

Conference Paper

The Court of Shipping System For Ship Accident

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Abstract

Indonesia, which is known as an archipelago, has a sea area two times larger than its land area. This renders shipping a vital factor in for national unity, defense and security, politics, social, culture, and the economic and trade sectors. However, until now the management, empowerment and utilization of waters by the state have not been optimal for the welfare of the people. The Shipping Court is an administrative quasi-judicial body (Quasi Rechtspraak) with the task of adjudicating cases or violations of shipping safety submitted by the Directorate General of Sea Transportation. The Shipping Court is only entitled to issue sanctions that are administrative in nature and in the form of provisions (beschikking), therefore the authority of the Shipping Court only applies to certain parties (skippers, ship crews, ship entrepreneurs and parties involved in sea shipping). However, a decision issued by the Shipping Court as an administrative moot court can be used as initial evidence for an investigator if an indication of a criminal act is found.

Keywords: Court System; Shipping Court; Ship.

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Published: 12 January 2021

Publishing services provided by
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Selection and Peer-review under the responsibility of the IWPOSPA Conference Committee.

1. Introduction

Indonesia, which is known as an archipelago, has a sea area (two) times larger than its land area. This causes the importance of the meaning of sea relations as a means of transportation between islands in realizing unity, integrity, defense and security, politics, social, culture, especially in the economic and trade sectors. However, until now the management, empowerment and utilization of waters including the sea by the state have not been optimal for the welfare of the people.

Sea transportation is one of the means of making relations in a larger scope, namely the international level for the benefit of our country's exports and imports by using ships. Ships used in international relations can be ships belonging to Indonesian shipping companies, but it does not rule out foreign vessels being chartered for this (Djoko Triyanto, *Bekerja Di Kapal, Mandar Maju, Bandung*, p. 2).

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Before the recognition of modern ships, which were widely used at this time, the ancestors of the Indonesian nation, which was known as a reliable seafaring nation, used many traditional ships in shipping and connecting between islands or with neighboring countries. One of the traditional ships that is well known to foreign countries is the *Pinisi* ship which is the proud ship of the Bugis (Makassar) community. Even the existence of *Pinisi* boats/boats is highly recognized by other countries as one of the best traditional boats in the world (Baharudin Lopa, (2002). *Hukum Laut, Pelayaran dan Perniagaan*, Alumni, Bandung. p. 6).

In the Indonesian Commercial Code, it is stated that only ships that have a gross weight of more than 300 m and are driven by machines can be used for transportation purposes, both passengers and goods. This is slightly different from the reality. Even today, *Pinisi* ships that are not driven by machines are also used as a means of transportation, especially by the Bugis in South Sulawesi.

In general, ships can be divided into two, namely:

1. Ordinary ship, which is any means of transportation used or intended for sea transportation.
2. Commercial Ship, which is any ship that is driven mechanically and is used to transport goods and/or passengers to the public with a fee (Soekardono, *Hukum Perkapalan Indonesia*, Dian Rakyat, Jakarta, p. 3).

But in its development, modern commercial or trade ships are divided into various types, depending on what purpose the ship was made. In general, these vessels can be divided into 4 (four) main categories:

1. Ships to carry passengers
2. Ships for transporting goods
3. Ships for fishing business
4. Ships for special purposes (which do not fall into any of the three categories above) (Frederik I. Hermawan, *Perkembangan Kegiatan Maritim Sebuah Pengantar Studi Ilmu Maritim*, Alumni, Bandung, p. 4).

In taking a trip, apart from meeting the ship's eligibility, a ship must have equipment or equipment, including the ship's driver or known as the captain, ship's officers, and also some of the ship's crew (klasi), where the three parties are required to support each other and work. the same so that the shipping process can run well.

