

Judicial Review of the Obligation to Have an Approval Letter for Sailing in the Crime of Sailing in Indonesia

Anis Rifai¹, Prosper Maguchu²

¹ Al-Azhar Indonesia University, Indonesia

² Vrije Universiteit Amsterdam, Netherlands

E-mail : anizrifai@gmail.com



<https://doi.org/10.25134/unifikasi.viii.9569>

ARTICLE INFO

ABSTRACT

Article History

Received: December 12, 2023

Revised: April 30, 2024

Accepted: May 10, 2024

Keywords

Harbormaster;

Ship;

Shipping.



Shipping is controlled by the state and carried out by the Government. Sailing approval letter can be given by a Harbor Master to the ship user or owner if the ship has fulfilled several important requirements. The aim of research is to find out how the obligation a sailing approval letter is regulated and what the legal consequences of not having a sailing approval letter are. Research methods used a normative juridical method with analytical descriptive specifications. The results of the research found that ship sailing is required to have a Sailing Approval Letter issued by the Harbormaster as stated in article 219 paragraph (1) of Law Number 17 of 2008 concerning Shipping. Meanwhile, the legal consequences if you do not have a letter of approval from the harbormaster will be threatened with imprisonment and find as regulated in Article 323 Paragraph (1) of Law Number 17 of 2008 concerning Shipping and Law Number 8 of 1981 concerning Criminal Procedure Law, as well as statutory regulations.

Introduction

Indonesia is an archipelago country characterized by an archipelago united by a very large territorial waters with boundaries, rights and sovereignty determined by law¹. The shipping, which consists of transportation on waters, ports, shipping safety and security, and maritime environmental protection, is part of the national transportation system whose potential and role must be developed by create an effective and efficient transportation system, as well as helping with create a stable and national distribution pattern².

Developments in the national and international strategic environment require shipping to be implemented in accordance with developments in a science and technology, private participation and business competition, regional autonomy and accountability of state administrators, while still prioritizing shipping safety and security for the sake of the national interest³. The strategic position of the Unitary State of the Republic of Indonesia must be utilized optimally as basic capital for national development based on Pancasila and the 1945 Constitution of the Republic of Indonesia to create an Indonesia that is safe, peaceful, just and democratic, as well as improving the welfare of the people⁴. Transportation is a means to smooth the wheels of the economy, strengthen national unity and unity, in order to

¹ Harry Purwanto and Dewa Gede Sudika Mangku, "Legal Instruments of the Republic of Indonesia in Border Management Using the Perspective of Archipelagic State," *International Journal of Business, Economics and Law* 11, no. 4 (2016): 51–59, <https://www.ijbel.com/wp-content/uploads/2017/01/LAW-112.pdf>.

² Febriansyah Febriansyah, Maghdalena Febriani, and Elfita Agustini, "Maritime Safety and Security Policies to Support Marine Transportation Systems," *Inland Waterways Journal* 2, no. 1 (2020): 46–56.

³ Hana Faridah and Rona Apriana Fajarwati, "Pengawasan Transportasi Laut Demi Mewujudkan Keselamatan Dan Keamanan Pelayaran Nasional," *Jurnal Keamanan Nasional* 8, no. 2 (2022): 396–407.

⁴ Palmawati Taher, "Pancasila as the Basis of the State Unity of the Republic of Indonesia," *Pancasila and Law Review* 2, no. 2 (2021): 133–140, <http://jurnal.fh.unila.ac.id/index.php/plr>.

strengthen the realization of the Archipelago Insight, improve and support national defense and security, which can then strengthen relations between nations. The importance of transportation is reflected in its implementation which influences all aspects of national and state life as well as the increasing need for transportation services for the mobility of people and goods within the country as well as to and from abroad.

In relation of implementing national development and realizing the Archipelago Vision, it is necessary to develop an effective and efficient national transportation system, to a support and at the same time to drive development dynamics, increase mobility of people, goods, and services, help create a stable and dynamic national distribution pattern, and support development region and further strengthen the development of social, national and state life, contributing to defense and security, as well as improving international relations. The initial pattern of law making like this absolutely requires a participatory approach in formulating ideas, so that it is more possible to properly formulate basic problems and ideas to regulate them through legal regulations⁵.

