

JURIDIC ANALYSIS OF THE ROLE OF PORT OPERATORS IN REALIZING LEGAL GUARANTEE AND PROTECTION TO SERVICE USERS

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ABSTRACT

Maritime issues in Indonesia are almost every day an endless discussion, so it is only natural that the public or law enforcement officers in the shipping sector participate in discussing them. This is because many ship accidents result in the loss of life of crew or passengers. The role of the sea is crucial as a unifier of the nation and the territory of Indonesia. Consequently, the Government is obliged to administer governance in law enforcement, both against threats of violations against the use of waters and maintaining and creating shipping safety and security. Shipping supervision must be increased in managing accidents at sea, which must be carried out efficiently and effectively. Shipping safety and security are the most important to avoid accidents at sea. Passenger safety is left to insurance protection, and transportation company operators must strive to provide and maintain transportation equipment that meets safety standards by the provisions of laws and international conventions. To ensure the implementation of the security, and safety of shipping at sea, a Marine and Coastal Guard Unit (KPLP) was formed, which is responsible to the Minister of Transportation. The duties, authorities, and other matters related to KPLP are regulated by Law Number 17 of 2008 concerning Shipping.

Keyword: Port, Protection, Law

1. INTRODUCTION

The territory of a country other than what we know, the air and land, is also the ocean. However, the problem of marine or sea area is not owned by every country, only certain countries that have sea areas, namely countries where their land area borders the sea. The sea is sometimes the boundary of a country with another country with a boundary point determined through bilateral or multilateral extradition, which also means limiting a country's power as far as the outermost line of its territory [1].

As an island country based on Law No. 17 of 1985 on the ratification of the archipelago (Archipelago State) by the United Nations Conference recognized by the international community, Indonesia has sovereignty over the entire Indonesian sea area. The role of the sea is very important as a unifier of the nation and the territory of Indonesia. Consequently, the government is obliged to administer the government in the field of law enforcement both against the threat of violations of the use of waters and to maintain and create safety and security of shipping.

The reference number should be shown in square bracket [1]. However the authors name can be used along with the reference number in the running text. The order of reference in the running text should match with the list of references at the end of the paper [2].

Marine problems in Indonesia almost every day become an endless conversation, so it is natural starting from the public or law enforcement officers in the field of shipping to talk about it. This is because many ship accidents result in the loss of life of the crew or passengers. Shipping supervision should be improved in managing accidents at sea which must be done efficiently and effectively. The safety and security of shipping is the most important thing to avoid accidents at sea. To ensure the implementation of security and safety of shipping at sea, formed the Union of Marine and Coastal Protection (KPLP), which is responsible to the Minister of Transportation. The duties, powers, and other matters relating to KPLP are regulated by Law No. 17 of 2008 on shipping [3].

Transportation crossings other than as a means of transportation for service users can also help improve the development of regional potential to drive the economy, for it demands safety and security in the crossing. The readiness of facilities, infrastructure, supporting facilities, and safety equipment both on ships and in ports, as well as the preparedness of reliable operators and high discipline, is the dominant factor in ensuring safety [4].

The safety factor is closely related to supervision and law enforcement in the field of shipping and is fundamental in ensuring the safety and security of shipping. This safety aspect can be measured by the smaller the level of interference in the journey and the smaller the number of accidents. Here are some kinds of safety equipment on passenger ships [5]:

1. Safety equipment is all equipment and equipment used to protect the lives of crew and passengers in an emergency.
2. Lifeboat is a lifeboat helper carried by ships made of wood, fiber, or metal with a watertight air tank to increase buoyancy and is equipped with equipment for saving lives at sea in an emergency.
3. Life jacket is a life jacket worn by the crew or passengers to float in the water when the ship is in an emergency, this one tool is familiar, just like the safety equipment in an airplane.
4. Life raft (life raft) is a raft that is used to save the lives of crew and passengers when the ship sinks.
5. Lifebuoy is a buoy tool that looks like a valuable tire to be thrown into the sea to help people who fall into the sea stay afloat.

