

# **THE ROLE OF THE HARBORMASTER OFFICE AND PORT AUTHORITY CLASS III BAAI BENGKULU ISLAND IN SEA TRANSPORT SHIPPING ACTIVITIES IN INDONESIA REVIEW OF LAW NUMBER 17 OF 2008 REGARDING SHIPPING**

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## **ABSTRACT**

*Shipping safety and security is a condition of fulfilling safety and security requirements concerning transportation in waters, ports, and the maritime environment. Sea transportation is one of the integrated national transportation capital in realizing the provision of integrated national transportation services in learning national transport by the needs and the availability of safe, comfortable, orderly, and efficient transportation services. To realize this, the government has an essential role in supporting smooth shipping, namely by enforcing the law at sea. Law enforcement in the maritime area is still experiencing various unresolved obstacles. Multiple violations of law in the sea area are often not resolved. Each stakeholder for maritime security and safety performs a law enforcement function that is not well coordinated and leaves problems of legal certainty for business actors and users of sea transportation facilities. In the implementation of law enforcement at sea, what is meant here is an effort to carry out law enforcement activities and marine security operations carried out by government agencies such as (Water Police, Indonesian National Navy (TNI AL), Sea And Coast Guard, Syahbandar, Customs Excise, Immigration, and others) by their respective primary duties and functions and authorities based on the applicable laws and regulations. Law Number 17 of 2008 concerning Shipping which contains acts subject to criminal sanctions are acts that violate provisions that are not sufficiently disciplined only by using administrative sanctions or civil sanctions. The Office of the Harbor Master and Class III Port Authority of Baai Island Bengkulu is a government agency engaged in managing and regulating ship traffic in and out. One of the elements for the fulfillment of shipping safety and security, which is one of the roles of the harbormaster in carrying out the functions of shipping safety and security, is the fulfillment of the seaworthiness element on the ship as stated in Article 117 paragraph (1) of Law Number 17 of 2008 concerning Shipping.*

**Keyword:** Harbormaster, Port Authority, Law.

## **1. INTRODUCTION**

Indonesia's geographical location between the continents of Asia and Australia and between the Indian and Pacific oceans has placed Indonesia in a strategic position regarding economic, political, socio-cultural, and defense security. In addition, its role and Marine Resources also made Indonesia very important for countries from various regions. However, this strategic position is not only an opportunity but also an obstacle for the nation because, in addition to providing a beneficial impact can also threaten the interests of Indonesia, causing complex problems related to security, law, economy, and national defense. Sea transportation is one of the Integrated National Transportation Capital in realizing the provision of Integrated National Transportation Services in learning National Transportation in accordance with the needs and availability of safe, comfortable, orderly, and efficient transportation services. To realize this, of course, the government has an essential role in supporting smooth sailing, namely by enforcing the law at sea [1].

Safety and security of shipping is a state of fulfillment of safety and security requirements concerning transportation in waters, ports, and the maritime environment. Sea transport is a unified shipping system with passengers or goods by ship. Ships are water vehicles with specific shapes and types driven by wind, mechanical, and other energy. Ships, as one of the capitals of sea transportation, are used as transportation in the waters to support economic growth and regional development and help create a dynamic National distribution pattern to achieve that all ships should be able to sail safely and safely [1].

To carry out shipping activities, every sea transport (ship) requires a sailing/Berthing approval letter (SPB) issued by the harbormaster to sail or dock. To obtain SPB, the boat that will sail must meet several requirements, such as seaworthiness requirements. A harbor manager can give each sailing approval letter to the user or owner of the ship if the ship has met several essential requirements, as stated in Article 117. Law of the Republic of Indonesia number 17 the year 2008 above and other provisions [2].

In sea transportation, one of the most important factors is the ship because transporting goods or passengers through sea transportation requires a boat as support. In addition to being able to load a large enough load, the ship also has adequate equipment and fittings. As for what is meant by a ship is a water vehicle with a specific shape and type, which is driven by wind power, mechanical power, or other energy, towed or delayed, including vehicles with dynamic carrying capacity, vehicles under the surface of the water, as well as floating equipment and floating buildings that move. Given the importance and strategic role of sea transportation, its existence is controlled by the state, whose construction is carried out by the government as mandated by law 17 of 2008 on shipping. This law is a refinement of Law No. 21 of 1992, which is no longer by the development of the strategic environment, both internal and external, of the Unitary State of the Republic of Indonesia, especially the paradigm shift so that it needs to be replaced with a new law.