Decision-making strategies for preventing ship detention in each component, this research can be a guide for decision making and establishing appropriate policies regarding shipping safety and oceanic environmental protection for government authorities and other stakeholders, as well as providing a new way of thinking in strategies to reduce the occurrence of ship detention that can be minimized. if each layer of defense can identify weaknesses in each component related to software, hardware, environment, and liveware. Four layers of defense by producing a ship detention reduction strategy based on each SHEL component, namely⁶:

- a. Ministry of Transportation as the first layer, provides safety standards and guidelines for shipping companies;
- b. shipping companies as the second layer develop safety guidelines for their fleet of ships;
- c. the captain as the third layer, on board the ship leads the ship's crew, and is the communication link between the company and the ship operationally; and
- d. the ship's crew as the final layer carries out activities in the field based on the direction of the captain and company guidelines, as well as increasing competency.

Based on Indonesia's geographical factors, a mode/means of transportation is needed that can support the mobility of people and goods. Reflecting on Indonesia's geographical characteristics, transportation facilities, especially transportation by sea, are very necessary. Indonesian sea transportation is useful as an effective networking mode for connecting one island to another. This is also in line with the concept of an archipelagic state as regulated in UNCLOS 1982, which views the sea not as a divider, but as a uniter between the land areas of Indonesia⁷. Based on the background described above, the problem that will be examined is how the obligation to have a sailing approval letter is regulated based on Republic of Indonesia Law no. 17 of 2008 concerning Shipping?, What are the Legal Consequences of Not Having a Sailing Approval Letter Based on RI Law No. 17 of 2008 concerning Shipping? (Case Study: 1) Decision Number 42 Pid.Sus 2016 Lembata District Court; 2) Decision Number 49

⁵ Sri Yuliana, "Tinjauan Yuridis Fungsi Dan Tugas Kantor Administrasi Pelabuhan Muntok Ditinjau Dari Undang - Undang Pelayaran," *Viva Themis Jurnal Ilmu Hukum* 6, no. 1 (2023): 33-53.

⁶ Ibid.

⁷ Zulfikri Marasabessy and Dwi Aryanti Ramadhani, "Perlindungan Hukum Terhadap Perusahaan Pelayaran Atas Wanprestasi Pencarter Dalam Perjanjian Pengangkutan," *Mimbar Keadilan* 16, no. 1 (February 2023): 55-66.

Pid.Sus 2017 PN Tj Balai Karimun; 3) Decision Number 60 Pid.B 2018 Rote Ndao District Court).

Research Methods

Research methods used in this research is a normative juridical method with analytical descriptive specifications. This legal writing first examines all the provisions of legislation relating to the protection and legal certainty of regulating the obligation to have a sailing approval letter and the legal consequences of not having a sailing approval letter.

Results and Discussion

1. *The Obligation to Have A Sailing Approval Letter Regulated Based on Republic of Indonesia Law Number 17 Of 2008 concerning Shipping*

Indonesia as a country based on Pancasila and the 1945 Constitution has goals and ideals to be achieved with a strong desire, namely to create a just and prosperous society⁸. One of the efforts to realize the state's goals is to improve the standard of living of the entire community by making the best use of human resources and natural resources. Apart from that, the country of Indonesia, which has been blessed by God with abundant natural wealth and a large population, can be proud and grateful for the grace of God Almighty. But if it is not managed well and correctly, it is not impossible that we will continue to suffer as a poor nation⁹. Marine wealth is part of the wealth of the Indonesian nation which, in its function as National Development capital, has real benefits for the lives and livelihoods of the Indonesian people, including ecological, social, cultural and economic benefits, in a balanced and dynamic manner. Where in its position, marine fisheries are one of the determinants of the life support system and a source of people's prosperity, therefore their existence must be maintained optimally and sustainably and their sustainability must be maintained. Shipping plays an important role in efforts to achieve national goals based on Pancasila and the 1945 Constitution of the Republic of Indonesia. In order to realize the Archipelago Insight and strengthen National Resilience, a National Shipping System is needed to support economic growth, regional development and strengthen state sovereignty¹⁰.