The importance of the transportation and transportation factors at this time, so that it is stated in Act No. 21 of 1992 concerning Shipping, which states (Billy, W. (2019). Analisis Penyebab Kandasnya Mv. Maximus 999 Di Alur Pelayaran Sungai Musi (Doctoral Dissertation, Politeknik Ilmu Pelayaran Semarang)):

“Sailing as one of the modes of transportation is carried out with the aim of smoothing the flow of people and/or goods moving through waters by prioritizing and protecting the national court in order to support, mobilize and encourage the achievement of national development goals, strengthen the realization of archipelago insights and strengthen national resilience”

In addition, Act No. 21 of 1992 on shipping also classifies the types of shipping. Shipping in Indonesia is grouped into:

1. Domestic shipping
2. Overseas shipping
3. People's shipping
4. River, Lake and Crossing Cruises
5. Shipping for disabled transport
6. Pioneer shipping
7. Shipping for special and dangerous goods

The more important and advanced sea shipping services and the modernity of the ships used, the greater the role of humans being controlled by fully automated equipment. Therefore, on the other hand, the government's responsibility has increased to create provisions and ensure recognition and appreciation of the need for shipping safety. In this case, it is up to water management for its implementation. In this era of technological and communication advances, ships that are widely used as means of transportation have also been touched by technology a lot. There are no more ships carrying passengers or goods that are not equipped with sophisticated navigation facilities. This is very reasonable considering we need a comfort and especially security in sailing.

Shipping safety is usually guaranteed by the quality of the ship which is well maintained accompanied by the competence of the entire crew. To become part of the ship's equipment, the captain, ship's officer or class officer must meet certain requirements, such as education, health and other requirements, including experience and hours at

sea. (Djoko Triyanto, loc cit). So far, there have been many ship accidents caused by violating one of the conditions above (human error), or due to natural factors. Especially if we look at the geographical and territorial conditions of the waters in Indonesia. High waves and whirlpools in the middle of the sea are not a rare thing in Indonesian waters, even in some areas, they occur continuously based on a certain period of time. Therefore, apart from these favorable geographical conditions, it cannot cover the real natural conditions of the Indonesian nature which hold many mysteries and natural phenomena. For this reason, it takes a crew who is capable of navigating the voyage in Indonesian territory.

The combination of human error and natural factors is one of the biggest causes of ship accidents, especially in Indonesian waters. One example is the accident that befell KM Senopati Nusantara. In this case, even though the accident occurred in bad weather conditions, which occurred amidst stormy conditions and high waves, there is an assumption that the accident was caused by an error in the management of the ship's mode and an error from the ship's captain who misread the situation.. In addition, KM Senopati Nusantara is also suspected of having very inadequate safety equipment/facilities to be implemented in ships with a capacity of more than 500 people. (Setiono, B. A., & Mudiyanto, M. (2010). Pengaruh Safety Equipment Terhadap Keselamatan Berlayar).

Even in the trial held by the Shipping Court, several parties were found guilty of this accident, especially the skipper of KM Senopati Nusantara, Wiratno Tjendanawasih. However, this is not strong enough to encourage the police to carry out further investigations into this incident, even as if they think that this problem has been resolved by paying compensation to the victim or to the victim's family. Apart from the cases above, there are still many other cases that are similar to the case that befell KM Senopati Nusantara, however, the resolution steps taken have not been able to satisfy the victim. Because in general, many marine ship accidents are considered to be a disaster caused by natural factors, without taking into account human error factors.

2. Research Methods

This type of research is a qualitative method. According to stating that qualitative research methods are the most appropriate type of research method in capturing human perceptions only with direct contact and an open mind and through inductive processes and symbolic interactions, humans can recognize and understand something.

(Semiawan, C. R. (2010). *Metode Penelitian Kualitatif: Jenis, Karakteristik dan Keunggulannya* (Arita L (ed.)). Grasindo). The data collection technique used in this research is participatory observation with an exploratory step, namely doing one of the qualitative data collection techniques that is recommended to obtain descriptive data. (Gunawan, I. (2017). *Metode Penelitian Kualitatif*. In Bumi Aksara (5th ed.)). Sources of data used are primary data in the form of observations and secondary data in the form of data collected, processed and presented by other parties in the form of books and previous research results.

3. Results and Discussion

3.1. Overview of Shipping Courts and Criminal Liability in Shipping Ship Accidents

The growth of the transportation system in Indonesia is rapid and promising, although the supporting facilities and infrastructure of the transportation system tend to undergo a very slow change. This is due to the high demands on the importance of transportation in Indonesia, especially as a means of supporting development.

Indonesia is an archipelagic country, which when seen in its form consists of water areas with thousands of islands while the exit is an archipelago located between the Asian Continent in the North and the Australian Continent in the South and the Indonesian Ocean in the West and the Pacific Ocean in the East. A geographical condition that is very strategic and very profitable when viewed from several aspects, including trade.

