

## THE LIABILITY OF THE CARRIER FOR PASSENGERS ACCIDENT

(Case Study: The Sank of a Ship in Bulukumba)

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### Abstract

Indonesia is an archipelago consisting of 17,504 islands included in the territory. Indonesia needs transportation, especially sea transportation. Sea transportation needed to facilitate the transportation of people and goods, shipping safety. Therefore, the law which refers to the existence of improvement efforts for sea transport services, those passengers is entitled to compensation which shall be provided by the carrier due to negligence during the transport operation.

The legal basis based on Law No. 17 of 2008 on shipping, consumer protection and security of shipping to have fulfillment the rights of victims on maritime transportation. The research will open the view on the settlement on liability of carrier against the loss of passengers. The purpose for bringing a change in the practice of marine transportation when accidents happen, getting the rights of accident victims, providing compensation for heirs, providing compensation for the property and provide accountability for victims. The method research used is the normative method. This's by recovering bibliographic data and scientific journals as well as documents relating to the problems analyzed to implementation of legal protection for passenger safety. The result of the research is to involve in sea transportation must be careful in carrying out the transportation business.

*Keywords: carrier, legal protection, liability, passengers, sea transportation*

## 1. INTRODUCTION

Indonesia is an archipelago which consists of 17,504 islands included in the territory, and also the 2/3 of Indonesian territory is the sea. This condition indicates that Indonesia is a maritime nation. Indonesia as an archipelago needs transportation, especially sea transportation to connect the islands. Sea transportation in Indonesia is very important for moving goods and people, and it is also very important to advance the economy of the local community, so the facilities of sea transportation must be increased to make users (passengers) more comfortable and safe by reducing the accidents rate.<sup>1</sup>

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<sup>1</sup> Prasetya, Eko, published Saturday, 19 August 2017, "Dari 17.504 Pulau Di Indonesia 16.056 Telah Diverifikasi PBB" Available on : <https://www.merdeka.com/peristiwa/dari-17504-pulau-di-indonesia-16056-telah-diverifikasi-pbb.html>, Thusday, 4 December 2018, 7:23pm.

KM Lestari Maju in 2018, there were several problems that occurred in KM Lestari Maju related to safety, comfort and ship equipment, such as what happened a few months ago when KM Lestari Maju was drowned in front of Pa'badilang, Selayar Regency. KM Lestari Maju serves the crossings from Bira Port, Bulukumba Regency, to Pamatata Port, Selayar Regency, South Sulawesi. KM Lestari Maju reportedly sank in front of Pa'badilang, Selayar Regency, when he was about to dock. KM Lestari Maju sank due to a leak in the hull. KM Lestari Maju transports hundreds of passengers, minibus, cars and motorcycles.

The capacity of cargo KM Lestari Maju was compiled from the port; the vessel's manifest contained 139 people, 18 motorbikes and 32 cars. The ship had a problem, where water entered the lower floor deck, the ship was allegedly hit by waves on the ship's body while in the middle of sea and was reportedly wrecked around 1:00 a.m. WITA.<sup>2</sup>

Basically the ticket is a community fund in the form of compulsory contributions that exist on insurance. The amount of the contribution fee and the amount of compensation in article 3 paragraph (1) poin a and other implementing provisions of this Law are governed by Government Regulations, the compulsory contributions have been regulated in article 7 in Law no.33 of 1964 on Passenger Accident Insurance Funds. The implementation of provisions related to article 7 has been further stipulated in article 3 and Article 4 of Government Regulation (PP) No.17 of 1965 on Provisions on the Implementation of Passenger Accident Compulsory Insurance Funds.

There are two reasons for the emergence of compensation, namely compensation for breach of contract (Wanprestasi) and compensation due to unlawful acts. Compensation for breach of contract (Wanprestasi) is regulated in book III of the Civil Code, which starts from Article 1246 until 1252 of the Civil Code. The compensation due to Unlawful Acts (PMH) is regulated in Article 1365 of the Civil Code. The debtore only required reimbursing the costs, damages and interest, which was originally expected or foreseeable at the time of engagement is held, unless the non-fulfillment of the engagement is caused by the deceit was doing. (WANPRESTASI). Article 1365 “A party who commits an illegal act which causes damage to another party shall be obliged to compensate therefor” (PMH) Book III of the Civil Code.

