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Urgency of Implementing Fixing Reward Mechanism in Indonesian Salvage Law

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ABSTRACT

Salvage is one of the important elements of shipping, it is necessary to assist vessels which are facing danger during its voyage. Salvage nowadays is considered as one of the customary international laws which has been consolidated and formulated over the decades. The International Convention on Salvage 1989 ("Salvage Convention") is the prevailing convention which contains such salvage regulations that has been recognized by its parties. Fixing reward is one of the provisions of the Salvage Convention, concerning fixing the salvage reward by considering the criteria that have been set. However, Indonesia currently has not adopted the fixing reward on its salvage law. The purpose of this article is to determine the urgency of implementing the fixing reward mechanism in Indonesia by raising two research questions, what is the implication of the absence of fixing reward mechanism in Indonesian salvage law, and the urgency of Indonesia to implement fixing reward within its salvage law. Normative juridical is the method of this article, which conducts such relevant studies towards primary and secondary data. As far as the research conducted, the fixing reward plays a pivotal role in determining the appropriate value reward and the apportionment of a reward for salvage service that have been rendered by the salvor. The salvage service occurred under contractual relationship, yet the public regulations and policies serve as guidance for the contractual itself, for instance, the open forms as implemented by several states. The fixing rewards establish a legal certainty for the parties involved in the respect to the salvage awards and apportionment between the parties.

Keywords: fixing reward; open form; salvage contract.

I. INTRODUCTION

The Salvage Convention stipulated that salvage service is based on a contract. Indonesian regulations also stipulated that salvage shall be based on contract, the contract is one of the conditions that shall be obtained by the salvor in terms to obtain a license from the Indonesian authority to conclude the salvage services. Practically speaking, salvage has been going on since 1633 in England and other states with a common law legal system, resulting in a customary and best practice that has been frequently applied in its implementation, including contract as the basis of salvage. History of salvage speaks that the first method of salvage is not based on contract, which is known as pure salvage. Either contract or pure salvage, both methods are the basis for the value or reward that will be sought for salvage services rendered.

Pure salvage is undertaken without any contract upfront. In order to be awarded such reward, there are several elements that need to be met, (i) perils; (ii) the salvage shall be made by voluntary; (iii) successfully salvage rendered, either in whole or in part.[1] Those elements are also known as "the

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[1] Joshua C. Teitelbaum. "Inside the Blackwall Box: Explaining U.S. Marine Salvage Awards." *Supreme Court Economic Review, Chicago Journal,* Vol. 22, (2015), 64.

triumvirate of danger, voluntariness and success".[2] The absence of a contract establishes an entitlement for the parties (salvor or shipowner) to seek a court order in relation to the award for salvage services that has been rendered. Pure salvage is risky, leaving too many loopholes that can be unlawfully abused by either party.[3] On the other hand, contract salvage obliged the existence of a contract as a basis of salvage. The first form of contract salvage known as the Lloyd's Open Form Salvage ("LOF"), established by the Lloyd's of London, one of the arbitration institutes majoring in salvage. Basis of LOF broadly known as "no cure - no pay" principle, in which the award shall be paid by the shipowner if the services are successfully rendered (in whole or in a part).

LOF is a mechanism that can be chosen by the salvor and the shipowner in the form of a short form that will be filled in by both parties, so that it does not take time to negotiate.[4] One of the issues on salvage is the reward of the salvage itself, specifically due to the need to take immediate measures to assist such vessels before it ran aground. Both parties need to conclude a salvage contract within a short period of time, therefore the form of LOF is one of the solutions to these kinds of issues. Value of salvage is essential for a contract, like the other work/commercial contract, usually it takes a long time to settle the value contract. Since the emergency circumstances require speed to conclude the contract, and also the unforeseen obstacle due to the worksite at the seas, the reward/value of salvage usually is not sufficiently discussed by both parties.

At this stage, fixing reward is needed to adjust both parties' interest in terms of the payable amount of salvage services. Fixing reward for the first time introduced by the Article 13 of Salvage Convention, which sets such criteria for fixing reward, so that it can be applicable to modify the amount of salvage reward. The fixing reward is not just for modifying the amount of salvage reward, but also applicable for modifying the apportionment of payable amount that shall be made by the shipowner and the property owner.[5] The criteria for fixing reward sets out under Article 13 of the Salvage Convention: (a) the salved value of the vessel and other property; (b) the skill and efforts of the salvors in preventing or minimizing damage to the environment; (c) the measure of success obtained by the salvor; (d) the nature and degree of the danger; (e) the skill and efforts of the salvors in salving the vessels, other property and life; (f) the time used and expenses and losses incurred by the salvors; (g) the risk of liability and other risks run by the salvors or their equipment; (h) the promptness of the service rendered; (i) the availability and use of vessels of other equipment intended for salvage operations; (j) the state of readiness and efficiency of the salvor's equipment and the value thereof.[6]

Fixing reward has frequently been a matter in terms of salvage disputes around the world. The disputes arising between the shipowner and the salvor involved the amount of salvage reward. The matter is whether the payable amount was too low or too high, or wrongly apportioned payment of salvage claimed by both parties. Since the fixing reward is already oftenly considered by the judges or arbitrator, it becomes necessary to examine the benefits of fixing reward under the salvage law.