The natural condition of Indonesia, which consists of thousands of islands, has made Indonesia known from ancient times as a maritime country that has a marine fleet, both as a war fleet and a fairly strong commercial or trading fleet. We can find this in the history of the archipelago kingdoms that have existed and are generally located on the beach, such as the Sriwijaya kingdom and the Majapahit kingdom at the beginning of its establishment. The glory of the kingdoms was made possible because of the strong naval fleet. A strong marine fleet, guarantees a large trading fleet.

The geographic location of Indonesia can be said to have a geographical position in the middle of the world's cross-traffic routes. Where with this strategic position, in terms of welfare in the political, economic and socio-cultural fields, especially in the marine system, it is very beneficial to the interests of the nation. However, the Indonesian

government has not made good use of what could have been a huge advantage for Indonesia.

Security in Indonesian territorial waters is not guaranteed by the authorities, so that crime at sea is very high. Even Indonesian waters are also known as pirate nests, resembling the Caribbean waters of the XVIII and XIX centuries. This of course makes many foreign merchant ships rethink, and even tend to be reluctant to stop in Indonesian territory (Baharudin Lopa, Op. cit, p. 9).

In the black's law dictionary, it is stated that:

“Maritime law is an anglo-saxon legal system covering a very broad substance, namely legal instruments consisting of legal principles issued by entrepreneurs, court decisions and also customs in practice regarding the shipping/transportation of goods and people, maritime affairs, ports and all other matters. related to shipping.”

As the largest archipelagic country in the world, it is time for us to place a maritime-based national development as gratitude to the Creator for the gift of the Homeland in the form of an archipelago with 2/3 of its territory being the sea and in a cross position. The development that occurs in Indonesia, like other major countries in the world, starts from the coastal areas. The economic wheel moves from the sea, because the sea is a cheap means of transportation and can easily reach remote areas. For this reason, a port is needed as a means of supporting development, so that all regions can feel the impact of development.

Initially, there were only a few ports in Indonesia. These ports are all fairly busy trading ports. These ports include Malacca Port, Sunda Kelapa Harbor, Makassar Port and several others. Meanwhile, as a link between islands, large ports specifically used for this have not been made. So that only using a makeshift port and only small ships that can reach it.

The term originally used was port for shipping in Indonesia, but in its development it was standardized as a port as a translation from the English “port”. Bandar is ports or rivers that are used as stopovers or berths, crabs on loading bridges and on loading bridges, docks and tunnels and other places for ships, along with sea areas intended for shelter for ships related to its cargo or other matters, cannot be included within the boundaries of the usual transit area (Andi Hamzah, Territorial Sea and Indonesian Waters (Association of Ordinances, Other Laws and Regulations), Akademika Pressindo, Jakarta, 1984, p. 48).

When viewed from Act No. 21 of 1992 concerning Shipping, it states that:

“Port is a place consisting of land and waters around it with certain boundaries as a place for government activities and economic activities that are used as a place for ships to dock, dock, board and/or unload goods, equipped with facilities and/or shipping and port supporting activities as well as a place for transferring intra and between modes of transportation.”

Apart from the port, one of the important factors in shipping is ships. Because all shipping voyages, both the transportation of goods and passengers, definitely need a ship as their support. Apart from having a larger load capacity compared to traditional boats, ships also have much better equipment and equipment than traditional boats. So that the safety and comfort of the cruise is more guaranteed.

According to Article 309 of the Commercial Code, it is stated that:

“Ships are all boats, under any name. Unless otherwise stipulated or agreed, this ship is deemed to include all its equipment. Meanwhile, what is meant by ship equipment is all objects which are not a part of the ship itself, but which are intended for permanent use by the ship.”

In working relations in the field of sea transportation, we recognize that there are 3 (three) groups of people, namely: ship entrepreneurs or shipping companies, skippers and ship crews, either as ship officers or classmates. Everyone who is involved in working on the ship must cooperate properly so that the purpose of the voyage is fulfilled. The three parties involved are generally bound by a certain agreement, and must have certain permits to be able to cooperate in a shipping business.