This study aims to discuss in detail whether the rights of survivors or not get compensation or insurance for their personal items,<sup>3</sup> for example cars, motorcycle, etc.<sup>4</sup>

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<sup>2</sup> Anugrahadi, Ady, published Wednesday 4 July 2018, “Korban Tewas KM Lestari Maju di Selayar” Available at : <https://www.merdeka.com/peristiwa/korban-tewas-km-lestari-tenggelam-di-selayar-jadi-25-orang.html>, Accessed on : Thusday, 19 July 2018, 7:45pm.

<sup>3</sup> Muhamad, Abdulkadir, 2013, *Hukum Pengangkutan Niaga*, PT. Citra Aditiya Bakti, Bandung, p.20.

Based on Law No. 17 of 2008 on shipping and related to many more regulations. The “company maritime transported are responsible for the safety and security of passengers and / or the goods be carried” (Compensation). The main problem in this research is how the implementation of legal protection for passenger safety and the responsibility of KM Lestari Maju. The finally what is the liability of the carrier (the captain and shipowner) against of passengers.

## 2. Method

### 2.1. Type of Research

The type of the research is Normative legal research which is a research based on the documentary or normative fact, focusing on reading and analysis of the primary and secondary materials.<sup>5</sup> Here the researcher collected the data from library in order to find the regulation and theory related to the object of research. In order to find information needed, the researcher collected the data from articles, news, and other supporting media.

### 2.2. Type of Data

The data used in this research is secondary data, the secondary data consist of primary, secondary, and tertiary legal material. Primary legal material is the legal material which is authoritative in nature. It means the material has authoritativeness. The secondary legal material refers to all publications related to the law except for official document.<sup>6</sup> These legal materials consist of the responsibility of the carrier against of passengers<sup>7</sup>;

1. Primary Legal Material, as follows ;
  - a. Law of Civil Code Book III
  - b. Law of Commercial Code Book II
  - c. Law No. 33 of 1964 on Passenger Accident Insurance Funds
  - d. Law No. 8 of 1999 on Consumer Protection
  - e. Law No.17 of 2008 on Shipping.

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<sup>4</sup> Lopi, Echa Panrita, “ 8 fakta tenggelamnya kmp lestari maju di selayar”, Available at :<https://makassar.terkini.id/berikut-ini-8-fakta-tenggelamnya-kmp-lestari-maju-di-selayar/> , Accessed on : Thusday, 19 July 2018, 10:52pm.

<sup>5</sup>Ibrahim, Johnny, 2006, *Teori dan Metodologi Penelitian Hukum Normatif*, Second Edition, Malang, Bayu Media, p. 46.

<sup>6</sup> Suratman, Philips Dillah, 2014, *Metode Penelitian Hukum*, ISBN 978-602-7825-39-0, Bandung, Alfabeta, p. 67.

<sup>7</sup> Nasution, Bahder Johan, 2008, *Metode Penelitian Ilmu Hukum*, ISBN 979-583-335-3, Bandung, CV Mandar Maju, p. 86.

- f. Law No.40 of 2014 on Insurance.
- 2. Secondary Legal Material
  - a. Books; Hukum Pengangkutan Niaga.
  - b. Scientific journals; Pengangkutan Melalui Laut.
  - c. Research report; Tenggelamnya KM Lestari Maju di Selayar.
- 3. Tertiary Legal Material

Provides further explanation, consist of any legal or non-legal materials which is related to the primary and secondary legal materials such as Black's law dictionary, English dictionary, Indonesian dictionary and encyclopedias.

### **2.3. Method of Collecting Data**

The method of collecting data in this research will be through library research. The literature learning also means to get practice and get opinion of expert, whether it is as desired by the society or not. The researcher will collect data by reading, analyzing, and making a conclusion from related interviewees, documents such as convention, books, legal journals, and others which are related to the main problem as the object of this research; required for doctrinal legal research is law library.<sup>8</sup>

### **2.4. Technique Analysis**

The data was analyzed systematically through descriptive qualitative. It means that the data were systematically evaluative taken relating to the issues to be researched. The analysis is based on the Constitution, Law, Regulations, and other theory related to the issue of the responsibility of the carrier against of passengers.<sup>9</sup>

## **3. Result and Analysis**

### **3.1. The Liability of The Captain**

The captain is the case of the transporter because the captain is employed by a transport company or individual to carry out the task of the manager. The captain is one of the crew who becomes the highest leader on the ship and has the authority and responsibility in accordance with the provisions of the legislation.

