

Enforcement of Criminal Law on Marine Traffic Negligence in Indonesia: Perspectives of Law No. 17/2008

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Sea transportation must be integrated and able to create a safe transportation service provider. It must have high accessibility, integrated services, adequate capacity, be orderly, easily accessible, timely, comfortable, and efficient. This paper analyzes national shipping safety and security standards as a form of legal protection for the users. The study describes the implementation of standards for the regulation of shipping safety and security, and the process of law enforcement against ship accidents for perpetrators and ship owners, based on illegal acts. In this research, providing regulations and enforcing the regulations must be relevant to the conditions in the field. The government has provided regulations on shipping safety and security. The shipowner or ship operator is responsible for following the Regulation of the Minister of Transportation. RI No. 6/2020 concerning the Procedures for Investigation of Ship Accidents, Chapter V Responsibility Due to Ship Accidents, Article 61 Ships, and according to legal principles in Article 1356 of the Civil Code, for legal protection of the passengers using National Shipping services.

KEY WORDS

- ~ Law enforcement
- ~ Public transportation
- ~ Criminal activity
- ~ Marine traffic
- ~ Marine law

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1. INTRODUCTION

The strategic position of the Unitary State of the Republic of Indonesia must be maximally utilized as the basic capital of national development based on the 1945 Constitution of the Republic of Indonesia and Pancasila to embody the safe, peaceful, equitable, and democratic Indonesia and improve the people's welfare. In the framework of implementing national development and embodying the Archipelago Insight, it is necessary to formulate a national transportation system that is effective and efficient (Han et al., 2020). The goal is to support and at the same time increase the mobility of people, drive the dynamics of development, goods and services, create a stable and dynamic national distribution and support regional development (Bellone et al., 2021). In addition, it consolidates community life, nation, and state helps in supporting defense and security and enhances international relations (Mountford & Morales Maqueda, 2021). Transportation is a medium to smoothen the wheels of the economy and strengthen the nation's unity and integrity (Ekinci et al., 2018). The context of enhancing the realization of the Archipelagic Insight, enhancing and supporting the national defense and security further strengthen the relations between nations (Errett et al., 2019).

The importance of transportation is reflected in its implementation, which affects all aspects of the nation's life and the state, and the increasing need for transportation services for mobility of domestic people and goods to and from abroad (Luttenberger & Luttenberger, 2017). Transportation also plays a role as a driver, and a driver of regional growth that has considerable natural resource potential but has not been developed to its full potential, as an effort to equalize and increase development (Cordón-Lagares & García-Ordaz, 2020). To raise the awareness of the importance of the role of transportation, sea transportation as a mode of transportation must be organized into a single national transportation system integrated and able to realize the implementation of balanced transportation services based on the level of need and availability of transportation services that are safe, integrated, easily accessible, orderly, smooth, timely, and comfortable.

In Shipping Law, it is necessary to pay attention to general provisions. Shipping is an integrated system consisting of safety and security, ports, transportation in waters, and protection of the marine environment. Shipping safety and security requirements are related to the maritime environment, transportation in waters, and ports (Akbulaev & Bayramli, 2020). The condition of a ship that is seaworthy must meet the needs of ship safety, crew, loading lanes, loading, welfare of ship crew, health of passengers, and prevention of water pollution from ships (Erdem & Akyuz, 2021). The condition of the ship meets the requirements for the feasibility test of materials, construction, buildings, machinery and electricity, stability, structure, and equipment, including supporting equipment and radio, ship electronics, as evidenced by a certificate after inspection and testing for ship safety (Arici et al., 2020).