This of course is intended so that each party can work responsibly, in accordance with what has been stated in the permit or agreement. So that if there is a problem in shipping caused by human error, it will be immediately known and anticipated, so as not to cause a bigger problem.

Regardless of the skills of the entire crew in taking a voyage, the risk of a ship accident at sea remains. So that it requires good and strict supervision of the transportation system, especially water transportation. Responsibility for the sinking of a ship or the occurrence of other ship accidents requires handling through statutory regulations or institutions that are somewhat more special when compared to land transportation accidents. The competent institution to handle Indonesian ship or shipping accidents is the Shipping Court.

According to Muchsan, that an agency or institution to be called a judiciary must meet the requirements (Muchsan. (2014). Hukum Perkapalan Indonesia. Dian Rakyat. Jakarta. p. 23):

1. The existence of an abstract legal rule that binds general, which can be applied to a problem.
2. There is a concrete legal dispute.
3. There are at least two parties.
4. There is a judicial apparatus which has the authority to decide disputes.

Based on the description above, the Shipping Court does indeed fulfill the requirements as a judicial institution. The Shipping Court is an administrative moot court body (Quasi rechtspraak) within the Ministry of Transportation and is directly responsible to the Minister of Transportation. Shipping Court examination can be used by a person or civil legal entity who is not satisfied with the decision of the State Administration Agency or Official (beschikking), in this case the condition or condition in the shipping sector. When an accident has occurred, it is the duty of the shipping court to investigate and decide what happened, and determine what caused the accident. In addition, if possible, the Shipping Court can also force the ship company to pay compensation to the victim.

If this is related to Act No. 8 of 1981 concerning Criminal Procedure Law, the decision by the Shipping Court is a valid evidence. Because it can be included in the category of evidence, namely documentary evidence (Article 184 KUHAP), so it can be used in court. In a ship accident, if in the investigation it is found that there is an alleged negligence or error of a procedural/administrative nature regarding the licensing of ships and other administration, then the party that can be held accountable is the ship owner or shipping company (vicarious liability), for which a party is held accountable. for an offense that was not directly committed by the defendant.

The responsibility of the captain and the carrier for the ship accident occurred only after a verdict from the Shipping Court stated that the crew was guilty of causing a ship accident at sea. In shipping activities, if a ship accident occurs, the stage that must be carried out is the initial inspection. If the documents in the initial examination have met the requirements to be continued, the examination will be entered at the advanced examination stage. However, before entering the stages, it will be explained about the legal basis for the establishment of the Shipping Court in Indonesia.

3.2. Legal Basis for the Establishment of the Shipping Court

In the KUHD, the Shipping Court is regulated in article 373a KUHD, as a judicial institution that has the authority to examine and decide cases arising because a skipper has

committed an error against a ship, cargo or passengers (Article 373a paragraph (1) KUHD (Article 373a paragraph (2): “A captain who has committed something wrong against a cargo ship or passengers, even by a decision of the Sailing Court, for a certain time, which does not exceed two years, can be dismissed and his power to sail as a captain in a ship. Indonesia.” See Subekti & Tjitrosudibio. (2006). *Kitab Undang-undang Hukum Dagang*. Jakarta: Pradnya Paramita. p. 112)). Article 373a does not regulate the organization of the Shipping Court in question, its powers, rights and obligations, but only mentions a little about the authority of the Shipping Court to examine and decide a case of a skipper who has committed an error or gross negligence of the ship, cargo or passenger (Article 342 paragraph (2) KUHD).

In Act No. 17 of 2008 concerning Shipping, the Shipping Court is a panel of experts who are under and responsible to the Minister whose task is to carry out further inspection of ship accidents (Indonesia, Shipping Law, Act No. 17 of 2008, LN No. 64 of 2008, TLN No. 4849, Ps. 1 number 58, p. 22). This law does not explicitly regulate the Shipping Court in its articles. Article 251 only mentions the function of the Shipping Court to carry out further investigation of ship accidents and to enforce the code of ethics for the profession and competence of the master.

