

## Aspects of Legality For Crew's Ship Burial At Sea

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### Abstract

Basically burying is burying the body or corpse in the ground. The purpose of burying is to protect the corpse from physical reproach and covering the personal disgrace of the corpse, in addition to avoiding the process of decomposition that spread the smell and the bacteria or viruses from the corpse's decomposition process. The burial process by throwing corpse into the sea is the last option taken by the leadership onboard. With various considerations. Colonialism and war were the two main reasons for burial or burial into the sea in the 19th century. The ILO Seafarer's Service Regulations on sea sailing are carried out for several reasons including: ships sailing in international waters; ABK has been dead for more than 24 hours or the death is due to infectious diseases; several cases of dumping bodies into the sea were carried out because there were no facilities for handling bodies on board. the ship is unable to store the bodies for hygiene reasons. Refrigerator is one of device that can be holded decomposition process with temperature at + 4 °C and -20 °C. The company must be responsible for the investigation process and provide confirmation of the cause of death of the crew's ship through autopsy.

**Keywords:** Burial, Crew, ILO Regulation.

### 1. Introduction

The ocean has urgency in human life, where it becomes a means of sailing for ships that carrying various kinds of goods, animals and humans themselves from one country to another country, which is human needed. They sail on the oceans for days or even months. Long trips taken by ships sometimes has unwanted events, such as dying on a boat or ship, even though sometimes the ship or boat does not get land for a long time. Then how to bury it? There aren't many regulations or rules that manage that problem. Apart from regulating the distance from the land and depth of the sea.

Burying is by burying the corpse in the ground. The meaning of burying a corpse is to protect the corpse from physical reproach and cover up personal disgrace, in addition to avoiding the process of decomposition that spread the smell and the bacteria or viruses from the corpse's decomposition process. The best place to bury is in a cemetery that has been set aside, however, if the death happen on a ship or boat that is in the middle of the ocean, should try to find the nearest land to be buried in the ground, if it is expected that the land will be found before the corpse is damaged.

Burial by dumping into the sea is the last option to be taken by the leadership on board. With various considerations. In the last few years, burials by dumping into the sea have increased significantly, with various considerations from belief to tribute. Then what is the responsibility of the ship owner regarding to the death of the crew and the cause of the death.

Burial at sea is the dumping of the corpse to the sea, in the cremation form, or perhaps the whole body in a coffin or wrapped in cloth. The history of this burial is a long and complex one. Historically, some burials at sea have been performed out of necessity, and some have been carried out of the deeply held beliefs.

Colonialism and war were the two main reasons for burial or burial into the sea. In the 19th century. In 1982, during the Falklands War between Britain and Argentina, wartime burials at sea took place out of necessity.



Figure 1. The process of burial of bodies into the sea (cloth wraps)

Before the planes became the main hajj transport, only ships were available to the Holy Land for the people from Dutch East Indies. “The pilgrimage by sailing ship, apart from being long, also faces difficult natural conditions, death lurks the pilgrims. During the voyage, many pilgrims died due to exhaustion, lack of facilities, or suffering from illness.

At another Dutch shipping company, called Nederland, 170 people died while leaving and 45 people returned to the Dutch East Indies. Concerns about disease transmission from the corpse – and there is still a long way to go to bury the corpse – makes the move to drown the body to the seabed is the best option. It is stated in the 1922 Ordinance concerning the Regulations for Hajj Sailing Chapter VII Paragraph 48. It contains : “The bodies of ship passengers who died at sea, because of contracting disease, were washed with chemical liquid, dipped, roped, and then drowned to the seabed.” to avoid decomposition.

Decay is a condition in which the body undergoes decomposition that occurs due to autolysis and bacterial activity. Decomposition includes two processes, there are autolysis and putrefaction. Autolysis is a state of softening and liquefaction of cells and organs that occur in a sterile chemical process due to intracellular enzymes released by dead cells. The process can be accelerated due to high temperatures, slowed down due to high temperatures. In organs that have many enzymes, the autolysis process will run faster than in organs with fewer enzymes. The second process is putrefaction, which is better known as putrefaction. This process is caused by bacteria and fermentation. After death, the normal flora of the digestive system spreads throughout the body causing a putrefactive state.

There are two factors that can affect the timing of the decomposition of a corpse, such as: external factors and internal factors;

- External factors include; environmental temperature and atmospheric pressure, humidity, air, clothing, the medium in which the corpses are located and the invasion of animals and insects.
- Internal factors include; age, gender, body condition, cause of death and burns.