Law No. 17 of 2008 concerning Shipping which contains acts subject to criminal sanctions, are acts that violate the provisions that are not sufficiently disciplined only by using administrative sanctions or civil sanctions. Administrative or civil sanctions need to be more effective to give effect and prevent others from committing the same act. Indonesia's maritime region includes thousands of islands with a vast territorial sea. Indonesia is the world's largest archipelago, with the world's most immense territorial sea and 95,108 km of coastline, the fifth longest in the world. As a commercial and military route, Indonesian marine waters have a strategic geographical position [1].

Criminal provisions in the field of shipping should provide guarantees for the implementation of safe and comfortable sea transportation so that it helps encourage 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 [2]

For the state of Indonesia, which is part of the territorial waters, the harbor manager office and Port Authority (KSOP) play an essential role in security and law enforcement in the territorial waters of the sea, where it has been mentioned that the Kesyahbandaran office and Port Authority Class III Baai Island Bengkulu under the section of safety sailing Guard and patrol (KBPP) has the task [3].

In addition, KBPP has a command function in enforcing rules in the field of shipping safety & security and a coordination function in law enforcement outside of shipping safety. If viewed from the perspective of law enforcement at sea to realize the protection of National Shipping, there are still issues that have consistently received attention until now and have not been appropriately resolved is the existence of many agencies authorized to handle law enforcement in the Indonesian sea [4].

In the implementation of law enforcement at sea, what is meant here are an effort to carry out law enforcement activities and marine security operations carried out by government agencies such as (the Water Police, Indonesian Navy (TNI AL), Sea and Coast Guard, Harbormaster, Customs, Immigration, and others) by the primary duties and functions and authority of each based on applicable laws and regulations. The power referred to here is the legal authority, namely actions to take discretion over the rights used to enforce the law at sea [5].

Law enforcement in the sea area is still experiencing various obstacles that still need to be resolved. Multiple law violations in the sea area often need a clear resolution. Each marine security and safety stakeholder performs law enforcement functions that need to be better coordinated and leave legal certainty problems for business actors and users of sea transportation facilities [6].

Harbormaster requires data obtained by state-owned enterprises (SOEs), namely the Indonesian classification Bureau BKI), which is a particular body to supervise the sea transport (ship) in the construction and completeness of the ship so that the harbor manager can issue letters or documents that will be used sea transport to cruise.

As the head of government in the port or coordinator of all activities in the dock as a supervisor and responsible for the security and safety of shipping in Indonesia, and as the issuer of shipping documents, the responsibility of the port in the security and safety of shipping under Indonesian law is to ensure a ship to sail and minimize the possibility, tackle pollution and make efforts to prevent marine pollution occurs. "Harbormaster office and Port Authority Class III Baai Island Bengkulu " Syahbandar office and Port Authority Class III Baai Island Bengkulu" in sea transport shipping activities in Indonesia in the review of Law No. 17 of 2008 on shipping".

### 1.1 Research Benefits

Referring to the formulation of the problem that the author has raised above, the main issue in this study examines and knows the role of the Office of the harbormaster related to the Navy when viewed from Law No. 17 of 2008 on shipping. The benefits of research conducted by the authors are as follows [8]:

#### 1. Theoretically

This research is expected to be used as a reference or additional reading material to promote the discipline of law theoretically. Furthermore, it can contribute to general thoughts in the field of marine law shipping law and can be a reference for stakeholders to carry out the duties and authorities of the harbor in the port and, especially port implementers, and most importantly to add to the treasure of legal knowledge for law faculty students and the wider community and future needs.

#### 2. Practically

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

## 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 Office of harbormaster and Port Authority Class III Island BAAI Bengkulu. researchers use informant retrieval techniques with purposive sampling method. 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, data processing, and the last presentation of data. While the conclusions will be used deductive method, the author takes the data, information, and opinions, which are general, and then draws explicitly conclusions

## 3. LITERATUR OF REVIEW

### 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
- g. Increase national resilienc

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 Role Of Harbormaster In Sea Transportation Shipping Activities In Indonesia In The Review Of Law No. 17 Of 2008 On Shipping**

Law Number 17 of 2008 on shipping can be categorized as administrative legislation. However, some acts against the law provide civil or administrative sanctions and criminal sanctions, which aim to effectively protect the basic social values referred to in the law itself. Shipping crimes are included in particular crimes where the offense occurs within the scope of shipping. As for criminal acts in the field of shipping, it has explicitly been regulated in the provisions of articles 284 to 332 of Law Number 17 of 2008, broadly speaking in the form of:

1. Any person is operating a foreign vessel to transport passengers and goods between islands and ports in Indonesian territorial waters.
2. Any person who serves special sea freight activities involving the cargo of goods belonging to another party without permission.
3. The captain of river and Lake transports who sailed his ship into the sea without permission from the harbormaster.
4. Any person who operates a vessel in the waters without a business license.
5. Anyone who operates a ship on river and Lake transportation without a route permit.
6. Any person is operating a vessel on a ferry without the vessel's operating approval.
7. Any person who conducts business-related services without having a business license.
8. Anyone who operates a ship in the waters without a business license.
9. Anyone who does not carry out the obligation to carry passengers and goods, especially postal transport.
10. Any person who does not insure their liability under the insurance terms.
11. Everyone transporting particular and dangerous goods does not fit the existing requirements.

