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Limitation of Harbormaster Responsibility in Ship Accidents

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Abstract

As the government in the port, the harbormaster has the responsibility to guarantee the safety and security of shipping. In shipping, the harbormaster, shipowner and captain are the trident of the security and safety of shipping. This research is a normative-legal research using a statute, comparative and conceptual approaches. The research results indicate that the concept of limiting the responsibility of a harbormaster in a ship accident is a ship accident not necessarily a criminal offense prior to the preliminary examination by the harbormaster and a further examination by the shipping court, if the results of the examination indicate a criminal act, the parties The police can conduct investigations into ship accident events based on the results of the examination by the harbormaster and the shipping court. In the event of a ship accident, the harbormaster has a relative or limited responsibility to the fulfillment and compliance of the implementation of maritime safety, security and safety of shipping in the form of the issuance of a sailing approval letter for ships leaving the port in accordance with applicable rules and procedures so that the harbormaster is not absolutely responsible for the circumstances that occur after the ship leaves port, but it has become the authority and responsibility of the ship commander.

Keywords: Harbormaster responsibility, The Safety and Security of Shipping, Ship accidents

1. Introduction

In the archipelago state, particularly in Indonesia, maritime transport is one way of shifting needs from primary to additional or supportive needs. It cannot be denied that in an island nation like Indonesia, maritime facilities and infrastructure are the mainstays for the transportation of large quantities of goods by ship. From an economic and industrial point of view, the use of shipping is more efficient and has significant advantages. With a maritime transport infrastructure such as shipping, it therefore makes sense to move goods and people from one place to another, which has a positive and positive effect on economic development in the Indonesian region. (Alexandro, V. H, 2019).

As well as being a mode of transport to spread key needs and additional needs for the community, both domestic and foreign. People have to travel from one place to another to meet their needs, for

example shopping, work, school and more. In terms of speed and type of ship transport, the government is very concerned, for example, inter-island freight ships that are very different from ships crossing straits, lochs and so on. This is the main concern of the government to draw up rules governing the registration of vessels for sailing, types of vessels by shipping area, discretionary in the employment of professional captains and crews by their areas (Alexandro, V. H, 2019).

In article 1 paragraph (56) of the shipping law, the harbormaster is a government official in the port designated by the minister and has the highest authority to enforce and control the implementation of the legal provisions to ensure the safety of shipping. In performing the functions and duties of the safety of ships, the government in this case is the carrier who receives the functions and duties under Article 208 of the Shipping Law, which reads:

1. The harbormaster is responsible for carrying out the security and safety functions referred to in article 207 paragraph (1), namely:
 - a) Overseeing the maritime affairs of the ship, safety, security and order at the port
 - b) Supervise orderly ship traffic in port waters and shipping lanes
 - c) Overseeing the transfer of loading activities in port waters
 - d) Overseeing the salvage activities and underwater work
 - e) Overseeing the ship delay activities
 - f) Overseeing the scouting
 - g) Overseeing the loading and unloading of dangerous goods as well as hazardous and toxic waste
 - h) Overseeing the refueling
 - i) Overseeing the orderliness of the embarkation and debarkation of passengers
 - j) Overseeing the dredging and reclamation
 - k) Overseeing the port facilities development activities
 - l) Overseeing the search and rescue assistance
 - m) Overseeing the pollution countermeasures and
 - n) Fire fighting in ports and
 - o) Overseeing the implementation of maritime environmental protection.

Appropriately, the harbormaster must be able to account for his duties and functions when carrying out the functions and duties given by law.

The Shipping Law, in article 117 letter (a) reads: Water transportation safety and security, namely the conditions for fulfilling the following requirements:

- 1) Shipworthiness;
- 2) Navigation.

What in paragraph (2) describes in more detail the ship eligibility category as referred to in paragraph (1) letter (a), each ship must be obeyed in accordance with the operational area which includes:

- 1) Ship safety and security;
- 2) The main concern of pollution from ships;
- 3) Ship control;
- 4) Ship loading and loading limits;
- 5) The welfare of the crew and the health of the passengers;
- 6) The legal status of the ship;
- 7) Safety arrangements and pollution concerns from ships; and
- 8) Ship safety arrangements.