According to Van't Hoff's rule, the speed of a chemical reaction will increase by two or even more every 10°C temperature rise. The process will be slowed down or even inhibited at very cold or cooled temperatures. In a corpse that is frozen, the enzyme process will be inhibited so that it will inhibit the autolysis process.

According to Micozzi, there is no decay at temperatures less than 4°C. development of bacteria becomes slower. Increasing the temperature will accelerate the decay. At temperature between 15°C to 37°C is a very good time for bacteria to reproduce and the number of bacteria will increase.

The refrigerator or freezer is an equipment to cool the corpse that are often found in morgues. Freezers are divided into two, namely those that cool at a temperature of +4°C and -20°C as a long time period storage for the corpse. A freezer with temperature of -20°C can store corpses for several months.

According to the Law of the Republic of Indonesia Number 18 of 2017, Indonesian Migrant Workers are every Indonesian citizen who will, is currently or has done work with wages outside the territory of the Republic of Indonesia.

Protection of Indonesian Migrant Workers aims to:

- Guarantee the fulfillment and enforcement of human rights as citizens and Indonesian migrant workers; and
- Guaranteeing legal, economic and social protection for Indonesian Migrant Workers and their families

Indonesian Migrant Workers include:

- Indonesian Migrant Workers who work for an employer with legal status;
- Indonesian Migrant Workers who work for individual or household Employers; and
- Sailors and Fishermen.

In the event that an Indonesian Migrant Worker dies in the destination country of the placement, the Indonesian Migrant Worker Placement is obliged;

- Notify the death of an Indonesian Migrant Worker to his family no later than 3 (three) times 24 (twenty four) hours after the notification of the death.
- Looking for information about the cause of death and informing officials of the Republic of Indonesia Representative Office and members of the Indonesian Migrant Worker Family concerned,
- Return the body of Indonesian Migrant Workers to their place of origin in an appropriate manner and bear all necessary costs, including burial costs in accordance with the religious procedures of the Indonesian Migrant Workers concerned;
- Take care of a funeral in the destination country of placement of Indonesian Migrant Workers with the approval of the Indonesian Migrant Worker's Family or in accordance with the applicable regulations in the country concerned, providing protection for all property owned by Indonesian Migrant Workers for the benefit of their families; and
- Take care of the fulfillment of all the rights of Indonesian Migrant Workers that should be.

## 2. Research Method

This research focuses intensively on one particular object that studies it as case. The case study method allows the researches to remain holistic and significant. According to Arikunto (2013), the research method is the method used by researchers in collecting research data [1]. Research conducted by the author with the title Legality Aspect of Burial the Crew's Corpse to the Sea is a qualitative descriptive study with a case approach. Qualitative research is a research that produce descriptive data (depiction in the form of written or spoken words of each observed behavior of the people).

Nawawi (2003) argues that "case study data can be obtained from all parties concerned, in other words the data in this study were collected from various sources" [5]. As a case study, the data collected comes from various sources and the results of this study only apply to the cases investigated. Arikunto (1986) further argues that "The case study method as a type of descriptive approach is research conducted intensively, in detail and in depth on an organism (individual), institution or a particular phenomenon with a narrow area or subject".

According to Whitney (1960), the descriptive method is a fact finding with the correct interpretation. Descriptive research studies problems in society, as well as the procedures that apply in society and certain situations, including about relationships, activities, attitudes, views, ongoing processes and the effect of phenomena.

The case study research process according to (Yin 2011) is :

- Defining and designing research. Researchers conduct a theory or concept development study to determine cases and design data collection protocols.
- Prepare, collect and analyze data. The researcher prepare, collects, and analyzes data based on a pre-designed research protocol.
- Analyze and conclude. In a single case, the results of the research are used to check back on the concepts or theories that were built in the first stage of the research.