Indonesia nowadays regulates its shipping law under the Law No. 66 of 2024 on Third Amendment to Law Number 17 of 2008 on Shipping. Salvage is one of the provisions under these acts. The salvage provisions are particularly regulated under the Regulation of the Minister of Transportation of the Republic of Indonesia Number PM.27 of 2022 on the Third Amendment to Regulation of the Minister of Transportation Number PM.71 of 2014 on Salvage and/or Underwater Works ("MoT

[2] Proshanto K. Mukherjee, "Salvage Agreement and Contract Salvage: Risk Dynamics in Salvage Law", *Brill,* (2022), 533.
[3] Cheng-Sheng Chiu, *et, al.,* "Cost of Salvage? A Comparative Form Approach." *Journal of Marine Science and Technology,* Vol. 25, (2017), 743.
[4] Pegasus Marine Consultancy, "Independent Review into the Potential for Delays in the Contracting and Engagement of Salvage Services in Marine Casualties, *Pegasus Marine Consultancy Final Report,* (2022), 10.
[5] Article 13 para. (2) International Convention on Salvage 1989.
[6] Article 13 para. (1) International Convention on Salvage 1989.

27/2022"). Article 6 of MoT 27/2022 stipulated that to obtain the salvage permission, either party shall attach the salvage contract and/or Letter of Intent ("LoI") as one of the requirements. Furthermore, when the vessels needed a speed assist for salvage, the MoT 27/2022 art. 7 stated that the time limit for submitting the application for the salvage permission is 24 hours since the salvage services. Those regulations concluded that the salvage contract between both parties shall be done quickly, in which may occur both parties "rushed" in concluding the contract. In this context, the concern is that both parties do not negotiate properly on the salvage rewards.

This article investigates the urgency of implementing fixing rewards mechanism in Indonesian salvage law. The discussion will be examined through two research questions, which are: 1) First, it is imperative to ascertain the implications of the absence of regulation pertaining to the fixing reward in the context of salvage regulation in Indonesia; (2) Second, the urgency of establishing and implementing a mechanism for fixing reward within the regulatory framework governing salvage in Indonesia.

In doing so, this article is divided into four chapters. Chapter one as an introduction we highlight the issues regarding its topic. Second chapter discusses the research methods that will be used as tools for the Authors in this research. Third chapter will elaborate and formulate the research and answer the issue of its topic. The last chapter is the conclusion and recommendation.

II. RESEARCH METHOD

This article is conducted by normative juridical method[7], in which the Authors will formulate the research results with a combination of exploratory, descriptive, and explanatory.[8] The research will examine several aspects to maximize the output of this article, which are theory aspect, history aspect, philosophy aspect, comparison approaches, and the legal language. Normative juridical method means the Authors will examine numerous relevant documents that are necessary to conclude this research. Nonetheless, the Authors have collected primary data in the form of interviews with the relevant authorities in Indonesia.

Due to the absence of fixing reward provisions in Indonesia, the Authors will also conduct a comparative approach to Singapore, Turkey, and the United States. Those states have their own treatment to the fixing rewards; therefore, it will be an advantage for the purpose of the article. Nonetheless, the case approach will supplement this article research to formulate effective results and discussion.

III. DISCUSSION AND RESULTS

3.1 Salvage: An Overview

The term "salvage" first gained prominence in 1985. According to experts in the field, the term refers to a service that aims to rescue or assist a "salvage subject," defined as an entity in danger that cannot be extracted without assistance. Notably, the provision of this service is voluntary, not obligatory, and is not related to any pre-existing obligation.[9] Historically, salvage has been understood to signify the voluntary and non-contractual rescue of a vessel. In the United States, the term "salvage"

[7] Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat,* (Jakarta: Raja Grafindo, 1995), 47.
[8] Ani Purwati, *Metode Penelitian Hukum Teori dan Praktek,* (Surabaya: Jakad Media, 2020), 22.
[9] Sir William Rann Kennedy, *et.al.* , *Kennedy's Law of Salvage,* (Virginia: Stevens ,1985), 9.

has traditionally been interpreted broadly to encompass "treasure salvage," an activity focused on the maritime interests of the United States.[10]

The establishment of the International Convention on Salvage (Salvage Convention) in 1989 marked a significant development in the realm of international law, as it emerged as the inaugural international legal norm of an international treaty on salvage. The Salvage Convention replaced the provisions of the 1910 Brussels Convention, and extended the no cure, no pay principle. The Salvage Convention defines salvage as an act to assist ships or goods in distress at sea. To be able to carry out salvage, the Salvage Convention regulates several ways to be able to carry out salvage activities, namely: (1) contract salvage; (2) ancillary services; and (3) special compensation.[11]

In the event of a successful rescue operation, the salvor is entitled to salvage reward for their services. Conversely, in the event of a failed salvage attempt, the salvor is not entitled to such reward. This principle, delineated in the Lloyd's Form of Salvage Agreement, is known as "no cure - no pay."[12] This principle signifies that in the event of a successful salvage, the salvor is entitled to a claim for payment, or "salvage award/reward," as they have confronted substantial challenges and risks in carrying out their duties. The “no cure - no pay” principle set out under Article 12 para. (1) and (2) of the Salvage Convention.[13] This provision is interpreted in two aspects, namely on the one hand that the valuable assets loaded on the ship are successfully salvaged, and on the other hand that a useful result is obtained precisely because of the services provided / useful, but the success of salvage does not have to be 100% successful / complete.[14]

