

JURIDICAL ANALYSIS OF THE ROLE OF SYAHBANDAR IN NON CONVENTION VESSEL STANDARD (NCVS) SHIP BELOW 34 GT (RESEARCH STUDY IN CLASS 1 KSOP WORK AREA TANJUNG BALAI KARIMUN)

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ABSTRACT

In implementing the Ship Nationality Certificate in Indonesia, the ship is required to have a ship nationality certificate. In accordance with the legal regulatory reference contained in the Regulation of the Minister of Transportation Number: Pm 13 of 2012 concerning Registration and Nationality of Ships as stated in article 57 paragraph 1 which reads that: Ships registered in Indonesia and sailing in the sea are given a National Identity Certificate of Indonesian Ship as evidence the nationality of the ship. Meanwhile, ships that only sail in river and lake waters are given river and lake passes. In the provisions, the Sea Mail as referred to in Article 57 paragraph (2) letter a is issued by the Director General. To obtain Sea Mail as referred to in paragraph (1) the ship owner submits an application to the Director General and must be completed, based on the request from the Director General, to check the completeness of the requirements within 5 (five) working days from the time the application is received completely. If the research has not been fulfilled, the Director General returns the application to the applicant to complete the requirements. An application that is returned can be re-submitted to the Director General after the lack of completeness of the requirements is completed. If the requirements for issuance of a letter are met, the Director General issues a Sea Letter. Sea Mail issuance is recorded in the Surat Laut register book

Keyword : Shipping, Harbormaster, Ship Nationality Certificate.

1. Introduction

Indonesia is a state of law, this is confirmed in Article 1 paragraph (3) of the 1945 Constitution which reads "The State of Indonesia is a state of law", that in the unitary State of the Republic of Indonesia, law is the lifeblood of all aspects of life. The importance of the rule of law is the guarantee of legal certainty for all citizens. Everyone has the right to recognition, guarantees, protection and fair legal benefits and equal treatment before the law. An ideal of the nation that was formulated by the founders of the republic and must be used as a direction or goal for the administration of the state.

Law is formed and developed as a product that simultaneously influences, because it reflects the dynamics of the continuous process of interaction between various social realities (human aspirations, religious beliefs, social, economic, political, moral, cultural and civilizational conditions within natural boundaries). with others who are confronted with human awareness and appreciation of the social reality, which is rooted in the view of life adopted and the interests of real human needs, so that the law and the legal order are dynamic.

The role of laws and regulations regarding law enforcement, especially shipping crimes is very important and strategic in order to support the creation of safety and security for sea transportation which will automatically support the welfare of the Indonesian people. Society, the existence and functioning of the legal system with its legal rules and law enforcement are products of human struggle in overcoming life's problems.

The role regarding the authority of law enforcement at sea, especially in the field of shipping crimes, needs to be regulated by the state so that the implementation of law enforcement activities at sea can be carried out in an orderly manner and protects the interests of all parties involved in it, both shipping entrepreneurs who own ships and transportation users who mobilize goods. - goods, as well as government agencies involved in it.

The law has a strategic and dominant position in supporting the strengthening of a law enforcement agency, especially those dealing with criminal acts in the shipping sector. Law as a system can play a good and right role in the community if the implementation instrument is equipped with authorities in the field of law enforcement. The sea as a territorial area is an area that is the full responsibility of the country concerned with the application of the applicable law in its territory, namely the national law of the country concerned. The sea that stretches wide with a position to connect land areas with one another and the possibility of different laws apply.

In enforcing the law there are 3 (three) elements that must be met, namely: legal certainty (Rechtssicherheit), expediency (Zweckmaasigkeit), justice (Gerechtigheit). However, even though the Indonesian nation since its birth has declared itself as a state of law, the reality is that until now the real law has not been able to touch the joints of the nation's life properly. We often find "laws" still taking sides, so the law (law) is still at a certain level of society"

Problems with law enforcement in Indonesia are still often found when the law is being operationalized at an early stage, often the actual law enforcement process is not carried out until the final stage. In general, the way of law in our country is still more dominated by "law with regulations" rather than "law with common sense". Ruling with regulations is minimalistic law, which is carrying out the law by applying what is written in the text law. It stops at spelling out the law. The soul and spirit (conscience) of the law are not taken into account.

If law enforcement focuses on the value of justice while the value of usefulness and legal certainty is ruled out, then the law cannot run well. On the other hand, if you focus on the value of use while legal certainty and justice are ruled out, then the law does not work. Ideally, in enforcing the law, the basic values of justice which are the basic values of philosophy and the basic values of usefulness are a sociologically valid unity and the basic values of legal certainty which constitute a juridical unit must be applied in a balanced manner in law enforcement.

