

RESEARCH PAPER

Indonesia Inspection Mechanism: A Way to Comply with Maritime Labour Convention

A Indah Camelia

Universitas Airlangga

Email: Indah.camelia@fh.unair.ac.id

Lina Hastuti

Universitas Airlangga

Email: lina@fh.unair.ac.id

ABSTRACT

PURPOSE: The aim of this paper is to examine the necessity of the Indonesian government to establish a national legal framework and inspection mechanism based on the Maritime Labour Convention (MLC) by emphasising its role as a flag state, a coastal state, a labour supplier state, and a port state.

DESIGN/METHODOLOGY/APPROACH: This is doctrinal research that applies a system-structural analysis by identifying, selecting, and synthesising all relevant sources, data, and provisions on the intended topic.

FINDINGS: After the MLC was ratified through Law No. 15/2016, some technical provisions passed as mandated by the law. However, by 2021, insufficient comprehensive technical regulations for conducting standard inspection assessments hindered national maritime industry compliance. As a temporary measure in 2020, the authority relied on cooperation and assistance from another state/institution to conduct assessments.

ORIGINALITY/VALUE: This paper is based on research carried out in 2020-2021 and has not been published in any journal.

KEYWORDS: *Maritime Labour Convention (MLC); Seafarer; Indonesia; inspection mechanism; comply; state roles*

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INTRODUCTION

In 2014, Indonesian President Joko Widodo formally announced that the Indonesian maritime profile for the next 5 to 10 years was to be a Global Maritime Nexus (GMN) (Yani and Montratama, 2015; Neary, 2014). The government would reach this GMN goal through the development of a strategic plan that elaborated seven main pillars of Indonesia's marine policy, as emphasised in the annex of Presidential Decree No. 16/2017:

1. Developing marine and human resources;
2. Empowering maritime defence, security, law enforcement and safety at sea;
3. Creating good marine governance;
4. Focusing on building maritime economic and infrastructure for maritime connectivity;
5. Managing marine spatial and environment protection;
6. Rebuilding Indonesian maritime culture;
7. Escalating maritime diplomacy.

Indonesian marine policy is not limited to strengthening national maritime power through developing the marine economy or being an influential maritime state; it also includes maintaining a leading role in the maritime industry by empowering human resources (Kabai, 2015). International maritime trade is one of the most globalised sectors, served by sea workers across the globe (Doumbia-Henry, 2020). Therefore, the enhancement of marine labour protection and welfare is one of the primary requirements for the development of maritime sector human resources to secure the balance of the supply chain both in Indonesia and globally.

The Maritime Labour Convention (MLC) 2006 is a legal instrument created by the International Labour Organization (ILO). It was adopted in February 2006 in Geneva, Switzerland, and officially entered into force in August 2013. In 2020, the convention was ratified by 98 states that were collectively responsible for 91% of world tonnage (Mantoju, 2021; Insight, 2021).

Because of the significant role of the convention, in October 2016, the Government of Indonesia ratified the MLC 2006 through Law No. 15/2016. This law is intended to protect seafarers and escalate the competitiveness of the domestic shipping industry. Previous to this, the Indonesian government had ratified other significant International Maritime Organization (IMO) regulations, such as the International Convention for the Safety of Life at Sea 1974 (SOLAS) by Presidential Decree No. 65/1980; International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers 1978 (STCW) by Presidential Decree No. 60/1986; and International Convention for the Prevention of Pollution from Ships 1973 (MARPOL) by Presidential Regulation No. 29/2012. Also, there were other rules relating to marine labour before 2016 in Indonesia, including Law No. 17/2008 concerning shipping, and Government Regulation No. 7/2000 on Marine.

Based on a report released by the International Transport Worker Federation in 2019, the demand for seafarers is expected to continue rising because of the expansion of global trade

(ITWF, 2019). However, in 2020, global seafarer demand slightly decreased due to the economic slowdown because of the COVID-19 pandemic (UNCTAD, 2021). The data show that international maritime trade slowed by 4.1% in 2020, resulting in the demand for seafarers also falling (*ibid*). In 2020, there were 1,892,720 people working in the global shipping industry, including 857,540 officers and 1,035,180 ratings (BIMCO/ICS, 2021). Indonesia is one of the largest suppliers of seafarer labour, together with The Philippines, the Russian Federation, China, and India (*ibid*).