3.2 Best Practice of Fixing Rewards

Salvage operations result in a “rescue” for the shipowner, which establishes an entitlement for the salvor to get their reward afterwards. The salvage rewards itself will also encourage salvage operations at sea to obtain high transaction costs by simulating the conditions and outcomes of a competitive market and to encourage efficient resource allocation.[15] The development of salvage rewards are significantly increased in the United Kingdom’s legal framework. Since the contract salvage was introduced in salvage’s legal framework, the no cure - no pay principle has been a hot topic in shipping law. Eversince the no cure - no pay commonly used by the salvor, the progress of its principle has significantly affected the contract salvage’s evolution. No cure - no pay principle is incurred on LOF.

Under LOF jurisdiction, in the event disputes arose between the parties, it shall be settled under the Lloyd’s Arbitration Branch. Notwithstanding the foregoing, the LOF mechanism has been broadly adopted by several states to their own public policies. Many experts use “open form” to describe it.[16]

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[10] David J. Bederman, “Historic Salvage and the Law of the Sea”, *University of Miami Inter-American Law Review,* (1998), 102.
[11] Shivam Pandey and, “Contemporary Maritime Legal Framework of the Ship Salvage”, *International Journal for Multidisciplinary Research,* Vol. 5, Issue 2, (2023), 3.
[12] Tan Twan Eng, “Can Intellectual Property Rights From A Part of the Salvors Traditional Rights, And Can A Balance Be Achieved Between Them? The Position of English, American and South African Salvors in Light of the Recent Decisions of the ‘R.M.S. *Titanic*’ Cases in the United States of America”, University of Cape Town, accessed October 4, 2024, https://open.uct.ac.za/server/api/core/bitstreams/cc44dad6-6dd7-4d91-8336-5823f9f6f293/content.
[13] Article 12 para. (1) and (2) of the Salvage Convention stated that: “(1) Salvage operations which have had a useful result give right to a reward, (2) Except as otherwise provided, no payment is due under this Convention if the salvage operations have had no useful result”
[14] Thiago V. Zanella, “Marine Salvage and the Protection of the Marine Environment: The Reassessment of the ‘*No Cure-No Pay’* Principle for the Protection of the Marine Environment”, *Advanced Shipping and Ocean Engineering,* Vol. 3, (2014) 42.
[15] William M. Landes and Richard A. Posner, “Salvors, Finders, Good Samaritans, and Other Rescuers: An Economic Study of Law and Altruism”, *7 Journal Legal Stud.* (1978), 14.
[16] Gard, “The Challenges to Lloyd’s Open Form Salvage Contract - from a Shipowner’s Perspective”, Published February 4, 2020, https://gard.no/insights/challenges-to-lloyd-s-open-form-salvage-contract-from-shipowner-s-perspective/.

To this extent, the no cure - no pay principle always incurred in any salvage contract. Therefore, open form and the no cure - no pay principle is commonly known as the basis in terms of salvage reward.

Stipulated on Article 13 of Salvage Convention, the objective of fixing reward is to modify the payable amount of salvage operations and/or apportioned the salvage reward proportion. Fixing reward is a tool that is hopefully utilized by either party to achieve a fair and reasonable reward since the salvage has been rendered. Therefore, the criteria have been set by the Salvage Convention, as a guidance for either party in terms of claiming a fixing reward mechanism. The fixing reward mechanism can be pursued either via court order or amicably settled by both parties.

The first step in assessing the fixing reward is to evaluate the salvaged property on arrival at the place of safety after successful salvage.[17] These measures shall be conducted in relation to the good faith principle by both parties and to avoid any doubt. The fixing rewards shall not exceed the value of the vessel and other property, so that the fixing reward cannot be used as a tool for either party who intended to take a wrongful benefit. One of the criteria for fixing reward has been considered as a key element for successful claim towards fixing reward, which is "skills and efforts of salvors in preventing damage to the environment". These criteria intended for salvors to be concern and aware in terms of preventing damage to the environment, for example in the event a salvage operation to rescue a cargo containing oil, the salvage shall be done carefully to avoid an oil-leakage, it is necessary so that the salvor has met one criteria for claiming the fixing rewards. This provision does not eliminate the obligation of salvor to rescue the vessel/cargo itself.[18]

In the United States, the evolution of salvage rewards over time has led to a transformation in their interpretation. The term "remuneration" emerged in 1938, signifying a shift from the understanding of salvage reward as a fee to a "reward" for perils services, bestowed voluntarily, and utilized as an incentive for salvor and others to engage in salvage operations in the sea.[19] Many disputes under the United States frequently include reasons that encourage judges to make reasonable awards. However, the "additional reward" that is often mentioned in judges' opinions may not be awarded.[20] In general, awards for salvage services exceed a mere recompense for the labour expended by the salvor. The objective is not only to reward the salvor, but also to motivate others in analogous circumstances to salvage property exposed to hazards that are particularly prevalent at sea.[21] Consequently, the role of rewards in salvage is significant.