### **3.5 The duties of the harbormaster**

The duties of the harbormaster in carrying out the safety and security functions, as referred to, are regulated in Article 208 of Law Number 17 of 2008 concerning shipping, including [16]:

1. Supervise ship seaworthiness, safety, security, and order in the port;
2. Supervise orderly ship traffic in Port waters and shipping lanes;
3. Supervising loading and unloading activities in Port waters;
4. Supervise salvage activities and underwater work;
5. Supervise ship delay activities;
6. Supervise driving;
7. Supervise the loading and unloading of dangerous goods and hazardous and toxic waste;
8. Supervise refueling;
9. Supervise passenger embarkation and disembarkation activities;
10. Supervise dredging and reclamation;
11. Supervising port facility development activities;
12. Carrying out search and rescue assistance;
13. Lead pollution prevention and fire fighting in ports; and
14. Supervise the implementation of Maritime Environmental Protection.

### 3.6 The Authority Of The Harbormaster

The authority of the harbormaster as a port chief is regulated in Article 209 of Law Number 17 of 2008 concerning shipping. In shipping in Indonesia, harbormaster has eight authorities as follows:

1. Coordinate all government activities in the port;
2. Checking and storing letters, documents, and ship's Gazette;
3. Issuing approval of ship activities in the port;
4. Conducting ship inspection;
5. Issued sailing approval letter (SPB);
6. Conducting ship accident checks;
7. Arrest the vessel by court order; and
8. Implementing crew certificates

One of the essential documents that are also a determining document for a ship (sea transport) to be able to sail is the sailing/Berthing approval letter (SPB). As stated in Article 219 of Law Number 17 of 2008 concerning shipping, namely:

1. Every ship that sails shall have a sailing approval letter issued by the harbourmaster; and
2. The sailing approval letter does not apply if the ship, within 24 (twenty-four) hours after the sailing approval is given, the ship does not depart from the port.

A sailing approval letter (SPB) can be obtained by ships that will sail by applying for a sailing license in writing to the harbor manager by attaching the following:

1. Master Sailing Declaration;
2. Cargo documents and evidence of the fulfillment of other ship obligations.

The fulfillment of the ship's obligations includes proof of payment for Port Services, proof of payment for navigation services, proof of payment for receiving shipping money, Customs and excise approval, immigration approval, health quarantine approval, and animal and Plant Quarantine support.

### 3.7 Responsibilities Of The Harbormaster As The Highest Port Authority

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 [17]:

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.

In connection with the termination of the shipping accident event, According to the author's analysis of the provisions for ships that want to sail, the initial stage must meet the requirements by the provisions contained in the regulations of the law on shipping. The fulfillment of the conditions for a ship to sail explains that the ship has been declared seaworthy. The seaworthiness of a vessel is the state of the boat that meets the requirements of ship safety, prevention of water pollution from ships, Manning, loading lines, loading, crew welfare and passenger health, the legal status of the ship, safety management, and Prevention of pollution from ships, and ship safety management for sailing in certain waters.

The harbormaster carries out the task of securing the sea area's territory based on the state's obligations and the sovereignty of coastal states mandated by UNCLOS as a convention on the international law of the Sea, which has been ratified into national law. The position of the harbormaster in the conception of international law of the sea as a commander or leading sector to maintain the safety and security of the country's territory, in this case, the area of the marine environment. The position and role of the harbormaster in the Indonesian Marine law enforcement system are very strategic, considering that the enforced area includes the administrative side related to organizational requirements, correspondence, permits, and others related to port and sea territory administration, then the enforcement of civil and criminal areas related to compensation and fines or agency sanctions [23].

In connection with the termination of the shipping accident event, the author views that law enforcement needs to be done correctly both with national law and international law, of course, while still prioritizing the sovereignty of the Unitary State of the Republic of Indonesia. The harbormaster's role is explicitly regulated in Law Number 17 of 2008 concerning shipping. Even though there are regulations governing the role of a harbormaster in issuing a sailing approval letter, it is not uncommon to find several sea transportation accidents caused by the negligence of a harbormaster in carrying out his duty, namely by providing sailing approval letters and ship seaworthiness letters to ships that are not fit to sail and ships that do not pass the class test by the Indonesian classification Biro [18].