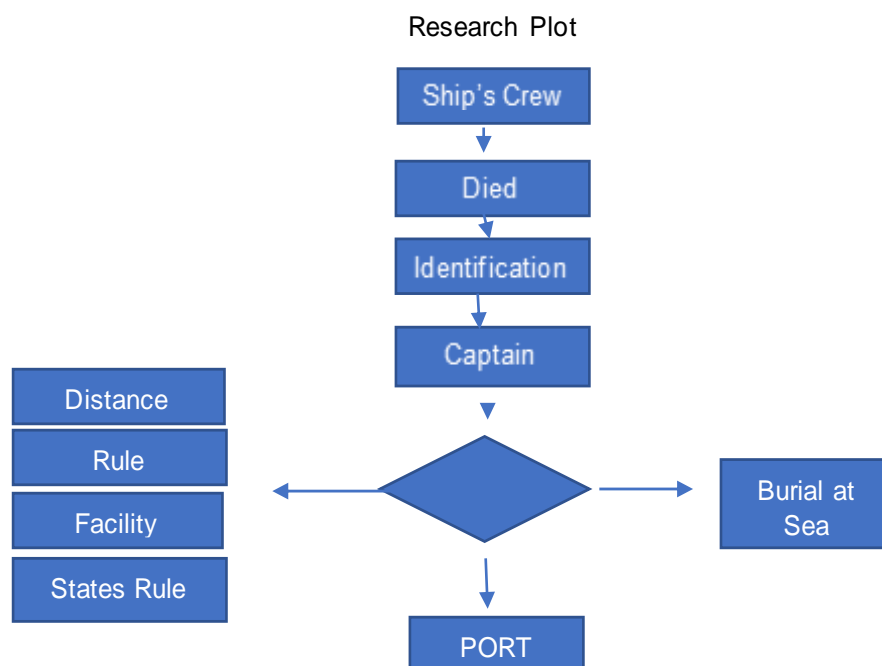


Figure 2

### **3. Analysis and Discussion**

What is certain in human life? That is death. Death, for some people, may be felt as a part of a life cycle that is very frightening or terrible. Death was suddenly happen, we don't know when, where, and how God will put us into death. Death is a mystery that humans can never dives into.

Death is the end of life in biological organisms. All living things on earth will eventually die, either from natural causes such as disease or from unnatural causes such as accidents. After death, the living body undergoes decomposition. Another term that is often used is died. One of the most causes of death on the ships is illness (disease) and accidents.

#### **3.1. Infectious and Non-infectious Diseases**

Disease is a condition where body is in abnormal, which causes the loss of a healthy normal condition. The existence of this abnormality, is not enough to fulfill the existence of a disease in our body, except 2 person together is sick and healthy, although perhaps this is only an early stage of disease development. Because the word disease, synonom with sick-healthy and sick conditions. (JCE Underwood. 1999).

World Health Organization (WHO), infectious diseases are caused by microorganisms, such as bacteria or parasites, which can spread from person to person or from animal to person. Infectious diseases are easily spread through bacteria, viruses, parasites and fungi through contact with other people or animals.

According to WHO, the most common infectious diseases are HIV / AIDS, tuberculosis, malaria and lower respiratory tract infections. Currently, the global rate of infectious diseases is decreasing because the help of vaccination programs and drug development; However, infectious diseases still pose significant dangers.

The main types of non-infectious diseases are cardiovascular disease (such as heart attacks and strokes), cancer, chronic respiratory diseases (such as chronic obstructive pulmonary disease and asthma) and diabetes. Non-infectious diseases, also known as chronic diseases, tend to be long lasting, result from a combination of genetic, physiological, environmental and behavioral factors. Non-infectious diseases kill 41 million people each year, the equivalent of 71% of all deaths globally.

#### **3.2. Death Identification**

In general, the method of death is divided into two, namely natural and unnatural. Natural death is caused by illness or old age (> 80 years) while unnatural death is caused by various types of violence (murder, suicide and work accidents and traffic accidents), death due to medical action, drowning, intoxication, and death with no clear cause. Death certificate issued by a doctor can be used as a guide to investigate how the victim died.

WHO guidelines, the causes of death are divided into direct causes, intermediate causes and underlying causes which are related to each other. In addition there are other conditions that are not directly responsible for the death of the patient / victim or are complicating it. The direct cause is the mechanism of death, namely the physiological and biochemical disturbances caused by the basic cause of death. Meanwhile, the basic cause is the main cause of death which is full of medicolegal content so that it is directly related to the cause of death. Thus, the underlying cause is the cause of death which needs to be studied carefully to estimate the cause of death. Verbal autopsy to estimate the cause of death was carried out by conducting a medicolegal interview. Medically, heteroanamnesis is carried out on those who know the medical history of the victim, including sacred seven and fundamental four. In addition, summaries of medical records, laboratory and

radiological examination results and other matters that can assist in establishing the diagnosis of the cause of death need to be asked to the family of the victim. For legal purposes, questions containing 5W + 1H (Who, Where, When, Why, What, How) also needs to be submitted.

Investigation of the victim is a thorough investigation of the body carefully, covering everything that is seen, smelled, felt and the objects that stick with the victim's body. The purpose of external investigation is to confirm death body, estimate the death time, mechanism and the cause of death, identify and find signs of illness or injury related to the cause of death as the basis for issuing a death certificate. If there are injuries that are thought to be the cause of death, then this death is very likely to be an unnatural death so coordination with the investigator is needed, and if necessary, a forensic autopsy examination is carried out.