Sea transportation, which has national transportation characteristics and reaches all areas through waters needs to develop its potential and increase. The role as a link between regions, both national and international including cross-border is used to support, encourage, and drive national development in improving people's welfare and being the unifier of the Unitary State of the Republic of Indonesia. Considering the critical and strategic role of sea transportation that controls many people's lives, its existence is governed by the state, whose guidance is carried out by the Government (Jiang & Lu, 2020). Therefore, ship safety occupies a central position and becomes very important in shipping (Zhou et al., 2020). The elements of shipping safety include the characteristics of attitudes, values, and activities in fulfilling safety and security requirements related to transportation in ports and waters (Bas et al., 2017). Ignoring safety in shipping tends to increase costs and cause environmental damage such as environmental pollution, decreased production, medical expenses incurred, and inefficient use of energy (Mandić et al., 2021). Weak human resource management causes low shipping safety (competence, working conditions, working hours, and education,) and the management of the fostering process carried out by the Government (Stavroulakis et al., 2021).

According to data released by the KNKT (National Transportation Safety Committee)/NTSC, in the last five years, there have been several ship accidents; namely in 2019, there were 3 ships; in 2018, there were 22 ships; in 2017, there were 25 ships; in 2016, there were 3 ships. Out of 16 ships in 2015, 11 ships had accidents and were inspected by the NTSC. The causes of the ship accidents were various, including accidents due to

sinking, fire, collision, grounding, and explosion. From these data, it is clear that ultimately the accident caused both material and human losses, which undoubtedly had an impact on the society. The purpose of this study is to find out the quality of the national shipping safety and security standards as a form of legal protection for service users or passengers and of the law enforcement process for perpetrators and shipowners who experience ship accidents as a form of legal responsibility (Abramic et al., 2021).

2. METHODOLOGY

The methodology becomes essential in finding the answers to research problems. The approach used is normative juridical. The approach is carried out by examining and interpreting the matters of the theoretical nature concerning the principles, conceptions, doctrines, and legal norms related to the National Shipping Safety and Security, and the regulations. Finally, descriptive-analytical research analyses and concludes the research object and the National Maritime Safety Law Enforcement in Public Transport Processes due to Negligence Crime in Sea Traffic.

This study uses secondary data derived from legal materials that are studied and analyzed, *videlicet*:

Primary legal materials are the legal materials that are authoritative, which means they have authority. They consist of statutory regulations, official records, or minutes of the formation of statutory regulations, such as: The 1945 Constitution, Law No.1/1946 concerning the Criminal Code, Law No. 8/1981 concerning the Criminal Procedure Code, Law No. 17/2008 concerning Shipping, Regulation of the Minister of Transportation No.20/2015 concerning Shipping Safety Standards, Minister of Transportation Regulation No. 37 Jo 119/ 2015, Sea Transportation Passenger Service Standards, Government Regulation No. 9/2019 concerning Ship Accident Inspection, Permenhub No. PM. 6/2020 concerning Ship Accident Inspection Procedures, Instruction of the Minister of Transportation No. Im. 7/2015 concerning the Obligation to Report Ship Accidents, Instruction of the Minister of Transportation No. Im. 5/2017 concerning the Acceleration of Ship Accident Investigation, Kepdirjen of Sea Transportation No. Kp. 734 / Djpl / 2020 concerning the Attributes and Work Equipment of a Ship Accident Investigator.

Secondary legal

Secondary legal Materials are all publications about the law that are not official documents; publications about law include books, legal journals, papers, magazines, and newspapers.

Third legal

Third legal materials provide guidance and explanation for the primary and secondary legal materials in legal dictionaries and Indonesian dictionaries. The techniques in studying and collecting the three legal materials use documentary studies. A documentary study is a study that examines various documents, both those related to the legislation and the existing documents. The analysis technique used is the qualitative normative analysis method. This method is based on primary legal material as positive law and is analyzed qualitatively.

