

**LEGAL PROTECTION FOR PASSANGER IN THE EVENT OF AN ACCIDENT ON THE SHIP BY REGULATION NUMBER 17 OF 2008 CONCERNING SHIPPING**

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**Abstract**

On the basis of the foregoing, Law No. 17 of 2008 concerning Shipping which is a refinement of Law Number 21 Years 1992, so that the operation of shipping as a system can provide the greatest benefit to all the people, nation and country, cultivate and develop a maritime spirit, by prioritizing public interest, and environmental sustainability, coordination between the center and the regions, as well as state defense and security. The aim of this research is to describe policy issues regarding passanger protection on shipping accident. Based on the explanation that has been given, this study provides the following key conclusions: Legal protection for related ship passengers with the accident divided into two parts, namely the efforts made preventive and repressive measures. Preventive Effort is a preventive measure, it must be done in order to avoid accidents on the ship. Where preventive efforts are readiness is not only done in the readiness of the ship itself, but the readiness of the port is also involved taken into account considering that many factors can lead to accidents both internal factors as well as the external itself, as well as the distance travelled distant ship. This readiness is in the form of preparation documents and equipment on the ship so that it can running optimally. Repressive measures taken by following all directions from the crew and other competent authorities, as well as all of these actions by remaining calm and not panic, it was done with a purpose minimize further and more fatal losses such as loss of life during an accident.

**Keywords:** passanger protection, ship accident

## **INTRODUCTION**

Indonesia is an archipelago which consists of 17,504 islands included in the territory, and also the 2/3 of Indonesian territory is the sea. This condition indicates that Indonesia is a maritime nation. Indonesia as an archipelago needs transportation, especially sea transportation to connect the islands. This is because its strategic position is located on the equator, and besides that, Indonesia's position is between two oceans, namely the Pacific Ocean and the Indian Ocean and between two continents, namely the Asian Continent and the Australian Continent. Indonesia is also a maritime country, where Indonesia's oceans are wider than the land (Aditya Bakti Pramono, 2018).

The condition of Indonesia, it is natural for the government to pay attention to all matters relating to the facilities and infrastructure that support progress in the field of sea transportation itself in order to achieve national development goals as the practice of Pancasila. Transportation in Indonesia has an important role in advancing and smoothing domestic and foreign trade because transportation can facilitate the flow of goods from production areas to passengers so that passenger needs can be met. This can be seen in the development of transportation services in Indonesia, which is starting to show progress, as evidenced by the sign that many industrial companies believe in using transportation services.

The advancement of the transportation sector encourages the development of legal knowledge, both legislation and transportation habits. Whether or not the current shipping law applies to the needs of the community depends on the operation of shipping. Likewise, the development of the customary law of transportation, how much behavior is created as a habit in transportation depends on the implementation of transportation. Therefore transportation has an important and strategic position in the development of an environmentally sound nation, in this case it must be reflected in the mobility needs of all sectors and regions.

Transportation also plays a role as a support, impetus and driving force for regional growth that has the potential but has not yet been developed, in an effort to increase and distribute development and its final results. Sea transportation is also an important mass transportation that cannot be carried out by other types of transportation. For both the transportation of people and goods, this type of transportation is capable of involving up to thousands of passengers and hundreds of thousands of non-cargo goods. It is increasingly important for Indonesia, which is the largest archipelagic country in the world, for economic

equality and the development of the archipelago's socio-culture. However, the safety and security system is an important factor that must be considered and as a basis and benchmarks for decision making in determining the feasibility of a voyage, both in terms of facilities in the form of ships and infrastructure such as navigation systems and the human resources involved in it.

The progress of the transportation sector encourages the development of legal knowledge, both legislation and transportation habits. Whether or not the current shipping law applies to the needs of the community depends on shipping operations. Likewise with the development of customary law of transportation, how much behavior is created as a habit in transportation depends on the implementation of transportation. Therefore, transportation has an important and strategic position in the development of an environmentally sound nation, in this case it must be reflected in the mobility needs of all sectors and regions (Ningrum, Lestari. 2004).

Considering the important and strategic role of sea transportation which dominates the lives of many people, their existence is controlled by a state that development is carried out by the Government. In the course of time, Law Number 21 of 1992 concerning Shipping adjustments need to be made because there have been various changes paradigms and strategic environment, both in the constitutional system Indonesia, such as the implementation of regional autonomy or progress in the field of science and technology. In addition, the meaning of the term "shipping" as a system has changed and consists of transportation in waters, ports, safety and security shipping, as well as the protection of the maritime environment, which in turn requires adjustment to the needs and developments of the times as well as science and technology so that the shipping world can play a role in international world (Agung, Paulus H. 2008).

