

The Authority of Shipping in Creating Safety and Security of Shipping

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Abstract. Shipping is a component of maritime transport. The government regulates and directs maritime transportation. The harbormaster is responsible for the significance of safety and security concerns in shipping. The goal of this study is to examine the regulation of shipping in positive law in Indonesia and the authority of the porter based on the Law of the Republic of Indonesia Number 17 of 2008 pertaining to Shipping as it relates to the creation of shipping safety and security. According to the findings of the study, the Law of the Republic of Indonesia Number 17 of 2008 pertaining to Shipping contains regulations pertaining to several areas of shipping. The law controls matters involving significant aspects of maritime transportation and offers guarantees for shipping in Indonesian waterways. The Law of the Republic of Indonesia Number 17 of 2008 pertaining to Shipping governs Syahbandar's functions and responsibilities for maritime safety. The harbormaster is responsible for shipping safety and security, which includes implementation, supervision, and law enforcement in the sector of transportation in waters and ports, as well as maritime environment protection in ports.

Keywords: Security, Safety, Harbormaster

1. Introduction

Sea transportation has a strategic role for Indonesia which has been recognized by the world as an archipelagic country. As with other transportation, sea transportation has risks that must be managed properly. The ability to manage to ship is very important in order to minimize the risks that may be caused so good communication is needed between related parties in regulating shipping safety. Shipping, which consists of water transportation, ports, shipping safety and security, and protection of the maritime environment, is a component of the national transportation system whose potential and role must be developed to realize an effective and efficient transportation system and contribute to the formation of a stable national distribution pattern. Considering the crucial and strategic role that shipping plays in controlling the livelihoods of a large number of people, the government controls and directs shipping. The government provides advice through regulation, control, and oversight.

The significance of safety and security issues in shipping is a port obligation, as the most common cause of ship accidents is a matter of one's skill and expertise in performing harbormaster duties[1]. Syahbandar is a government official who is appointed by the minister and has the authority to carry out and supervise the fulfillment of statutory provisions in ensuring the safety and security of shipping in the ports he regulates [2]. Syahbandar plays an important role in every sea transportation shipping activity, both in terms of supervision, law enforcement,

ports, maritime environmental protection, and shipping itself. The success of a voyage carried out by a ship or sea transportation is also the success of a harbormaster in carrying out his porter duties.

The Law of the Republic of Indonesia No. 17 of 2008 regarding Shipping stipulates the role and function of porters who have greater authority to carry out shipping safety and security functions, such as implementation, supervision, and law enforcement in water transportation, ports, and marine areas. [3]. The harbormaster oversees all port activities, including shipping. [4]. Syahbandar rules the port and oversees its activity. The syahbandar has great authority over maritime safety in his region. [5].

Shipping safety cannot be isolated from the porter's function because the main cause of shipping accidents is the porter's negligence. The harbormaster demonstrates the government's involvement in marine traffic, hence all shipping activities are governed by the government as per Law of the Republic of Indonesia Number 17 of 2008 [6].

Porters' tasks ensure the safety and security of maritime transportation in Indonesian waters. The Law of the Republic of Indonesia Number 17 of 2008 Concerning Shipping specifies porters' roles and responsibilities in ship safety and security. The role and function of port porters in shipping safety and security is not yet perfect. Based on the context, this study's difficulties are as follows: Indonesian law regulates shipping. What is the harbormaster's authority under Indonesian Law 17 of 2008 addressing maritime safety and security?

2. Method

This research kind is library research. Literature research is research conducted through library data collecting or research conducted to answer a problem that relies primarily on a critical and in-depth examination of pertinent library materials [7]. This investigation includes library research since data sources can be gathered from libraries or other written documents, including journals, novels, and other literature. The method utilized in this study is the statutory method. The legal strategy is one that employs statutes and regulations [8]. This study employs a legal methodology since it examines all laws and regulations pertinent to the studied legal topic..

3. Result & Discussion

3.1. Regulations About Shipping in Positive Laws in Indonesia

The sea, especially the oceans, has special properties for humans. Likewise, the law of the sea, because the law in general is a series of rules regarding the behavior of people as members of the community and aims to establish order among the members of that community. Since the sea is used as a shipping lane, trade and as a source of life such as fishing, since then legal experts have begun to devote their attention to the law of the sea.

In a broad sense, the law of the sea governs all elements of the use or exploitation of the ocean and its resources. In continental countries such as the Netherlands, the law of the sea is often characterized as shipping law, which focuses primarily on regulating the operation of maritime transportation and related problems. In nations that adhere to the Anglo-Saxon legal system, marine law refers to the body of international trade-related maritime transportation regulations. The law of shipping or maritime law is, in a broad sense, a subset of the law of the sea.[8].

