:

- a. Freelancers are workers who work alone and are not committed to a company.
- b. Contract workers are workers employed by a company for a certain period of time.
- c. Permanent workers are workers employed by a company for an indefinite period of time.

2) Based on its quality

Labor can be classified into educated labor, trained labor, and uneducated and untrained labor:

- a. Educated workers are workers who have knowledge and expertise in certain fields obtained through formal education.
- b. Skilled workers are workers who have skills or expertise obtained through non-formal education, such as training or courses.
- c. Uneducated and untrained workers are workers who work without requiring prior education or training.

3) Based on its nature

Labor can be classified into physical labor and spiritual labor:

- a. Physical labor is labor that uses more of its muscle abilities to work
- b. Spiritual workers are workers who use more of their brain abilities to work.

One type of labor based on employment status is casual labor. In Article 1 number 2 of the Decree of the Minister of Manpower Number Kep. 150/Men/1999 concerning the Implementation of the Social Security Program for Casual, Contract and Fixed-Term Workers, it is stated that:

"Casual daily workers are workers who work for employers to do certain jobs that vary in time or continuity of work by receiving wages based on their daily presence."

Regarding casual laborers, especially casual fishermen, one form of legal protection for casual laborers is social security for laborers. Social security for laborers is protection for laborers in the form of compensation in the form of compensation for part of the lost or reduced income and services as a result of events or circumstances experienced by the laborer, such as work accidents, illness, pregnancy, childbirth, old age, and death. Article 99 Paragraph (1) of Law Number 13 of 2003 concerning Manpower stipulates that: "Every worker/laborer and their family have the right to receive social security for laborers". The implementation of these provisions in reality tends to be violated by

¹⁰[https://www.talenta.co/blog/macam-tenaga-kerja-indonesia/#:~:text=Tenaga%, Accessed on September 18, 2024](https://www.talenta.co/blog/macam-tenaga-kerja-indonesia/#:~:text=Tenaga%2C%20Accessed%20on%20September%2018,2024)

employers or employers, especially the rights of casual fishermen.¹¹

Based on Article 25 paragraph (1) of Government Regulation Number 82 of 2019 concerning Amendments to Regulations, participants who experience work accidents are entitled to JKK benefits. Work accidents are accidents that occur in an employment relationship, including accidents that occur on the way from home to work or vice versa, and diseases caused by the work environment. JKK benefits consist of health services according to medical needs and compensation in the form of money. ¹²Thus, basically the one who bears the costs and provides compensation in the form of JKK benefits for workers who experience work accidents or work-related diseases is BPJS Ketenagakerjaan.

Based on the applicable regulations, especially Law No. 40 of 2004 concerning the National Social Security System; which requires social security participation, employers in this case (fishing vessel) entrepreneurs are required to register workers with BPJS Ketenagakerjaan based on the applicable terms and conditions. Even though the worker's status is freelance, based on PP No. 44 of 2015 concerning the Implementation of the Work Accident Insurance and Death Insurance Program, and the Decree of the Minister of Manpower of the Republic of Indonesia Number Kep-150/Men/1999 of 1999 concerning the Implementation of the Social Security Program for Workers for Casual Daily Workers, Contract Workers and Fixed-Term Work Agreements, casual daily fishermen are also entitled to the social security.

In reality, casual laborers such as fishermen in Waai, Tulehu and Hitu Villages, in Central Maluku Regency, who work on bobong boats owned by these entrepreneurs, work without any guarantee other than a verbal agreement about the income earned every time they go to sea or given every week according to mutual agreement. The fishermen on bobong boats do not receive social security in the form of health insurance, accident insurance or death insurance which is their right to receive, in accordance with the laws and regulations governing the matter in question.

IV. Conclusion

The government's responsibility in the field of employment is to implement government policies in the field of employment that protect the rights and obligations of workers/laborers and employers or companies so that there are no actions that are contrary to legal provisions, one of which is casual fishermen, who start going to sea to catch fish, usually they leave in the middle of the night and will return in the morning or afternoon with unpredictable sea weather, and sometimes strong waves and winds that can cause accidents when going to sea, even when they are in the middle of the sea, one or several fishermen must go down to sea and swim to check whether there are fish or not in the fish aggregating device using only the clothes they are wearing, without *safety tools* as protection to avoid the risk of work accidents when going down to sea and when sailing at sea.

¹¹rna Rahmawati, et al., *legal protection for casual workers who work based on verbal work agreements in the construction services sector (case study of casual workers at PT. Pillar Permata)* , Vol.4 No.4, 2017, Jurnal Hukum, p.4,

¹²<https://setkab.go.id/pp-no-82-2019-hak-menuntut-manfaat-jkk-jadi-5-tahun-jaminan-kematian-jadi-rp20-juta/>, Accessed on September 11, 2024

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Rahmawati Irna, et al., *Legal protection for casual workers who work based on verbal work agreements in the construction services sector (case study of casual workers at PT. Pillar Permata)* , Vol.4 No.4, 2017, *Jurnal Hukum*, DOI: <https://doi.org/10.2674/novum.v4i4.24823>

Government Regulation No. 44 of 2015 Concerning the Implementation of Work Accident Insurance and Death Insurance Programs

Government Regulation Number 82 of 2019 Concerning Amendments to Regulations, Participants Who Experience Work Accidents

Minister of Manpower Decree No.Kep. 150/Men/1999 concerning the Implementation of the Labor Social Security Program for Casual Daily Workers, Contract Workers and Specific Time Work Agreements.