### **3.8 A sailing approval letter (SPB)**

A sailing approval letter (SPB) is an authentic proof that includes the following:

1. The ship was inspected;
2. Meet ship seaworthiness requirements;
3. Fulfill obligations in the field of other shipping.

Public appreciation of law enforcement in the shipping world still needs to be improved, a simple example is that we often witness ships leaving the port without a sailing approval letter (SPB) issued by the Kesyahbandaran office and the Class III Port Authority of Bengkulu Baai Island. Thus, to improve the optimal implementation of shipping as mandated in Article 274 Paragraph (1) and Paragraph (4) of Law Number 17 of 2008 on shipping, the public has the same and most comprehensive opportunity to participate in shipping activities and take responsibility for maintaining order and safety and security of shipping. The participation of the community, as referred to in Article 274 Paragraph (1) of Law Number 17 of 2008, is required as follows [21]:

1. Monitor and maintain the order of the implementation of shipping activities;
2. Provide input to the government in improving regulations;
3. Technical guidelines and standards in the field of shipping;
4. Provide input to the Government, Local Governments in the framework of coaching, organizing, and supervision of shipping;
5. Convey opinions and considerations to the competent authority on shipping operations that result in significant impacts on the environment; and
6. Carrying out a representative lawsuit against shipping activities that interfere, harm, and endanger the public interest.

According to the author's analysis that the lack of public knowledge about the regulations contained in Law No. 17 of 2008 on shipping, so the public, in this case, the skipper is reluctant to complete the requirements to fulfill their obligations before sailing, that in fact by completing the requirements by the provisions of the legislation is a form of supervision from the harbormaster, which surveillance proves that the ship is about to sail is said to be seaworthy. The seaworthiness of the ship that the captain will command during sailing reduces the risk of accidents and ensures safety for the crew (ABK) [22].

The absence of debriefing or socialization causes a lack of public knowledge about the law to understand the provisions of laws and regulations from the government. It is appropriate for the government to provide socialization to the community so that people can understand the rules of law that apply so that order and safety can be realized. Furthermore, it refers to the legal theory that the author has previously explained so that it is seen from the research results in legislation and based on interviews with several informants.

When viewed from the factors causing the crime of Shipping against ships that do not have a sailing approval letter (SPB) in harbormaster and Port Authority Class III port of Bengkulu Baai Island based on the opinion of Friedman Lawrence M. Friedman in his book *Legal Culture and Social Development* quoted by Lilik Mulyadi on the legal system, that to understand the effectiveness of the law in society, it must be considered the components of the legal system which include: structural components that include institutions or rules regarding a community activity in terms of shipping created by the legal system with various functions to support, therefore the need for guidance to the public about the institution or the rule of law of the harbormaster as an agency that is an expert with a scientific understanding of shipping [25].

#### 4. CONCLUSIONS

Based on the discussion in the previous chapters, the authors can outline some conclusions in this study, including:

- a. Provisions of the terms of shipping in Indonesia based on Law No. 17 of 2008 on shipping is to have a ship nationality certificate, certificate of construction safety of cargo ships, cargo ship equipment safety certificate, Radio telecommunications Certificate, National Certificate of prevention and pollution on ships, Minimum ship manning (Safe Manning), Manifestation letter, PPKN letter, and sailing approval letter (SPB). Where a sailing approval letter is obtained from the harbormaster. The harbormaster holds the authority over the port, checks the documents and the ship's feasibility, and supervises the activities in the Class III port of Baai island Bengkulu.
- b. The responsibility of the harbormaster in shipping safety is essential because the duties, functions, and powers of the harbormaster are very strategic. The importance of responsibilities of the harbormaster in a port is to support the orderly administration of shipping and shipping safety, then the task must be supported by human resources who have discipline and proficiency in the field of the sea. In addition, supporting equipment is also needed so that the duties and functions of the harbormaster can be maximized. The responsibility of the harbormaster in shipping safety is to issue SPB and ensure that the administration is appropriately fulfilled. Any shipping violation encountered can be sanctioned directly by the harbor manager by applicable laws and regulations.
- c. The occurrence of criminal acts without a sailing approval letter (SPB) in the territorial waters of Baai Bengkulu is due to a lack of public knowledge about the regulations contained in Law No. 17 of 2008 on shipping, so that the public, in this case, the skipper is reluctant to complete the requirements to fulfill their obligations before sailing, that in fact by completing the requirements in, which surveillance proves that the ship is about to sail is said to be seaworthy.

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