The Shipping Court institution is affirmed as a pure government institution and not a judicial institution as stipulated in the Basic Law on Judicial Powers. As stated in Article 251 of Act No. 17 of 2008 concerning Shipping, the Court of Shipping is the institution appointed to carry out further examinations of ship accidents. Examination is carried out to determine the causes of ship accidents and/or to determine whether or not there is an error or negligence in the application of maritime professional standards carried out by the master or ship leader and/or ship officer in connection with the occurrence of ship accidents. The results of the inspection will then be used as a guide for the steps needed to prevent ship accidents with the same accident causes. In addition, examination is intended as a form of guidance and supervision for maritime professional personnel (Prof. Dr. Hj. Etty R. Agoes, SH, LL.M. *Final Report Analysis Team Evaluation of Legislation concerning the Jurisdiction and Competence of the Shipping Court*. (Jakarta: National Legal Development Agency, Ministry of Law and Human Rights, 2005). p. 20).

In carrying out its duties, the Shipping Court is based on several provisions, namely:

1. Presidential Decree No. 28 of 1971 concerning Composition, Membership of the Shipping Court.

2. Decree of the Minister of Transportation No. PM./3/4Phb-74 dated 6 August 1974 concerning the Arrangement of Working Procedures for Relationships between the Ministry of Transportation and the Shipping Court.
3. Decree of the Minister of Transportation No. PM.5 // Phb-74 dated 6 August 1974 concerning the Position, Duties, Functions and Organizational Structure of the Secretariat of the Shipping Court.
4. Decree of the Minister of Transportation No. KM.57 // 05/Phb-78 concerning the Organizational Structure and Work Procedure of the Registrar of the Shipping Court.
5. Presidential Decree No. 32 of 1984 concerning the Membership Composition of the Shipping Court.
6. Government Regulation No. 1 of 1998 concerning Ship Accident Inspection.
7. Decree of the Minister of Transportation No. 15 of 1999 concerning the Organizational Structure and Work Procedures of the Shipping Court.
8. Regulation of the Minister of Transportation No. KM 55 of 2006 concerning Vessel Inspection Procedures.

3.3. Position, Role and Function of the Shipping Court

Shipping accident reports are often dominated by technical problems, such as ship sinking and ship collisions. This occurs as a result of unreliable operating activities. On the ships, the safety equipment is not maintained so that according to research generally three out of four safety devices are not functioning. This condition of the ship is especially for ships that serve passenger and ferry shipping. Meanwhile, handling of ship accident incidents is still administrative and documentative which does not solve the root problems of shipping safety.

The Shipping Court is a government institution that is under and responsible to the Minister of Transportation. Although structurally, the Shipping Court is under the Director General of Sea Transportation, the Shipping Court is directly responsible to the Minister of Transportation. The main task of the Shipping Court is to carry out further investigation of ship accidents.

The Shipping Court has a function to carry out research on the causes of ship accident research whether or not there are errors and/or negligence in determining professional standards. In addition to imposing administrative sanctions in the form of warnings

and/or temporary revocation of Seafarers' Expertise Certificates. All of the duties and functions of the Shipping Court are aimed at realizing law enforcement in the field of shipping safety (Shipping Court, Material of Recruitment Socialization of Shipping Court Members, (Jakarta: Shipping Court, 2009), p. 3).

3.4. Jurisdiction of the Shipping Court

In connection with further investigation of ship accidents, the Shipping Court only provides administrative sanctions which can be in the form of a written warning, temporary suspension of the certificate of the guilty party, after going through a trial process before the Court, including procedures for proof and error. If we look at the regulations that underlie the Shipping Court, it is clear that the Shipping Court is currently not a judicial body and its position is not within the general court.

Thus, in fact, the Shipping Court does not have jurisdiction to decide cases related to civil aspects (such as carrier responsibility, compensation or economic compensation) or criminal aspects, even if they are related to ship accidents. This is because these problems are the jurisdiction of the general courts. Therefore, the jurisdiction and competence of the Maritime Court cannot be compared with a maritime judicial institution or what is commonly referred to as the Maritime Court. (The Maritime Court or Admiralty Court, which is located in several countries such as the UK and the United States, has a very broad jurisdiction, namely "admiralty courts, also known as maritime courts, are courts exercising jurisdiction over all maritime contracts, torts, injuries and offenses..." Prof. Dr. Hj. Etty R. Agoes, SH, LL.M. Final Report Analysis Team Evaluation of Legislation concerning the Jurisdiction and Competence of the Shipping Court. (Jakarta: National Law Development Agency, Ministry of Law and Human Rights, 2005), p. 37). If seen, even though the maritime Court has the same object of jurisdiction, namely relating to ship accidents, however, its authority is indeed much more complete. (Ibid. p. 39).