In the implementation of the Ship's Nationality Certificate in Indonesia, the ship is required to have a ship's nationality certificate. In accordance with the reference to the legal arrangements contained in the Regulation of the Minister of Transportation Number: Pm 13 of 2012 concerning the Registration and Nationality of Ships as stated in article 57 paragraph 1 which reads that: Ships registered in Indonesia and sailing at sea are given an Indonesian Ship National Certificate as evidence ship nationality.\

The Indonesian Ship's Nationality Certificate as referred to in paragraph (1) is given in the form of:

- a. Sea Certificate for ships measuring GT 175, (one hundred and seventy-five grosse tonnage) or more;
- b. Large Pass for ships measuring GT 7 (seven grosse tonnage) up to a size less than GT 175 (one hundred and seventy-five grosse tonnage); or
- c. Small Pass for vessels measuring less than GT 7 (seven grosse tonnage).

Meanwhile, ships that only sail in the waters of rivers and lakes are given a River and Lake Pass. In its provisions, the Sea Letter as referred to in Article 57 paragraph (2) letter a is issued by the Director General. In order to obtain the Sea Certificate as referred to in paragraph (1), the ship owner submits an application to the Director General and must be equipped with

- a. photocopy of grosse registration deed of ship or grosse deed of ship's transfer of name;
- b. photocopy of Measurement Letter; and
- c. certificate from the ship owner regarding the data and use of the ship.

Based on the request from the Director General, the completeness of the requirements must be checked within 5 (five) working days after the complete application is received. If the research has not been fulfilled, the Director General returns the application to the applicant to complete the requirements. The returned application may be re-submitted to the Director General after the incomplete requirements are completed. If the completeness of the requirements for the issuance of the Letter has been fulfilled, the Director General shall issue the Marine Letter. The issuance of the Sea Letter is recorded in the Sea Letter register book.

Sea Letters are given a serial number, page number, and a Sea Mail register book number. Sea Letters use a form of Marine Letters made and printed by the Directorate General using a predetermined format which is an integral part of the Regulation of the Minister of Transportation Number: Pm 13 of 2012 concerning Vessel Registration and Nationality.

Furthermore, the supervision of ships in accordance with the *Scheepen Ordonantie (SO)* and *Scheepen Verordening (SV)* in 1935 which was translated into Indonesian into the regulations for the supervision of ships in 1935, mentions the term "Syahbandar" in Article 3 of the Shipping Safety Regulations, "Syahbandar-Syahbandar experts". are supervisors of the safety of ships in their position. The harbormaster himself in carrying out the supervision of the safety of his shipping conducts inspections and tests on ships in order to issue certificates of perfection and safety certificates, wherein every ship sailing to outer waters must be equipped with a valid certificate of perfection given by or on behalf of the Director General of Sea Transportation in the event that this is syahbandar.

1. Then after the Indonesian State became independent for such a long period of time, finally the supervision of shipping safety was specifically regulated in Law Number 21 of 1992 concerning Shipping Article 40 which reads: "Every ship that enters the port and while in the port is obliged to comply with regulations to maintain order and smooth traffic of ships at the port, the supervision of which is carried out by the harbormaster", which was later amended by Law Number 17 of 2008 concerning Shipping as described above. vessel standard Indonesian flagged or NCVS) which was enforced in 2012 as a technical guideline for supervising the safety of ships sailing within the country or non-conventional vessels which also applies to fishing vessels (fishing vessels).
2. Based on the description above, the authors are interested in conducting research with the title "Juridical Analysis of the Port Authority's Role in Non Convention Vessel Standard (NCVS) Ships Under 34 GT (Research Study in the Working Area of Ksop Class 1 Tanjung Balai Karimun)".

2. Research purposes

If referring to the title and formulation of the problem in this study, it can be stated that the objectives to be achieved in this research are:

1. To find out the Port Authority's Legal Arrangements in Non Convention Vessel Standard (NCVS) for Ships Under 34 GT.
2. To find out the implementation of the porter's role in the Non Convention Vessel Standard (NCVS) for ships under 34 GT.
3. To find out the factors that become obstacles and the efforts made in the Port Authority's Role in Non Convention Vessel Standard (NCVS) Ships Under 34 GT in the Working Area of the Port Authority and Class I Port Authority Office Tanjung Balai Karimun.

