



1992 which has now been replaced by Law Number 17 of 2008 concerning Shipping, acts that are included in criminal acts in the shipping sector are regulated exclusively in the Criminal Code (KUHP), namely in Book Two, Chapter XXIX Concerning Shipping Crimes, Articles 438 to 479. Where the regulation of criminal acts in the Shipping Sector in the Criminal Code is qualified into 8 types, some of which are Piracy, False Information on the contents of the sailing permit, Violation of Agreement, Attack on the captain.

After the enactment of Law Number 17 of 2008 concerning Shipping, regulations regarding criminal acts in the shipping sector are contained in Articles 284 to 336, where the scope of the regulations is more emphasized in areas related to commerce, licensing, and transportation. However, crimes in the shipping sector according to shipping law can not only be committed by humans as legal subjects, but can also be committed by corporations. This is as stated in Article 333 of Law Number 17 of 2008 concerning Shipping, that "Criminal acts in the shipping sector are considered to be committed by corporations if the crime is committed by people acting for and/or on behalf of the corporation or for the benefit of the corporation, either based on employment relationships or other relationships, acting within the corporate environment either alone or together". Where investigations, prosecutions, and criminal penalties for crimes in the shipping sector committed by corporations can be carried out against the corporation or its administrators. In addition, the imposition of criminal fines can also be increased up to 3 times the fines stipulated in the shipping law. Even though there is an expansion of subjects in the shipping law, the shipping law does not regulate the crime of piracy as regulated in the Criminal Code.

The shipping crime was committed because the ship did not have shipping documents and letters, and was suspected of not having permission from the relevant agency when entering the waters. Usually the ship sailed without a sailing permit from the harbor master. Ship captains who cannot show shipping documents and letters will be arrested. According to Article 219 paragraph 1 in conjunction with Article 323 paragraph 1 of Law Number 17 of 2008 concerning Shipping. The contents, captains who sail without a sailing permit issued by the harbor master as referred to in Article 219 paragraph 1 shall be punished with a maximum of five years' imprisonment and a maximum fine of IDR 600 million

2. Research Method

This research is descriptive analytical, that is, research that merely describes the condition of an object or event without any intention of drawing generally applicable conclusions. Research that is descriptive analytical leads to normative





juridical research, namely reviewed based on law. The type of research used in this study is normative legal approach, namely to analyze laws and regulations related to violation of sailing permit without official documents

3. Results And Discussion

Maritime transportation has always been a popular choice, particularly in driving the economy. This is because maritime transportation offers passenger transportation services or the transportation of large quantities of trade commodities over long distances, at relatively low costs compared to land and air transportation. Ships are the spearhead for generating revenue, as one of the goals of shipping companies is to maximize profits from their transportation services. For a company to thrive, shipping companies must be profitable, meaning revenue must exceed expenses. Therefore, operating costs must be kept to a minimum. Both revenue and operating costs are heavily influenced by proper ship maintenance, which indirectly increases the number of sailing days. The condition of a ship is crucial to ensuring the safe arrival of passengers or cargo. Even though the ships in operation are old, they are still required to be seaworthy to avoid endangering the ship itself, the crew, the cargo, and the environment. While ship condition is crucial for passenger safety, in reality, this is a priority often overlooked by sea transportation operators. Negligence regarding passenger safety will result in the enforcement of the law, specifically Law Number 17 of 2008 concerning Shipping.

The ship is considered unseaworthy because it is proven not to meet the requirements of the provisions set for the safety and security of the ship. There are expired ship certificates, inadequate safety equipment, ship registration marks not installed, excess cargo/over draft, cargo not in accordance with cargo documents or manifests, etc. which will have fatal consequences if the ship continues to sail, from the problems that occur, sometimes the one who violates is the ship's captain who does not pay attention to security and safety procedures on the ship which will have consequences for passengers or goods being transported.

Law enforcement efforts at sea, particularly those related to the Shipping Law, are carried out through maritime safety and security patrol operations, both partially by various stakeholders at sea and in a coordinated manner carried out by patrol vessels belonging to the Directorate General of Sea Transportation which are placed at all Sea and Coast Guard Bases and Technical Implementation Units in regions throughout the territory of the Unitary State of the Republic of Indonesia. There are several notes from the results of maritime safety and security patrols, namely cases of ships that have a Sailing Approval





Letter issued by the authorized Harbor Master, but when an inspection was carried out in the middle of the sea by a patrol vessel, it turned out to be unseaworthy.