3. RESULT AND DISCUSSION

3.1. National Shipping Safety and Security Standards

A Statutory regulation must have three types of power. A law has juridical power if the formal requirements for the formation of law have been fulfilled. In contrast, a law has the power to be valid sociologically if the law is effective as a rule of thumb in public life and can be implemented (Barthos & Sara, 2019). There are two kinds of strengths of the sociological application of law in society (Hammar, 2019). First, the power theory (*machtstheorie*), the law is valid sociologically if the authorities enforce it. In the theory of

recognition (*rechtsidee*), the law is to be valid sociologically if it is accepted and recognized in society (Rosidah, 2019). Second, the law has the power to be valid philosophically (Onayeva et al., 2018). If the rule of law follows the legal ideals, then the rule of law must fulfill all three elements at once (Hasyim, 2019). The law as a guide for human life or *levensvoorschriften* in society shows what is good and what is not good and provides instructions for what to do and what not to do (Jia & Zhang, 2021). All of this is possible because the law has nature/character in regulating human behavior and has the characteristics of commanding and prohibiting (Zhang et al., 2019).

In the 1945 Constitution Amendment IV Article 28A: the right to live and defend one's living and life, and Article 28D: (1) the right on recognition, guarantee, protection, and legal certainty that is just and equal treatment before the law. Therefore, providing regulations for Safety in Sailing for Passengers is an obligation. Thus, the Government issued Law Number 17/ 2008. Furthermore, Article 276, paragraph 1, states that maintaining and enforcing laws and regulations at sea and coast is carried out.

The Minister of Transportation of the Republic of Indonesia issued several technical regulations responsible for the transportation sector. The Minister of Transportation Regulation Number 15/2015 concerning Shipping Safety Standards includes facilities and/infrastructure, standard operating procedures (SOP), sanctions, environment, and human resources (HR). Violations of shipping safety will be subject to criminal and administrative sanctions in the form of deactivation of personnel from their position or the revocation of the operator's license following the provisions of the legislation. Sea Transportation Service Standards aim to fulfill the type and quality of shipping entitled to sea transportation service users. This is contained in the Regulation of the Minister of Transportation Number 37 and Number 119 /2015. The two regulations are an effort by the Minister of Transportation to meet the Minimum Service Standards (SPM) for users of sea transportation modes (Jain & Luaran, 2020). The issuance of the two ministerial regulations is intended for the implementation of sea transportation. In addition, it is also expected that there will be good compliance from regulators, operators, and users of sea transportation services so that they are safe and comfortable (Zavitsas et al., 2018). The two regulations are the efforts of the Minister of Transportation to fulfill the Minimum Service Standards (SPM) for the users of sea transportation modes. The issuance of the two ministerial regulations is intended for the implementation of sea transportation. In addition, it is also hoped that there will be good compliance with regulators, operators, and users of the sea transportation services to make it safe and comfortable.

SOLAS (Safety of Life at Sea) is one of the international conventions on maritime, which becomes a safety standard that must be applied for merchant ships of a specific size. The early history of the SOLAS Convention was as the response to the sinking accident of the Titanic after hitting an iceberg in 1912, which killed more than 1,500 passengers and the crew, while the second was in 1929, the third in 1948, and the fourth in 1960 (later known as SOLAS Convention 1960).

It is the main task of the IMO (International Maritime Organization) after the organization's formation. It represents a step forward in the modernization of maritime regulations and is in line with the development of shipping industry technology (Zis & Cullinane, 2020). The regulation on shipping safety by the Government has been adopted from the regulations issued by the IMO, namely - the regulations regarding the International Safety Management Code (ISM-Code) and firstly prevailed since July 1, 1998. The safety management system (ISM-Code) must be applied as "mandatory" by the countries that have ratified SOLAS. Its application in Indonesia is realized through the Decree of the Director-General of Sea Transportation Number: PY.67/1/ 9-96 on July 12, 1996. Based on this, the ISM-Code requires commitment from the top management to the executor, both on land and on board. Therefore, the ISM Code can be understood as the International Safety Management Code for Safe Operation of Ships and Pollution Prevention.