Of course, to identify death requires special skills that can only be done by people who have been expert in this field. And this will certainly be difficult for a captain on board without the help of a medical expert. Medical experts usually only exist on certain ships, such as passenger ships. The lack of knowledge and tools is the main factor that makes the identification of deaths impossible to be optimally carried out on board.

### **3.3. Master Of Responsibility**

The definition of Master/ Captain is formulated in article 1 number 41 UUP: "Master is one of the crew members who is the highest leader on the ship and has certain powers and responsibilities in accordance with the legislation". From the understanding of the captain above, it can be seen that the captain is the official who holds the highest authority over the ship as a whole, mean whoever is on board the ship must obey to the captain's orders for the sake of safety and order during the voyage, including if the ship's operator of the ship being on board. In carrying out his duties, the captain is assisted by the ship's officer and several helmsmen on the deck, and Chief Engineer responsible over engine, support by the oiler.

The captain of the ship bears important responsibilities in a ship. The duty of a ship captain is to be responsible when carrying a ship on a voyage, from port to port safely. This responsibility includes the safety of all passengers or goods on board.

If viewed from the UU. No.21 Th. 1992 and also article 341.b KUHD clearly stated that the captain is the leader of the ship, then by reviewing article 341 KUHD and article 1 paragraph 12 of the Law. No. 21 Th.1992, the definition of a captain is as follows:

Ship's captain is someone who has signed a Sea Employment Agreement (SEA) with a company and meets the requirements as a captain in the sense of leading the ship according to statutory regulations applied

Duties of the Captain which are regulated by the laws and regulations, namely:

- As a holder of general authority on board the ship. (articles 384, 385 KUHD and article 55 of UU. No. 21 of 1992).
- As Ship Leader. (Article 341 KUHD, article 55 UU. No. 21 Year 1992 and article 1/1 (c) STCW 1978).
- As a Law Enforcer. (articles 387, 388, 390, 394 (a) KUHD, and article 55 No. 21 Th. 1992).
- As a Civil Registration Officer. (Civil Registry Regulations for Birth and Death, and article 55 of UU. No. 21. Th. 1992).
- As a Notary. (Articles 947 and 952 of the Civil Code, as well as article 55 of UU. No. 21, Th. 1992).

### 3.4. ILO Seafarer's Service Regulation

General Assembly of the International Labor Organization, Has been convened in Geneva by the Governing Body of the International Labor Office and met at the 94th Session of the Assembly, on 7 February 2006, and wants to create a single, interrelated instrument that contain as much as possible the latest standards of the applicable international maritime labor Conventions and Recommendations as well as the basic principles contained in other International Labor Conventions, rules / regulations regarding the handling of corpse of crew members who die on board. As stated in the regulations below;

*Chapter III Responsibilities,  
Section 1 General Provisions,  
Article 30;*

*"Should any seaman or passenger on the voyage die, the master shall immediately report it to the employer to convey the bad news to victims' family. The deceased who meets the following conditions shall be buried at sea under the decision of the master:*

- 1. Vessel cruising in international waters.*
- 2. Being dead for over 24 hours or death is caused by infectious disease and the deceased has been sterilized.*
- 3. Unable to keep the corpse for reasons of hygiene or the port of entry forbids vessels to keep cadavers, or other legitimate reasons.*
- 4. A death certificate shall be issued by the ship's doctor (if available).*

*While conducting sea burial, the master shall hold an appropriate death ceremony and adopt measures to prevent the corpse from floating up. The ceremony shall be recorded or photographed in as much detail as possible. Relics of the deceased such as hair remains and personal belongings shall be entrusted to personnel to forward to the deceased's spouse or immediate family members. "*

In the Maritime Labor Convention, Regulation 5.1.6 concerning Victims of Accidents at Sea states that;

- Each Member State shall carry out an official investigation of any victim of a serious accident at sea, which results in injury or loss of life, involving a ship flagstate. The final investigation report should normally be access publicly.
- Member States shall cooperate with each other to facilitate investigations of victims of serious accidents at sea referred to paragraph 1 of this Regulation.

### 3.5. ILO recommendations regarding work in the fishing sector (fisherman)

For vessels 24 meters in length or more, in addition to the provisions of Article 32 of this Convention, the following elements need to be considered:

(a) when determining medical equipment and medicines to be carried on board, competent authorities should take into account, such as those contained in the latest edition of the International Medical Guidelines for Ships (ILO / IMO / WHO) and the Sample List of Essential Medicines (WHO), as well as developments in medical knowledge and treatment methods.