Maritime safety is very important and is at the center of all aspects of the world of navigation. The main characteristics of maritime safety include attributes, values and actions related to the importance of complying with safety and security requirements related to transport in waters and ports. Neglecting transport security often leads to higher economic and environmental costs, such as lower production, medical costs, pollution and inefficient energy consumption (Latuheru, P. M. 2021)

Maritime transport is a highly regulated sector, where there are clear regulations on the role of

each related party in maritime transport (Baranyanan, A. S., 2020). There are maritime safety regulations that take precedence over third party rules due to the many navigation accidents caused by human errors. To improve the activity, the port captain, the owner and the captain are responsible for transport security. All three have defined roles and responsibilities in the maritime affairs of the ship, which are strictly regulated in Article 1 paragraph (33) of the Shipping law defining the condition of ships as a condition of a ship that meets the requirements for the health and well-being of the ship, crew, cargo, crew and passengers, as well as the legal status of ships, safety regulations and pollution prevention, regulation of ship safety in certain waters (Baranyanan, A. S., 2020).

Shipping is not just about maritime transport, but in general it includes existing facilities and infrastructure, as well as a guarantee of safety, security and protection in Indonesia's marine environment (Kimbal, M., 2019). This creates a combination of maritime support, routine management and maintenance and the need for maritime and boat safety guarantees as a guarantee of safety, security and protection in the marine environment (Indah, D. J. 2019). All transportation requires many facilities, such as marine warehouses, cruise ships, cargo equipment, tubs and support vessels (Baranyanan, A. S., 2020). In addition, the facilities that must be provided for securing port channels, ship lighting, port access points and patrol boats are not yet available for pioneer ships to guide ships to port docks (Kimbal, M., 2019).

The harbormaster's responsibilities in the field of shipping security and safety are in accordance with Indonesian law as law enforcers in the field of Indonesian shipping safety and security, as head of government at ports or as coordinators of all actions in ports, such as supervisors and are responsible for the security and safety of shipping in Indonesia, and as the publisher of shipping documentation. The harbormaster's responsibility in the security and safety of shipping is in accordance with Indonesian law to ensure that the ship is fit for navigation and the risk of marine disasters caused by the unworthiness of vessels, overcoming sea pollution, making efforts to prevent and reduce marine pollution and to participate in the search and rescue of victims in the event of a boat accident or shipping disturbance (Kimbal, M., 2019).

In fact, what happened in the field compiled from Kompas.com provides an overview of ship accidents during 2003 to 2018 in Indonesia. Based on the results of the investigation by the National Transportation Safety Committee (KNKT), the sinking incident that occurred in Indonesia was caused by a number of factors, including high waves and overloading. (This article was published on Kompas.com with title "15 Peristiwa Kapal Tenggelam dari 2003 hingga 2018", Accessed on: <https://nasional.kompas.com/read/2018/06/23/15220601/15-peristiwa-kapal-tenggelam-dari-2003-hingga-2018?page=all>.)

Here are 15 events of the ship sinking from 2003 to 2018, which are summarized from the NTSC investigative report via www.knkt.dephub.go.id: KMP. Wimala Dharma (7 September 2003), KM Wahai Star (10 July 2007), KM Samudra Makmur Jaya (17 May 2008), KM Teratai Prima (11 January 2009), KM Dumai Express (22 November 2009), KM Ammana Gappa (6 March 2010), KMP Windu Karsa (27 August 2011), KM Pemudi (3 July 2013), KM Irama Nusantara (24 December 2013) KMP Munawar Ferry (3 January 2014), First KM I (26 August 2014), KM. Marina Baru 2B (19 December 2015), KM. Dharma Kencana VIII (14 October 2016), KMP Sweet Istanbul (21 March 2017). (This article was published on Kompas.com with title "15 Peristiwa Kapal Tenggelam dari 2003 hingga 2018", Accessed on: <https://nasional.kompas.com/read/2018/06/23/15220601/15-peristiwa-kapal-tenggelam-dari-2003-hingga-2018?page=all>.)