Talking about shipping in a broad sense, it cannot be separated from aspects of transportation in waters (in the sense of ships), port aspects, and security and safety aspects, while shipping in a narrow sense only concerns the transportation aspect. Shipping is carried out, of course, must

provide benefits to all parties, in carrying out business activities in the shipping sector using fair competition and also not causing environmental pollution. Considering the crucial and strategic role that shipping plays in controlling the livelihoods of a large number of people, the government controls and directs shipping. In actuality, a number of laws and regulations enacted by the Dutch East Indies administration spanned a variety of disciplines, including navigation, shipping, ports, and transportation, which were no longer in conformity with the requirements and advancements of the period, science, and technology. On the basis of these considerations, a law on shipping was drafted, which is a refinement and codification, so that the operation of shipping can provide the greatest benefit to all the people, nation, and state, cultivate and develop the maritime spirit, by prioritizing the public interest, sustainability environment, coordination between the center and the regions as well as agencies, sectors, and related elements, and state defense and security..

After Indonesia's independence in 1945, the regulation of shipping in Indonesian waters was still based on the Indonesian shipping ordinance (Indische Scheepvaartwet Staatsblad 1936-700) [9]. Although the regulation does not explain the shipping court in detail, it remains the legal umbrella for shipping and shipping regulations in Indonesia. As a form of activity that affects people's lives, the world of shipping requires regulations governing shipping business because Indonesia is a state of law and everything must be regulated by law. So to regulate it all the government issued the Law of the Republic of Indonesia Number 17 of 2008 concerning Shipping. As a positive law, the Law of the Republic of Indonesia Number 17 of 2008 regulates matters in which there are important factors of transportation in waters.

One of Indonesia's most significant maritime laws is Law of the Republic of Indonesia Number 17 of 2008 Relating to Shipping. Due to its extensive territorial waters, which have legally defined boundaries, rights, and sovereignty, Indonesia is regarded to be an archipelagic nation. It is believed that the Law of the Republic of Indonesia Number 17 of 2008 pertaining to Shipping will increase national resilience and promote awareness of the archipelago. Prior to this, shipping was governed by Law of the Republic of Indonesia Number 21 of 1992 Governing Shipping. However, it is believed that the law's provisions no longer satisfy the needs of the current maritime industry, necessitating its revision. [10].

Due to various paradigm shifts and strategic environments, both in the Indonesian constitutional system, such as the implementation of regional autonomy, and in the scientific and technological fields, the Law of the Republic of Indonesia Number 21 of 1992 Concerning Shipping must be modified over time. Additionally, the definition of shipping as a system has expanded to include ports, water transportation, shipping safety and security, and protection of the maritime environment, necessitating modifications to meet contemporary needs and developments as well as scientific and technological advancements so that the shipping industry can participate in the global community..

On the basis of these considerations, a new Shipping Law, which is a refinement of Law No. 21 of the Republic of Indonesia from 1992, was drafted. It is anticipated that the operation of shipping as a system will bring the greatest advantage to all individuals, nations, and states. By prioritizing the public interest, environmental sustainability, coordination between the center and the regions, and state defense and security, this law is expected to nurture and develop a marine spirit. The Law of the Republic of Indonesia Number 17 of 2008 pertaining to Shipping defines shipping as a cohesive system comprising of water transportation, ports, safety and security, and preservation of the marine environment. Compared to the former shipping law, it may be claimed that this law provides a fairly comprehensive set of requirements. The most noticeable difference is the increase in the number of articles in the new shipping law, which now contains 355 compared to the previous law's 132.[8].

The Law of the Republic of Indonesia Number 17 of 2008 Concerning Shipping contains clearer provisions than the previous law, including its application to all maritime activities, ports, safety, shipping security, and maritime environment protection in Indonesian waters, as well as to foreign ships traveling through Indonesian waters and all ships flying the Indonesian flag. Since the passage of Law of the Republic of Indonesia Number 17 of 2008 Concerning Shipping, several provisions in other shipping laws and regulations, such as the KUHD (Wetboek van Koophandel), the Territorial Sea Ordinance and the Maritime Environment of 1939, Law of the Republic of Indonesia Number 1 of 1973 Concerning the Indonesian Continental Shelf, and Law of the Republic of Indonesia Number 5 of 1983 Concerning the Indonesian Exclusive Ecosystem, have been repealed.

The harbormaster has the authority to create shipping safety and security under Indonesian Law 17 of 2008. Safety and security are non-negotiable components of shipping that must be considered. All parties involved in maritime transportation maintain passenger and cargo safety from departure to destination. Shipping safety and security depend on a ship's seaworthiness at the departure port. The port's harbormaster implements and supervises safety and security rules and regulations [10].

Syahbandar is important for maritime oversight, law enforcement, ports, environmental protection, and commerce. In other words, a ship's or sea transport's voyage is also a harbormaster's syahbandar success. [11].