Data from The Indonesian Migrant Workers Protection Agency (BP2MI) and the Central Bank of Indonesia (Bank Indonesia – BI) show there were 3.1 million Indonesian migrant workers in 2020 (Bank Indonesia, 2021); 38% of these workers identified as seafarers (Directorate of Marine Transportation, 2021). However, Indonesian fleet ownership only shared 1.5% of the global maritime industry (UNCTAD, 2021). As a result, most Indonesian seafarers work on foreign ships because of the lack of national vessels to accommodate national sea workers. Unfortunately, some Indonesian seafarers receive less than the minimum standard based on their contracts; they also receive other forms of unfair treatment during their work (Diana, 2021). Before MLC 2006 was set up by the ILO and IMO, the legal instruments concerning protection for seafarers' rights were piecemeal, targeting only specific issues. Such instruments included the Merchant Shipping (Minimum Standards) Convention 1976, Seafarers' Hours of Work, and the Manning of Ships Convention 1996, among others.

Based on MLC 2006, states serve two essential roles: a control function as port states and an enforcement function as flag states (Mantoju, 2021). However, trade and shipping industry development has increased the complexity of the state's role, necessitating the articulation of two additional functions: as coastal state and labour supplier state (*ibid*).

As a result, a contracting state must establish a national legal framework and mechanism to manage these roles. Indonesia formally ratified and adopted MLC 2006 in 2016 through Law No. 15/2016. Consequently, the convention is a binding legal source for minimum standard treatment for seafarers in Indonesia. Since 2006 some important changes have taken place to comply with the new requirements of the convention; these include the Director-General of Sea Transportation issued regulation No. HK. 103/3/13/DJPL-18 in August of 2018 that established a procedure for certification of seafarers, and the Ministry of Transportation Regulation PM No. 58/2021 on MLC certification. These technical regulations (mandated by the law) should serve as the practical application and responsibility of contracting flag states, as the ratification was not sufficient to give effect to fully comply with the convention (Pentsov, 2007; Zhang, 2016). However, a significant gap still exists between international standards and those in Indonesia, particularly in the standard of wages, recreational facilities, on-board complaint procedures, financial security for repatriation, and relating to shipowners' liability.

It should be noted that before the Indonesian government ratified the convention, some national ship-owners voluntarily attempted to adopt and apply MLC 2006 rules and regulations to avoid detention in contracting parties' ports (Beritatrans.com, 2015). To be able to operate

internationally, they must comply with an international standard assessment unilaterally set by the Indonesia Classification Bureau (BKI) (*ibid*). By 2021, the lack of sufficient comprehensive technical provisions for conducting standard assessments hindered the ability of the national maritime industry to ensure compliance, particularly in terms of the inspection mechanism of MLC 2006.

Research Scope and Limitations

This paper explores some of the fundamental rules of the national legal framework and mechanism for implementing MLC 2006 in Indonesia, particularly the inspection mechanism. System-structural analysis was used to assess the state role factors, problems, and circumstances affecting compliance with MLC 2006. In restricting the analysis to these state roles, in particular the inspection mechanism, the scope of the research is limited. Nevertheless, this paper provides an important focus on the establishment of a legal and technical framework concerning the MLC inspection mechanism in Indonesia.

This doctrinal research is aimed at identifying, selecting, and synthesising all relevant sources, data, and provisions on the intended topic and applying system-structural analysis. The research was conducted using three steps: First, it lays out the existing national legal framework and provisions for the inspection mechanism expressed in national law based on MLC 2006; second, the study determines a prospective resolution based on concepts that combine national rules and an international legal analysis approach; third, it recommends that the Indonesian government urgently sets up technical regulations regarding the MLC inspection mechanism based on its role as a flag state, coastal state, labour supplier state and port state.

