

Conference Paper

Implementation of Act No. 17 of 2008 concerning Shipping to Support Passenger Safety

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Abstract

Indonesia is located between two oceans, the Pacific Ocean and the Indian Ocean, and two continents, the Asian Continent and the Australian Continent. Indonesia is also a maritime country, where and the oceans are wider than the land. Therefore with sea transportation a major consideration, it is only natural that the government pays attention to all matters relating to this sector, especially in terms of security and safety. This study considers the safety of maritime passenger transportation and the effectiveness of the existing regulations, namely Act No. 17 of 2008. This study is based on research into the case of PT. ASDP Ferry, Singkil Branch. The main conclusions that can be drawn from the writing of this research is that Act No. 17 of 2008 also includes the legal (as well as physical) protection for users of sea transportation services. The parties who are legally responsible, namely the harbormaster, captain, crew, company, NTSC, and also the Shipping Court in this case must continue to optimize their functions and continuously optimize their resources for shipping safety and security and also complement shipping support facilities.

Keywords: Ship; Safety; Passenger.

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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 IWOSPA Conference Committee.

1. Introduction

Indonesia is the largest archipelago country in the world which has 13,000 islands spanning 3,500 miles. Indonesia also has the fourth longest coastline in the world with a length of more than 95,181 kilometers. 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. (1 Yosafat, Christo.(2010) Judicial Review of the Impact of the Application of the Cabotage Principle in Act No. 17 of 2008 concerning Shipping on Sea Transportation Services. Depok, Faculty of Law, University of Indonesia. p. 1.2Anantyo, Sendi. (2012). Diponogoro Law Review volume 1 Number

 **OPEN ACCESS**

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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.³ 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.⁴

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. Many examples of cases of marine accidents occur due to violations of safety standards carried out by passengers both by the public and in this case the institution that deals specifically with shipping

safety is the Directorate of Coastal Marine Guard Safety or commonly abbreviated as KPLP, the Directorate General of Sea Transportation.

The main tasks of the KPLP Directorate General of Sea Transportation in accordance with Ministerial Decree No.KM.24 of 2001 concerning the Organization and Work Procedure of the Ministry of Transportation include:

1. Carry out the formulation of policies
2. Technical guidance and evaluation in the security sector
3. Patrol for disaster and pollution prevention
4. Orderly waters and ports
5. Salvage (rescue goods) and underwater work as well as means of guard and rescue

Various types of tasks and jobs related to safeguarding and saving at sea are very dominated by the problem of human resource capabilities supported by shipping technology facilities, so that it has encouraged the government to carry out various policies in regulating shipping problems on international standard sea transportation systems, therefore the conditions Current regulations need to be improved in accordance with technological advances and developments, modern equipment and more advanced navigation systems are needed to meet the smooth needs of the marine transportation system, especially if it is associated with a relatively large community using marine services (mass) that connects archipelagic areas one another. However, various policies and regulations that are made if they are not supported by good service will certainly affect the safety system in the shipping sector, both for the skipper, the crew of the passenger ship, and the means of transportation.

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 shipping safety and security as a public service institution, of course, the quality of service to related parties, especially services in the port sector, greatly affects Shipping Safety.

Shipping in the field of Ports is one of the interesting things to discuss and study because of the importance of shipping safety. Port services that must be performed

by each employee, especially those within the KPLP Directorate, are very important because they do not only concern security, but also mental safety issues for users of transportation or shipping services. Shipping in terms of working time and discipline in terms of arrangements relating to transportation problems, both freight and passenger transportation in accordance with the international convention in the field of shipping (IMD). For this reason, Government policies must be carried out in accordance with implementation guidelines supported by loyalty, of course it will encourage the desired results both by the Government itself as a regulator and for the safety of passengers and goods. Therefore, the issue of safety is very important in transportation in water, both at sea and rivers and lakes.

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.

Shipping that has its own characteristics and advantages needs to be developed by taking into account its capital-intensive nature, so as to be able to improve a wider range of services both domestically and abroad. Considering the important and strategic role of the service which controls the lives of many people, the service is controlled by the State, the guidance is carried out by the government. In fact, the various laws and regulations which were the product of the Dutch East Indies government which were spread in various forms of regulations, among others in the fields of navigation, shipping, ports and transportation were no longer in accordance with the needs and developments of the times, science and technology. On the basis of the foregoing, a Law (UU) on shipping, which is an improvement and codification, was drafted. so that the operation of shipping can provide the greatest benefit to the entire people, nation and state, foster and develop a maritime spirit, by prioritizing public interests, environmental sustainability, coordination between central and regional as well as agencies, sectors and between related elements as well as the defense and security of the State. 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”.

Based on the description above, sea transportation needs special attention, especially in terms of shipping safety and security in the form of protection in the eyes of the law and observing the actual application of conditions that are actually true in the field which aims to support shipping companies and be able to compete with companies from other countries. and provide proper protection to the transporters and / or ship operators. In addition, this also benefits sea transportation passengers. for that we need the effectiveness of the application of law to support this.

