



SAILING APPROVAL LETTER FOR COMMERCIAL SHIP

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Abstract

The method used in writing this thesis is to use a normative juridical research approach. This study aims: (1).To find out the Legal Arrangements Regarding Sailing Approval Letters for Commercial Ships (2) To find out the Legal Implications for Commercial Ships that are Not Seaworthy but Have Sailing Approval Letters. The results of this study are (1). Issuance of Sailing Approval Letter is regulated in Article 219 of Law Number 17 of 2008 concerning Shipping and is followed up by Government Regulation Number 82 of 2014 concerning Procedures for the issuance of Sailing Approval Letter. In this provision, ships carrying out voyages, including commercial ships, are required to have a Sailing Approval Letter issued by the harbormaster with the stipulation that the ship is seaworthy in practice. Most of the commercial ships that occur at sea are caused because the ship is sailing in a state that is not seaworthy and the implications of the ship accident are the porter who is affected, is considered negligent, must also be responsible for his policy of issuing a Sailing Approval Letter (SPB).

Keywords: Commercial Ship, Sailing Approval

1. Introduction

The Unitary State of the Republic of Indonesia (NKRI), known as the Archipelago State, because it is an archipelago located along the equator, has 17,504 islands and a coastline of 81,000 km¹. Indonesia has a marine area that is larger than its land area, besides that Indonesia is also a center of traffic crossing between 2 (two) oceans, namely the Indian Ocean and the Pacific Ocean, as well as the center of crossing traffic between 2 (two) continents, namely Asia and the Australian Continent².

In the condition of the State, territory as above, the role of sea transportation facilities in this case commercial vessel becomes very important and strategic in terms of supporting the smooth flow of transportation of people and goods. Realizing how important commercial ships are in supporting and contributing to the national development process, consequently, shipping

¹ Keputusan Presiden Nomor 178 tahun 1999 tentang pengesahan *Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea*, 10 Desember 1982, p, iii

² *ibid*



operations should be managed and organized properly, in the sense of being efficient and effective.

Law Number 17 of 2008 concerning Shipping mandates that the organization of shipping activities continues to be fostered and improve its management, as stated in Article 5 paragraph (1) that Shipping is controlled by the state and its guidance is carried out by the Government. The definition of being controlled by the State as stated in Article 5 paragraph (1) above implies that the state has the right of control over the operation of shipping whose manifestation includes aspects of regulation, control and supervision.

In the concept of a modern legal state or commonly called a welfare state, the state in this case the government is positioned as an institution that is given the task and responsibility of serving or providing services to the public interest (public service)³. Including the obligation to provide protection for comfort, security and safety in shipping. The form of this regulatory aspect is the legal basis for the operation of the voyage.

Currently, the management, empowerment and utilization of sea transportation means, in this case commercial vessels, have not been optimally carried out by the state. This can be seen from the many cases of commercial ships that have a Port Clearance Letter, but when they are inspected they are not seaworthy. The ship is considered not seaworthy because it is proven that it does not meet the requirements stipulated by regulations regarding ship safety, such as a certificate of the ship exists, but dies, PMK does not work and safety equipment is not sufficient, ship registration is not installed, excess signs (over draft), not in accordance with cargo documents, The crew's certificate does not match, the sailor's book is dead, the presence of stowaway passengers, the OWS is not functioning properly and so on.

In fact, the Commercial Ship is equipped with a Sailing Approval Letter (SAL) which is signed and authorized by the Harbor Master, where the ship starts the voyage (Port of Origin), which means that the ship has actually gone through an administrative and physical inspection at the port and is considered seaworthy and has been comply with the provisions of laws and regulations to carry out voyages at sea.

Article 219 paragraph (1) of Law Number 17 of 2008 concerning Shipping states that "Every ship sailing is required to have a Sailing Approval Letter issued by the Harbormaster" Further provisions and conditions for the issuance of a sailing approval letter are regulated in the Regulation of the Minister of Transportation of the Republic of Indonesia Number KM. 82 of 2014 concerning Procedures for the issuance of a Sailing Approval Letter (Port Clearance), has explained in detail the provisions and procedures for how a Sailing Approval Letter is issued.