The Authors has found several cases regarding fixing rewards which demonstrate an important role of fixing reward to achieve legal certainty for both parties.

a. Blackwall v. Goliah

On August 12, 1867, the British-flagged ship called "Blackwall" caught fire in the port of San Francisco. The captain and the crew were compelled to abandon the vessel due to the fire. Without any prompt assistance, the Blackwall was doomed to suffer irreparable damage, consequently the salvage was contacted to do a salvage operation. The Goliah, a steam tug, was the vessel which did the salvage operation of the Blackwall. The fire was extinguished after approximately two and a half hours.

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[17] Simon Baughen, *Shipping Law,* (USA: Routledge-Cavendish, 2009)*,* 315.
[18] Sheila Cele, "The Development of Environmental Salvage and the 1989 Salvage Convention: The Proposed Amendments to the 1989 Convention and the Issues Regarding the Assessment of Environmental Salvage Awards." *College of Law and Management Studies, School of Law Unit of Maritime Law and Maritime Studies,* (2017), 10.
[19] G. H. Robinson, "Admiralty Law of Salvage" *Cornell Law Review,* Vol. 23, (1938), 230.
[20] G. H. Robinson, *Op. Cit. 249*.
[21] Bluestein Law Firm, "Marine Salvage Law", accessed November 20, 2024, https://www.bluesteinlawoffice.com/maritime-law-articles/salvage/.

The Goliah petition a court order for salvage remuneration for the service rendered to the Blackwall. The relevant district court ordered an award of $10,000 for the salvage services. The Blackwall appealed the court order. The United States Supreme Court then explained that there are six factors to be considered by any court in determining the fixing reward/remuneration, which are: (1) the labour expended by the salvors in rendering the salvage service; (2) the promptitude, skill, and energy displayed in rendering the service and saving the property; (3) the value of the property employed by the salvors in rendering the service, and the danger to which such property was exposed; (4) the risk incurred by the salvors in securing the property from the impending peril; (5) the value of the property saved; and (6) the degree of danger from which the property was rescued.[22] Subsequent to a thorough examination of the aforementioned fix factors, the United States Supreme Court arrived at the determination that the award shall be reduced by half, amounting to $5,000.

The Blackwall v. Goliah cases have become jurisprudence, therefore the six factors shall be considered by the judges in their consideration in terms of giving a court order or stipulating a verdict under the United States jurisdiction.

b. SMIT Salvage BV. v. Luster Maritime S. A.

In the case of SMIT Salvage B. V. v. Luster Maritime S.A., both parties engaged in a process known as re-floating, which is broadly considered as a form of salvage. SMIT Salvage, in its capacity as a salvor, sought a fixing reward for the salvage service rendered, citing the criteria for fixing reward outlined in the Salvage Convention as the legal basis. In contrast, Luster Maritime as the shipowner asserted that a mutual agreement had been reached between both parties in the form of salvage contract. This predicament gives rise to the question whether the salvage contract is considered as legal and valid or *vice versa.*

Upon meticulous examination on hearing, it was ascertained that while the parties had arrived at an agreement on the contract value (salvage reward), negotiations regarding other contract terms persisted until the vessel had been successfully salvaged. The court determined that this sequence of events indicated that no contract for service had been entered, thereby allowing SMIT Salvage B. V. to claim a fixing reward for the salvage service that has been rendered.

c. Archangelos Gabriel v. The Nanhai Rescue Bureau of the Ministry of Transport of China

An oil tanker, Archangelos Gabriel, grounded at Qiongzhou Strait, China. To do salvage operations, the Nanhai Rescue Bureau of the Ministry of Transport of China ("NRB") was contacted to assist the oil tanker. The salvage operation was completed in approximately 5 (five) days until the Archangelos Gabriel successfully saved, and the oil was removed from the waters. The salvage operations took three salvage vessels to maximize its operations as requested by the Archangelos Gabriel.

The disputes arose between the parties regarding the salvage reward. To be noted, both parties were engaged in contract prior to the commencement of salvage. The Archangelos Gabriel declined to fulfill the payment obligation stipulated in the contract, claiming that the salvage reward was too high for the services provided by the NRB. Based on the, the Archangelos Gabriel petitioned the relevant court to fix the rewards, seeking to adjust the reward amount to a figure more aligned with the perceived value of the salvage. Additionally, the Archangelos Gabriel also proposed that the later payable amount shall

[22] Joshua C. Teitelbaum, *Op. Cit.* 68.

be divided into a rational proportion between the shipowner and the cargo owner due to the successful retrieval of the cargo as justification.

