



Legal protection for sea transport passengers

Romi Wahyudi¹, Dewi Astutty Mochtar².

¹ Romi Wahyudi; Postgraduate Law Masters Study Program, University of Merdeka Malang; Terusan Raya Dieng Street Number 62-64; Malang; 65146; Indonesia;

² Dewi Astutty Mochtar; Faculty of Law, University of Merdeka Malang; Terusan Raya Dieng Street Number 62-64; Malang; 65146; Indonesia.

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Abstract

In terms of transportation, safety and security issues are of particular concern. The shipping safety and security system is an important factor that must be considered and as a basis and benchmark for decision-making in determining the feasibility of shipping both in terms of facilities in the form of ships and infrastructure such as navigation systems, and the human resources involved in it. Indonesia has sovereignty over the entire Indonesian sea area, so the sea has a significant role in both the means of unifying the nation and the territory of the Republic of Indonesia, as well as the sea as an invaluable asset of the nation and the future of Indonesia. The efforts that can be made in maximizing legal protection for passengers are to improve the legal system in the shipping sector, including the substance of the provisions regarding shipping, which are further enhanced in the form of sanctions against companies, the addition of providing adequate and comfortable facilities and infrastructure for passengers, especially in the field of legal protection against losses incurred. suffered by passengers, sometimes the transportation company pays less attention to passengers who suffer losses.

Corresponding Author:

* Romi Wahyudi.

E-mail address: romiwahyudi62@gmail.com

1. Introduction

The use of transportation in Indonesia is generally very concerned about passengers' safety, security, and comfort. The marine area is no exception; every ship has a safety management system to create a safety-oriented work environment in operating and carrying out shipping. Ship accidents often occur, such as ship sinking and ship fires. Sailing safety is not only seen from the ship's condition because many other factors influence it. One crucial factor is the implementation of a Planned Maintenance System (PMS) that can be carried out by operators or shipyards. The safety management system must ensure 1. Compliance with mandatory rules and regulations, and 2. the adoption of standard provisions, guidelines, and recommendations from the Organization, Administration, classification societies, and maritime industry organizations are considered. The importance of safety and security issues, as well as sea transportation activities in general, are the responsibility of the Port. (Hidayatulloh, 2022)

The intended safety of the ship is the condition of the ship that meets the requirements for construction materials, buildings, machinery and electricity, stability, layout, and equipment, including radio and electronics of the ship as evidenced by a certificate after inspection and testing which has been carried out continuously since the ship was designed, built, and operating until the Ship Safety Inspector Officer no longer uses the ship. This safety management is critical because it is the main element of ship safety. It is expected to reduce the number of fatalities resulting from the lack of implementation of this safety management.

The increase in the number of passengers has increased significantly from year to year, so it is necessary to look at the form of protection for both passengers; this also often occurs when en-

tering national holidays and holidays, encouraging an increase in the number of passengers and so sometimes carrying passengers and whose number exceeds the capacity of the ship, because of that it makes a disregard for the safety of passengers. The completeness of safety-supporting facilities and infrastructure influences passenger safety, all of this. Lack of facilities and equipment for navigation equipment has obstacles in the operation of ferry crossing at night, which does not support the smooth running of crossing transportation.

This matter is by the provisions of Article 61 Paragraph (3) Government Regulation of the Republic of Indonesia Number 22 of 2011 concerning amendments to Government Regulation number 20 of 2010 concerning Water transportation, which states that every ship serving ferry transportation must: 1. Meet marine technical requirements and service requirements minimum crossing transportation; 2. Have technical specifications by seaport facilities used to serve ferry transportation or ferry terminals on the routes served; 3. Have and/or employ crew members who meet the qualification requirements required for crossing vessels; 4. Having facilities for crew and passengers and vehicles and their cargo; 5. Include company identity and ship's name placed on the left and right side of the ship, and; 6. Include the necessary information or instructions using Indonesian and English.