Article 1 number 32 of Law Number 17 of 2008 concerning Shipping, states that shipping safety and security is a condition where safety and security requirements concerning transportation in waters, ports, and the maritime environment are met. Article 1 number 33 states that ship seaworthiness is a condition of a ship that meets the requirements for ship safety, prevention of water pollution from ships, manning, load lines, loading, crew welfare and passenger health, legal status of the ship, safety management and prevention of pollution from ships, and ship security management for sailing in certain waters. To ensure the safety of shipping as a support for the smooth flow of ship traffic at sea, it is necessary to have a crew that is skilled, capable and skilled, thus every ship that will sail must be manned with a sufficient and appropriate crew to carry out their duties on board the ship based on their position by considering the size of the ship, the layout of the ship and the sailing area. Article 1 number 40 of Law Number 17 of 2008 concerning Shipping, crew are people who work or are needed on board the ship by the owner or operator of the ship to carry out duties on board the ship according to their position

According to Law No. 45 of 2009 concerning amendments to Law No. 31 of 2004 concerning Fisheries, the Sailing Approval Letter is a State document issued by the Harbor Master to every ship that will sail from the port after the ship meets the requirements for seaworthiness of the ship and other obligations. At this point the role of the fisheries harbor master is very important, including checking the condition of the ship and checking all ship documents, and issuing sailing permits.

A captain who sails without a Sailing Approval Letter issued by the Harbor Master can cause accidents due to the ship's unseaworthiness. As happened in case number 614/Pid.B/2019/PN Btm. A blue unnamed speedboat with a Yamaha 1x40 PK outboard engine that did not have a Sailing Approval Letter from the Harbor Master or Port Clearance, captained by the Defendant Hazrami Bin M. Yusuf, sank. This was due to excess passenger cargo where each passenger carried 2 bags or suitcases and the size of the speedboat was not suitable for carrying 8 (eight) passengers and 2 (two) crew members plus passenger cargo. The captain should be able to predict or estimate the imbalance in the capacity of the speedboat with 1 (one) captain, 1 (one) crew member and 8 (eight) passengers, plus the passenger cargo, if very bad weather occurs, there will be an accident with the speedboat he is captaining, while the capacity of the speedboat is only for 2 (two) passengers which is usually used for fishing.





In case number 614/Pid.B/2019/PN Btm, the criminal act committed by the Captain of an unnamed Speedboat because he did not have a Sailing Approval Letter issued by the Harbor Master resulted in a ship accident resulting in death, this act was carried out by means of pOn Sunday, May 5, 2019, at approximately 17.30 WIB, Agam, a crew member of a blue unnamed speedboat with a Yamaha 1x40 PK outboard engine, was contacted by Gendit in Malaysia, saying, "There are 8 (eight) people on the other side," to which Agam replied, "Yes." Gendit then asked to be picked up in Malaysia. Agam then reported the news to the defendant, Hazrami Bin M. Yusuf.

Then on Sunday, May 5, 2019, at approximately 18.00 WIB, the Defendant Hazrami Bin M. Yusuf, with a fee of Rp. 500,000 (Five Hundred Thousand Rupiah) per person from Akul Als Akut Als Akil, together with Agam and Iwan, departed from Tanjung Uma harbor in the waters of Nongsa Batam using 1 (one) blue unnamed Speedboat with a Yamaha 1x40 PK outboard engine that did not have a Sailing Approval Letter from the Harbor Master or Port Clearance, captained by the Defendant Hazrami Bin M. Yusuf towards Sungai Renggit Malaysia.

On Sunday, May 5, 2019, at approximately 20.00 WIB, the Defendant Hazrami Bin M. Yusuf, Agam as the Ship's Crew along with Iwan arrived at Sungai Rengit Malaysia, then Agam and Iwan went ashore to meet Gendit. Not long after, Agam as the Ship's Crew came with and loaded the illegal Indonesian Migrant Worker passengers into the Speedboat that the Defendant captained, totaling 11 (eleven) people. Furthermore, after the Speedboat was filled with 11 (eleven) passengers, the Defendant Hazrami Bin M. Yusuf as the Captain departed from Sungai Rengit Malaysia towards Kampung Rambai, Nongsa, Batam City.