DISCUSSION

The Main Features of the Maritime Labour Convention

Based on International Chamber of Shipping data from 2020, it is estimated that there are more than 1.5 million seafarers across the globe (BIMCO/ICS, 2021). Therefore, ensuring that seafarers' rights are protected is critical (Christodoulou-Varotsi and Pentsov, 2007; Carey, 2017). To this end, MLC 2006 is intended to establish four pillars of maritime rules and regulation, in addition to those expressed in the International Conventional for Safety at Sea 1974 SOLAS, and Protocol SOLAS 1978, International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers 1978 and 1982 (STCW) and Amendment SCTW 1995, and Marine Pollution Convention 1973 and 1978 (MARPOL) (Dombia-Henry *et al.*, 2006).

The structure of MLC 2006 consists of 16 Articles, Regulations, and Codes. The Articles and Regulations set out principles, fundamental rules, and essential obligations for the states that ratified the convention. Therefore, there are two types of MLC 2006 legal structures regarded as mandatory rules with which states must comply. The Code is divided into mandatory standards (Part A) and non-mandatory matters (Part B). The MLC articles indicate the basic principles, norms

and liabilities set by the treaty (Maunikum, 2007). The regulations and code of the MLC 2006 are structured under five titles:

Title 1: Minimum requirements for seafarers to work on ships

Title 2: Conditions of employment

Title 3: Accommodation, recreational facilities, food and catering

Title 4: Health protection, medical care, welfare, and social security protection

Title 5: Compliance and enforcement

Under MLC 2006, there are many IMO rules and ILO regulations concerning seafarers that were replaced by the treaty subjected to Article X of the convention (Dewayani, 2012), such as:

1. Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133)
2. Prevention of Accidents (Seafarers) Convention, 1970 (No. 134)
3. Continuity of Employment (Seafarers) Convention, 1976 (No. 145)
4. Seafarers' Annual Leave with Pay Convention, 1976 (No. 146)
5. Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) and Protocol of 1996
6. Seafarers' Welfare Convention, 1987 (No. 163)
7. Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164)
8. Social Security (Seafarers) Convention (Revised), 1987 (No. 165)
9. Repatriation of Seafarers Convention (Revised), 1987 (No. 166)
10. Labour Inspection (Seafarers) Convention, 1996 (No. 178)
11. Recruitment and Placement of Seafarers Convention, 1996 (No. 179)
12. Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180) (*Ibid*)

SHIPPING AND SEAFARER PROFILE OF INDONESIA

Indonesia is the largest archipelagic country globally and has excellent potential to become the world's maritime nexus. The maritime nexus is a strategic idea that is intended to ensure inter-island connectivity, the development of the shipping and fisheries industry, the improvement of sea transportation, and a focus on maritime security. With this in mind, what follows is a snapshot of the current Indonesian profile as it relates to shipping and maritime workers.

Indonesian Vessels

At the end of 2020, the global trading fleet was approximately 2.033 million DWT (deadweight tonnage) and 62,100 vessels (Department of Transport UK, 2021). Despite the economic slowdown because of the COVID-19 pandemic, shipping has continued to grow since 2019 (*ibid*). Based on data released by UNCTAD 2020, Indonesia has a 1.17% share of the world total ship registry, with 2,132 vessels above 1,000 gross tonnage (GT) (UNCTAD, 2021). However, in 2019 the Indonesian

National Shipowners Association (INSA) stated that there were 32,587 units registered in Indonesia (Al Hikam, 2020). The data discrepancy appears because under Article 158, paragraph 2, and Article 29, paragraph 1 of the Law No. 17/2008 concerning shipping, there is a requirement to register any ship with a minimum of 7GT for individuals and 175GT for a company. Therefore, INSA data also include all national registry vessels under 1,000GT. It seems that only 6.5% of national vessels are above 1,000GT.

Seafarers

Seafarers are defined as any person who is employed on, engaged with, or is working in any capacity on a vessel, by the terms of the convention in Article 2 of the MLC. Based on Indonesian law, a worker is any person on board, whether on a merchant or fishing ship. It should be noted that this criterion is set by Government Regulation No. 7/2000 concerning Maritime Affairs, and Law No. 18/2017 concerning Indonesia's migrant worker protection. It seems that both laws set a similar approach to define who is a seaman.

