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Criminal Liability on Ship Accidents in Aceh Shipping

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Abstract

Maritime safety and security are essential components of the sector. In the occurrence of a maritime incident, the captain bears the principal obligation to safeguard the passengers, crew, and the vessel. Nonetheless, the criminal liability of the captain in shipwrecks in Aceh continues to encounter numerous problems in its execution. The research methodology employed in the formulation of this study is the Empirical Juridical research method. This research aims to elucidate the nature of criminal liability in maritime incidents within Aceh Shipping. The research findings

indicate that the captain's duty to ensure the safety and security of navigation is governed by several legislation, including Law Number 17 of 2008 regarding Navigation. The skipper must guarantee the ship's seaworthiness, adhere to safe navigation protocols, and conform to operational requirements. Nevertheless, there exist technological and administrative impediments that obstruct the fulfillment of such tasks, including inadequate safety provisions and a deficiency in regulatory comprehension.

Keywords: Criminal Liability, Ship Accidents, Aceh, Shipping

Introduction

Maritime transport, which has the characteristic of national transportation and reaches all regions through waterways, needs to have its potential developed and its role enhanced as a connector between regions, because it is used as a means to support, encourage, and drive national development to improve the welfare of the people.¹

Article 1 Number 5 of Law Number 17 of 2008 concerning Shipping regarding People's Sea Transportation states that "People's Sea Transportation is a traditional people's business that has its characteristics to carry out transportation in the waters using sailing ships, motorized sailing ships, and/or simple motor boats under the Indonesian flag of certain sizes." The emergence of various types of ship transportation has given prospective passengers many different options in using ships as a means of transportation. Although the advancement of maritime transportation is becoming increasingly complex, accidents still frequently occur in various oceans. If a ship accident occurs, it will certainly cause a lot of losses. Because the losses are not only material losses, but also immaterial losses, and can even result in the loss of human lives.²

In Aceh Province, particularly at Malahayati Port and Meulaboh Port, shipping is a vital artery and the main transportation route for tourists visiting the islands. In conducting their business in maritime transportation, both passenger and cargo transport, shipowners and relevant authorities must ensure that they have the authority to provide safety guarantees for passengers.

The security and safety of navigation are crucial aspects of maritime operations that encompass various elements ranging from ships, crew members, and passengers, to the cargo being transported. Safe and secure navigation is a crucial prerequisite for maintaining smooth maritime operations, which in turn directly impacts the global economy. Ships as a means of maritime transportation play a vital role in international trade, transporting essential goods such as oil, gas, industrial raw materials, and finished products between countries. Therefore, maintaining the security and safety of navigation is an effort that cannot be compromised.

¹ Sution Usman dll, Hukum Pengangkutan di Indonesia, Rineka Cipta, Jakarta, 1991, p. 290.

² Istopo, 1999, Kapal dan Muatannya, Koperasi BP3IP, Jakarta, p. 170.

The reality of shipping is that ship accidents still often occur, whether due to the captain's negligence, unexpected weather conditions, or technical problems. In the event of an accident, the captain can be held criminally liable if proven negligent in performing their duties. The captain's duty to maintain navigation safety, as regulated by Law No. 17 of 2008 on Shipping and various related regulations, serves as the legal basis that emphasizes the importance of the captain's role in maritime safety.

As stated in Article 284 of Law Number 17 of 2008 concerning Shipping, it is declared that "A ship accident is an event experienced by a ship that can threaten the safety of the ship and/or human life, including Ship sinking, Ship fire, Ship collision; and Ship grounding." Furthermore, in Article 249, it is stated that the accidents as referred to in Article 245 are the responsibility of the Captain unless proven otherwise. The fact that often occurs is that the captain, who causes the ship to sink, catch fire, collide, or run aground, is not held responsible for the incident.

The criminal responsibility of the captain is related to preventive actions, such as inspecting the seaworthiness of the ship before sailing, training the crew, and implementing safety protocols during the voyage. Failure to carry out these preventive measures can be considered a form of negligence that results in criminal liability. For example, if an accident occurs due to overloading or known technical damage that has not been repaired, the captain can be subject to criminal sanctions for being deemed negligent in performing their duties.

The responsibilities of the captain in Law Number 17 of 2008 concerning Shipping are regulated in several articles. Article 244 paragraph (2) stipulates that the captain is obliged to take preventive measures, search, and rescue efforts if the ship is in danger, and report the incident to the nearest authorized officer. Article 245 states that a ship accident is an event that threatens the safety of the ship and/or human life, such as the ship sinking, collision, grounding, and stranding.