The Law of the Republic of Indonesia Number 17 of 2008 Concerning Shipping and the Regulation of the Minister of Transportation of the Republic of Indonesia Number PM 76 of 2018 Concerning the Second Amendment to the Regulation of the Minister of Transportation Number PM 36 of 2012 Concerning Organization and the Work Procedure of the Harbormaster Office and the Port Authority govern Syahbandar's roles and responsibilities regarding shipping safety. The harbormaster's duties are stated in Indonesian Shipping Law 17 of 2008. According to Article 207 Paragraph 1 of Law of the Republic of Indonesia Number 17 of 2008 Concerning Shipping, the harbormaster is responsible for shipping safety and security, including implementation, supervision, and law enforcement in waters and ports, as well as protecting the maritime environment in ports.

According to the above laws and regulations, the task of carrying out supervision by the harbormaster is not only centered on shipping activities but on all activities within the port. Among other things, namely rescue activities and carrying out an underwater working condition, dredging and expanding the port area or reclamation, controlling pollution, protecting the maritime environment around the port, as well as carrying out search and rescue assistance for ships. In accordance with the Law of the Republic of Indonesia Number 17 of 2008 Article 212 Paragraph (2) that the harbormaster may request assistance from the Police and the TNI to immediately secure anchored ships when an act of theft or acts of piracy occurs and is reaffirmed in the Law of the Republic of Indonesia. Number 17 of 2008 in Article 212 Paragraph (3) explains that security and order assistance is under the authority of the harbormaster. Where security and order assistance at the port is under coordination within the authority of the harbormaster and depends on the problems that occur on the ship, because any problems that arise will be handled differently according to the duties and responsibilities of the relevant agencies.

In the Law of the Republic of Indonesia Number 17 of 2008 concerning Shipping, Article 1 Paragraph (32) states that shipping safety and security is a condition of fulfilling safety and security requirements concerning transportation in waters, ports, and the maritime environment. Shipping safety is very decisive in the implementation of national and international sea transportation, both for commercial ships, passenger ships, war ships, and even fishing vessels.

Article 207 Paragraph (2) of the Law of the Republic of Indonesia Number 17 of 2008 explains that a harbormaster also takes part in the search and rescue of a sea transportation if the sea transportation has an accident or is disturbed while carrying out shipping activities. The duties and responsibilities of a porter are very important in providing a ship's seaworthiness certificate, sailing permit, safety and security, as well as all sea transportation shipping activities in Indonesian waters.

Every ship that wants to make a voyage must have a sailing permit. Syahbandar before giving a sailing permit (port clearance) must examine the completeness of the ship's documents and others. If there are no things that are contrary to the regulations, then a sailing permit can be given and if there are things that are in violation or there are deficiencies on the ship, then a sailing permit cannot be given. In carrying out the safety and security functions in accordance with the provisions of the laws and regulations regarding Indonesian shipping, the harbormaster has tasks are:

1. Supervise the ship's seaworthiness, safety, security, and order in the port.
2. Supervise the orderly traffic of ships in waters, ports and shipping lanes.
3. Supervise ship tow activities.
4. Supervise the order of passenger embarkation and disembarkation.
5. Supervise loading and unloading of dangerous goods and hazardous and toxic waste.

The duty of the harbormaster in carrying out safety and security functions is regulated in Article 208 of the Law of the Republic of Indonesia Number 17 of 2008 concerning Shipping, namely:

1. Shipworthiness, safety, security and order in the Port.
2. Orderly ship traffic in port waters and shipping lanes.
3. Activities of loading and unloading in port waters.
4. Salvage activities and underwater work.
5. Ship delaying activities.
6. Guidance.
7. Loading and unloading of dangerous goods and hazardous and toxic waste.
8. Refueling.
9. Orderly embarkation and disembarkation of passengers.
10. Dredging and reclamation.
11. Activities for the construction of port facilities.
12. Search and rescue assistance.
13. Pollution control and fire suppression in ports.
14. Protection of the maritime environment.

From the provisions of the preceding article, it is clear that the seaworthiness of the ship is strongly tied to shipping safety; if the seaworthiness of the ship is not supported by shipping safety facilities, the probability of ship accidents is extremely high. The existence of a ship's seaworthiness certificate is evidence of a ship's seaworthiness. The harbormaster issues a certificate of seaworthiness based on class test results from the Indonesian Classification Bureau [12]. Users of sea transportation services that utilize unseaworthy vessels can cause damages ranging from the destruction of cargo to the death of passengers and crew. The implementation of water transportation safety has not been carried out optimally in practice. The port is responsible for the significance of safety and security issues, as well as the overall activities in sea transportation shipping, because one of the biggest problems in ship accidents in shipping

is the issue of a person's ability and expertise to carry out his Syahbandar duties both in carrying out all duties in the port or in cooperation with other business entities.

4. Conclusion

Based on the discussion, it can be concluded that:

1. Law 17 of 2008 of the Republic of Indonesia on Shipping covers several shipping concerns. The law controls major aspects of shipping in Indonesian waterways.
2. The Indonesian Shipping Law Number 17 of 2008 regulates the harbormaster's roles and duties. The harbormaster oversees shipping safety and security, including implementation, oversight, and law enforcement in water, port, and maritime environment protection.

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