Previous data show that unsatisfactory maritime safety can be caused by poor human resource management (training, skills, working conditions, working hours) and process management. Some of the results of accident investigations show that the human error factor is often the cause and not a few parties the harbormaster is asked to take responsibility and become suspects in ship accidents without going through legal process in accordance with the Shipping Law. For this reason, this study examines and formulates the concept of limiting the harbormaster's responsibility for ship accidents.

2. Method

This research is a normative-legal research using a statute and conceptual approaches (Marzuki, P. M. 2009). Its data will be provided from primary and secondary legal materials. The primary legal materials resulted from some relevant laws and legislation. Those legal material collected are analysed descriptively related to the problems and prescriptively.

3. Results and Discussion

Every legal action has responsibility, in line with the expression there is no authority without accountability or without authority there is no responsibility. In running the government, this responsibility is borne by the government. In this case, the basic principle of legal relations occurs in the field of governance that is one-sided or a one-sided relationship (Listyowati, N. 2015). "Accountability" comes from the word responsibility, which means the condition of being obliged to bear everything (if anything happens, it can be sued, blamed on litigation, etc) (Sangki, A. 2012). According to Suwoto, the definition of responsibility contains 2 (two) aspects, namely internal and external aspects (Juliani, H. 2010). According to Tatiek Sri Djatmiati, there are 2 (two) terms, arguing that responsibility is a form of political responsibility by the government to parliament, which includes collective and individual responsibility, directly or indirectly, materially or mentally to its citizens (Listyowati, N. 2015).

Munir Fuady, argued that the aansprakelijkheid theory or in Indonesian can be called responsibility is a theory to determine who should accept a lawsuit or who should be sued because of an act against the law. Therefore, any legitimate authority, whether derived from law or agreement, may result in responsibility for the person executing the task or obligation. In Black's Law Dictionary, it states: "Liability is the quality or state of being legally obligated or accountable; legal responsibility to another or to society, enforceable by civil remedy or criminal punishment (liability for injures caused by negligence) also termed legal liability (Listyowati, N. 2015).

According to Frans G. Von der Dunk from the International Institute of Air and Space Law - Leiden University, the term liability which is equated with aansprakelijkheid can lead to various interpretations (Nasution, K. 2014): *"Perhaps it may be added, that the Dutch language, although not an authentic language as far as the Outer Space Treaty is concerned, is also confusing in this respect. Whereas 'responsibility' should be translated as 'verantwoordelijkheid' and 'liability' as 'aansprakelijkheid', 'international state responsibility' turns out to be always translated as 'staatsaansprakelijkheid'."*

The basic concept of the issue of responsibility when connected with an act against the law, can be divided into 2 (two) kinds of principles of responsibility, namely: the principle of responsibility based on error and the principle of responsibility without error (Marzuki, P. M. 2008). The principle of responsibility based on mistakes (fault liability principle) can be further detailed into: First, responsibility based on mistakes for default (responsibility based on default); Second, responsibility based on mistakes for committing acts against the law, both as referred to in Article 1365 of the Civil Code based on the Hoge Raad decision in the lindenbun versus cohen case since 1919 (liability based on unlawful acts), or for violating other laws and regulations such as the vicarious liability principle, liability based on fault principle, presumption of liability principle and presumption of non-liability principle. Meanwhile, the no fault liability principle can be divided into 2 (two) types, namely; the strict liability principle and the absolute liability principle. The fundamental difference between the two principles of responsibility lies in the element of error, meaning whether there is an element of error in demanding one's responsibility. If an element of error is required, the fault liability principle applies, while the no fault liability principle is applied if an element of error is not required.