A. THEORY BASIS

Theory is essentially a relationship between two or more arrangements of facts in certain ways. Setting these facts requires an analysis to seek and find answers or problems that will be investigated empirically in the thesis. In this section the researcher must propose a normative theory that is relevant to the research to be carried out, the researcher uses the theory, namely:

a. Grand Theory: Jeremy Bentham

Jeremy Bentham is the founding philosopher of utilitarianism from England. Jeremy Bentham (1748 – 1832). He lived in the American Revolution, French Revolution and the Napoleonic wars and in the first stages of the Industrial revolution. Because of the devastation and chaos that also arose in England, he wanted to bring about social changes in the fields of politics, law and ethics. His most famous work is *Principles of Moral and Legislation*.

b. Middle Theory: John Austin (Legal Assurance)

Born in 1790, in Sufflok, to a family of merchants. Austin had served in the army, and was assigned to Sicily and Malta. But he also studied law. In 1818, he worked as an advocate. But he didn't take it seriously. He later left the job, moving on to become a legal scientist. From 1826 to 1832, he worked as professor of jurisprudence at London University. Shortly after resigning as professor, he held many important positions in royal institutions. For example, he has worked for the Criminal Law Commission and the Royal Commissioner for Malta.

Law according to Austin must be understood in the sense of an order because the law should not give room to choose (whether to obey or not to obey). Law is non-optional. Therefore, criticizing the natural law theorists of Austin asserts that the law is not a pile of rules or moral advice. The law in this last sense does not have any punitive

implications. When the law can no longer be enforced, that is, the violation is subject to punishment or legal sanctions, then the law can no longer be called law; or the law loses its essence as a command. Thus, compliance with the law is a non-negotiable obligation.

c. Applied Theory: Lawrence M. Friedman (The Legal System)

Lawrence Milton Friedman was born on April 2, 1930, who put forward the theory of the legal system, describing that law as a system, in its operation, has three interacting components, namely structure, substance and culture. Law is an institution created by the legal system.

3. RESULTS AND DISCUSSION

- a. According to Law Number 17 of 2008 Article 1 point 36, what is meant by a ship is a water vehicle with a certain shape and type, which is driven by wind power, mechanical power, other energy, pulled or delayed, including vehicles with dynamic support, vehicles on below the water surface, as well as floating equipment and floating structures that do not move. Furthermore, in the explanation what is meant by "ship" are:
 - b. a. A ship that is propelled by the wind is a sailing ship.
 - c. b. Ships that are driven by mechanical power are ships that have engine propulsion devices, such as motor ships, steam ships, ships with solar power, and nuclear ships.
 - d. c. A towed or towed ship is a ship that moves by using another ship's propulsion device.
 - e. d. Dynamic carrying capacity is a type of ship that can be operated on the surface of the water or on the surface of the water by using the dynamic carrying capacity caused by the speed and/or design of the ship itself, for example jet foil, hydro foil, and other fast ships that meet some criteria.
 - f. e. Underwater vehicle is a type of ship that is able to move under the water surface.
 - g. f. Floating equipment and floating buildings that do not move are floating equipment and floating buildings that do not have their own means of propulsion, and are placed in a certain water location and do not move for the same time, for example floating hotels, accommodation barges for support offshore activities and oil storage barges, as well as offshore drilling unitsepas pantai berpindah (*mobile off shore drilling units/modu*).

1. Types of Ships

The following types of ships are:

- a. Motorized ship is a ship equipped with a motor as the main propulsion. This ship is usually called a Motor Ship (KM).
- b. A steamer is a ship equipped with a steam engine as the main propulsion device. This ship is usually called the Fire Ship (KA).
- c. Fishing vessel is a vessel equipped with sails as its main propulsion.
- d. Marine fishing vessel is a vessel that is only used to catch fish in the sea, whales, seals, sea bears or other marine biological resources, unless the vessel is 100 cubic meters of gross content or more and is equipped with a propulsion engine (Art. 1 paragraph 2 Beslit Surat Laut and Pas Kapal – 1934), then the ship is not a marine fishing vessel.
- e. Fishing vessel is a vessel used to catch fish, whales, seals, sea lions, or other biological resources in the sea.
- f. A barge is a ship that does not have its own means of propulsion, so it must be towed or delayed by another ship.
- g. Tugboat is a ship specifically used to tow or tow other ships (i.e. barges).
- h. Passenger ship is a ship that can carry more than 12 people.
- i. A cargo ship is a ship that is not a passenger ship, used primarily to transport goods.
- j. Tank ship is a cargo ship specially built to carry liquid cargo in bulk, which has flammable properties.
- k. Nuclear ships are ships equipped with nuclear reactor installations.
- l. Inland ships/inland waters are ships used to navigate rivers, canals, lakes and other inland waters.
- m. Warship is a ship that is only used for war, including ships used to transport soldiers or war equipment.
- n. A sailing ship with auxiliary power is a sailing ship equipped with an auxiliary motor which in certain circumstances is only used as a substitute for a sail, and is not a towed ship or a barge.
- o. A dredger is a ship based on its structure and arrangement which is only intended for implementers or used for water construction works.