3.3 Comparative Approach: Fixing Rewards Mechanism Across the World

Since Indonesia has not been adopting fixing rewards under its domestic legislation, it is necessary to do a comparative law approach. To this extent, the Authors chose Singapore, Turkey, and the United States of America as objects for the comparative approach due to the differential treatment to the fixing rewards mechanism. Nevertheless, the Authors can conclude that those states regulated the fixing reward relevant to the Salvage Convention.

a. The Republic of Singapore

The Republic of Singapore acceded to the Salvage Convention on July 24, 2021. The maritime legal framework in Singapore is currently governed by the Merchant Shipping Act 1995, which has undergone an amendment in 2020. Singapore's legal system was influenced by its historical status as a former British colony, resulting in incorporated elements of the English Common Law. Since the Salvage Convention was forced, Singapore also amended the provision of its High Court's Admiralty Jurisdiction to extend its jurisdiction to settle such salvage matters' disputes.

The fixing reward mechanism was not incorporated into the domestic legislation of Singapore, or in the other words, the fixing mechanism's provision was only regulated by the Salvage Convention. However, since the Salvage Convention open to reservations, Singapore conducts a reservation, which are:

> *"(a) any salvage operation that takes place in inland waters of Singapore, and in which either no ship in involved or all the ships involved navigate in inland waters (whether of Singapore or otherwise; or*
>
> *(b) any salvage operation in which the property involved is maritime cultural property of prehistoric, archaeological or historic importance, and is situated on the seabed."*[23]

The reservation made by Singapore followed Article 30 of the Salvage Convention, particularly with paragraph (3) and (4).

In addition, Singapore also has a provision that differs from other states, regarding the valuation carried out on salvaged property, said that:

> *"(1) Where any dispute as to salvage arises, the receiver may, on the application of either party, appoint a valuer to value the property, and must give copies of the valuation to both parties.*
>
> *(2) Any copy of the valuation purporting to be signed by the valuer, and to be certified as a true copy by the recover, is admissible as evidence in any subsequent proceedings.*
>
> *(3) Any fee that the Authority directs is to be paid in respect of the valuation by the person applying for the valuation."*[24]

This provision stipulated that in the event of a dispute arising subject to salvage, an institution, surveyor or valuer may be appointed to conduct a valuation of the salvaged property, which could subsequently serve as court evidence. The Authors asserts that this

[23] Article 145A of Singapore Merchant Shipping Act 1995.
[24] Article 171 of Singapore Merchant Shipping Act 1995.

provision intersects with the concept of fixing reward, as aligned with one of the criteria of fixing rewards.

b. Turkey

Contrary to Singapore, Turkey did not accede to or ratify the Salvage Convention. However, Turkey did adopt such key provisions of the Salvage Convention into its legal framework. The legal principles governing salvage operations are delineated in Book Five, Part Three of the Turkish Commercial Code ("TCC"). The term "salvage" is defined as (a) Activities carried out despite the clear and reasonable opposition of the owner or the captain of the watercraft or the owner of the goods that were not in the vehicle and were not found; (b) Activities carried out by persons employed in the endangered vehicle; (c) Services performed or required to be performed for the performance of a contract established before the danger arises.[25] These provisions stipulated that the salvage method enabled on Turkey jurisdiction is contract salvage.

Article 1301 of TCC stipulated that if a salvage contract executed under the influence of misdirection or danger, and the agreed terms are subsequently deemed to be contrary to the principles of right and safety, or if the salvage fee are determined to be disproportionate to the salvage service provided, the contract may be adapted to the prevailing circumstances or be annulled by the court upon request or petition. The article stipulates the adaptation or annulment of the contract. At this stage, the Authors places greater emphasis on the provision concerning salvage costs, which can serve as the basis for adjusting or even cancelling the salvage contract through litigation proceedings. As far as the research conducted, there is no fixing rewards annulled such contract, the mechanism only prevails as a "modification or adjustment" tool of its salvage reward. However, the Article 1301 of TCC plays a pivotal role in the establishment of the fixing rewards mechanism.

Furthermore, Turkey also regulated the no cure - no pay principle in the Article 1304 TCC, which says:

> *"(1) any salvage activity that has yielded a beneficial result is entitled to a salvage fee claim.*
>
> *(2) unless otherwise stated in this Section, no right to claim salvage fees arises for salvage activities that do not yield beneficial results.*
>
> *(3) The salvage fee cannot exceed the value of the recovered item after recovery. In the application of these rules, interest and litigation expenses that may be paid are not taken into account."*

The Salvage Convention employed the term "useful result", while the TCC employed the term "beneficial result". In essence, both phrases convey the same principle, that salvage rewards are not incurred and are not subject to payment unless the ship or cargo has been successfully salvaged (wholly or in a part). It is contextually relevant with the no cure - no pay principle. For example, such valued vessels or cargo shall be salved to establish the rights of salvor for request for the salvage reward.[26]

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[25] Article 1298 para. (4) Turkish Commercial Code.
[26] Brice Geoffrey, *Maritime Law of Salvage* (London: Steven and Son, 1983), 105.

The fixing rewards of Turkey's legal framework has been stipulated in Article 1305 TCC:

"(1) If the salvage fee has not been determined by the parties or if the agreed fee is requested by the court to be adapted to the current conditions according to the Article 1301, the fee is determined with an understanding to encourage salvage activities, taking into account the following criteria, regardless the order:

a) the value of the vehicle and other property after recovery.
b) the effort and skill of the salvor to prevent or limit environmental damage.
c) the degree of success achieved by the salvor.
d) the danger faced by the salved vehicle and the people and property in it, and the nature and magnitude of the danger that those involved in the rescue risk for themselves and their vehicles.
e) the effort and skill of the salvor to save the vehicles, other property and human life.
f) time spent, expenses incurred and damage suffered by the salvor.
g) salvor's liability risk and other risks incurred by the salvor and his equipment.
h) how quickly the services provided are provided.
i) vehicles and other equipment reserved for salvage activities have been made available and actually used.
j) the availability, effectiveness and value of the salvor's equipment.