Criminal provisions in the field of shipping should provide guarantees for the implementation of safe and comfortable sea transportation so that it encourages the growth of sea transportation which ultimately supports economic development so that it does not become an obstacle to the implementation of sea transportation or shipping to serve the mobility of people, goods and services that connect economic activities between islands and international relations [6].

For the state of Indonesia, which is part of the territorial waters, sea transportation plays a vital role in creating a safe and orderly Transportation Safety, conducting reliable sea transportation supervision according to national and international standards, and enforcing the law in the field of shipping throughout the waters of the sea and coast of Indonesia, where it has been clearly stated that sea transportation under the section of safety sailing Guard and patrol (KBPP) has the task of investigating criminal offenses in the field of shipping [7].

Criminal provisions in the field of shipping should provide guarantees for the implementation of safe and comfortable sea transportation so that it encourages the growth of sea transportation which ultimately supports economic development so that it does not become an obstacle to the Head of PLP Class II Tanjung Uban Capt. Handry, who all members of PLP followed, made preparations related to the facilities and safety of ferry passengers due to the imminent arrival of fasting in the month of Ramadan and preparation for Eid homecoming to pay more attention to the safety and comfort of passengers and conduct inspections of each fleet. From the description above and the increasing number of government agencies that are authorized to maintain the safety and comfort of passengers, to know in a scientific paper in the form of a thesis with the title "juridical analysis of the role of port operators in realizing legal certainty and protection to service users."

1.1 Research Benefits

Referring to the formulation of the problem that the author has raised above, the author wishes to examine the juridical analysis of the role of port operators in realizing certainty and legal protection for service users. The benefits of research conducted by the authors are as follows:

1. Theoretically

This research is expected to be a reference or additional reading material to promote theoretical legal disciplines. Furthermore, it can contribute to general thoughts in the field of marine law and shipping law, and can be a reference for stakeholders to carry out duties and authorities in sea transportation activities in supporting shipping safety, and most importantly to add to the treasure of legal knowledge for law faculty students and the wider community and future needs. In addition, it is expected to be helpful as a reference or reference in researching similar matters. The writing of this thesis can help readers with the development of lecture materials and is expected to contribute new knowledge in the field of public order.

2. Practically

The results of this study will be expected to provide an accurate, practical solution to the problems studied. In addition, as input for practitioners who are directly involved and can uncover new theories to develop existing approaches in carrying out a policy of legislation in the field of ports and shipping.

2. RESEARCH METHOD

This study's specification only analyzes up to the level of detests, which analyzes and presents the facts systematically so that they can be more easily understood and concluded. This type of thesis research is normative legal research as well as combined with sociological (Empirical) Legal Research using secondary data obtained directly as the first source through field research through interviews and primary data as sources/information materials in the form of primary legal materials, secondary legal materials, and tertiary legal materials. The method of approach in this study is a combination of methods between normative approach " legal research "with empirical approach method" juridical sociologies." The location of this study is in the Working Area of the port operator Unit Class I Tanjung Uban. Samples used in this study in the Office of the port operator Unit Class I Tanjung Uban Tanjung Uban Village District of North Bintan Bintan Regency. This type of research is included in the group of joint research between normative legal research (library research) with observational research (observational research). Data analysis is done qualitatively by describing the research, then comparing the data with legal theories, legal experts, and legislation. The analysis starts with data collection, processing, and the last presentation of data. While the conclusions will be used in the deductive method, the author takes the data, information, and opinions, which are general, and then concludes specifically.

3. RESULTS AND DISCUSSION

3.1 The Harbormaster's Functions

The harbormaster's functions, duties, and obligations are regulated in articles 207 to Article 225 of Law Number 17 of 2008 concerning shipping.

1. Functions Of The Harbormaster

The functions of the harbormaster are stated in Article 207 of Law Number 17 of 2008 concerning shipping as follows [10]:

- a) The Port Authority carries out the safety and security functions of Shipping, including implementation, supervision, and law enforcement in the field of transportation in the waters, ports, and protection of the maritime environment in the harbor.
- b) In addition to carrying out the functions referred to in Paragraph (1), The harbormaster assists in implementing search and Rescue (SAR) at the port by the provisions of laws and regulations.
- c) the minister appointed Syahbandar after meeting the requirements of competence in the safety and security of shipping and harbormaster.