2. Ship Equipment

In order for a ship to obtain a shipping permit, the ship must have ship equipment that aims to encourage ship operations in carrying out voyages. The ship's equipment in question is the equipment mentioned in Law Number 17 of 2008 concerning Shipping Article 1, namely:

- a. Crew is a person who works or is employed on a ship by the owner or operator of the ship to perform tasks on board the ship in accordance with the position listed in the certificate book.
- b. The captain is one of the crew members who is the highest leader on the ship and has certain authorities and responsibilities in accordance with the provisions of the legislation.
- c. The crew of the ship is the crew other than the captain.
- d. Navigation is everything related to Shipping Navigation Aids, Shipping Telecommunication, hydrography and meteorology, lanes and crossings, dredging and reclamation, scouting, handling of ship hulls, salvage and underwater work for the benefit of ship voyage safety.
 - 1) Navigation is the process of directing the motion of the ship from one point to another safely and smoothly and to avoid hazards and/or obstacles to shipping.
 - 2) Shipping Navigation Auxiliary Facilities are equipment or systems located outside the ship which are designed and operated to improve the safety and efficiency of navigating ships and/or ship traffic.
 - 3) Shipping telecommunication is a special telecommunications for the purposes of the shipping service which is a system of transmitting, sending or receiving each type of sign, picture, sound and information in any form through a wire system, optical, radio, or other electromagnetic system in the shipping mobile service which is part of the shipping service. of shipping safety.
 - 4) Salvage is a job to provide assistance to a ship and/or its cargo that has a ship accident or is in a state of danger in the waters, including lifting the ship's skeleton or underwater obstacles or other objects.
 - 5) Underwater work is work related to installation, construction, or ships carried out under water and/or underwater work of a special nature, namely the use of underwater equipment operated on the surface of the water.
 - 6) Sailing Channels are waters which in terms of depth, width, and are free from other shipping barriers, are considered safe and safe for navigating.

Ship, is a vehicle for transporting passengers and goods at sea (river, etc.), based on Article 310 of the KUHD states that:

- A. Marine ships are ships used for voyages in the ocean or those intended for it.
- B. In the first title to the fourth title of this law, the meaning of ship is solely a ship.

From the definition of ship as contained in Article 309 paragraph (1) of the KUHD as well as those contained in Article 1 paragraph 36 of Law no. 17 of 2008, it can be seen that the ship according to Article 310 paragraph (1) of the KUHD, focuses on the destination, while the definition of ship according to Article 1 paragraph 36 of Law no. 17 of 2008, focusing on the shape and type, it can be seen that the difference in the meaning of the ship is only a definition, not a principle thing.

According to the formation of the Act, the term sailing tool has a broad meaning, except for ships or boats that we see everyday, as well as objects such as: floating docks, mud dredging machines, sand extracting machines, wheat suction machines, boat bridges, dempok boats, rafts, fishing boats and others. Anyway, all kinds of objects that can be or are intended for sailing. Similarly, ships under construction are objects that are or cannot be sailed, as regulated by Article 312 and Article 749 paragraph (2) of the KUHD, which regulates the transfer of ownership rights and delivery of ships registered in the transfer of ownership rights and delivery of ships. registered in the ship registration, which is considered a ship.

The definition of a ship in terms of the legal status of the ship, for example, a ship can be referred to as a ship if the ship has ever sailed the ocean, even though it is then used to sail inland waters. Determination of status is an important element for ship registration purposes.

Regarding the above problem, Whereas a ship which, although usually used for voyages on rivers, is only once used for voyages at sea, from that time onwards the term "ships" is entered until the time when the ship is always used for voyages on rivers. It is clear that this change in the purpose of use can be said to have occurred, if the ship's registration is transferred from the list of ships to the list of river/inland ships.

In this case, Soekardono is of the opinion that: Based on the objective designation, ships are still in their legal position, even though the ships are temporarily not navigating the sea. In this case, after being used for navigating the sea, it is then used for navigating rivers in the interior, according to DR. Wirjono Prodjodikoro, SH has not yet brought a change in his status as a ship, until it is later proven to be an inland ship, article 12 paragraph

(2) of the Staatsblad 1933 – 48 (the bookkeeping of ships must be requested as ships, marine fishing vessels and inland ships).