After the speedboat sailed for about 50 m, a large wave came, then the defendant Hazrami Bin M. Yusuf as the captain of the speedboat turned back towards Sungai Rengit Malaysia and dropped off 3 (three) illegal Indonesian migrant workers passengers consisting of 1 (one) man and 2 (two) women. Then after 3 (three) passengers got off, the Defendant Hazrami Bin M. Yusuf as the Captain of the unnamed blue Speedboat with a Yamaha 1x40 PK outboard engine continued the voyage carrying 8 (eight) passengers including Zulkhikmi Juni Saputra, Nasruddin, Fadlon Fahmi, Darmiaty, Lindawati and Muhammad Sabri Bin Rizua and 2 (two) passengers whose identities are currently unknown to the waters of Putri Nongsa Island, Batam City, even though he knew that the weather at that time was very bad and the sea waves were ± 4 m and with excess passenger cargo where each passenger carried 2 bags or suitcases and the size of the speedboat was not suitable to carry 8 (eight) passengers and 2 (two) crew



members plus passenger cargo, which the Defendant Hazrami Bin M. Yusuf should have been able to suspect or estimate the imbalance in the capacity of the Speedboat with 1 (one) captain, 1 (one) crew member and 8 (eight) passengers, plus passenger cargo. If the weather is very bad, there will be an accident involving the captain, while the speedboat's capacity is only for 2 (two) passengers, which is usually used for fishing.

On Sunday, May 5, 2019, at approximately 20:40 WIB, during a voyage to Putri Nongsa Island, Batam City at coordinates 1013.555"N - 10406.942E, there were sea waves as high as ± 4 m and sea water entered the Speedboat through the rear of the engine area. In the condition of sea water entering the Speedboat, Agam as a Crew member tried to drain the sea water that entered the Speedboat, but at the same time, high sea waves came again, causing the Speedboat to sink and sink. At the same time, all passengers were scattered into the sea.

When the Speedboat sank and the passengers tried to save themselves, the Defendant Hazrami Bin M. Yusuf as the Captain took a red Yamaha brand jerrycan for fuel oil to be used as a life jacket to save themselves. At the same time, the Defendant Hazrami Bin M. Yusuf pulled 1 (one) female passenger and another passenger held a round life jacket along with 1 (one) body life jacket. And at the same time, the Defendant Hazrami as the Captain shouted to the passengers "Come closer so you don't get separated". However, the Defendant Hazrami Bin M. Yusuf, Agam as the crew and 8 (eight) other passengers were carried away by the sea current to international waters and asked for help from passing ships but no one heard. Then, one passenger using a black bag approached the Defendant Hazrami Bin M. Yusuf and said "One of our relatives has died". Then the Defendant saw the body tied to a bag strap in his hand, then the Defendant tied the body to a life buoy, until the Defendant Hazrami Bin M. Yusuf continued to be carried by the sea current to the waters of Sebang Bay, Bintan Regency.

In a state of floating in the sea and asking for help but help did not come and in the evening the captain Hazrami Bin M. Yusuf and other passengers were separated to seek help. On Tuesday, May 7, 2019 in the afternoon while still floating in the sea without using a life jacket and sleeping on his back, the Defendant Hazrami Bin M. Yusuf was successfully rescued by fishermen and brought onto the ship. Not long after, another fisherman came saying there was a body there and one passenger who was still alive, then the Defendant Hazrami Bin M. Yusuf and the fishermen moved to the location where the body was found, then lifted 1 (one) female passenger and 1 (one) female corpse onto the fishing boat, until they received help and were evacuated by the Navy.





That regarding the sinking of the Speedboat captained by the Defendant Hazrami Bin M. Yusuf which was previously carrying 8 (eight) passengers and 1 (one) crew member, 6 (six) passengers were successfully rescued, including 1 (one) female passenger and 1 (one) male crew member, who have not yet been found, while 1 (one) female passenger was found dead.

Based on Visum Et Repertum Number: 005 / RSUD-VER / VI / 2019 issued by the Riau Islands Provincial Government, Tengku Haji Daud Regional General Hospital dated June 21, 2019, signed by Dr. Dika Herza Pratama has examined the body of a 31-year-old Indonesian woman according to a request letter named Linda residing in Lhokseumawe, Aceh Province: with a description of the abnormalities found: a swollen, blackish face with both eyes protruding out, the tongue appears to be protruding, water coming out of both nostrils, the stomach appears to be accompanied by peeling epidermis, both arms appear to be black with blistered epidermis containing fluid and partially peeling, both feet appear to be blistered and partially peeling and both soles of the feet the outer skin appears to be peeling. The conclusion of the examination results, the patient came in a state of death; swelling was found on the face, stomach, both hands and feet, both hands and feet are blackish with peeling epidermis.