2. 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. 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.

3. Result and Discussion

3.1. History of Sea Transportation in Indonesia

3.1.1. KUHD

The main source of Civil Law (private) regarding the implementation of sea transportation in Indonesia is Book II of the KUHD. The contents of Book II regulate the rights and obligations arising from shipping. The meter coverage is quite wide which principally

regulates matters relating to ships and their cargo, ship owners / entrepreneurs, ship captains and crew, transportation of goods and people, ship collisions, ship disasters, losses at sea, marine insurance, abolition of the contract. agreements in trade by sea and also regarding ships and means of shipping rivers and inland waters. The provisions contained in Book II of the KUHD are legal products from the Dutch colonial period and their contents have practically not changed until now. Even though it is seen from the development of International Maritime Law and even to meet domestic needs, even though many of these provisions are not sufficient to be applied. Some of the differences between shipping companies in the past and today, which I describe below:

1. In ancient times, for voyages the main thing was wild voyages (*wilde vaart*) whereas in this day and age, in all the oceans of the world there are fixed harbors (*vaste lijnen*) from one port to another, and it is not only operated by one or two companies, but there are a lot of companies from various nations, so that it is easy for people to board one of the ships of a particular direction from a company of their choosing.
2. in the past there were only shipping companies called (*rederij*) which is now rare, namely ownership of a ship by several people, which in the KUHD is regulated in Article 323 to Article 340-f, now shipping companies are in the form of PT and can be owned by tens, even hundreds of ships. The company is now not only a carrier company, but also available to charter ships to those in need.
3. In ancient times there was an institution called (*bodemerij*) which is an old form of shipping credit, where a person releasing money is guaranteed a ship or cargo or both. If the ship and its cargo return safely, the debt must be paid with high interest. Meanwhile, if the ship and / or cargo does not arrive, then the moneylender loses the right to collect the debt in the present form (*bodemerij*)it is no longer used by other people. As collateral for debt, the ship can be burdened with mortgages, then the ship can also be used as an object of coverage for marine insurance regarding kasko.
4. In the past, the transportation of people was not an important issue, on the other hand the transportation of goods was the priority. Previously, when people boarded a ship, they had to take care of it themselves, meaning that the ship did not provide food for other passengers. Now the transportation of people includes important things, which get the attention of the ship operators properly, everything that is in the interests of the passengers.

The conditions described above, namely the situation before, the situation before 1927. Now the situation has far developed, with advances in technology and shipping systems in the world, people need a set of laws and regulations that are in accordance with current conditions. This is the reason for the emergence of thinkers who desire to renew the regulations regarding sea shipping and inland waters.

3.1.2. Act No.17 of 2008 Concerning Shipping

In the course of time, Act No.21 / 1992 concerning Shipping needs to be adjusted because there have been various paradigm changes and strategic environments, both in the Indonesian constitutional system such as the application of regional autonomy or the progress in science and technology.

The definition of “shipping” as a system has changed and includes transportation in waters, ports, shipping safety and security, and protection of the maritime environment. This understanding requires adjustments to the needs and developments of the times as well as science and technology so that the Indonesian shipping sector can play a role in the international world. On the basis of these matters, a new Shipping Law was drafted which was a refinement of Act No. 21/1992. The operation of shipping as a system is expected to provide the greatest possible benefit to all people, nation and state. It is hoped that this law can cultivate and develop a marine spirit, by prioritizing public interests and environmental sustainability, coordination between central and regional levels, as well as national defense and security.

3.2. The Effectiveness of Act No. 17/2008 concerning Shipping on the Safety of Sea Transportation Passengers

The implementation of legal protection for ferry service users / ship passengers has parties which in this case are legally responsible, which are as follows:

3.2.1. Harbourmaster

The safety of shipping cannot be separated from the role of the harbormaster because the biggest problem in the occurrence of shipping accidents begins with the neglect of procedures or in other words, the harbormaster does not carry out his duties properly.

The presence of a harbormaster is a manifestation of the presence of the Government in marine traffic so that in addition to private legal relationships, public legal relations are

evident in the marine transportation system, so that all shipping activities are regulated by the government as regulated in Act No. 17 of 2008. In this Law the duties and responsibilities of the harbormaster have been strictly regulated.

3.2.2. Captain

The captain of the ship has an important role in the ship, because the one who steers the ship safely reaches its destination. The master of the ship bears important responsibilities in a ship. The duty of a ship master is responsible when carrying a ship on a voyage, both from one port to another safely. This responsibility includes the safety of all passengers or goods on board. The master is obliged to comply carefully with the prevailing rules and regulations to ensure the ability to sail and the safety of the ship, the safety of the passengers and the transportation of their cargo. He will not undertake his journey, unless his ship fulfills the requirements, is properly equipped and is provided with sufficient crew. The captain is obliged to provide help to people who are in danger who are on the ship. The master must not leave the ship during the voyage or when there is danger threatening

If you look at the foregoing, briefly the responsibilities of a ship captain are as follows:

1. perfectly equip the ship;
2. manning the ship properly according to procedures / rules;
3. make the ship seaworthy (*seaworthy*);
4. responsible for shipping safety;
5. responsible for the safety of the sailors on board; and
6. comply with the ship's entrepreneur's order as long as it does not deviate from the prevailing laws and regulations.