Issuance of a Sailing Approval Letter (Port Clearance) is a process of supervision carried out by the harbormaster of ships that will sail from the port to ensure that the ship, its crew, and its cargo technically-administratively have met the requirements of shipping safety and security as

³ Bambang Sunggono, 1994, *Hukum dan Kebijakan Publik*, Jakarta, Sinar Grafika, p. 4



well as protection of the maritime environment⁴. The understanding of shipping safety and security requirements is a condition of the fulfillment of safety and security requirements relating to transportation in waters, ports and the maritime environment. The case of a commercial ship which is actually not seaworthy but has a Sailing Approval Letter is an old case that keeps happening again and again in Indonesia and has become a phenomenon that is considered normal in managing Sailing Approval Letters (SPB) using the fast lane for commercial ships that will sail at sea.

In the recapitulation and analysis of various Niaga ship accidents at sea, it turns out that most of the Niaga ship accidents at sea were caused by ships sailing in a less seaworthy condition, such as the Niaga Wihana Sejahtera ship accident in November 2015 which resulted in the death of 3 (three) passengers and 10 (three) passengers. ten) people were declared missing, this accident was caused by KM Wihana Sejahtera carrying passengers exceeding the specified capacity⁵

2. Method

This research uses a normative legal research type. The choice of this type of normative analysis is related to the formulation of problems that become legal research issues. This type of normative legal research is also used to study/analyze secondary data in standard materials, mainly traditional primary materials and secondary legal materials.

3. Findings And Discussion

a. Legal Arrangements Regarding Sailing Approval Letters for Commercial Vessels

Indonesia is de facto known as an archipelagic country, but currently it has not become a true maritime country that is strong, advanced and independent. A maritime country is a country that controls all strategic forces in the oceans supported by maritime forces, be it a trading fleet, war fleet, maritime industry and maritime-based state development policies⁶. With characteristics as an archipelagic country and a maritime country, the role of sea transportation for Indonesia is very strategic in various aspects ranging from economic, ideological, political, cultural aspects as well as in defense and security aspects. Given the importance of the role of transportation, especially sea transportation, all activities related to sea transportation need to be regulated by the state, so that the implementation of sea transportation activities can be carried out in an orderly manner and protect the interests of all parties involved in it.

At present, legislation plays an important role in people's lives, because through these laws, government policies are formulated and people's lives are regulated. Law Number 17 of 2008

⁴ Sution Usman Adji, 1991, *Hukum Pengangkutan di Indonesia*, Jakarta, Rineka Cipta, p. 24

⁵ Tabrakan Kapal KM Wihana Sejahtera, di akses di Sindo News.com tanggal 2 November 2015

⁶ Dewan Kelautan Indonesia, *Penyusunan Kembali Rancangan (Redesingn) Peraturan Perundang-Undangan Dibidang Pelayaran*, Kementerian Kelautan Dan Perikanan Sekretariat Jenderal Satuan Kerja Dewan Kelautan Indonesia, Tahun 2002, p. iii



concerning Shipping was made to accommodate all interests related to sea transportation, and according to the Elucidation of Law Number 17 of 2008 concerning Shipping, it is intended that "the operation of shipping as a system can provide the maximum benefit to all the people, nation and state, fostering and developing a maritime spirit, by prioritizing the public interest, and environmental sustainability, coordination between the center and the regions, as well as state defense and security."

As an archipelagic country, it is proper for Indonesia to have a very strong naval fleet, not only a military fleet, but also strong fleets or commercial ships capable of competing with foreign merchant ships. In accordance with Article 219 paragraph (1) of Law Number 17 of 2008 concerning shipping, it is stated that: "To make a voyage, every sea transportation (ship) requires a sailing / anchoring approval letter issued by the harbormaster in order to be able to sail or dock".

A sailing approval letter is a state document issued by the portmaster to every ship that will sail from the port after the ship meets the ship's seaworthiness requirements and other obligations. While the seaworthiness of the ship itself is the condition of the ship that meets the requirements of ship safety, prevention of water pollution from ships, manning, loading lines, loading, welfare of the crew and the health of passengers, legal status of the ship, safety management and prevention of pollution from ships, and ship security management. to sail in certain waters.