(2) Expenses and fee of official institutions, customs duties and other duties to be paid for the salvaged things, and expenses incurred for the purposes of keeping, protecting, appraising their value and selling these things are not included in the salvage fee.

(3) The salvage fee is determined by money. Unless otherwise agreed, the fee cannot be determined as a percentage of the value of the item salvaged."

An analysis of Turkey's fixing reward provision reveals their alignment with the principles outlined in the Salvage Convention. However, it is important to note that certain distinctions do exist. First, the mechanism for determining a fixing reward is applicable in Turkey, as stipulated in para. 1. The application of the fixing reward is permissible under two conditions: first, in the absence of an agreed salvage fees/reward between the parties; and second, when the stipulated salvage rewards are requested by the court to be adjusted according to the prevailing circumstances. Secondly, para. (1) point d) provides a more detailed and objective construction, stipulating that the criteria for determining the fixing reward include not only the danger to the ship, but also the cargo and passengers. Furthermore, the payment salvage is determined in money, unless otherwise specified in the salvage payment contract through a percentage of the value of the salvaged ship or cargo.

c. The United States of America

The United States ratified the Salvage Convention, which came into effect within its legal domain in July 1996. Prior to this development, the nation had been embroiled in various salvage disputes, albeit to a lesser extent. The United States is a nation that exemplifies the elements of pure salvage in various cases within its jurisdiction. These elements encompass the following: 1) marine peril; 2) the service voluntarily rendered; 3) success, in whole or in part; and 4) the service rendered contributed to a salvage, either in

whole or in part. While pure salvage is frequently observed, the United States also permits contract salvage, provided that the contract is executed without fraud, misrepresentation, or undue influence.[27]

The United States Constitution does not specify the sources of substantive law that judges should consider when formulating their rules. Consequently, judicial bodies within the United States frequently rely on principles of general maritime law. As Chief Justice Marshall articulated, the judicial determination of salvage awards is contingent upon their recognition by the court. The prevailing principle in the United States regarding salvage awards is as follows:

> *"Compensation as salvage is not viewed by the admiralty courts merely as pay, on the principle of a quantum meruit or as remuneration pro opere et labore, but as reward given for perilous service, voluntary rendered, and as an inducement to seamen and others to embark in such undertakings to save life and property"*[28]

3.4 Implications of the Unregulated Fixing Reward Mechanism in Indonesia's Salvage Legal Framework

Pursuant to the MoT 27/2022, the undertaking of salvage activities in Indonesia is exclusively permissible for salvors that have been duly established for the specific purpose of conducting salvage operations. To engage in salvage operations, these professionals are obligated to possess a salvage activity permit, which is issued by the Directorate General of Sea Transportation, a division of the Ministry of Transportation. A prerequisite for applying for a salvage activity license is the submission of a work contract or a Letter of Intent (*LoI*). This analysis indicates that the salvage method recognized in the Indonesian legal framework is contract salvage. Based on the regulation and application in Singapore, Turkey, the United States, and other countries that regulate fixing reward, if fixing reward is requested to the court, and it is found that it meets the regulated criteria, the salvage value will be reduced/added according to the facts revealed. It is therefore important to analyze from an Indonesian perspective, how the unregulated fixing reward may have implications for salvage activities in Indonesia. The following are the implications that can arise by not regulating the fixing rewards mechanism in Indonesia.

3.5 Legal uncertainty of Letter of Intent as one of the contract salvage instruments in Indonesia

In this section, the researcher will focus on the role of LoI as an instrument of binding the parties into salvage work. In essence, LoI serves as a binding instrument, thereby establishing a framework of understanding between the parties involved. Additionally, some sources have posited that LoI functions as a pre-contractual form of engagement. The present study aims to delve more profoundly into the relevance of LoI in Indonesia in relation to the prevailing international salvage practice, particularly the utilization of LOF. It should be noted again that the LOF essentially sets out the usual templates for contracts, which are intended to make it easier for shipowners and salvors to bind themselves when faced with perilous circumstances that require immediate action. The LOF is adapted in accordance with the provisions of each country, such as Turkey which created the Turkish Open Form[29], and the

[27] *Mason v. The Ship Blaireau,* U. S. 266. Accessed November 21, 2024, https://supreme.justia.com/cases/federal/us/6/240/.
[28] G.H. Robinson, *Op. Cit.* p. 230.
[29] Ulgener Legal Consultants Law Office, *"Turkish Salvage Turkish Open Form",* accessed December 29, 2024, 20, https://ulgener.com/dosya/29.Turkish_Salvage_Turkish_Open_Form.pdf.

United States which created the U.S. Open Form Salvage Agreement.[30] A thorough examination of the open form reveals that it stipulates the rights and obligations of the parties, including the timeframe for payment, the method of payment (instalments or in full), the no cure-no pay principle, and the establishment of reward criteria to ensure legal certainty for the parties.