3.2.3. Company

Regardless of the skills of the entire crew in taking a voyage, the risk of a ship accident at sea remains. So that it takes good and strict supervision of a ship in transit. Supervision of safety(*safety*) from the Shipping Company to the sailing vessel that has been regulated in *International Safety Management Code (ISM Code)* that is, it is an international standard rule regarding safety management in ship operations and efforts to prevent / control environmental pollution. In accordance with the awareness of the

importance of human factors and the need to improve ship operational management in preventing ship accidents, people, cargo and property and preventing pollution of the marine environment, then *IMO* issued regulations on ship safety management & marine environmental protection known as *ISM Code* which is also consolidated in *SOLAS Convention*. Basically *ISM Code* regulate the management of safety (*safety*) both shipping companies and ships including human resources who handle it.

3.3. PT.ASDP INDONESIA FERRY's Responsibility in Protecting- Passenger Safety and Security

Following are the responsibilities of PT. ASDP in protecting the safety and security of passengers:

3.3.1. Check port entry ticket and ship entry ticket

The responsibility of PT.ASDP INDONESIA FERRY in protecting passengers has been carried out from the beginning when prospective passengers enter ports and ships. There are two tickets to then cross to the destination through PT.ASDP INDONESIA FERRY. namely the port entrance ticket and the entry ticket to the ship. At the beginning, the passenger will go through the inspection process at the portals at the port to the dock, then at the entrance to the ship, ticket checking is again carried out. This check is carried out as an effort to prevent fraud during the ticket purchase process so that prospective passengers are not registered and do not have a ticket, besides that the name and type of vehicle carried along with the vehicle number plate are also carried out in detail by the crew, whether it is appropriate as stated on the ticket. If after the passenger has passed the ticket checking process but there is still fraud and the crew finds out, the crew will impose strict sanctions in the form of a fine. other than that passengers who are not registered or do not have proof of a ticket, PT. ASDP will be free from responsibility for the passenger in the event of an accident.

3.3.2. Protection based on the type of need

1. Passengers with special needs / disabilities

As mandated by Act No. 17 of 2008 concerning Shipping, article 63 paragraph (1) states that persons with disabilities and sick people have the right to receive services in the form of special treatment in water transportation, therefore PT

ASDP Indonesia Ferry also provides wheelchairs this has become *mandatory* or any obligation for the operator of the crossing company, even though there are not many wheelchairs provided.

2. Pregnant mother

A wheelchair is also provided, the prospective mother is also asked about her health and readiness to sail if there is a problem with the mother's health, the crew will then ask the mother to cancel it. departure when it threatens the safety of the mother and child. In addition, a big and all-size hull is provided so that it will be safe and comfortable even if used by pregnant women.

3. Children

PT. ASDP ferry gives full responsibility for children to their parents or guardians, besides that in the event of an accident and the evacuation process usually the crew will then put the children first, because children are the most vulnerable subjects. In addition, children are also differentiated based on the ticket, so for the group of children, it is specifically for children tickets, different from adult tickets.

3.3.3. PT.ASDP provides insurance services

The insurance is Raharja's service for life and Raharja Putra's service for losses. For insurance services, raharja for serious injuries, minor injuries, and even death. As for the raharja putra service for losses for passengers who usually bring their vehicles.

According to Act No.33 of 1964 Article 3 paragraph 1 states that compensation is given to legal passengers from passengers of public motorized vehicles, trains, airplanes, national companies and shipping company ships.

According to Act No. 34 of 1964 article 4 paragraph 1 Jo article 10 Government Regulation No. 18 of 1965, it is explained that those who are entitled to compensation are every person who becomes a victim of death / permanent disability due to accidents caused by transportation means. road traffic / national shipping.

4. Conclusion

Based on the explanation that has been given, this study provides the following key conclusions:

1. Implementation of passenger transportation in sea transportation is; The preparation stage for transportation, includes the provision of sea transportation equipment and the delivery of goods or people to be transported, the stage of carrying out sea transportation, includes the activity of moving goods or people by sea transportation from four departures to the agreed destination, the stage of delivering goods or people to receiver, passenger disembarkation and payment of sea transportation costs in the event that an event does not occur during transportation, and the stage of settlement of problems that arise or occur during sea transportation or as a result of transportation.
2. The forms of legal protection for sea transportation passengers are as follows; Provide safety equipment in ship operations and work environment safety. Create protection against all risks that may occur or are known and continuously improve the safety management skills of land and ship personnel, including in emergencies related to environmental protection safety.
3. Implementation of the effectiveness of Act No. 17 of 2008 on shipping on the safety of sea transportation passengers; The parties that are legally responsible are the harbormaster, captain, crew, company, KNKT,

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