The responsibility of the captain of the ship is based on the provisions of Article 128 of Law Number 17 of 2008 concerning Shipping which states that:

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<sup>8</sup> *Ibid.* p.71.

<sup>9</sup> Mukti Fajar dan Yulianto Ahmad, 2009, *Dualisme Penelitian Hukum*, Pensil komunika, Yogyakarta, p. 123.

- a. The captain and / or the sub-crew must notify the ship safety inspector if he is aware that the condition of the ship or part of his ship is deemed not to fulfill the ship's safety requirements.
- b. The owner, ship operator and captain are obliged to assist in the implementation of inspection and testing.

This is in accordance with the case in the KM Lestari Maju accident. This happened because the ship suffered a leak in the hull of the ship. Each ship acting as the ship's leader should notify any Ship Safety Inspector Officer of his ship whatever happens in the vessel regarding the danger is the responsibility of the ship's captain or crew in accordance with Article 128 of Law No. 17 of 2008 concerning shipping.

The captain is basically the person most responsible for everything that happens on the ship. He is required to know and understand all the characteristics of each unit on the ship in question, both those directly related to the operation of the ship and those that are only helpful in shipping<sup>10</sup> based on Law No. 17 of 2008 concerning shipping. Besides that the boat captain must understand correctly about the number of passengers and cargo of the ship and other items as a ship's completeness.

The captain of the ship must adhere to the usual rules and regulations to ensure the sailing capability and security of the ship, the safety of the passengers and the transportation of the cargo. He will not travel, except if his ship is to carry out the requirements, be equipped appropriately and given enough crew. The captain of the ship is obliged to give help to people who are in danger of being on board. The captain of the ship may not leave his boat during the voyage if there is danger threatening.

Duties and responsibilities of the boat captain are very large and heavy both before and during the service. Even according to international law, the captain of the ship can act for and on behalf of the flag state which has the authority to decide everything related to navigation safety and shipping security, among others: requesting permission from the coastal state in relation to the use of peaceful cross rights, entering narrow straits which matches the characteristics of the ship.

The existence of the Ship Captain is generally born from an agreement with the Shipowner which is in line with the provisions of Article 1 Paragraph (40) and (41) Law No. 17 of 2008, in that both of the above arrangements assume that in the case of running a ship by sea, it is not necessary for the ship to be led by a ship entrepreneur, who is not skilled in carrying out the ship, but the assignment can be handed over to the Captain of the ship attached to it. In connection with this as a comparison, it is also necessary to state that a Ship Entrepreneur, who runs his own ship, because he is an

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<sup>10</sup> Jabalnur, 2018, "Responsibility for Transporter and Supervisor of Sailorship on Citizen Sailing", *Jurnal Law Review*, ISSN: 2548-1762, Volume 2 Issue 2, Halu Oleo University Kendari, p.547.

expert in carrying out the ship and has a diploma for the assignment, then functions as the Captain of ship.

This case was a ship accident of KM Lestari Maju sank because of a leak in the hull of the ship, so captain has been negligent in carrying out its duties; He is required to know and understand all the characteristics of each unit on the ship in question, both those directly related to the operation of the ship and those that are only helpful in shipping.

The ship is not sea-worthy or does not meet the standards of sailing (kelaiklautan), thus causing a boat accident that causes many victims. If we examine the important role of the captain of the ship is to determine whether the ship was feasible or not, based on Article 117 Law Number 17 of 2008 on Shipping.

“The skipper who sail the ship while the concerned know that it is an unseaworthy vessel referred to in Article 117 paragraph (2) shall be punished with imprisonment of three (3) years or a fine of not more than Rp400.000.000,00 (four hundred million rupiah).”

Based on the case, the captain of the ship has an important role in the ship, because he the one who steered the ship to the destination. The captain of the ship bears important responsibility on a ship. The task of a ship captain is to take responsibility when carrying a ship on a voyage from one port to another port safely. This responsibility includes the safety of all passengers or items on board based on Law Number 17 of 2008 concerning Shipping.

The parties concerned can submit claims, there are two for the compensation, namely compensation for breach of contract (Wanprestasi) and compensation due to unlawful acts (PMH). Compensation for breach of contract (Wanprestasi) is regulated in book III of the Civil Code, which starts from Article 1246 until 1252 of the Civil Code. The compensation due to Unlawful Acts (PMH) is regulated in Article 1365 of the Civil Code.