3.2. The process of law enforcement as a form of legal responsibility

We still remember the tragedy of KM Sinar Bangun, which sank in Toba Lake, Simalungun, North Sumatra, on June 18, 2018, or still in the atmosphere of the Idul Fitri 1439 Hijriah holiday. Three people were killed, and 178 other passengers were declared missing. Only 21 people survived. The ferry departed from

Simanindo Port, Samosir Island, headed for Tigaras, and after about 1 mile of the voyage, the ship sank, allegedly after hitting a log. The number of passengers cannot be ascertained because the ship departed without the manifest. They searched for the victims, and the ship's hull took days, involving reliable divers and even the Frog Troop Command (Kopaska). However, many victims could not be found. The captain of KM Sinar Bangun and three North Sumatra Transportation Service employees were named as the suspects for the shipwreck.

In this case, there has been a law enforcement process for the negligence of the Transportation Service's captain and employees. They deal with Criminal Law as the form of responsibility for negligence that causes losses, including the Human Soul, the Ship's Safety, Facilities in the waters, Maritime environment. Criminal law is the law that contains orders and prohibitions (Lutzer, 2018). Criminal law is the translation of the Dutch term *strafrecht*, which comes from two words: *Straf* (punishment) and *Recht*, which can be interpreted as a law (Alcaide & Llave, 2020). *Recht* can also mean right, but in the context of *strafrecht*, the word *Recht* more precisely means a law. Therefore, *strafrecht* means the law of punishment (criminal). The word itself has been known for a long time. When we do something wrong, we will accept the strap. The word strap seems to come from *straf*, which means punishment.

The violation of the rules of the criminal law (now referred a crime) is a form of human behavior (Khairil et al., 2021). This attitude is formed by his subjective awareness of the values and norms of the community or group (Jumintono et al., 2018). That is which values and norms are accepted by the individual from the culture where they were born. The adage *actus reus non facit reum nisi mens sit rea*, which describes no crime without error, is in line with the philosophical description of human (criminal) action. It is not easy to mention. In the Digium, there is a psychological complexity combined with the psychological complexity of a human individual. To understand all the teachings about errors in criminal law, the expert invites to jointly remember "the philosophy of the human mind" in the development of these principles of criminal law (Mustafa et al., 2020).

The Criminal Justice System in various countries views crime. However, there are similarities in explaining the main elements of a crime, i.e., the consequences of losses and mistakes stated in *actus reus* and men's *rea* (guilty mind). These two elements are objective and subjective elements, both of which are interrelated, cannot be separated even though they cannot be distinguished in the form of expressions. The two concepts of criminal law are analytical tools for legal experts and criminal law arrangements as well as guidelines for discussing and applying criminal law doctrine (Ambaw & Meher, 2019). The criminal law system has also been universally recognized as the basic building block of criminal liability.

When connected with criminal law, it can be said that criminal law aims to determine the objectivity of positive criminal law. In the theoretical context, the objectivity of positive criminal law can be seen from the substance of positive criminal law, which regulates the prohibited acts (Ousey, 2017). Regarding the prohibited acts, some are *rechtdelicten*, and some are *wetsdelicten*. The teaching of guilt is essential in criminal law because it relates to the quality of the maker's intense crime, which determines whether or not the perpetrator can be convicted. The adage No Penalty Without an Error also translates as *Geen Straf Zonder Schuld*.

Criminal law and jurisprudence define negligence (*culpa*) as "lack of caution" or "lack of care". According to Article 1.1 PP No 9/2019 and Article 1.1 of the Minister of Transportation Regulation No. PM. 6/2020, ship accidents are events caused by external and internal factors of ships that can threaten and endanger human safety, loss of property, damage to ships, and damage to the marine environment. Ship accident investigation and inspection activities are a series of activities to determine the cause of the accident and the supporting factors for the occurrence of a ship accident, such actions may only be carried out by authorized government officials. (Article 1.2 Permenhub No. PM.6/2020). The aim is to investigate the shipwreck to obtain information and preliminary evidence of the cause of the accident. (Article 4, paragraph 1, PP No.9/2019).