This maritime judiciary institution needs to have jurisdiction that covers all legal aspects arising from shipping activities, but not limited to matters of an administrative nature of the maritime profession and technical of shipping but can also handle civil, economic, criminal, environmental and administrative issues. The establishment of this maritime justice institution is considered very urgent because currently the world of justice in Indonesia is undergoing a reform process, especially with regard to improving the performance and management of existing judicial institutions.

3.5. Procedures for Advanced Examination of Ship Accidents

Examination according to Article 221 Act No. 17 of 2008 concerning Shipping, inspection of ship accidents consists of two things, namely:

1. Preliminary inspection of ship accidents by an official appointed by the Minister, in this case can be carried out by the Harbormaster or a designated government official. This examination is intended to seek initial information or evidence of a ship accident.
2. The follow-up examination is carried out based on the results of the evaluation by the relevant official, namely that based on the preliminary examination there are allegations of errors or negligence in the application of the maritime profession by the captain or ship leader and/or ship officers regarding the accident. In this case a further examination is carried out by the Shipping Court (Ibid. p. 21).

According to Government Regulation no. 1 of 1998 concerning Ship Accident Inspection which is the implementing regulation of Article 218 of Act No. 17/2008. This regulation apart from being an attribution regulation of Act No. 17 of 2008 concerning Shipping, is also an effort to update the existing provisions which are separated in several regulations, namely:

1. The 1935 Ships Ordinance;
2. S. 1947 - 66 regarding changes/improvements to the duties and authority of the examination in the trial and the defense/attorney involved and re-examination;
3. S. 1949 - 103 concerning changes in notification permits for the Chairman, Members and Secretary of the Raad voor de Scheepvaart who will go out of town;
4. Presidential Decree No. 28 of 1971 concerning Changes in the Membership Composition of the Shipping Court which was later amended again by Presidential Decree No. 32 of 1984 concerning the Membership Composition of the Shipping Court;
5. Minister of Transportation Decree No. PM 3/U/PHB-74, dated August 6, 1974, which regulates the Working Procedures and Relationships between the Ministry of Transportation and the Shipping Court;
6. Minister of Transportation Decree No. PM 57/U/PHB-74, dated 6 August 1974 which regulates the Position of Sailing and the Secretariat of the Shipping Court which

was revised again by Decree of the Minister of Transportation No. 57/OT/PHB-78, dated March 8, 1978;

7. Minister of Transportation Decree No. KM 109/U/PHB-82 regarding General Guidelines for Harbormaster (Ibid. p. 22).

Government Regulation No. 1 of 199b consists of 7 chapters and 60 articles. According to this implementing regulation, ship accidents include sinking ships, burning ships, colliding ships, ship accidents that threaten human lives and loss of property and run aground. The scope of inspection for ship accidents according to this regulation is all ship accidents that occur in Indonesian territorial waters and ship accidents with Indonesian flag that occur outside Indonesian territorial waters.

Ship accidents examined according to Article 2 PP No. 1 of 1998 is a ship accident as referred to in Article 245 of Act No. 17/2008. Meanwhile, the provisions for inspection of ship accidents that occur in Indonesian waters are an effort to respond to the number of ships with foreign flags that are in Indonesian waters. Due to the large number of ships with foreign flags entering the territory of Indonesia, the potential for ship accidents in this region is likely to increase. Based on these considerations, it is deemed necessary to apply provisions for ship accident inspection to the traffic of vessels entering or currently in Indonesian waters, even if the ships having the accident have foreign flags.

Ship accident inspection includes preliminary inspection and follow-up inspection. The provisions are the same as those concerning the inspection of ships in the Ordinance *Raad voor de Scheepvaart* S. 1934 No. 215. Article 4 PP. 1 of 1998 states that: "Every person on board a ship who knows that a ship accident has occurred within their limits is obliged to report the ship accident to the nearest port harbormaster or the nearest representative of the Republic of Indonesia.