Safety and security is the central policy that must prioritize shipping in supporting the smooth sea transportation of Indonesia as an archipelagic country. Low shipping safety can be caused by poor human resource management. Transportation services are very closely related to aspects of safety for both people and goods, marine governance, and law enforcement at sea in ensuring safety,

security, order, and protection of the marine environment so that it remains clean and sustainable as a source of life for all Indonesian people and supports smooth shipping traffic. It is a concern that shipping safety and security are essential factors in supporting the smooth running of sea transportation and preventing accidents. The Directorate General of Sea Transportation has issued policies on preventing ship accidents, such as making shipping announcements regarding increasing shipping safety supervision for passenger ships and making announcements about weather conditions in Indonesian waters, such as telegrams regarding inadequate weather readiness at sea. (Ditjen Hubla, 2017)

In addition, safety policies in shipping or sea transportation are also regulated by international institutions, namely the International Maritime Organization (IMO) and under the auspices of the United Nations (UN). An international institution tasked with dealing with matters relating to the safety of the lives of ship passengers and crew, marine assets, and environmental sustainability at sea. (Kusumaatmadja, 2002)

Nur Paikah wrote the same study with the title, legal protection for the safety of seagoing passengers based on law 17 of 2008 concerning shipping in Indonesia, one of the focuses of the study was the non-fulfillment of the technical requirements for seaworthiness and the minimum service requirements for ferry transport. So that not a few passengers suffered both material and non-material losses. In this study, the author focuses on the carrier's responsibility for passengers in the event of an accident due to a natural disaster at sea (Paikah, 2019).

Based on what has been described in the background of the problem, the problems that will be analyzed in more depth in this study are 1. What

is the legal protection for passengers in sea transportation? 2. What is the carrier's responsibility to sea transport passengers when an accident occurs due to a natural disaster at sea?

2. Methods

Research is divided into 2 (two), namely normative legal research and empirical or sociological legal research. Empirical legal research based on field data. Empirical legal research is legal research that obtains primary or public data with a descriptive pattern. In analyzing, the researcher wishes to provide an overview or description of the object and research subject.

3. Result and Discussion

3.1 Legal Protection of Passengers in Sea Transportation

Legal protection is synonymous with guaranteed rights and obligations in an agreement between the two parties (Soedjono, 1993). Legal protection protects the parties' interests in a legally valid agreement. The forms of legal protection for sea transport passengers are divided into two, namely preventive legal protection and repressive legal protection. (Soedjono, 1983).

Preventive legal protection is an action taken by sea carriers before social deviations occur so that an act of violation can be dampened or prevented, for example, socialization in the form of directing passengers to buy tickets at the place provided, not through brokers, because it is illegal. In addition, guiding passengers in terms of obtaining safety before the ship departs, including directions on the use of lifeboats and lifeboats so that they can be used correctly if unwanted things occur during sea travel. However, the reality is that officers themselves act as brokers, and

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there is often mutually beneficial cooperation between brokers and officers. *Repressive legal protection* is an active action that can be taken by sea carriers when social deviations occur so that deviations that are happening can be stopped, which includes responsibility for the safety of passengers as objects in sea travel. (Soedjono, 1999).

The most important thing that must be considered in sea transportation carriers is from boarding the ship until the passengers disembark at their destination. The system is designed to ensure the implementation of adequate protection from possible risks and hazards that can be foreseen and anticipated as a cause of injuries, deaths, health problems, and property and environmental damage that should not occur. This form of repressive legal protection has not run optimally, mainly when it is found that lifeboats, life jackets, and other life-saving equipment need to be fixed, and there needs to be more cleanliness on board so passengers feel uncomfortable.

Another form of repressive legal protection is to guarantee the safety of passengers in the form of insurance that has been agreed upon beforehand in the event of a transaction between the passenger and the transportation service as outlined in the form of an agreement. Through the insurance program, there is a guarantee for passenger safety in the form of compensation if unwanted things happen in the future. In addition, legal protection relates to compensation guarantees for passengers who experience unwanted things such as experiencing losses. Suppose you need to find common ground regarding safety guarantees and compensation. In that case, passengers can take legal action if the sea transportation company does not pay attention to the complaints experienced by passengers. Legal efforts can be taken through court (litigation) or outside the court (non-litigation) on their mutual agree-

ment, for example, conciliation, mediation, negotiation, and arbitration (Umar, 1999).

The many problems that occur in the community regarding sea transportation, among which are often complained about by passengers of ships, are 1. The passenger waiting room still feels uncomfortable because the passengers are waiting for departure too long, so passengers are jostling in the waiting room. 2. The ship owner sometimes needs to notice the ship's cleanliness. 3. There are still thugs in the waiting room, thus disturbing the comfort of passengers. 4. Sometimes, passengers do not get a seat, so they have to go to the floor, and smoke can still be felt everywhere. 5. There are still many hawkers and brokers. 6. Passengers still feel unsafe if many unauthorized people are on board. 7. Passengers complain that there is still a loss of goods on board. 8. Sometimes the departure schedule is late, so passengers have to wait a long time.