Regarding salvage value, it depends on each country's open form regulation whether it is included or not. In the Turkish Open Form, salvage value does not need to be included, so what is regulated is only limited to the rights and obligations of the parties in requesting payment, as well as in the event of a dispute. While in the U.S. Open Form Salvage Agreement, the parties can choose whether to include the salvage value or not, but it should be underlined again that even if the value is included, it does not necessarily ignore the fixing reward mechanism, because it has been stated that payment will be made according to the results of salvage work, and can be modified (fixing reward) in accordance with Article 13 of the Salvage Convention.

Indonesia has not regulated open form, but it must be reiterated that Indonesia regulates LoI, which as far as the Researcher has researched, LoI is a binding instrument that has no legal effect on the parties. This provision is not wrong, but has its own purposes and objectives, one of which is to summarize the implementation of contract making when ships require speed of action. LoI arrangements must be balanced with legal principles that emphasize and create legal balance for the parties. Two approaches exist for enhancing the efficacy of the provision: the establishment of an open form instrument and the implementation of a fixing reward mechanism. In the context of a flawless arrangement, it is anticipated that the Indonesian LoI/open form will be regarded as a valid contract. If costs are reduced or increased following salvage operations, the involved parties can directly refer to the criteria for the fixing reward, thereby circumventing the need to resort to litigation and legal channels for contract cancellation through the court or others.

3.6 Legal uncertainty that will be suffered by the parties in implementing the salvage contract

A salient issue in the realm of salvage pertains to instances wherein the salvage value does not align with the contractual stipulations agreed upon by the involved parties. In such instances, the fixing reward assumes a pivotal role in facilitating adjustments and modifications to the salvage value. If a country does not regulate the provision of fixing reward, it is difficult to adjust the salvage value, unless the parties want to go through litigation through a lawsuit to annul the contract through the court.

In the case of Blackwall v. Goliah, it is important to note that the work performed by Goliah was not based on a contract, but rather on pure salvage. This was due to the absence of a Salvage Convention at the time, and the recognition in the United States at that time was limited to pure salvage. Notwithstanding the absence of a contractual basis, adjustments and modifications were made to the salvage value. Initially, the salvage value was assessed at $10,000 in the initial court decision. However, it was subsequently modified by the United States Supreme Court to $5,000. In the appellate decision, the Supreme Court judges identified six fixing reward factors (which are still recognized and taken into consideration by the United States Courts in hearing and deciding salvage cases). The decision was rendered after a thorough examination of the case, leading the judges to conclude that elements (criteria) must be reconsidered prior to the adjudication of salvage value in a successful salvage case. The objective of this procedure is to establish legal certainty for the parties involved.

[30] The Society of Maritime Arbitrators, *"U.S. Open Form Salvage Agreement",* 2022, accessed December 29, 2024 https://seatow.com/wp-content/uploads/2022/01/MARSALV.pdf.

3.7 Indonesia's Urgency to Regulate Fixing Rewards

This research will specifically discuss the urgency of applying the fixing reward mechanism to the Indonesian salvage legal framework, which will be analyzed through various perspectives. To be able to examine this, researchers will examine from the private aspect, which in this case is accommodated through contracts and/or LoIs. The urgency of this arrangement does not only have a positive impact on the contract or work that will be established between the parties, but also on the Indonesian legal framework, specifically in the scope of maritime and salvage. The following is the urgency of regulating the fixing rewards mechanism in the framework of salvage law in Indonesia.

3.8 The Establishment of Legal Certainty for the Parties Involved in the Salvage Contract

From the perspective of contract clause analysis, the fixing reward mechanism may be regarded as hindering legal certainty with respect to the value of the payment to be made by the shipowner. However, when the analysis is expanded to encompass the elements of contract formation, the fixing reward emerges as a mechanism that can establish legal certainty regarding the value of payment, thereby benefiting the parties involved by ensuring that the payment does not exceed or fall short of the stipulated amount. In this context, the researcher also recognizes that the value of the contract constitutes an implementation of freedom of contract. However, within the framework of Indonesian law, it is imperative to acknowledge that the formation of contracts recognized in Indonesia entails considerations specific to the parties, as outlined in Article 1339 of the Indonesian Civil Code. That everything stipulated in the agreement is not only binding on what is expressly agreed, but according to the nature of the agreement must be obeyed, namely decency, custom, or law.

The primary objective of implementing a fixing reward is to ascertain the salvage value that will be remunerated by the shipowner for the salvage work executed by the salvor. Conversely, the open form (or, in Indonesia, which is currently regulated as LoI) is the preferred practice in other countries, with the objective of facilitating and accelerating the process of formulating salvage contracts for the involved parties. The researcher posits that if the open form or LoI is not balanced with the setting of fixing reward, then legal certainty in terms of the amount of salvage value is not achieved. This is because it can simply be argued that the open form or LoI does not accommodate adjustments to the salvage value through the fixing reward mechanism. Therefore, to be able to encourage the acceleration of the contract making stage, it needs to be balanced with instruments that can ensure that the interests of the parties are not hindered, in the context that the salvage value is fair and reasonable, it is necessary to regulate the fixing reward.