3.2 Duties Of The Harbormaster

The duties of the harbormaster are stated in Article 208 of Law Number 17 of 2008 concerning shipping as follows [11]:

- a. Supervise ship seaworthiness, safety, security, and order in the port;
- b. Supervise the orderly traffic of ships in Port waters and shipping lanes;
- c. Supervising loading and unloading activities in Port waters;
- d. Supervise salvage activities and underwater work;
- e. Supervise ship delay activities;
- f. Supervise driving;
- g. Supervise the loading and unloading of dangerous goods and waste of hazardous and toxic materials;
- h. Supervise refueling;
- i. Supervise the order of embarkation and disembarkation of passengers;
- j. Supervise dredging and reclamation;
- k. Supervising port facility development activities;
- l. Carrying out search and rescue assistance;
- m. Lead pollution prevention and fire fighting in ports; and

n. Supervise the implementation of Maritime Environmental Protection.

3.3 Syahbandar Authority

The authority of the harbormaster stated in Article 209 of Law Number 17 of 2008 concerning shipping includes the following [12]:

- a. Coordinate all government activities in port;
- b. Checking and storing letters, documents, and ship's Gazette;
- c. Issuing approval of ship activities in the port;
- d. Conducting ship inspection;
- e. Issue A Letter Of Approval To Sail;
- f. Conducting ship accident checks;
- g. Arrest the vessel by court order; and
- h. Execute the crew certificate.

Port as a transportation infrastructure that supports the smooth sea transportation system has a function that is closely related to social and economic factors. Economically, the port serves as one of the driving wheels of the economy because it becomes a facility that facilitates the distribution of production results. In contrast, socially, the port becomes a public facility where there is interaction between users (community), including interactions that occur due to economic activity. More broadly, the port is a point of the Connection Center node (central) of a supporting area (hinterland) and connects with regions outside it.

Based on Law Number 17 of 2008, Article 68 states that the port has the following roles [13]:

1. Nodes in the transport network according to their hierarchy;
2. The gate of economic activity;
3. Place of activity transfer mode of Transportation
4. Supporting industrial and trade activities;
5. Place of distribution, production, and consolidation of the cargo or goods; and
6. Creating the vision of the archipelago and national sovereignty.

The principles of Shipping are stated in Article 2 of Law Number 17 of 2008, which states that shipping is organized based on the following [14]:

- a. Basic benefits;
- b. The principle of joint efforts and kinship;
- c. Principles of healthy competition;
- d. Fair and equitable principles without discrimination;
- e. Principles of balance, compatibility, and alignment;
- f. Principles of public interest;
- g. Fundamentals of integration;
- h. The principle of law enforcement;
- i. Principle of self-reliance;
- j. Principles of environmentally sound;
- k. The basis of national sovereignty; and
- l. National Foundation.

Law Number 17 of 2008 states that the cruise is organized with the following objectives [15]:

- a. Facilitate the movement of people and goods through the waters by prioritizing and protecting transportation in the seas to facilitate national economic activities;
- b. Building a new soul;
- c. Upholding state sovereignty;
- d. Creating competitiveness by developing the national water transport industry;
- e. Support, mobilize, and encourage the achievement of National Development Goals;
- f. Strengthen the unity and unity of the nation in the framework of the realization of the archipelago; and
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Based on Law No. 17 of 2008 article 4 on shipping, several provisions are much more precise than the previous law, such as the scope of the law that is formulated expressly, which applies to all transportation activities in Indonesian

waters, ports, safety, and security of shipping and Maritime Environmental Protection in Indonesian waters also applies to foreign ships sailing in Indonesian waters and to all Indonesian-flagged ships outside Indonesian waters.