From some of the problems above, it must get a guarantee of legal protection. Through repressive and preventive legal protection, the above problems can be overcome; for this reason, it is essential for sea transportation companies to implement the mandate of Law Number 17 of 2008 Concerning Shipping Jo Law Number 11 of 2020 concerning Job Creation Jo Government Regulation Number 20 of 2008 2010 concerning Water Transportation. Passengers are one of the essential elements in an organization of transportation, both land, sea, and air transportation. Even though sometimes they are most vulnerable to experiencing unpleasant treatment from freight forwarders, it is necessary to have guarantees for legal protection for passengers, in this case, sea transport passengers.

Law no. 17 of 2008 Article 1 point 32 confirms that shipping safety and security is a condition of fulfilling safety and security requirements

concerning transportation in waters, ports, and the maritime environment. Whereas Article 1 point 33 of Law Number 17 of 2008 states that ship seaworthiness is the condition of a ship that meets ship safety requirements, prevention of water pollution from ships, operating, load lines, loading, crew welfare, and passenger health, ship legal status, safety management and prevention of pollution from ships, as well as management of ship safety to sail in certain waters. The efforts that can be made in maximizing legal protection for passengers are by improving the legal system in the field of shipping, including the substance of the provisions regarding shipping which is further enhanced in the form of sanctions for companies, especially in the field of legal protection against losses suffered by passengers, sometimes the transportation companies pay less attention to the loss of passengers. Especially at this time, public interest in sea travel is still high, so of course, the risks are ready to be borne by passengers. No passenger wants a disaster on the sea, air, or land transportation. However, apart from that, some passengers experience losses and need help claiming their rights.

In addition, other efforts are providing proper and comfortable facilities and infrastructure for passengers, including the provision of spacious waiting room facilities and the availability of branch offices everywhere for transportation companies, especially making it easier for ship passengers when they are going to make complaints or requests. Claims for compensation in the event of abuse of authority by the transportation company. Apart from that, the most important thing is to improve the culture (legal culture) of both passengers and transportation companies by cultivating the slogan of passenger satisfaction that must always be considered so that passengers feel comfortable and safe in using the transportation

company's services. In addition, there is no psychological burden for passengers who experience problems while traveling because the crew and officers are ready to provide information or explanations to passengers.

Law Number 8 of 1999 concerning Consumer Protection explains that consumers, who in this case are passengers of sea transportation, have the following rights (Sutedi, 2008) 1. the right to comfort, security, and safety in consuming goods and/or services; 2. the right to choose goods and/or services and obtain said goods and/or services by the exchange rate and the conditions and guarantees agreed upon; 3. the right to be treated or served properly and honestly and not discriminatory; 4. the right to receive compensation, compensation and/or reimbursement, if the goods and/or services received are not by the agreement or not as they should be; Etc.

The daily manager of the Indonesian Consumers Foundation (YLKI), Agus Sujatno, believes that a large number of ship accidents shows the weakness of oversight of passenger safety. In the case of a fire caused by the cargo being transported, for example. According to Agus, according to standard procedures, officers should check the contents of the cargo, and the condition of the vehicle, before the vehicle enters the belly of the ship until the vehicle is tied to the rope. However, officers at almost all ports in Indonesia often need to pay more attention to this. (Online Law, 2021)

The former chairman of the National Transportation Safety Committee (KNKT), Tatang Kurniadi, thinks that when a transportation accident occurs, the NTSC must find out whether there was a violation of the rules. If violations of the rules are found, it is the responsibility of the management of the transportation service company to take action. Shipping safety is closely related to the seaworthiness of ships, which has been regu-

lated in Law Number 17 of 2008 concerning shipping. Where these regulations are listed in Chapter IX, Articles 124 to Article 171 of the Shipping Law, but several articles have been amended by Law Number 11 2020 concerning Job Creation, namely arrangements regarding ship safety standards regulated in Article 57 number 26 to Article 57 number 42.