The Archangelos Gabriel v. NRB (China) case reflects that the legal certainty of the fixing reward mechanism also depends on the type of salvage contract entered by the parties. The Chinese Supreme Court explained that the fixing reward mechanism can be enforced if the contract or open form that binds the parties contains the principle of no cure - no pay. In the case, it was revealed that because the contract was a salvage contract that did not contain no cure - no pay, the fixing reward could not be applied to the salvage value. The researcher posits that a salient lesson for Indonesia is that, despite its regulatory framework for salvage contracts, additional formalities (fixing reward) are necessary to ensure the upholding of justice, usefulness, and legal certainty for the parties involved.

3.9 Harmonization of Salvage Law

The researcher argues that the lack of fixing reward in Indonesia will have an impact on the choice of law in the contracts entered by the parties. A simple argument that can be put forward is that the parties do not want the salvage value written in the contract to be too large, or too small. Salvage work is risky, requires expertise, and requires a lot of human resources and equipment, therefore it is

important for a country to create fair arrangements, without having to interfere with the principle of freedom of contract. The aspiration for the salvage of vessels and cargo must be met with a judicious balancing of interests, particularly considering the Indonesian regulatory framework, which stipulates a constrained time frame for the acquisition of salvage activity permits from the pertinent authorities. In this context, it is crucial to acknowledge that global salvage practices have historically embraced the use of fixed reward and open form mechanisms to expedite the process. It is therefore imperative for Indonesia to harmonize its legal framework by aligning the provisions of the contract/LoI and the fixed reward, thereby facilitating the rescue efforts without compromising the interests of the parties involved.

Referring to the best practices in the maritime world, the fixing reward mechanism is regulated in statutory instruments, such as Singapore, Turkey and the United States. However, this does not rule out the possibility of reaffirmation in the contract/LoI/open form, as done by the United States in its open form. It should be underlined that the open form is a template contract, or in the Indonesian legal sense can be compared to a standard agreement, to facilitate the parties in carrying out the stages of contract making and encourage efficiency. In the U.S. Open Form Salvage Agreement, it is stated that payments may be subject to the fixing reward mechanism which is a result of the ratification of the Salvage Convention. Setting the fixing reward outside the contract (the United States ratification of the Salvage Convention), as well as setting the fixing reward mechanism in the contract (by writing the above clause, plus the inclusion of the annex to the Salvage Convention) facilitates the interpretation of the legal implications by the involved parties.

IV. CONCLUSION

The absence of a regulatory framework regarding the fixing reward mechanism has raised several implications for the Indonesian salvage law and the contractual relationship between the parties. First, it is necessary to consider the legal uncertainty of the Letter of Intent as one of the instruments of contract salvage in Indonesia. The authors find that the Letter of Intent has objectives that are relevant to open form, an instrument that has become best practice in the field of maritime law. This objective is intended to accelerate the process of making salvage contracts. The fundamental purpose of the Letter of Intent is to bind the intentions of the parties involved. However, the Authors find that certain cases have established that the principle of no cure - no pay must be incorporated into the contract/LoI for the fixing of reward to be applicable. Secondly, the legal ambiguity surrounding the implementation of contract salvage can result in an unreasonable and inequitable evaluation of the outcomes of the work and efforts undertaken by the salvor in carrying out salvage. In the context of contractual work, the terms of compensation and value are typically delineated and mutually agreed upon by the parties involved. However, in the domain of salvage operations, the inherent uncertainty associated with the process renders the calculation of compensation a challenging endeavor. This is because the value of the salvage goods in question is often subject to fluctuations, rendering the determination of compensation for completed salvage operations a complex task. Thirdly, the potential for various disputes to arise in the domain of transnational salvage due to Indonesia's lack of harmonization of its laws. Notably, Indonesia has not yet ratified the Salvage Convention, a significant impediment to the harmonization of laws and the facilitation of cross-border cooperation in the field of salvage. The absence of regulatory oversight regarding the fixing reward provision may potentially encourage forum shopping, a term used to describe the strategic selection of legal jurisdiction by the parties involved, thereby influencing the legal interpretation of the contract.

The mechanism for fixing rewards has been demonstrated to engender a variety of positive impacts, thereby providing legal certainty for the parties. Achieving legal certainty can be facilitated by

adjusting the payment value and allocating a portion of the salvage value payment, as evidenced by cases such as Archangelos Gabriel v. NRB (China) and Blackwall v. Goliah (United States). The implementation of a fixing reward mechanism in Indonesia is expected to complement the provisions outlined in the LoI, thereby ensuring legal certainty for the parties involved and facilitating the conduct of pre-contractual stages. By adopting the fixing reward provision, Indonesia has directly harmonized maritime law, especially in the field of salvage. Consequently, it is expected that the actors in maritime transportation are easier to implement the provisions of salvage law based on the Indonesian legal system. The Authors suggest that the adoption of the fixing reward provision can serve as a foundational element for the execution of salvage contracts in Indonesia. Indonesia may adopt the fixing rewards mechanism through several way, such as accession (Singapore), or adoption to the domestic law (Turkey).

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