In addition, the captain is also responsible for ensuring that the ship meets seaworthiness requirements before sailing, maintaining the safety and well-being of passengers and crew, and ensuring the performance of other crew members. The captain must act with skill, precision, and wisdom in every situation. Accidents involving transport ships can occur not only along waterways but also around ports or docks due to various causes. Among the many causes of transportation ship accidents, human negligence and carelessness are the primary factors, in addition to other technical or natural factors. In the history of maritime transportation in Meulaboh waters, particularly in Malahayati, there have been many shipwrecks that have resulted in significant losses.³

Based on ship accident case data obtained from the Malahayati Port Harbor Office, it was found that the last commercial ship accident occurred in 2018. The accidents that frequently occur are sinking fishing vessel accidents. According to special SOPs, fishing vessel accidents are not reported to the Maritime Court and are only recorded. Meanwhile, in the last 3 to 4 years, there have been no commercial ship accidents. The types of ship accidents that occurred at KMP BRR Port Malahayati also include leaks

and grounding. The causes of these accidents include technical errors made by the watchkeepers who lack an understanding of navigation, overloading which caused the ship's hull to leak, insufficient lashing of the ship's cargo affecting the ship's stability, and extreme weather conditions that posed technical obstacles to the ship's safety.

Another ship accident case also occurred in the waters of Meulaboh in 2021, where one unit of a fishing boat was destroyed after being hit by a large ship. In 2022, a similar accident occurred where a fishing boat collided with the mooring bollard/mooring buoy belonging to the coal transport ship PT. Mifa Bersaudara, allegedly because no buoy was installed as a marker. In this case, the type of ship accident that occurred did not involve a major accident, but rather human error, such as crew fatigue that caused a collision at sea.

The criminal liability of the captain in the context of a shipwreck is regulated by maritime criminal law, which includes various national and international regulations. The captain, as the leader of the ship, has full responsibility for the safety of the ship, crew, passengers, and cargo during the voyage. When a ship accident occurs, the captain can be subject to criminal sanctions if proven to have committed negligence or violations that caused the accident.⁴

According to the Criminal Code (KUHP), a captain can be subject to criminal sanctions if proven guilty of negligence that causes an accident or loss. Article 359 of the Penal Code states that anyone who, due to their negligence, causes the death of another person, shall be punished with imprisonment for a maximum of five years or confinement for a maximum of one year. Furthermore, Articles 360–361 of the Penal Code regulate negligence that harms others. In addition, Law Number 17 of 2008 concerning Navigation also specifically regulates the captain's responsibility in ensuring navigation safety, including the technical requirements of the ship and seaworthiness.⁵

Article 302 of the Criminal Code regulates the punishment for a ship's captain who takes their ship to sea, knowing that the ship does not meet maritime safety standards as stipulated in Article 117 paragraph (2). If the captain commits this act, he can be sentenced to a maximum of 3 years in prison or a fine of up to Rp. 400,000,000.00. If the action causes property damage, the penalty can be increased to a maximum of 4 years in prison and a fine of up to Rp500,000,000.00. If the act results in someone's death and property damage, the captain can be punished with a maximum of 10 years in prison and a fine of up to Rp1,500,000,000.00. This aims to encourage the captain to take responsibility and ensure that the ship they operate meets the established maritime safety standards.

The criminal liability of the Captain is also regulated in Article 302 Paragraph (1) of Law Number 17 of 2008 concerning Shipping. This legislation regulates both Shipping and the Captain. The regulations governing criminal liability are stipulated in Articles 303, 305, 309, and 316 paragraph (2) of Law Number 17 of 2008 concerning Shipping.

⁴ Satocid Kartanegara, *Hukum Pidana 1*, Sinar Grafika, 2002, p. 144.

⁵ E.Y. Kanter and S.R. Sianturi, *Asas-Asas Hukum Pidana di Indonesia dan Penerapannya*, Stora Grafika, Jakarta, 2002, p. 208.

³ Soewedo, Hananto, *Penanganan Muatan Kapal*, Djangkar, 2015, Jakarta, p. 32.