First, the principle of responsibility based on errors in some literature in the field of shipping is also known as the liability based on fault principle or the fault liability principle. Based on this principle, the parties must be responsible for any losses suffered by passengers, shipper / consignee of goods or

third parties, due to their mistakes during the voyage (Soedjono, W. 1980). Claims of responsibility for losses based on this principle (liability based on fault) can be fulfilled if there is an element of error in the implementation of the voyage. This problem is not simple, because in practice it is not certain that every accident the parties admit their mistakes. If so, then it must be able to prove that there has been an error during the voyage that resulted in a ship accident. Such proof is carried out in court to be decided by the judge, as also conveyed by Subekti that default has important consequences, therefore it must be determined in advance whether the person has committed default or negligence, and if this is denied by him it must be proven before the judge (Subekti, R. 1990).

Second, the Presumption of Liability Principle, according to Wiwoho Soedjono, the Presumption of Liability Principle is that the parties must be responsible for any losses suffered by passengers, shippers or third parties, unless the parties can prove that the voyage was carried out properly (Soedjono, W. 1980). If a loss occurs in a shipping operation, the assumption / assumption is that the parties are responsible for the loss that occurs. These assumptions / assumptions can be dispensed with / overridden if the parties can prove that the loss occurred out of their fault or outside the fault of their employees.

According to R. Soekardono's opinion, to prove that the parties are carrying out the voyage properly / properly, it is sufficient by showing documents or documents related to shipping safety. The same thing was stated by E. Suherman based on the Air Transport Ordinance (Staatsblad 1939 No. 100) Article 29 paragraph (1), that the carrier is not responsible for damages if he proves that he and all those employed have taken all actions necessary to avoid harm or that it is impossible for them to take those measures. Third, No Fault Liability Principle, based on the principle of responsibility without error, that a person must be responsible when a loss occurs, regardless of whether there is an error in him or her, so that the error factor is no longer an element that must be proven in court, in other words it is called responsibility. Absolute liability. In absolute responsibility there is no requirement of a causal relationship between the person responsible and the usual defenses do not apply, unless expressly and specifically stated in a statutory regulation. according to E. Saefullah Wiradipradja (Wiradipradja, E. S. 1989): Because the absolute measure (which distinguishes it from other principles of responsibility) is the responsibility that does not question the existence or absence of errors. The principle of no fault liability has many similarities with the doctrine of *res ipsa loquitur* (the thing speaks for itself), which is a doctrine in the field of civil proof. In civil law, the party filing a lawsuit must prove the guilt of the perpetrator, if it is negligence or deliberate action. This evidence often makes it very difficult for victims to prove that there was negligence by the perpetrator, resulting in an illegal act that is detrimental to the victim. This doctrine is actually a kind of circumstantial evidence, which is evidence about facts and from which facts a plausible conclusion is drawn (Apriani, T. 2020 & Murdi, P. B., 2018). For example, from the location of the car or car damage, it can be concluded that the speed of the car is concerned. The doctrine of *res ipsa loquitur* was applied in England since 1809, namely in the famous case of *Christie v. Grigg* who applies this doctrine in cases of negligence of the carrier against the passengers.

The responsibility of a harbormaster as a government official at the port is clearly regulated in the shipping law, namely carrying out the safety and security functions of shipping, including implementation, supervision and law enforcement in the field of transportation in waters and ports and protection of the maritime environment in ports. When performing the security functions referred to in Article 208 paragraph (1) the harbormaster has the following duties:

- a) Overseeing the maritime affairs of the ship, safety, security and order at the port
- b) Supervise orderly ship traffic in port waters and shipping lanes
- c) Overseeing the transfer of loading activities in port waters
- d) Overseeing the salvage activities and underwater work
- e) Overseeing the ship delay activities
- f) Overseeing the scouting
- g) Overseeing the loading and unloading of dangerous goods as well as hazardous and toxic waste

- h) Overseeing the refueling
- i) Overseeing the orderliness of the embarkation and debarkation of passengers
- j) Overseeing the dredging and reclamation
- k) Overseeing the port facilities development activities
- l) Overseeing the search and rescue assistance
- m) Overseeing the pollution countermeasures and
- n) Fire fighting in ports and
- o) Overseeing the implementation of maritime environmental protection.