On the basis of the foregoing, Law No. 17 of 2008 concerning Shipping which is a refinement of Law Number 21 Years 1992, so that the operation of shipping as a system can provide the greatest benefit to all the people, nation and country, cultivate and develop a maritime spirit, by prioritizing public interest, and environmental sustainability, coordination between the center and the regions, as well as state defense and security (Agung, Paulus H. 2008).

The level of traffic accidents and sea, river and lake transportation accidents in Indonesia is still quite high. This is due to the lack of feasibility of the transportation used as well as the human factor who often ignores existing safety standards. There is minimal

socialization in safety awareness in transportation. The higher intensity and rainfall and high water flows also disrupt ship shipping activities due to bad weather. From weather conditions that are sometimes not possible it can also hamper shipping activities and increase the risk of ship accidents (Purwosutjipto . 2003).

As stated in Article 6 Paragraph (32) of Act No. 17 of 2008 concerning Shipping, which reads: "The safety and security of shipping is a condition where safety and security requirements are met with regard to transportation in waters, ports, and the maritime environment". coordination between central and regional as well as agencies, sectors and between related elements as well as State defense and security. As stated in Article 6 Paragraph (32) of Act No. 17 of 2008 concerning Shipping, which reads: "The safety and security of shipping is a condition where safety and security requirements are met with regard to transportation in waters, ports, and the maritime environment". coordination between central and regional as well as agencies, sectors and between related elements as well as State defense and security. As stated in Article 6 Paragraph (32) of Act No. 17 of 2008 concerning Shipping, which reads: "The safety and security of shipping is a condition where safety and security requirements are met with regard to transportation in waters, ports, and the maritime environment" (Agung, Paulus H. 2008).

Various problems regarding shipping are the background for the author to conduct research and studies related to the preparation of this research. Crucial things that are interesting to study with the hope that the research results can be used or at least as a contribution of thought for the government or related parties in making policies or decisions related to safe shipping or sea transportation. In addition to policy issues regarding passenger protection on shipping accident.

### **Research Methods**

The research method used in this research is normative juridical research, because this research is derived from positive law by looking at its relationship in the application in society, then the data obtained is analyzed qualitatively (Soerjono Soekanto, 2012). Normative qualitative, namely data obtained after being systematically compiled and then analyzed qualitatively and normatively in the form of a description, so that conclusions can be drawn so that clarity can be achieved regarding the problem to be studied. The results of library research will be used to analyze the data, then the data are analyzed qualitatively and normatively to answer the problems in this study.

### **Discussion**

This seaworthiness is a form of existence protection from ships that are about to sail, this too in accordance with international provisions in this case through the United Nations Convention on the Carriage of Goods by Sea in 1978 or as it is better known with “The Hague-Visby Rules / Hamburg Rules” which provides an explanation of seaworthiness as follows:

“The bearer must be bound before and the beginning of the journey to do due diligence to: a. make seaworthy ships, b. right man, provide and equip the ship, c. make handle, refrigerated and refrigerated chambers, and all other parts from the ship where the goods are transported in a healthy and safe condition for their reception, transport and preservation.”

The above rules are the seaworthiness of a ship (ship seaworthy) which can be divided into, preparation proper vessel, suitable crew (crew seaworthy), and the capacity space is also seaworthy for third parties, namely the insurer cannot accept coverage without any documentary evidence of the marine life. Seaworthiness is also useful regarding with the business cooperation that will be carried out with the consumer, this is the commercial shipping company must also fulfill this in order to maintain business.

Efforts in legal protection of passengers ship related to accident. The main thing besides the existence of rules that must be obeyed internationally, there are also national regulations that have become a special standard in conducting voyages in Indonesia. The main legal protection in terms of shipping are contained in Article 94 letter d of the Shipping Law which stipulates that: obligations of the shipping operator which can be in the form of: a company that runs a good transportation service people and/or goods, namely participating in maintaining safety, security and order at the facility operated port.

### **Legal protection of ship passengers in the event of an accident**

Legal protection in Article 94 d of the Shipping Law does not stop there, but continues in Article 180 paragraph (1) PP Water Transportation which regulates obligations water transportation companies have responsibility for safety and security passengers and/or goods transported. Rule above has not been explained explicitly about how is the legal protection for safety passengers on board. However, there are still rules below which explains more how the implementation of passenger safety on ships can carried out. Through the Regulation of the

Minister of Transportation Republic of Indonesia Number 37 of 2015 concerning Sea Transport Passenger Service Standards. In definition of service standards on transportation sea, he explained that the benchmark used as guidelines for service delivery and assessment reference service quality as an obligation and a promise organizers to the community in order to quality service, fast, easy, affordable and measurable.