As stated in Article 117 of Law Number 17 of 2008 concerning shipping, it is stated that:

- (1) The safety and security of water transportation is the condition of the fulfillment of the requirements
 - a. Shipworthiness and
 - b. Navigation
- (2) The seaworthiness of the ship as referred to in paragraph (1) letter a must be fulfilled by every ship in accordance with the shipping area including:
 - a. Ship safety
 - b. Prevention of pollution from ships
 - c. Ship manning
 - d. Ship loading and unloading line
 - e. Welfare of crew members and health of passengers
 - f. Ship's legal status
 - g. Management of safety and prevention of pollution from ships and
 - h. Ship security management

Furthermore, the terms and conditions for the issuance of a sailing approval letter are regulated in Article 8 of the Regulation of the Minister of Transportation of the Republic of Indonesia Number KM. 82 of 2014 concerning Procedures for the issuance of a Sailing Approval Letter (Port Clearance) which states that.

1. To obtain a Sailing Approval Letter, the Ship Owner or Operator submits a written application to the harbormaster using the format as the sample attachment which is an



integral part of this regulation of the minister of transportation.

2. The application as referred to in paragraph (1) is accompanied by:
 - a. The captain's statement letter using the sample 2 format in the appendix which is an integral part of this regulation of the minister of transportation
 - b. Evidence of fulfillment, other ship's obligations in accordance with their designation by using format 3 in the attachment which is an integral part of this regulation of the minister of transportation
 - c. For fishing vessels must be equipped with a letter of operation worthiness from the fishery supervisor

the issuance of the Sailing Approval Letter, the harbormaster as the executor has an important role and is a supporting element in the smooth sailing. The issuance of the Sailing Approval Letter will be issued in accordance with the request of the shipping company/agent by fulfilling the specified requirements. Here the harbormaster in issuing the SPB must really pay attention to the fulfillment of the seaworthiness requirements and check the actual condition of the ship.

If the seaworthiness requirements are not met, the harbormaster has the authority to delay the ship's departure to sail until the seaworthiness requirements are met as stated in Article 219 paragraph (4) of Law Number 17 of 2008 concerning Shipping which states that "the portman may delay the departure ship to sail because it does not meet the ship's seaworthiness requirements or weather considerations".

Based on the above provisions, ships that will sail from the port must meet the sea-worthy requirements so that a sailing approval letter from the harbormaster can be issued with the aim of preventing any disaster from occurring on the voyage. As for the responsibility of the Port Administrator of the Harbormaster Section to issue a sailing approval letter, it must pay attention to the following matters:

1. Are the ship's documents complete and still valid
2. Does the ship's master have a Seaman's Book
3. Is the number of passengers/goods in accordance with what has been allowed.
4. Does the ship's health certificate already exist?
5. Matters affecting shipping safety.
6. The number of crew members must meet the requirements in accordance with existing provisions.
7. Navigational tools must function optimally

In practice, ships are still found that are not seaworthy but can sail which result in unwanted accidents, such as the Niaga Wihana Sejahtera ship accident in November 2015 which resulted in the death of 3 (three) passengers and 10 (ten) people declared missing. This accident was caused by KM Wihana Sejahtera carrying passengers exceeding the specified capacity

From the problems that occurred above, the authors draw the conclusion that, First, the captain of the ship does not want to comply with the applicable laws and regulations so that carrying



passengers exceeds the specified capacity. Second, the inspections carried out by the authorities at the port, especially the harbormaster officers, were less thorough and less focused on inspecting ships at the port.

In the Regulation of the Minister of Transportation of the Republic of Indonesia Number PM. 82 of 2014 concerning Procedures for the issuance of a Sailing Approval Letter, it has been explained in detail the provisions and procedures for how a Sailing Approval Letter is issued. However, it is not implemented properly by the inspecting officer who has the authority in the field, in this case the porter.

b. Legal Implications for Commercial Vessels That Are Not Seaworthy But Have Sailing Approval Letters According to Law Number 17 of 2008 concerning Shipping

Various commercial ship accidents that occur at sea are mostly caused because the ship is sailing in a condition that is not seaworthy and the implications of the accident are often the porter is affected, is considered negligent, must also take responsibility for his policy of issuing a Sailing Approval Letter (SPB). Issuance of a Sailing Approval Letter is a process of supervision carried out by the harbormaster on ships that will sail from the port to ensure that the ship, crew, and their cargo technically-administratively have met the requirements for shipping safety and security as well as protection of the maritime environment.