3.4 Definition Of Sea Freight

In general, transport comes from the primary word “haul, “ which means to lift and carry, load and carry or deliver. Meanwhile, transportation in the legal dictionary is a reciprocal agreement between the carrier and the sender, where the carrier binds himself to safely carry out the transportation of goods and people from a place to a particular destination. In contrast, the sender binds himself to pay the freight. Based on Law No. 17 of 2008 concerning shipping states that sea transportation is the activity of transporting and moving passengers and goods by ship [16].

3.5 Purpose And Functions Of Sea Transport

Transportation is organized to help to move goods or people from one place to another effectively and efficiently. It is said to be effective because the movement of goods or people can be done at once or in large quantities. In contrast, it is said to be efficient because by using transportation, the movement becomes relatively short or fast in the distance and travel time from the initial place to the destination. Abdul Kadir stated that the purpose of Transportation is to arrive or arrive at the site of destination transportation to arrive at the specified destination safely, and the cost of Transportation is paid off. While Purwosutjpto explained the purpose of Transportation is to increase the usefulness and value of both goods and passengers [17].

The function of Transportation is to move goods or people from one place to another to increase use and value. Thus, increasing the usefulness and value is the purpose of Transportation, which means that if the benefit and value in the new place do not rise, then Transportation does not need to be held because it is an act that is detrimental to the merchant. Such transportation functions are applicable not only in the world of trade but also in the fields of government, politics, society, education, defense and security, and others [18].

3.6 Legal relationship in a sea carriage agreement

A legal relationship is regulated by law and carried out by legal subjects that can give birth to legal consequences, namely rights and obligations for legal matters. In the transportation of both goods and persons, the legal relationship occurs between the carrier and the user of the transportation service. The legal relationship between the user and the user of this transportation service has been regulated and guaranteed legal certainty in the laws and regulations. Its implementation is carried out through an agreement [19].

According to the Indonesian legal system, the carriage agreement is not required to be written, just oral, as long as there is a consensus. From the above understanding can be interpreted that the existence of a transport agreement is sufficient with the contract (consensus) between the parties, this is as outlined in the provisions of Article 90 of the Criminal Code, which states that the transport letter is an agreement between the sender or the exporter on the one party and the carrier or skipper, for example, regarding the time in which transportation must be completed and regarding compensation in the case of delay [20].

The freight forwarder's responsibility in sea transportation to passengers begins with the transportation of passengers to the agreed destination. Likewise, accountability to the owner of the goods (sender) begins when the goods are received for transportation until the goods are delivered to the sender or recipient. Where the responsibility is due to an accident. An accident is an unwanted and unexpected event that can cause human and property casualties [21].

3.7 The role of port operators in realizing legal certainty and protection for service users at Tanjung Uban Port

Based on Article 207 of Law Number 17 of 2008 on shipping states that the functions of a harbormaster include:

- a. The Syahbandar carries out the functions of safety and security of Shipping which include implementation, supervision, and law enforcement in the field of transportation in the waters, ports, and protection of the maritime environment in the harbor;
- b. In addition to carrying out the functions as referred to in Paragraph (1), the harbormaster assists in the implementation of search and Rescue (SAR) by the provisions of laws and regulations; and
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3.10 Responsibility for the role of port operators in realizing legal certainty and protection to service users at Tanjung Uban Port

The importance of the role of the harbormaster in monitoring the seaworthiness of ships can be seen in the Indonesian shipping law regarding ship safety. Some things that need to get the attention of the harbormaster under his supervision are ship materials, ship construction, shipbuilding, ship machinery and electricity, ship stability, arrangement, and equipment, including auxiliary equipment and radio, and Ship Electronics. Users of sea transportation services that use ships that are not seaworthy can cause losses to the goods transported to lose the lives of passengers and crew. To avoid this occurrence then held inspections conducted in the form of Harbormaster [26]:

1. Annual inspection, every 12 months, inspected in a state of piled above the shipyard.
2. Major inspection, conducted once every four years, along with annual dock time.
3. Inspection of damage or repair is done at the time of damage that affects the perfection of the ship.
4. Additional checks, carried out when necessary, dispensation, for example, will transport passengers carrying dangerous cargo and others.