The process of legal accountability in ship accidents involves steps such as reporting to KSOP or Basarnas, evaluating the situation, investigating the cause of the accident by collecting evidence conducting interviews, and coordinating with various related parties to determine legal actions. This process also includes environmental protection in case of damage. From the description, there are several differences in handling ship accidents at various ports. KSOP Malahayati, for example, has strict procedures and involves various parties including the Maritime Court. However, obstacles such as delayed information and miscommunication often hinder the case resolution process. Based on the above description, the purpose of this research is to explain the forms of criminal liability in ship accidents in Aceh Shipping.

Research Method

The type of legal research used is empirical legal research, which is a legal research approach that combines normative legal analysis with empirical observation. This method aims to understand how law is applied and functions in practice through the collection of empirical data from sources obtained through interviews, observations, or case analysis. This research not only examines existing legal rules but also how those rules are applied in practice and their impact on society.⁶ The data sources used in this research are primary data and secondary data. Primary data is data obtained directly from the main source through field data collection via interviews.

Results and Discussions

Liability in criminal law refers to an individual's obligation to bear the legal consequences of actions taken, especially if those actions meet the elements of a criminal offense. According to Sudarto, criminal liability is the relationship between a person and their actions that meet the elements of a crime, thus making them subject to criminal sanctions. This concept is based on the principle of no punishment without guilt (*geen straf zonder schuld*), which means that a person can only be punished if proven guilty of their actions.⁷

In the context of a shipwreck, criminal liability applies if the captain or related parties are proven to have committed negligence or legal violations that caused the accident. This negligence can take the form of failing to meet maritime safety standards, ignoring operational procedures, or taking actions that pose risks to the ship, passengers, or marine environment. Therefore, criminal liability in this case must be proven through the element of fault (*mens rea*), unlawful act (*actus reus*), and the resulting consequences.⁸

Criminal liability in ship accidents is a form of legal consequence for the captain if proven negligent, causing the accident. According to Sutikno, the captain has the primary responsibility for the safety of the ship and passengers, so

any actions or negligence that cause an accident can be subject to administrative and criminal sanctions.⁹

In practice, as stated by Capt. Sutekno, "Every ship accident must be reported by the captain to the KSOP, followed by a thorough investigation of the incident." If elements of negligence or violations of safety procedures are found, the captain may be subject to sanctions, both administrative and criminal, by the applicable regulations".¹⁰

Based on that statement, it is evident that the captain's responsibility in a ship accident heavily depends on their adherence to reporting procedures and navigation safety. This is under Article 234 of Law No. 17 of 2008 on Navigation, which requires the captain to immediately report ship accidents to the relevant authorities. Failure to fulfill this obligation can lead to administrative or criminal sanctions, especially if elements of negligence are found that impact the safety of the ship and the maritime environment. Thus, the effectiveness of criminal liability for the captain depends on a consistent and strict regulatory oversight and enforcement system.

According to Captain Azharuddin, "Efforts to prevent ship accidents are carried out through strict technical supervision, training for the crew, and better utilization of navigation and communication technology." With this measure, it is hoped that the safety of the ship will be better ensured so that the captain can avoid legal risks due to negligence."¹¹

This statement emphasizes that compliance with safety regulations not only serves as an accident prevention measure but also as a form of legal protection for the captain. In accordance with the SOLAS Convention 1974, every ship is required to meet safety standards and use adequate navigational equipment. If the captain neglects this, he can be considered negligent and legally responsible. Therefore, technical supervision and adequate training are key factors in ensuring that every captain understands and fulfills their legal obligations properly.

Criminal provisions in ship accidents are regulated in Article 302 of Law No. 17 of 2008, which states that a captain who intentionally operates a ship that is unseaworthy can be sentenced to up to 10 years in prison or a maximum fine of IDR 1.5 billion. Additionally, in cases of accidents that cause environmental pollution, Law No. 32 of 2009 on Environmental Protection and Management can also be used to prosecute the perpetrators. From the above opinion, it can be concluded that criminal liability in ship accidents highly depends on an effective reporting system, compliance with safety regulations, and strict technical supervision.

KSOP Malahayati stated, "Many fishing vessel accidents are not officially reported, making it difficult for us to conduct investigations and impose appropriate legal sanctions." This often happens because fishermen prefer to resolve issues through customary means rather than through legal channels. This statement shows that without clear reporting, investigations cannot be conducted optimally, resulting in many ship accident cases ending without legal consequences for the responsible parties.

⁶ Hamzah, *Metode Penelitian Hukum Sebagai Suatu Pengantar*, Laduny Alfatama, Lampung, Cet. 1, 2019. P. 7.