In the inspection of the blue unnamed Speedboat, both the inspection of the ship's cargo and the completeness of the ship's documents. One unit of the blue unnamed speedboat with a Yamaha 1x40 PK outboard engine that did not have a Sailing Approval Letter from the Harbor Master or Port Clearance which was captained by the Defendant. The result of the ship accident was not only due to bad weather but also due to excess passenger cargo where each passenger carried 2 bags or suitcases and the size of the speedboat was not suitable for carrying 8 (eight) passengers and 2 (two) crew members plus passenger cargo. The defendant Hazrami Bin M. Yusuf should have been able to suspect or estimate the imbalance in the capacity of the Speedboat with 1 (one) captain, 1 (one) crew member and 8 (eight) passengers, plus passenger cargo if very bad weather occurred, an accident would occur to the speedboat he captained, while the speedboat capacity was only for 2 (two) passengers which was usually used for fishing.

Shipping crimes are included in special crimes where the crime occurs within the scope of shipping. Law Number 17 of 2008 concerning Shipping can actually be categorized as administrative legislation. However, there are several unlawful acts that not only provide civil sanctions or administrative sanctions but also criminal sanctions, this aims to effectively protect the basic social values referred to in the law itself. Therefore, according to the author, it is appropriate for the Panel of Judges to first consider the First Primary Charge, namely violating



Article 323 paragraph (1), (3) in conjunction with Article 219 paragraph (1) of Law Number 17 of 2008 concerning Shipping, the elements of which are as follows:

1. Captain.
2. Sailing without having a Sailing Permit issued by the Harbor Master.
3. Resulting in ship accidents resulting in death.

Based on the case above, it is clear that the positive law for captains who sail without having a sailing permit from the harbor master is regulated in the law, namely Law Number 17 of 2008 concerning Shipping Article 291 paragraph (1) and is subject to criminal penalties under Article 323, while for fishing vessels it is regulated in Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries Article 42 paragraph (3) and is subject to criminal penalties under Article 98. The special feature of criminal law lies in its coercive power, in the form of criminal threats so that this law can be obeyed and complied with by each individual or other legal subject.

Case number 614/Pid.B/2019/PN Btm provides a clear picture that the captain of a ship who sails his ship without being equipped with a Sailing Approval Letter is clearly a violation of criminal law. The application of criminal sanctions for captains who sail without having a Sailing Approval Letter from the Harbor Master which results in a ship accident in decision number 614/Pid.B/2019/PN Btm is in accordance with the provisions of positive Indonesian law, namely violating the provisions of Article 219 paragraph (1) of the Republic of Indonesia Law Number 17 of 2008 concerning Shipping with the threat of criminal penalties in Article 323 paragraph (1), (3) namely with imprisonment and fines. The provisions of Article 323 paragraph (1) of the UUP in addition to the imprisonment imposed on the Defendant also cumulatively the Defendant must also be sentenced to a fine with the provision that if the fine is not paid it must be replaced with imprisonment.

The liability for violating a sailing permit without a Sailing Approval Letter (SPB) is a criminal offense for the captain, in accordance with Article 219 paragraph (1) and Article 323 of Law Number 17 of 2008 concerning Shipping. This violation can be in the form of imprisonment (maximum 5 years) and/or a fine (maximum IDR 600 million). In addition to criminal sanctions, there can be additional sanctions such as revocation of the sailing permit or compensation sanctions



4. Conclusion

Legal regulations for violating sailing permits without having written documentsailing agreement is a violation of the law as regulated in Law Number 17 of 2008 concerning Shipping. This violation is subject to criminal sanctions, such as imprisonment and/or fines, as stipulated in Article 323 of the Shipping Law, including a maximum of 5 years' imprisonment and a fine of up to IDR 600,000,000. In addition to criminal sanctions, administrative or civil sanctions may also be imposed.

Law enforcement against perpetrators of violations of sailing permits without sailing approval documents is carried out through criminal sanctions and fines based on Law Number 17 of 2008 concerning Shipping, which is regulated in Article 219 paragraph (1) and Article 323. These sanctions are applied through an investigation process carried out by Civil Servant Investigators (PPNS) under the harbormaster's office, which can take the form of imprisonment and/or fines.

The liability of perpetrators of violations of sailing permits without a sailing permit document can be subject to criminal sanctions in the form of imprisonment and fines based on Law Number 17 of 2008 concerning Shipping. The main responsibility is borne by the ship's captain. In addition to criminal sanctions, in practice, the captain who violates can also be subject to additional sanctions, such as administrative sanctions in the form of revocation of sailing permits, or civil liability (compensation) if the sailing without a SPB causes an accident or loss to another party, although this is rarely explicitly regulated in the law

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