In carrying out its functions and duties, the Harbormaster has the authority to include:

- a) Coordinating all government activities at the port.
- b) Checking and keeping letters, documents and ship reports.
- c) Issuing approval of ship activities at the port.
- d) Conduct ship inspection.
- e) Issuing Sailing Approval Letter.
- f) Checking ship accidents.
- g) Holding the ship by court order, and
- h) Implementing Ship Crew Certificate.

The implementation of the function and authority of this harbormaster is a step and effort so that the voyage continues in accordance with the principles of safety and security of shipping and to avoid an accident during shipping.

A ship accident if we refer to the Shipping Law in Article 245 is a ship accident is an event experienced by a ship that can threaten the safety of the ship and / or human life in the form of:

- a) The ship sank;
- b) The ship caught fire;
- c) The ship collision; and
- d) The ship ran aground;

Likewise, in Government Regulation No. 9 of 2019 which provides the definition of a Ship Accident is an event and / or event caused by external and / or internal factors of the ship, which can threaten and / or endanger ship safety, human life, property loss, and damage to the maritime environment (Article 1 paragraph 1 Government Regulation No. 9 of 2019)

From the definition of this ship accident, the author argues that a ship accident is not an action or action that is carried out or not carried out, but is purely an accident or a condition that in the event there can be human error and negligence and that can be seen or proven through examination of the case.

Historically, ship accidents in the Dutch East Indies are regulated in the Criminal Code (Wetboek Van Strafrecht: Staatsblad 1915 No. 732) which applies throughout the Dutch East Indies and is examined according to the criminal procedural law contained in IR (*Inlandsch Reglement: Staatsblad 1848 No. 16*) updated with HIR (*Herziene Indonesisch Reglement: Statsblad 1941 No. 44*). In the Second Book of the Criminal Code Chapter XXIX concerning Shipping Crimes and the Third Book of the Criminal Code Chapter IX Concerning Shipping Violations, it is not possible to find the formula that a ship accident is a shipping crime and a shipping violation criminal offense. For this reason, there is a separation and difference between crime and shipping violations and a ship accident. Criminal and shipping offenses are criminal activities although boat accidents are not defined as crimes or breakages, it is clear that a boat accident is not an accident as it is not designed as a criminal act although it is possible that there could be a boat accident there is a criminal act.

If a ship accident refers to the Shipping Law, the harbormaster conducts a preliminary examination and the Shipping Court conducts a further examination, if any criminal elements are found, whether in the form of deliberate or unintentional errors then this can be forwarded to the police for investigation. This means that the police must wait for a verdict on a ship accident examination before carrying out an investigation into an alleged criminal act. In connection with the ship accident as an event, according to Moeljatno, it provides an explanation regarding the meaning of

the incident, namely that (Moeljatno. 2002):

"An incident cannot be prevented, unless it is caused by a person and the person cannot be punished unless it is the result of what happened. And just to illustrate this close relationship the word action is used, which is an abstract meaning that refers to two concrete situations; firstly, there are special events and secondly, there are people who do what caused the event". A ship accident is not an event that cannot be prohibited and is not necessarily an act resulting from someone's actions. For this reason, an examination is required by the harbormaster and shipping court to find out the facts related to the ship accident.

Article 220 Paragraph 1 and paragraph 2 of the Shipping Law states that "The harbormaster checks every ship accident to seek information and / or preliminary evidence of a ship accident. The ship accident examination is a preliminary level examination and the results of the preliminary level examination of the ship accident can be forwarded to the Shipping Court for further examination.

The harbormaster in carrying out his functions and duties based on Article 209 letter (f) of the Shipping Law has the authority to conduct ship accident checks. Furthermore, referring to Government Regulation No. 9 of 2019 Article 3 states that Ship Accident Inspection is a series of investigative activities carried out by authorized government officials to find out the causes and factors supporting the occurrence of ship accidents. Ship accident examination is carried out on ships with Indonesian flags or foreign flags occurring within Indonesian territorial waters; and ships with Indonesian flags that occur outside the territorial waters of Indonesia.