Ship accidents are divided into several types. A sinking ship is defined as the loss of buoyancy of the ship resulting in the sinking of part of the ship's hull. Ship fire burns an object on board that affects the ship's general condition and operation due to fire spreading uncontrollably. Collision between 2 or among more ships, with each other/one another, or ships with other movable/immovable objects. Strand touches the bottom of the

ship with the bottom of the water, but the ship still can float on condition that its movement is disturbed, caused by the tides of the water surface.

The Ship Accident Inspection Procedure Based on PP No. 9/2019. Syahbandar (Receiving the Accident Reporting from everyone, Making a Ship Accident Report to the Director-General of Hubla through PUSKODALOPS, Receiving the LKK from the captain/other officers, Carrying out a preliminary examination, reporting the BAPP to the Minister and: a. Mahpel; b. PPNS; c. Police Investigators); HUBLA/KPLP (Receiving the Report from UPT Ditjen Hubla, coordinating with implementing the Preliminary Handling and Inspection of ship accidents); Shipping Court (Receiving the BAPP files from the Syahbandar, Determining the expert panel team, conducting open sessions to the public, Providing the recommendations to the Minister regarding the imposition of administrative sanctions); KNKT (Conducting the safety investigations for ship accidents measuring GT 500 and above, or accidents with a severe category and receiving the public attention and making the safety recommendations).

Law No. 17/2008 concerning Shipping, Article 302, Paragraph (3): The skipper is not seaworthy, resulting in the death of a person, 10 (ten) years in prison, and a fine of 1.5 billion related to safety. Article 303 Paragraph (3): operates a ship that is not seaworthy, resulting in the death of a person, 10 (ten) years in prison, and a fine of 1.5 billion related to safety. Article 306: operates a ship that is not suitable for navigation equipment, 2 (two) years in prison, and a fine of 300 million related to safety. Article 307: operates a ship without a radio, 2 (two) years in prison, and a fine of 300 million for safety. Article 309: The sail captain then ignores terrible weather, 2 (two) years in prison, and a fine of 300 million related to safety. Article 310: operates a ship without competence, 2 (two) years in prison, and a fine of 300 million related to safety. Article 330: The captain knows that his ship is in danger if he does not take precautions and notify other parties, 3 (three) years in prison and a fine of 400 million related to safety.

The ship accidents due to the captain's negligence can have legal, civil, criminal implications. Administrative responsibility. Every unlawful act that harms another person obliges the person because of his mistake to make a loss and then compensates for the loss. This decision is contained in Article 1365 of the Civil Code. It is also strengthened by the Republic of Indonesia Transportation Regulation Number PM 6/2020 concerning Procedures for Inspection of Ship Accidents, Chapter V Liability due to Ship Accidents, Article 61. Ship accidents can be caused by hazards from the operation of ships and perils of the sea. Thus, the responsibility for the accident will be the responsibility of the shipowner or operator. The responsibility referred to shall be carried out for: a. Ship crew and their daily necessities; b. Passengers and their luggage; c. The cargo carried; d. The ship's hull and engine; e. The ship as a means of transport; and f. Second party and third party.

4. CONCLUSION

The government of Indonesia has provided regulations on shipping safety and security. Therefore, the skipper who neglects the safety and security of shipping can also be held accountable by civil law, in this case, regarding the compensation, criminal acts, and administration through the Shipping Court. Furthermore, the shipowner or ship operator is responsible for following the Regulation of the Minister of Transportation. RI No. 6/2020 concerning the Procedures for Inspection of Ship Accidents, Chapter V Responsibility Due to Ship Accidents, Article 61 Ships, and according to legal principles in Article 1356 of the Civil Code, for legal protection for the passengers using National Shipping services.

Implementation of Handling Cases of Sea/Water Accidents in Indonesia. The Criminal Code, consisting of Article 359 of the Criminal Code regarding negligence/negligence that causes another person to die, requires imprisonment for five years for negligence and Article 360 of the Criminal Code regarding negligence/negligence resulting in serious injury, 1-5 years' imprisonment for negligence.

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