### **3.2. The Liability of The Shipowner**

Shipowners are individuals or companies that own ships and to comply with applicable laws and regulations, so they can claim that the ship belongs to an individual or company. Shipowners have to fulfill ship safety requirements, prevent water pollution from ships, manning, loading lines, loading, welfare and health of passenger ship crew, ship legal status, safety management and pollution prevention from ships, and send safety management to sailing in certain waters.<sup>11</sup>

Rights and obligations in the transport agreement are generally not written, but are supported by transport documents, so the obligations and rights of the parties are

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<sup>11</sup> Anantyo, Sedy, 2012, "*Pengangkutan Melalui Laut*", *Diponegoro Law Review*, Volume 1, Nomor 4. Semarang, p.2.

usually written on the document. The reason for the transportation agreement is not made in writing because the obligations and rights of the parties are determined based on the consensual principle, where this principle does not require that the form of the transport agreement in writing but is considered sufficient but also must be specify with transport documents.

The rights and obligations are not formulated in the document, then the provisions of the Transportation Law are followed, but if the rights and obligations of the parties are not determined in the Law, then the customs for transportation shall be followed. Habits in transportation carried out by the parties regarding rights and liabilities in which the carrier is obliged to carry out the transportation of goods and or passengers from the loading place to the destination safely, but this is not done because the passengers do not get their rights to get protection for the operation of goods and or passengers from the loading place to the destination by all means.<sup>12</sup>

The principle of liability known in transport law was described, they are<sup>13</sup>;

- a. The principle of fault liability,
- b. The principle of presumption of liability
- c. The principle of absolute / strict liability (*no-fault liability* )

These principles are related to the description above, then in this case based on to the principle of presumption (principle of presumption of liability) that the transporter is assumed to be always responsible in accordance with the provisions of Article 41 paragraph (2) Law No. 17 of 2008 on Shipping. This principle the carrier is assumed to be always responsible for any losses arising from the transportation carried out.

The carrier is responsible for the consequences caused by the operation of the ship, including the destruction, loss, or damage of goods transported, so that the passengers have the right to replace the goods and the carrier must register to insure their responsibilities as referred to and basic public passenger protection in accordance with statutory provisions.

The responsibilities of the carrier in accordance with the provisions of Article 40 of Law Number 17 of 2008 concerning the shipping are:

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<sup>12</sup> Susetyo, Herman, 2010, "Tanggung Jawab Nakhoda Pada Kecelakaan Kapal Dalam Pengangkutan Penumpang dan Barang Melalui Laut di Indonesia", *Jurnal Hukum* , MMH, Vol 2, No. 1, p.14.

<sup>13</sup> Fadia Fitriyanti and Ani Yunita, 2017, *Hukum Perniagaan Internasional*, Buku Ajar, Available at : <http://repository.umy.ac.id/bitstream/handle/123456789/14218/Buku%20Ajar%20Hukum%20Perniagaan%20Internasional%20.pdf?sequence=1>, Yogyakarta, Accessed on: 7 January 2019, 10:23 AM, p.29.

- a. Transportation companies in the waters are responsible for the safety and security of passengers and / or goods transported;
- b. The transport company in the waters is responsible for the cargo of the vessel in accordance with the type and amount stated in the cargo document and / or agreed agreement or transportation contract.

The companies transport Sea also are obliged to insure their responsibilities and carry out basic public passenger protection insurance in accordance with statutory provisions based on Article 41 paragraph (3) of Law No.17 of 2008 on Shipping “The Company shall insure the transport in the waters of responsibility referred to in paragraph (1) and carry out basic public passenger protection insurance in accordance with the provisions of the legislation”. From the existence of the responsibility of the carrier to the passenger, the legal relationship between the two parties arises. The legal relationship is the relationship of obligations and rights reciprocally arising from the existence of legal events in the form of actions, events, or circumstances<sup>14</sup>.

The provisions of the articles above, if the shipowner can complete the ship's documents, the payment of compensation for the occurrence of the ship accident can be resolved as soon as possible, so that PT. Jasa Raharja service insurance can replace a number of financial values contained in the policy. Basic protection PT. Jasa Raharja provides to the community through social insurance programs, namely Public Transport Passenger Accident Insurance implemented under Law No. 33 of 1964 on Passenger Accident Insurance Funds.