Examination of ship accidents consists of 2, namely inspection of the preliminary level of ship accidents; and advanced examination of ship accidents. The preliminary examination on the level of ship accidents is carried out by the harbormaster or government official appointed by the minister and the advanced level examination of ship accidents is carried out by the Shipping Court.

Preliminary level examination of ship accidents must be carried out no later than 7 (seven) working days from the receipt of the written report from the master. In carrying out the preliminary examination of ship accidents, the harbormaster or government official appointed by the Minister may request information from related parties, namely:

- a) Master;
- b) Crew members;
- c) Ship owner / operator;
- d) Guide officers;
- e) Port business entities or special terminals that manage and operate the guides; and
- f) Other related parties.

After conducting an investigation, the results of the preliminary investigation of ship accidents are contained in the minutes of preliminary investigation of ship accidents. Minutes of preliminary investigation of ship accidents contain at least:

- a) Examined information and ship data;
- b) Evidence of a ship accident;
- c) The course of the ship accident; and
- d) Suspected factors causing the ship accident.

After the preliminary investigation of the ship accident is signed by the inspector and the examiner, then verified by the harbormaster or government official appointed by the Minister no later than 3 (three) working days from the completion of the examination. The harbormaster or government official appointed by the Minister reports the results of the preliminary investigation of the Ship Accident to the Minister and also reports to:

- a) The Shipping Court, in the event that preliminary information or evidence is found regarding the alleged error and / or negligence in applying the maritime professional standards carried out by the captain and / or ship's officer for the occurrence of a ship accident;
- b) Civil servant investigators, in the event that initial information or evidence is found regarding the alleged crime of shipping as a contributing factor to the ship accident; and / or
- c) State Police Investigators of the Republic of Indonesia, in the event that initial information or

evidence is found regarding the alleged general criminal act as a contributing factor to the Ship Accident.

In a ship accident, it is often found that the police immediately take steps to investigate a ship accident like a criminal act and not a few of the porters are one of the parties accused in the accident. In fact, if we refer to the Shipping Law on a ship accident in Article 249, the ship accident as referred to in Article 245 is the responsibility of the master unless it can be proven otherwise. What is meant by "proven otherwise" is based on evidence that efforts have been made and carried out obligations based on the provisions of laws and regulations.

Based on that, it can be said that the captain is absolutely or fully responsible for what happens to the ship. Meanwhile, the harbormaster is the party that carries out the supervisory function of the safety and security of shipping which is carried out by providing a sailing approval letter after studying and examining all ship documents, meaning that if a ship accident occurs, the harbormaster has relative responsibility which is limited to the fulfillment and compliance of the entire set of procedures. in the issuance of a sailing permit the harbormaster has carried out and fulfilled all procedures in granting a sailing approval letter, the harbormaster is not responsible for events that occur after the ship leaves the port, because in fact it is the authority and responsibility of the captain. This can also be seen if we refer to one of the requirements for applying for a sailing approval letter, which is the presence of a Master Sailing Declaration, which is a declaration from the captain stating that the ship, cargo and crew have met the requirements for the safety of shipping and the protection of the marine environment shipping and protection for sailing to the port of destination, with a statement from the captain indeed a statement of full responsibility that the ship and its contents ready and fulfill an address value so that the harbormaster with the appropriate approach will only grant administrative permission if it meets the requirements specified by rules in issuing sailing approval letters.

4. Conclusion

The concept of limiting the responsibility of a harbormaster in a ship accident is a ship accident not necessarily a criminal offense prior to the preliminary examination by the harbormaster and a further examination by the shipping court, if the results of the examination indicate a criminal act, the parties The police can conduct investigations into ship accident events based on the results of the examination by the harbormaster and the shipping court. In the event of a ship accident, the harbormaster has a relative or limited responsibility to the fulfillment and compliance of the implementation of maritime safety, security and safety of shipping in the form of the issuance of a sailing approval letter for ships leaving the port in accordance with applicable rules and procedures so that the harbormaster is not absolutely responsible for the circumstances that occur after the ship leaves port, but it has become the authority and responsibility of the ship commander.

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