Apart from being stipulated in the Shipping Law, Government Regulation 51 of 2002 concerning Shipping also requires every ship to fulfill requirements regarding ship seaworthiness, including ship safety, ship manning, ship operation safety management, and prevention of ship pollution, loading, and ship's legal status. The Government Regulation also regulates actions for ship safety where the ship must be equipped with a general emergency alarm; the crew must be trained in the event of a disaster or leave the ship; officers who carry out the first guard duty must get sufficient rest time, fire role training, the role of leakage, the role of helping people falling overboard and the role of leaving the ship is carried out once a week or at least once during a voyage if the sailing time is less than one week. Furthermore, for ships that experience accidents, it is regulated that the results of ship accident inspections must be evaluated and assessed to improve the implementation of ship safety, determine whether the relevant certificate can still be applied, and whether or not a further inspection is necessary.

According to Aziz, Director of Communication and Knowledge Management at the Center for Legal and Policy Studies (PSHK) in online law, ship seaworthiness is the suitability of the ship's weight with the number of passengers on a ship. She was referring to several incidents of water transportation accidents caused by the overcapacity of passengers. So only let the ship carry the passenger capacity because each has a load line that must be considered.

In addition, the feasibility factor for water transportation operations is also influenced by passengers' luggage. This is because, apart from impacting the security and safety of passage, it also significantly affects passenger comfort when the ship is on its way. The number of ship accidents yearly shows the weak supervision of passenger safety – fires caused by the cargo being transported, for example. According to standard procedures, before the vehicle enters the ship's belly, the officer checks the contents of the cargo, and the condition of the vehicle, until the vehicle is tied to the rope. However, this procedure is often not noticed by the ship's officers because the inspection is considered to take hours, so it can burden the cost of the ship's docking.

3.2 Responsibilities of the Carrier to Sea Transportation Passengers When an Accident Occurs Due to a Natural Disaster at Sea

A transportation service equipped with safety guarantees will provide a sense of certainty and calm for travelers so that the socio-economic activities of the community can be protected when traveling. There is no guarantee of feeling safe, constantly feeling anxious about part of the trip, the connecting trip, or the whole trip process. If the safety aspect of transportation is guaranteed, and the rights of the user community are protected, unexpected costs will not arise that are detrimental to the user community. In principle, the issue of order and safety is a shared responsibility between the government, the private sector, operators and users of transportation services, and the whole community.

According to Sution Usman Adji, regarding ship entrepreneurs, four people play an essential role, they are: (Adji, 1991) 1. Reder (Ship Entre-

preneur); 2. Captain; 3. Carrier; 4. Owner; The ship entrepreneur (redder), according to Article 320 KUHP, determines that the entrepreneur is he, who uses a ship at sea and runs it himself or is entirely run by a skipper who works for him even though a shipping entrepreneur is usually a ship owner.

According to Usman Adji, the responsibilities of the ship entrepreneur (Reder) 1. Article 321 KUHD, as a reder, controls the ship in reality (feite); therefore, he is responsible for all incidents on the ship in question. 2. Article 321 of the Criminal Code paragraph (1) stipulates that ship entrepreneurs are related to all legal actions committed by those who work permanently or temporarily on their ships in their positions within their authority. If this verse is peeled off, what binds the reder is: a. Legal actions by those working on the ship; b. in permanent or temporary employment; c. Paragraph (2) confirms: the reder is responsible for all losses incurred by parties who break the law; d. Article 536 determines that the reder of a ship that has made a mistake must be held responsible. And also article 568 KUHD and 537 paragraph (3) KUHD.

Article 522 paragraph (1) of the Criminal Code states that the agreement to transport obliges the carrier to maintain the security of passengers from the moment they board until the time they get off the ship. Paragraph (2) explains that the carrier is obligated to compensate for losses caused by injuries that occur to passengers in connection with transportation unless he can prove that the injury was the result of an event that could not have been prevented or avoided or the result of the passenger's fault. Paragraph (3) explains that if the injury results in death, then the carrier is obliged to compensate for the loss suffered by the husband or wife left behind, the children and parents of the passenger. Article 537, paragraph (1), explains that if the ship's collision is the result of

both parties, the responsibility of the two ship operators is balanced with the mistakes made by both parties. Paragraph (2) explains that the judge determines this comparison without being indicated by the person claiming compensation. If this cannot be determined, the ship's operators are responsible for all the same parts. Paragraph (3) explains that if someone dies or is injured, each ship entrepreneur is responsible to a third party for all losses. Therefore, the ship's entrepreneur has paid more than the portion calculated in the manner referred to in the first paragraph by having bills against fellow joint debtors.