As for the responsibility of the harbormaster, it is as stipulated in Article 80 paragraph (1) letter a of Law Number 17 of 2008 that the Port Authority has the duties and responsibilities include [27]:

1. Providing land and water;
2. Provide and maintain wave barriers, Harbour, shipping lanes, and road networks;
3. Provide and maintain means of navigation aids-shiping;
4. Ensure the safety and order of the Port;
5. Develop the Master Plan of the port as well as the Working Environment and the environmental interests of the Port;
6. Propose tariffs to be set by the Minister for the use of water and land and port facilities provided by the government and port services organized by the Port Authority with the provisions of laws and regulations;
7. Ensure the smooth flow of goods.

Based on the results of interviews with the Port of Tanjung Uban harbormaster, it can be concluded that the harbor manager, as the ruler of the port, is responsible for the passengers of the passengers buy tickets until the passengers board the ship, the Syahbandar is fully accountable for the safety, comfort, and safety of passengers, but after on board the boat and sail the responsibility of the carrier, but does not cover the possibility also if something happens that is not desirable such as Shipwreck, the harbormaster could also be guilty.

Based on the results of interviews with the Port of Tanjung Uban, it can be seen that the obstacles faced by the port of Tanjung Uban in supporting the safety of shipping in the Port of Tanjung Uban class I include:

1. The lack of supporting infrastructure in the field affects the implementation of the duties of the harbormaster in conducting continuous surveillance, such as patrol boats. This is supported by the results of interviews with the

author harbormaster officers at the port that the lack of supporting infrastructure in the field affects the implementation of duties in conducting supervision resulting in less optimal performance harbormaster

2. Lack Of Human Resources

Human resources make supervision can only be done sparingly. This is supported by interviews with the officer's harbormaster author, who said some members are on duty at the office because many administrative matters are to be resolved about the service to service users. Some other members are at the Port guard post to supervise ship activities.

3. Lack Of Legal Awareness

Lack of legal awareness of the service users is also one factor that affects the implementation of the duties of the harbormaster. Still, the ship's safety certificate is invalid, and there is still an overload. This is supported by the results of interviews with the head of Maritime Safety Guard and patrol (KBPP), who said We have often socialized in ports and ship owners to obey the rules, but not also carried out by ship owners who are found in the field, and can cause repeated violations.

4. CONCLUSIONS

Based on the results of research and discussion, then in this last chapter, the authors take some conclusions on the study conducted at the Port of Tanjung Uban Class I as follows:

- a. In Law No. 17 of 2008 concerning shipping, the harbormaster's duties, functions, and powers have been explained and regulated in articles 207-225. The harbormaster is the Port Authority authorized to regulate the existing shipping activities of the port. Harbormaster holds authority over the harbor, checks the documents and the feasibility of the ship, and supervises the activities in the Port of Tanjung Uban. The responsibility of the Harbormaster has been stated In Law No. 17 of 2008 concerning shipping, so the responsibility of the harbormaster for the safety, comfort, and safety of passengers in the Class I Port of Tanjung Uban from the passenger before boarding the ship until he will depart, it is the responsibility of the harbormaster.
- b. The role of the harbormaster in supporting the safety of shipping in the Tanjung Uban Class I port operator unit plays a critical role. Shipping becomes a very strategic thing for national insight and a vital tool supporting national unity and integrity. The regulation of seaworthiness law in shipping is the central part of sea transportation facilities, as mandated by Law Number 17 of 2008 concerning shipping, which states that ships must meet ship safety requirements which include: material, construction, building, machinery, and electricity, stability, arrangement and equipment including auxiliary equipment and radio, and Ship Electronics. Before making a voyage and obtaining a sailing certificate, the ship must meet the ship's seaworthiness requirements which include: ship safety, ship manning, ship operation safety management Prevention of pollution from ships, loading, and the legal status of the ship.
- c. Constraints faced by The harbormaster in supporting the safety of shipping in the port operator Unit Class I Tanjung Uban is still limited, supporting infrastructure in the field of patrol boats is inadequate, lack of human resources, and still lack legal awareness of service users.

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