⁷ Sudarto, *Hukum Pidana*, Alumni, Yogyakarta, 1983, p. 157

⁸ Moeljatno, *Asas-asas Hukum Pidana*, Bina Aksara, Jakarta, 2002, p. 63.

⁹ Sutikno, *Tanggung Jawab Nahkoda dalam Keselamatan Kapal*, RajaGrafindo, Jakarta, 2021, p. 45.

¹⁰ Interview with Capt. Sutekno, KSOP Malahayati Dated on 24 December 2024.

¹¹ Interview with Capt Azharuddin KSOP MBO, Dated on 24 December 2024.

In addition, the implementation of safety regulations requires support from strict technical oversight, training for crew members, and better utilization of navigation and communication technology. If the captain and the shipowner adhere to the applicable safety standards, the risk of accidents can be minimized, so that criminal responsibility is not only focused on enforcement after an accident occurs, but also on preventive aspects.

KSOP Malahayati also emphasizes the importance of monitoring the seaworthiness of ships, administrative oversight, and coordination with captains and coastal radio stations to reduce the risk of accidents. However, its effectiveness still depends on good coordination between the captain, ship operators, and maritime authorities. Thus, the effectiveness of criminal liability in ship accidents does not only depend on legal aspects, but also on inter-agency coordination and the captain's awareness in fulfilling legal obligations.

KSOP Malahayati also revealed that "Several obstacles in resolving ship accident cases, such as the delayed receipt of accident information, which slows down the provision of information to the Ministry of Transportation, and miscommunication between the captain and the inspector, making it difficult to produce inspection results".¹² Therefore, improvements in the reporting and monitoring systems are necessary so that the established regulations can be implemented more effectively in the field.

From the interview with Capt. Sutekno, S.Sos., M.Mar., who is a staff member at KSOP Malahayati, it was explained that the captain has the primary obligation in the legal process after a ship accident. "The captain must immediately report the accident to the KSOP, which will then be forwarded to the Director General of Sea Transportation." This report must be supported by accompanying documents that will be thoroughly examined before being forwarded to the Maritime Court. The Maritime Court has the authority to impose administrative sanctions on the captain if professional misconduct is found. In line with this, the captain of KMP BRR at Malahayati Port emphasized that the captain's responsibility does not stop at reporting the accident, but also includes coordination with various parties. "After the accident occurs, we must immediately coordinate with KSOP and Basarnas to ensure the safety of the ship and passengers," he stated. However, he acknowledged that there were obstacles in this process, especially in prioritizing safety amidst the emergency situation.

This statement indicates that although legal procedures have been established, their implementation still faces challenges on the ground. In emergency conditions, the captain's main priority is to save the passengers and the ship, which sometimes causes delays in legal proceedings. This creates a dilemma between adhering to legal procedures and taking swift action in handling accidents. Therefore, a better coordination system is needed between the captain, KSOP, and related agencies so that law enforcement does not hinder rescue efforts on the ground.

Based on an interview with Mr. Azharuddin from KSOP MBO, he mentioned that in some cases, fishing boat accidents are not officially reported and are more often resolved through customary mechanisms. "Many fishermen

are reluctant to report and prefer to resolve issues at the customary sea level," he said. This shows that there is an imbalance between the applicable legal rules and the practices on the ground.

Analysis of this statement shows that the effectiveness of the law in regulating the captain's responsibility is still influenced by social and cultural factors. The existence of customary institutions in the resolution of ship accidents, particularly on fishing vessels, indicates the presence of a dual legal system in operation. On one hand, there are formal regulations that govern the obligation to report ship accidents, but on the other hand, there are customary mechanisms that are more accepted by fishery operators. This poses a challenge in ensuring that every ship accident is handled according to the applicable legal procedures, especially in the context of the captain's accountability.

The implementation of law enforcement against ship captains in ship accident cases in Aceh still faces various challenges. Normatively, legal procedures have been clearly regulated in national regulations, such as the captain's obligation to report accidents, the investigation process by KSOP, and the possibility of sanctions by the Maritime Court. However, in practice, there are various obstacles that hinder the implementation of these regulations.

Conclusion

The captain's responsibility in maintaining the safety and security of navigation has been regulated by various laws, such as Law Number 17 of 2008 concerning Shipping. The captain is obliged to ensure the seaworthiness of the ship, carry out safe navigation procedures, and comply with operational standards. However, in practice, there are technical and administrative obstacles that hinder the execution of these responsibilities, such as limited safety facilities and a lack of understanding of regulations.

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