In 2020, the total number of seafarers was 1,545,000, with 790,500 officers and 754,500 ratings (BIMCO/ICS, 2021). Indonesia is recognised as one of the biggest seafarer suppliers in the maritime industry, with 143,702 people (*ibid*). Data indicate that nearly 84,000 seamen work in a foreign shipping company, and approximately 6,060 seafarers work under Holland America Line (Maunikum, 2007).

MLC IN INDONESIA: LEGAL FRAMEWORK AND COMPLIANCE

McConnell (2011) asserts that a national government shall prioritise seafarers' rights and maritime business. In regards to Indonesia, the government should consider national interests as “national goals” based on Indonesia's long-term interests. With this in mind, MLC 2006 needs to adapt based on national goals (Rudy, 2002).

As stated, there are five Titles governing shipowners under MLC 2006. The first Title breaks down into four categories: minimum age, medical certificate, training qualification, and recruitment and placement. To satisfy the requirements of this Title, the Procedures for Issuing Maritime Employment Certificates explain the certification, procedure, and other relevant matters needed to satisfy the convention.

Previous to this regulation, these matters were governed by Presidential Decree No. 60/1986 as the ratification of the International Convention on Standards of Training, Certification and Watch Keeping for Seafarers 1978 (STCW), and the Regulation of Minister of Transportation No. 70/2013 concerning Education and Training Certification as Seafarers, also by Regulation of Director General of Sea Transportation—Transportation Ministry No. HK. 103/3/13/DJPL-18 on procedure for certification of seafarers. All seafarer certifications were already based on IMO rules and regulations, which were designed to comply with MLC 2006. Therefore, this Title has been reasonably managed by local marine companies.

Different circumstances may be said of Title 2 of the convention concerning Conditions of Employment, despite Indonesian seafarers and maritime companies being aware of the regulation. After MLC came into force in 2016, the Ministry of Transportation set up Regulation PM No. 58/2021 on MLC certification standards. These include:

- 2.1 employment agreement;
- 2.2 wages;
- 2.3 work hour and rest;
- 2.4 leave;
- 2.5 repatriation;
- 2.6 compensation; and
- 2.7 manning level.

Briefly, these ministry regulations place more emphasis on:

- qualifications of seafarers,
- minimum age,
- work hours or rest,
- medical care certification,
- health care safety and accident prevention on-board,
- food and catering,
- accommodation (Title 3 of MLC) and
- manning levels for the ship.

In contrast, payment of wages, recreational facilities, on-board complaint procedures, financial security for repatriation, and relating to shipowners' liability are only stated briefly in the provisions; as technical rules, these matters are not elaborated into as much detail.

These rules seem intended to enforce MLC titles as flag state roles, with minimal emphasis on their role as a port state.

Title 3 is related to facility, food, and additional crew needs during voyages. Mainly, Title 3.1 of MLC 2006 asserts an obligation to provide decent accommodation for working and living conditions on board; this is one of the main obstacles to satisfying the convention by the local maritime industry. Logically, investments should be aimed at equipping vessels based on convention standards. For instance, the standards require bigger cabins, reduced noise and vibration, and an ambient environment (Nicholson and Ridd, 2014). Indeed, shipowners should compulsorily comply with these criteria to protect seafarers' well-being as a long-term goal (Chia *et al.*, 2017). This matter should be ensured and enforced by the national government since it holds the role of regulator and facilitator. For instance, the duty to inspect recreational facilities based on MLC standards lay on

the flagship hand. In these circumstances, states should provide regulations by balancing seafarers' rights without putting an undue capital burden on maritime businesses to comply.

THE CHALLENGE OF AN MLC INSPECTION MECHANISM IN INDONESIA

The MLC is interpreted as a demand to establish the particular position for the seafarer in every domestic law attributable to minimise risks resulting from hazardous living conditions at sea. It was found that shipping companies and flag states used loopholes to waive or reduce obligations created by the convention (Mantoju, 2021). This manoeuvre may create serious concerns by negatively affecting the reputation of the convention. Because of this, a state must initiate an assessment, monitoring and evaluation mechanism of its role as a flag state, coastal state, labour supplier state or port state.