Legal protection for the passengers of this ship divided into two passenger service standards, namely the standard of passenger transportation services at the terminal and standard of sea transportation passenger service above boat. Where in the attachment of Article 5 paragraph (2) in Regulation of the Minister of Passenger Service Standards Sea Transportation, which is explained about information and services regarding safety and health. Furthermore, from the explanation of these regulations, which is the benchmark in the standard of protection to passenger safety is the availability of easy-to-use instructions and safety services seen and understood, where it is explained that the standard consists of, the availability of fire extinguishers, instructions for evacuation routes and there is a gathering point evacuation and the last is the existence of important numbers who can be contacted in case of an emergency (Agung, Paulus H. 2008).

Protection carried out by company generally divided into two parts namely legal protection efforts carried out preventive and legal protection measures taken repressively. Preventive efforts are the first to do and is very important in playing a role in preventing unwanted circumstances such as, accidents etc.

These preventive efforts must be carried out in positive efforts, so as to create a condition regarding safety be a shared responsibility. Mainly seen from shipping company management system where. In general, these implementation instructions have been regulated in the International Safe Management Code (ISM Code). International conventions can be proven as from the results of interviews with informants, which is included in ISO 140001 where is the scope of safety management (Djohan, A. Tunggal. 2008). These include, among other things: policies for safety and protection of ships and the environment, authority and responsibility of the company, authorized and responsibilities of the captain during the voyage, resources from shipping service companies, ready whether or not the ship is in an emergency situation, maintenance of ships and ship equipment, documentation, certification, verification and supervision against the ship.

**Passenger Barrier Factors If Ship Accident Happened**

Discussing barriers to protection laws related to accidents on board then, the obstacle comes from this law enforcement party alone. The law enforcers in question can be from the the crew of the ship carrying out the voyage up to officers who are directly related to this shipping activity. Obstacles come from the officers who work with a poor work ethic and can also comes from the lack of coordination from the parties such as BMG, navy, water police, customs, SAR team and other related parties. So that when If an accident occurs, evaluation will continue to be carried out properly can minimize the occurrence of accidents even arrived at the destination of the voyage that is zero accident (D.A Lesse. 2014).

Matters concerning the entire crew of the ship, to immediately conduct seafarer resource training periodically, and carried out seriously and earnestly and fully responsible for creation of expertise and skills based on certificate held by the captain, officer of the ship as well as the crew of the ship. The next obstacle comes from the facility factor and facilities. These facilities or facilities include: includes educated human resources and skilled, good organization, have equipment complete, as well as sufficient finances. The facilities exists in Indonesia now, it must be recognized because it is still very far compared to the country advanced that has complete facilities and technology sophisticated in carrying out the enforcement process law. Facilities or facilities are a very important role important as part of the enforcement factor

law. The role of the facility or facility must be given as a real and clear step so that enforcement can run well and correctly. Matters relating to facilities and amenities this then the main obstacle comes from the main mode This transportation is the ship itself. Better soon re-registration and national audit of Indonesian ships that are still operating, and granting soft loans to entrepreneurs who want to move their business in the field of commerce through this voyage.

The last inhibiting factor is the cultural factor from the community, it is still often found that culture that does not reflect positive things can still be found. This is of course very dangerous when it comes resulted in an accident on the ship. Negative culture that can be harmful to ship as disclosed at the time of interview is smoking everywhere. Habit Indonesian smoking is very common, this is Of course it is dangerous if the passenger smokes in any place for the rest of the cigarettes or Existing cigarette butts are disposed of in areas where flammable and cause a fire on the ship. Of course, this is very detrimental to all parties

involved are on the ship, so there is a need for facilities specifically for smokers to be able to smoke inside ship safely

### **Conclusion**

Based on the explanation that has been given, this study provides the following key conclusions: Legal protection for related ship passengers with the accident divided into two parts, namely the efforts made preventive and repressive measures. Preventive Effort is a preventive measure, it must be done in order to avoid accidents on the ship. Where preventive efforts are readiness is not only done in the readiness of the ship itself, but the readiness of the port is also involved taken into account considering that many factors can lead to accidents both internal factors as well as the external itself, as well as the distance travelled distant ship. This readiness is in the form of preparation documents and equipment on the ship so that it can running optimally. Repressive measures taken by following all directions from the crew and other competent authorities, as well as all of these actions by remaining calm and not panic, it was done with a purpose minimize further and more fatal losses such as loss of life during an accident. Continuous repressive efforts to follow-up carried out by shipwreck investigators such as KNKT for further evaluation on the incident so that there is no accident sustainable in the future.

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