In Law Number 17 of 2008 Article 40 paragraph (1), that transportation companies in the waters are responsible for the safety and security of passengers and/or the goods they transport. Then it is emphasized in article 41, paragraphs (1), (2), and (3) of Law Number 17 of 2008 concerning Shipping that; Paragraph (1) The responsibility referred to in Article 40 can arise as a result of the operation of the ship, in the form of 1. The death or injury of the passengers being transported; 2. Destroyed, lost, or damaged goods transported; 3. Delay in the transportation of passengers and/or goods being transported, or 4. Losses of third parties Paragraph (2) if the party proves that the losses referred to in paragraph (1) letters b, c, and d were not caused by their mistakes, the transport company in the waters may be released in part or whole from their responsibilities. Paragraph (3), transportation companies in the waters are required to ensure their responsibilities as referred to in Paragraph (1) and carry out general passenger basic protection insurance by statutory provisions. In the sea transportation safety system, the role of the sea transportation supervisor is needed. Indonesian shipping law, which regulates the security and safety of passengers, is mandated to Syahbandar. Those in the organizational structure

of the Ministry of Transportation are within the Directorate General of Transportation, which consists of the main harbor and port authority offices. Each office has different tasks.

According to Article 3 of the Regulation of the Minister of Transportation Number PM 36 of 2012 concerning the Organization of Work Procedures for the Harbor Master Office and the Port Authority, the functions of the Harbor Masters and Port Authority offices are 1. Implementation of supervision and fulfillment of ship seaworthiness, ship certification, prevention of pollution from ships, and determination of the legal status of ships. 2. Execution of ship safety management inspection. 3. Implementation of shipping safety and security supervision related to the loading and unloading of dangerous goods, unique goods, hazardous and toxic waste (B3), refueling, orderly embarkation and disembarkation of passengers, construction of port facilities, dredging and reclamation, seaworthiness and maritime affairs, orderly ship traffic in harbor waters and shipping lanes, pilotage and delay of ships, and issuance of sailing approval letters. 4. Execution of inspection of ship accidents, prevention, and suppression of fires in port waters, handling of disasters at sea, implementing maritime environmental protection, and law enforcement in shipping safety and security. 5. Implementation of coordination of government activities at ports related to the implementation of supervision and law enforcement in shipping safety and security (Saputra, & Adwani, 2013).

Other technical matters are still regulated from points 6 to 11 relating to the preparation of port masters, supervision of land use, implementation of ship traffic, evaluation of work service standards, and implementation of port finance. Implementation of supervision and compliance with ship seaworthiness, ship certification, preven-

tion of pollution from ships, and determination of the legal status of ships. From the job description based on article 3 PM No. 36 of 2012 above, it can be seen that the syahbandar plays a vital role in supervising the ship's safety for passengers and goods. In carrying out supervision of ship safety management. As well as the implementation of shipping safety and security supervision related to the activities of loading and unloading of dangerous goods, certain goods, hazardous and toxic waste (B3), refueling, orderly embarkation and disembarkation of passengers, construction of port facilities, dredging and reclamation, seaworthiness and maritime affairs, orderly ship traffic in port waters and shipping lanes, guiding and tugging ships, as well as issuing sailing approval letters. So that if a ship accident occurs, the harbormaster coordinates with related parties at the port related to the implementation of supervision and law enforcement in the field of shipping safety and security. So it is expected that the harbor master, in issuing the sailing approval letter, must be prudent first to carry out the stages of the inspection procedure so that the sailing ship has genuinely been declared seaworthy, starting from ship management, ship safety, passenger safety equipment, engines, the condition of the ship, the number of goods. Passengers must match the gross tons with the carrying capacity of goods and people. So that when issuing a sailing approval letter if all procedures have been carried out correctly and safely. Articles 302 and 303 of the Shipping Law stipulate sanctions for the captain if he sails his ship while the party concerned knows that the ship is not seaworthy, as referred to in Article 117 paragraph (2) of the shipping law.

In transportation law, there are 3 (three) principles of responsibility, namely fault liability, presumption liability, and absolute liability.

4. Conclusion

Legal protection for passengers on ships based on Law Number 17 of 2008 concerning Shipping is passengers' right. The shipping company is obliged to provide legal protection for passengers in a preventive and repressive legal protection for parties involved in the transportation of goods and people both in public shipping, between islands, and at ferry crossings; each party is responsible based on their respective roles and functions. The captain and ship owner are the carriers (*actus reus*). At the same time, the supervisor, in this case, the harbor master, and the regional transportation service are indirectly responsible based on the principle of responsibility.

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