When passengers are victims of ship accidents do not need to worry about compensation because passengers who have been injured, disabled, even those who live in the world will get compensation from PT. Jasa Raharja based on Article 7 Law no.33 of 1964 on Passenger Accident Insurance Funds, Government Regulation No.17 of 1965 on Provisions on the Implementation of Passenger Accident Compulsory Insurance Funds, and Law No. 17 of 2008 on shipping.

Based on the analysis of the author in accordance with the above explanation that the responsibility of the shipowner on KM Lestari Maju accident in the form of default accountability, the accountability for default is given due to negligence of the shipowner or ship operator in checking the crew before sailing so that there was a leak on the ship's hull which caused the ship to sink.

Transport companies in the waters are obliged to insure their responsibilities and carry out basic public passenger protection insurance in accordance with statutory provision; everyone who does not insure its responsibility as referred to in Article 41 paragraph (3) shall be punished based on Article 292 of Law Number 17 of 2008 on Shipping;

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<sup>14</sup> Kadarisman, Muh, 2016, “Policy Formulation of Sea Transportation System”, *Jurnal Manajemen Transportasi & Logistik*, ISSN 2355-4721, Vol. 03 No. 2, p.165.



“Everyone who does not insure its responsibility as referred to in Article 41 paragraph (3) shall be punished with imprisonment of six (6) months and a maximum fine of Rp 100,000,000.00 (one hundred million rupiah)”

From the responsibility of the carrier to the passengers, legal relations arise between the two parties. The legal relationship is the relationship of obligations and rights reciprocally arising from the existence of legal events in the form of actions, events, or circumstances. The relationship of obligations and rights occurs both because of the agreement and because of the legal provisions<sup>15</sup>.

In reality, the case shows that the carrier did not fulfill the responsibility for the compensation to the passengers because it was based on the clause of the ticket. The transport company released the responsibility for passengers which impacted on the loss of passengers caused by a ship accident, in that they were not compensated by the carrier. So, the passengers suffered losses due to an accident and the government also did not follow-up to the problem regarding the clause of a ticket.

The clause of ticket which states the release of the responsibility of the transport company for passenger goods is also not in accordance with Article 18 paragraph (1) of Law No. 8 of 1999 on Consumer Protection. The company does not fulfill the obligations, namely according to Article 40 Law No. 17 of 2008 on Shipping and Article 18 of Law No. 8 of 1999 on Consumer Protection. Reviewing the clause on the ticket in terms of theory and applicable law is declared null and void because it contradicts the applicable Law.

## **4. Conclusion**

### **4.1. Conclusion**

The liability of the captain of the ship is based on the provisions of Article 117 of Law No. 17 of 2008 on Shipping. The ship was not sea-worthy or did not meet the standards of sailing (*kelaiklautan*). The captain shall get punishment in the criminal act because his actions caused many victims, and this is based on Article 302 in Law No. 17 of 2008 on Shipping. The Liability of the shipowner must responsible when the passenger becomes victims and this is based on Article 40 and 41 Law No. 17 of 2008 on Shipping. The carrier are obliged to insure their responsibilities and carry out basic public passenger protection insurance in Article 41 Law No. 17 of 2008 on Shipping, everyone who does not ensure its responsibility as referred to in Article 41 paragraph (3) shall be punished based on Article 292 of Law Number 17 of 2008 on Shipping.

### **4.2. Suggestions**

- a. This is expected that the sea transporters in this case the KM Lestari Maju and related parties must provide adequate supporting facilities and infrastructures,

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<sup>15</sup> Abdul Kadir Muhammad, *Hukum Asuransi Indonesia*, Citra Aditya Bakti, Bandung, p.75.

especially in terms of security and comfort in the port, so that the users of sea transportation services are guaranteed more secure and comfortable when traveling by ship.

- b. The important role of the government is to monitor the ports, so that there is no more sinking ship due to overcapacity. The government also needs to review the law regarding the problem of losses charged by passengers, based on the ticket clause.

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## **Regulations**

Law of Civil Code Book III

Law of Commercial Code Book II.

Law No. 33 of 1964 on Passenger Accident Insurance Funds

Law No. 8 of 1999 on Consumer Protection

Law No. 17 of 2008 on Shipping

Government Regulation (PP) No. 17 of 1965 on The Implementation of Passenger Accident Compulsory Insurance Funds.

Government Regulation No.20 of 2010 in Marine Transportation.

The Regulation Minister of Finance No. 36 / PMK.010 / 2008 and 37 / PMK.010 / 2008 26 February 2008 the types of compensation provided for land and sea are the same while for air there are some that are differentiated.