According to the general territorial principles of law, a flag state has a responsibility to provide information, rules and guidance for their ships to implement MLC requirements. Indonesia has already passed some technical regulations to implement MLC. However, as of the end of 2021, there are insufficient comprehensive provisions relating to inspection assessment and a mechanism in light of the MLC.

As a temporary technical resolution, in 2019 the Directorate General of Sea Transportation developed the Ship Safety Inspection—Center for Excellence (SSI-COE), supported by the Australian Maritime Safety Authority (AMSA), to raise the standards of professionalism in ship inspections. This has led to approximately 417 Indonesian vessels being granted MLC certification based on the Regulation of the Directorate General of Sea Transportation—Transportation Ministry No. 103/3/13/DJPL-18 by the end of 2020 (Bisnisnews, 2020). However, this strategy should only be considered as interim measures to fill the lack of assessment provisions. There must be a transfer of knowledge to increase the competence of national assessors from AMSA, so that when the rule (MLC technical guidance) has been enacted, it can be implemented immediately. In June 2021, the authority passed PM No. 58/2021 as national practical implication to satisfy Title 5 of MLC on compliance and enforcement. Under the rules, two types of MLC declaration resulted from the inspection mechanism: MLC full clearance and interim declaration for above 500 GT ships. The interim certificate is a temporary declaration (six months) for a new vessel or register that is in the process of complying with MLC provisions.

It should be noted that some exemptions might be allowed by MLC provisions in particular circumstances. For instance, there is a new requirement for following shipbuilding standards, whereby new ships need to accommodate MLC rules and regulations (Chia *et al.*, 2017). It means for new vessels, ship-building companies must refer to MLC even when it still at the design stage. There is also second-hand tonnage, theoretically after the convention's entry into legislation for contracting states; the regulations are legally binding and should be enforced. However, an exemption here is still permitted by law, as in the example of the Liberia exemption, based on the Marine Notice MLC-004 of 2013 issued by the Liberia Maritime Authority (*ibid*).

Such an exemption may only be granted for circumstances when seafarers' health and safety are considered essential subjects. However, the exemption is only allowed for accommodation and recreational facilities based on MLC 2006, even though the exemption for accommodation is not clearly stated in the convention. Logically, ensuring that crew cabins are healthy enough and protected from noise and vibration, and the environment overall is sufficient; living quarters need not be expansive in size. The shipowner may design some technical changes on the vessel for such a purpose. In terms of practical resolution, Indonesian authorities are supposed to apply a similar exemption strategy to comply with the protection of the national maritime industry, rather than enforce interim certification of MLC. However, a further study regarding how far the exemption remains in place in practice with the purpose of MLC and the spirit to provide decent living conditions for seafarers should be conducted.

INSPECTION MECHANISM BASED ON THE ROLES OF A STATE

A port state must act as a port state control officer (PSCO) with the authority to create and enforce rules and guidelines (Fotteler *et al.*, 2020). Under an inspection mechanism, the port authority has a right to detain and force a ship to address deficiencies found during the inspection procedure. However, detention is only imposed if the deficiencies could endanger the safety or health of seafarers or cause harm to the environment (Cariou *et al.*, 2008; Kiehne, 1996). As the PSCO, a state has the right to check ship documentation and MLC certification. The inspection only justifies detention if deficiencies are found on documents, complaints are received, or other suspicions are raised (Grbić *et al.*, 2015).

As a flag state, the state's role is to control compliance and assessment of ships (Pineiro, 2015). In pursuing the aim of a 'decent work agenda', the general idea of labour inspection requires a framework and legal basis for the state's interference into a more strategic plan (Weil, 2008). On the other hand, there are also genuine link principles to test the originality and control based on the UN's Law of the Sea Convention 1982 (UNCLOS). The genuine link principles are set by Article 91, paragraph 1 of UNCLOS regarding flag states and the nationality of ships, defining a ship's condition as determined by a close or genuine relationship with the flag state. Consequently, the ship shall be granted the right to fly its flag (Weston, 2021). As a state that holds the control authority, the flag state has a right to perform an inspection on the object that flies its flag. However, the basic principles of vessel inspection should be adhered to, namely prioritisation, deterrence, sustainability, and systemic effect (Weil, 2008).