According to Soekardono, this was based on the category at the time the ship was first registered. If it is registered as a ship, then its status remains as a ship even for sailing on the river. From the above understanding it can be concluded that the ship is used as a ship. Changes in the meaning of this ship can occur if the ship's status is changed to an inland ship.

Whereas what is meant by inland ship is not a ship, the meaning is: solely used in inland waters, namely in rivers, lakes, reservoirs, canals and canals as contained in the explanation of Law no. 17 of 2008 Article 1 paragraph 36. When viewed from Law no. 17 of 2008 concerning Shipping, the definition of ship is expressly regulated in Article 1 paragraph 36, namely: Ship is a water vehicle of any shape and type, which is driven by mechanical power, wind power, or delayed including vehicles that have dynamic support, vehicles under water surface, as well as floating equipment and floating structures that do not move.

In connection with this, what is meant in Article 310 paragraph (1) of the KUHD is not seen from the point of view of the ship's entrepreneur (Subjective), or viewed from the point of view of the fact (Objective), namely by looking at the shape and structure of the ship concerned. So the qualification of a ship, whether the ship is a ship or not is seen in relation to the registration of the ship (category/class).

According to Article 311 of the KUHD, an Indonesian ship is any ship deemed so by the law regarding the determination of sea documents and ship passes, (Zeebrieven en Scheepspass bess luit). Staatsblad 1934 No. 78 Article 2, stipulates that, Indonesian ships are:

1. Owned by someone or more than an Indonesian citizen.
2. Companies under the firm and limited liability companies domiciled in Indonesia, while the respective responsible companies are Indonesian citizens.
3. Limited companies domiciled in Indonesia which are established according to the legal regulations in force in Indonesia, while all shares are read in the name of Indonesian Citizens, besides that all members of the Board of Directors and Board of Commissioners are Indonesian Citizens residing in Indonesia.
4. Associations and foundations that have Indonesian legal entities, while all of their management and commissioners are Indonesian citizens residing in Indonesia.

Article 3 paragraph 1 (1) of this regulation also states that Indonesian ships can be issued with a certificate of nationality in the form of a sea certificate, ship pass, temporary sea certificate or temporary permit as a replacement.

R. Soenarwo, defines Indonesian ships as: Ships owned by one or more Indonesian citizens, or owned by legal entities, firms, limited liability companies, foundations established in accordance with applicable regulations and domiciled in Indonesia. It is clear that the ship is owned by a foreign legal entity or person, not an Indonesian ship.

Thus, it can be said that Indonesian ships that have complied with these provisions are obliged to fly the Indonesian flag as a sign of the ship's nationality. Consequently, ships that are not Indonesian ships are prohibited from flying the Indonesian flag as their nationality.

According to Article 309 paragraphs (1) and (2) of the KUHD, it is stated that a ship is all sailing equipment, however it is called and its nature, unless specified or agreed otherwise, the ship is considered to contain ship's equipment.

4. CONCLUSION

That the Certificate of Nationality of the Ship Against the Legal Status of Indonesian Flag Vessels. The regulation governing ship registration is the second book of the Commercial Code, Staatsblad 1933 No. 48 and Law No. 17 of 2008 concerning Shipping, but strictly speaking the ship registration regulations can be found in Stb. 1933 No. 48 jo. Stb. 1938-2, that is, as long as the regulation is appointed and does not conflict with the regulation above. The procedure for implementing ship registration is carried out by making a deed before the Vessel Registration Officer and Baliknama Registrar. The ship is registered in the name of a private or PT. From private to PT, there must be proof of the transfer of rights. The ship whose original owner is unknown and the required documents are lost, it can be reached through a court decision. The regulation regarding ship registration was originally contained in the Staatsblad 1933-48 which was later replaced by the 1992 Shipping Law, and replaced again by Law No.1 of 2008 concerning Shipping. Article 314 of the KUHD and article 46 of the Law. 21 Th. 1992 regulates the registration of ships. By the Harbor Masters Officer who makes the Ship Registration Deed/Letter issued in accordance with the applicable regulations and laws. The procedure for registering a ship to obtain a Registration Certificate is as follows, the registration of the ship is addressed to the harbormaster officer accompanied by a sales deed (Bill of Sale), Sale-Purchase agreement, Declaration of Nationality, Company's Articles of Association (AD),

Copy of Measurement Letter, Certification Release from the previous country, purchase permit, power of attorney (if the management is authorized to another person).

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