To achieve zero accident, it will not be achieved if the government allows violations and is not firm in enforcing the rules regarding the issuance of Sailing Approval Letters (SPB). According to the President of the Indonesian Seafarers' Union (KPI) Hanafi Rustandi said that: "A letter of approval for sailing or port clearance may not be given if the ship does not meet the requirements. Among other things, it concerns the safety of the ship, the legal status of the ship, loading, manning, welfare of the crew and the health of passengers. As long as the shipping company has not complied with the provisions, the harbormaster has the right to detain the ship. Port clearance is also only valid 1 time 24 hours. If the ship delays the voyage after 24 hours of obtaining the sailing permit, it must be re-examined".

In practice, the provisions contained in the Regulation of the Minister of Transportation PM Number 82 of 2014 concerning Procedures for the issuance of Sailing Approval Letters are often not carried out according to procedures, this is one proof that there is weak supervision in the shipping sector. Based on the results of the author's research that there are various reasons why a ship can get a Sailing Approval Letter (SPB), even though it is actually not seaworthy, including the following:

1. Persons from the Owner/Agent/Operator/Ship Master who are less concerned about the safety and security of their own ship. and sometimes the captain knows the ship is not seaworthy but is forced to bring the ship which is not seaworthy, and in the management of the ship's Sailing Agreement (SPB), the agent/ship owner prefers to flirt with inspectors in the field, rather than obeying the law by following the rules. applicable by completing/fulfilling the deficiency for the ship's seaworthiness requirements. As a result, the porter who was not



careful, immediately signed the SPB and was affected, when the ship turned out to be problematic when inspected by law enforcement officers at sea or sometimes involved in cases when the ship experienced an accident at sea which caused many casualties.

2. The behavior of the crew and ship passengers who are not disciplined, and ignore the safety factor, where the harbormaster officer in the field is seduced with the persuasion to launch the issuance of the Ship Sailing Approval Letter, even though the passenger ship has neglected the safety and seaworthiness factors, for example the lack of equipment kespel , excess passengers and Over Draft. Or in other cases the passengers boarded stealthily by boat to the ship without the knowledge of the harbormaster officer. If there is a ship accident with very large casualties, then it is known from the results of the investigation and investigation that the ship is actually not seaworthy, the number of passengers differs between the passenger list and the actual number of passengers and as a result the harbormaster is dragged into the case, is considered negligent and blamed.
3. The naughty crew members deliberately manipulate the actual reality, especially safety equipment such as Liferaft and PMK that have expired are changed as if they are still valid, as well as dangerous goods which are manipulated by reports of ordinary goods to avoid being transported by special ships and seaworthiness inspectors. in the field less thorough in inspecting the ship and easily facilitate the issuance of SPB. However, when the ship disaster occurred in the middle of the sea, it turned out that the ship was not seaworthy and the Syahbandar was affected.
4. The shipworthiness inspection apparatus at the port is not carried out by people who have adequate qualifications and competence in the field of portability, as a result the physical inspection of ships in the field is carried out less thoroughly and is more of a mere formality inspection.

The role of the harbormaster in carrying out his functions, duties and authorities is a very big responsibility. Syahbandar is the head of government in the port who plays an important role in a system at the port, both in the shipping itself, law enforcement, and all activities that take place in the port. In other words, the harbormaster is a motor in a system that functions to drive all activities that take place at the port.

4. CONCLUSION

Issuance of Sailing Approval Letter is regulated in Article 219 of Law Number 17 of 2008 concerning Shipping and is followed up by Government Regulation Number 82 of 2014 concerning Procedures for the issuance of Sailing Approval Letter. In this provision, ships that carry out voyages, including commercial ships, are required to have a Sailing Approval Letter issued by the harbormaster with the stipulation that the ship is seaworthy in practice, and Various commercial ship accidents that occur at sea are mostly caused by sailing ships that are not seaworthy and the implications of the ship accident are the porters being affected, considered negligent, must also be responsible for his policy of issuing a Sailing Approval Letter (SPB).

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