In Article 5 PP. 1 of 1998 also states that the captain or ship leader (a) the ship has a ship accident; (b) causing another ship to have a ship accident; (c) knowing that another ship had a ship accident; and (d) bringing the crew or passengers from a ship that has experienced a ship accident, is obliged to report any ship accidents to the nearest harbormaster and also to the nearest representative of the Government of the Republic of Indonesia if the accident occurs outside Indonesian territorial waters.

On the basis of the ship accident report, the official who has the authority to conduct preliminary inspection of ship accidents is the harbormaster and/or government official appointed by the Minister of Transportation (Article 221 paragraph (1): "The preliminary examination of accidents on Indonesian flagged ships in Indonesian territorial waters is carried out by the harbormaster or appointed government official." Indonesia, Shipping

Law, Act No. 17 of 2008, LN No. 64 of 2008, TLN No. 4849, p. 110). The results of the preliminary examination are stated in the Minutes of the Preliminary Examination which are submitted in writing to the Minister of Transportation attached with the conclusions of the results of the preliminary examination, namely containing an opinion regarding the causes of the accident.

If the Minister is of the opinion that there is an allegation of error or negligence in applying the standards of the maritime profession by the captain which causes a ship accident, then within 14 days after receipt of the preliminary inspection report on ship accidents, the Minister requests the Shipping Court to carry out further inspection of ship accidents. The results of further investigations by the Shipping Court within a period of 180 days are submitted to the Minister of Transportation and parties related to ship accidents.

Government Regulation No. 1 of 1998 has several changes stipulated in Government Regulation no. 8 of 2004. However, Government Regulation no. 8 of 2004 concerning Amendments to Government Regulation No. 1 of 1998 concerning Ship Accident Inspection basically does not substantially change the authority of the Shipping Court, but only changes some provisions in PP No. 1 of 1998, particularly regarding the organization of the Shipping Court. The amended provisions are Article 23, Article 24, Article 28 and the addition of Article 57A relating to the retirement period of shipping court personnel.

Government Regulation Number 51 of 2002 concerning Shipping also regulates the tasks of the authority of the Shipping Court. In Article 88 PP No. 51 of 2002 states as follows:

(1) Every time a ship accident occurs, the captain and/or ship owner is obliged to report it to the harbormaster at the nearest port or to the nearest representative of the Republic of Indonesia if the accident occurs overseas.

(2) For every ship accident as referred to in paragraph (1), an inspection must be conducted by an official appointed by the Minister.

(3) The results of the examination as referred to in paragraph (2) shall be made in an official report of the preliminary examination and if necessary it can be made in an additional examination report.

(4) The results of the ship accident inspection as referred to in paragraph (3) must be evaluated and assessed with the aim of:

- a. Improve the implementation of ship safety;
- b. Determine whether the certificate of the ship concerned can still be enforced;
- c. Determine whether or not further examinations are required.

(5) Minutes of preliminary examination and/or additional inspection minutes, after being completed with other supporting documents and data in connection with the occurrence of ship accidents, are sent to the Minister no later than 14 (fourteen) days from the date of the end of the examination.

(6) Further provisions regarding procedures for reporting, inspection of ship accidents, making minutes as referred to in paragraph (1), paragraph (2), paragraph (3) and paragraph (4) shall be regulated by a Ministerial Decree. Furthermore, in the provisions of Article 89 PP No. 51 of 2002 is stated as follows:

(1) The results of the inspection of ship accidents as referred to in Article 88 may be subject to further examination by the Shipping Court.

(2) Further examination by the Shipping Court as referred to in paragraph (1) shall be carried out to obtain a decision regarding the causes of ship accidents and to impose administrative sanctions on the ship's crew.

(3) Further provisions regarding institutions, procedures for inspection of ship accidents as referred to in paragraph (1) and paragraph (2) shall be regulated separately in a Government Regulation.

4. Conclusion

The Shipping Court is an administrative quasi-judicial body (Quasi Rechtspraak), because it is under an administrative official (Minister of Transportation), with the task of adjudicating cases or violations of shipping safety submitted by the Directorate General of Sea Transportation. The Shipping Court is only entitled to issue sanctions that are administrative in nature and in the form of provisions (beschikking), therefore the authority of the Shipping Court only applies to certain parties (skippers, ship crews, ship operators and parties involved in sea shipping). However, a decision issued by the Shipping Court as an administrative moot court can be used as initial evidence for an investigator if an indication of a criminal act is found namely documentary evidence.

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