(b) Inspection of medical equipment and medicines should be carried out at intervals of not more than 12 months; The inspector must ensure that the expiry dates and storage

conditions of all drugs are checked, the contents of the drug crates are recorded and comply with national medical guidelines, and that drug supplies are labeled with a generic name next to each brand name, complete with expiration date. and storage conditions;

(c) medical manuals book should explain how to use the contents of medical equipment and medicines, and must be designed so that in addition to doctors unavailable, other people can also treat the sick or injured crews on board.

### 3.6. Refrigeration Machines as a Handling for Decomposition

There are two types of cold storage rooms for corpses:

a. positive temperature

Body kept between 2 ° C (36 ° F) and 4 ° C (39 ° F). While it is usually used to maintain the body for up to several weeks, it does not prevent putrefaction, which continues at a slower rate than room temperature.

b. negative temperatures

Body kept between -10 ° C (14 ° F) and -50 ° C (-58 ° F). Usually used in forensic institutes, especially when the body has not been identified. At this body temperature it is completely frozen and the decomposition is considerably reduced.



Figure 3

#### Portable Corpse Storage

- External dimensions: 2520 \* 820 \* 620mm
- Internal Dimensions: 2620 \* 960 \* 780mm
- Cooling mode: Air cooling coil tube
- Power Supply Voltage: 220 V / 50Hz
- Temperature inside box: 1-5 °C
- Input Power: 350 W
- Weight: 150 kg
- (US \$ 1,050.00 - US \$ 2,100.00 / set)

### 3.7. Voyage Distance

*Nautical miles* are units of length used throughout the world for maritime purposes such as calculating the distance in a voyage. This unit is commonly used in international law and treaties, especially regarding territorial boundaries. One nautical mile is equal to 1,852 km; 1,1508 miles normal; or 6,076feet. The symbol for the *nautical mile* is M, NM or nmi. While the *knot* is a unit for measuring speed at sea with the symbols kn, kt or kts. A speed of one *knot* means one nautical mile per hour or 1,852 km per hour.

By knowing the distance to the voyage to be covered, you will also get how much time it will take to take a voyage from one point to the destination point. This is very



necessary to prepare for the operational needs of the ship. The farther the voyage distance, the greater the ship's operational needs.

In the case of the death of the crew at sea, the distance of the ship is what determines the captain in making decisions to be taken.

$$\text{distance Cruise travel time} = \frac{\text{distance}}{\text{ship's speed}}$$

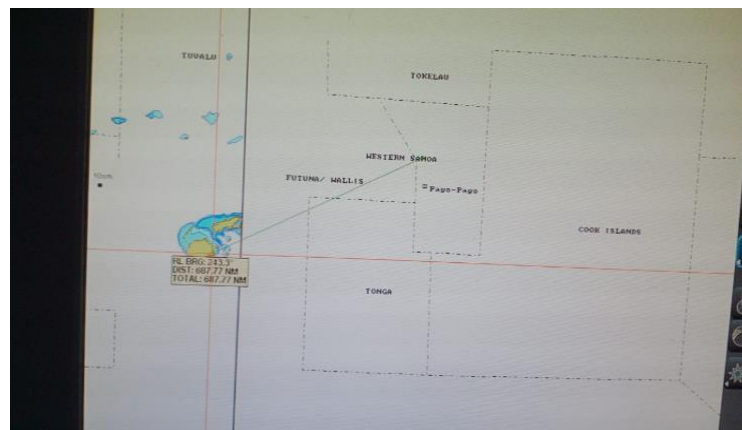


Figure 4. Samoa to Fiji distance (688 miles)

Distance traveled from one events in the Samoan islands, based on the distance on the map it is known that the distance from Samoa to Fiji is 688 miles. During the voyage, if the average speed of the ship is 10 knots, the travel time is 68.8 hours.

#### 4. Conclusion

- Throwing corpse into the sea can be carried out with various considerations accordance with the ILO Seafarer's Service Regulations.
- To Avoid throwing corpse to the sea, ship need to have refrigeration machine for keep the died body permanently or portable.
- Each ship's owner / company is responsible for handling dead people on board. Both in terms of their rights as *ratings/crews* and the process of identifying the cause of death. Including the agents who in charge of crew.

#### 5. Suggestions and Feedback

There is a need for clearer rules regarding the requirements for float which can be used as a reference for the skippers on board. Given the development of ships and shipping has developed rapidly, so burials incidents are not common. burial can be used as an excuse to eliminate medical identification related to the cause of a person's death.

The addition of types of medicines related to the handling of bodies on board is very necessary so that handling of bodies becomes safer.

The storage of portable bodies can be used as a recommendation for ships with long or long voyage travel times.

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