According to Section 5.1.5 of MLC 2006, a flag state has to establish a complaints procedure for the seamen on board (Pineiro, 2015). It is then required to create a system that reports the complaint to a port state, as well as a mechanism to receive a complaint from a seafarer.

As a labour supplier, it is the duty of a state to upgrade seafarers' knowledge and competence about their rights and ability during the working period. Therefore, a state must adopt new certification systems for seamen that are not only set up by the International Convention on Standards

of Training, Certification, and Watchkeeping for Seafarers 1978 (STCW) and other IMO seaman standards, but also by MLC 2006 in their national training system. They must also instruct seafarers as to their rights during their working period based on the MLC, as well as inform them of the general system of complaint procedures on board or in port.

CONCLUSIONS

The enforcement of the Maritime Labour Convention 2006 significantly changed how the world perceived seafarers' working rights. The convention consists of mandatory standards as shown in Articles, Regulations, and Codes (Part A), as well as non-mandatory matters (Part B). In 2016, Indonesia ratified MLC 2006 by Law No. 15/2016. Consequently, the convention has become a binding legal source for minimum standards of treatment for seafarers in Indonesia. Mandated by the law, the Director-General of Sea Transportation issued a regulation No. HK. 103/3/13/DJPL-18 regarding the Procedure of Certification for seafarers, and the Ministry of Transportation set up Regulation PM No. 58/2021 on MLC certification standard according to MLC as practical (technical) guidance. These rules were intended to enforce Indonesia's role as a flag state with minimal emphasis on its role as a port state.

However, there are insufficient comprehensive technical provisions for conducting a standard assessment in Indonesia; in particular, specification for an inspection mechanism are lacking. The inspection procedure is critical for ensuring compliance with the MLC. Therefore, a state must establish a set of national legal frameworks and mechanisms. There are three critical roles of a state under MLC 2006: flag state, labour supplier state, or port state. A port state is described as an entity that has a duty as a port state control officer (PSCO) that must create and enforce rules and guidelines. Under the inspection mechanism, the port authority has a right to detain and enforce a ship to comply with deficiencies found during the procedure. As a flag state, the state serves a primary role in managing compliance and assessment of ships. As a state that holds the control authority, a flag state has the right to perform an inspection via an inspection mechanism on the object that flies its flag. Such a mechanism should conform to basic principles of vessel inspection, namely: prioritisation, deterrence, sustainability, and systemic effect. As a labour supplier, a state must adopt the new certification system for seamen set up by MLC 2006 and provide for the upgrading of seafarers' knowledge about their rights during working periods.

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BIOGRAPHY



A Indah Camelia is a junior academic and researcher in the International Department, Faculty of Law, Universitas Airlangga and the Airlangga Institute of International Law Studies (AIILS). She holds a master's degree in law from the Faculty of Law, Universitas Airlangga and post-graduate certificate from Nottingham University. She serves as a coach for the International Maritime Law Arbitration Moot Court Competition (IMLAM), International Humanitarian Law Moot Court Competition, and International Criminal Court (ICC) Moot Court Competition 2022. Her areas of expertise are public international law, maritime law, the law of the sea, maritime labour, and humanitarian law.



Lina Hastuti holds a doctoral degree of law from the Faculty of Law, Universitas Airlangga, and serves as a senior lecturer at the International Law Department in the same faculty. Her expertise is in humanitarian law, diplomatic and consular law, public international law, and international crimes law. Lina's newest publications are: *Enforceability Of International Humanitarian Law in Armed Conflict at Present* (2016), *Illegal fishing as a Trans-National Organized Crime [La Pesca Ilegal como Crimen Organizado Transaccional]* (2020), and *Application of Distinction Principle Between Civil and Military Objects in Indonesia* (2020).