In efforts to realize this situation, the government has an important role to support the smooth running of shipping. This is in line with Law Number 17 of 2008 Article 5 paragraph (1) which states that shipping is controlled by the state and its guidance is carried out by the government. One of the guidance carried out by the government based on Law Number 17 of 2008 paragraph (2) is the regulatory function, which includes determining general and technical policies, including, among other things, determining norms, standards, guidelines, performance, planning and procedures including, requirements, shipping safety and security as well as licensing¹¹.

⁸ Muhammad Idris Patarai, "Representative Democracy and Constitution Pancasila Perspective with the 1945 Constitution," *Budapest International Research and Critics Institute-Journal* 4, no. 4 (2021): 12941-12951, <https://doi.org/10.33258/birci.v4i4.3355>.

⁹ Endy Marlina and Tutut Herawan, "Geotourism Concept Development in the Basis of Environment Sustainability, Socioculture, and Natural Science Wealth: A Case Study in Indonesia," *Journal of Environmental Management and Tourism* 11, no. 1 (2020): 145-158.

¹⁰ Sondang Novita Sitanggang, "Jokowi Administration's Maritime Axis Development Policy," *International Journal on Social Science, Economics and Art* 11, no. 1 (2021): 20-32.

¹¹ Rahmi Erwin and Fahririn Fahririn, "Tanggung Jawab Negara Untuk Mencegah Terjadinya Kecelakaan Kapal Transportasi Laut Menurut Hukum Internasional Dan Hukum Nasional," *Supermasi: Jurnal Hukum* 4, no. 2 (2022): 177-199.

Each sailing approval letter can be given by a Harbormaster to the ship's user or owner if the ship has fulfilled several important requirements as stated in Article 117 of Republic of Indonesia Law Number 17 of 2008 and other provisions. The Harbormaster needs data obtained from State-Owned Enterprises (BUMN), namely the Indonesian Classification Bureau (BKI), which is a special agency for supervising sea transportation (ships) in the construction and equipment of ships so that the Harbormaster can issue letters or documents. which will be used by sea transportation to carry out shipping. This document is very important because it concerns the smooth operation of the ship and the safety of the ship, captain and crew¹².

The legal basis for issuing a Sailing Approval Letter is regulated in several statutory provisions, including:

- a. Law Number 17 of 2008 concerning Shipping;
- b. Minister of Transportation Regulation Number 82 of 2014 which contains procedures for issuing sailing approval letters;
- c. Government Regulation Number 51 of 2002 concerning Shipping.

According to the Law above, what is meant by a Sailing Approval Letter is a State document issued by the Harbormaster to every ship that will sail leaving the port after the ship has fulfilled the ship's seaworthiness requirements and other obligations. At this point the role of the harbormaster is very important, including checking the condition of the ship and checking all ship documents, and determining sailing permits. As stated in article 219 paragraph (1) of Law Number 17 of 2008 concerning Shipping, the sailing approval letter is one of the important and mandatory documents issued by the Harbor Master and must be owned by every ship that sails leaving the port ¹³.

Shipping, which consists of transportation in waters, ports, shipping safety and security, and maritime environmental protection, is part of the national transportation system whose potential and role must be developed to create an effective and efficient transportation system, as well as helping to create a stable national distribution pattern. and dynamic. Shipping has its own law, namely Law Number 17 of 2008 concerning Shipping. Law 17 of 2008 concerning Shipping states that shipping is a unified system consisting of transportation in waters, ports, safety and security, as well as maritime environmental protection. Law Number 17 of 2008 concerning Shipping was ratified on May 7 2008 by President Susilo Bambang Yudhoyono in Jakarta. Law 17 of 2008 concerning Shipping was promulgated on 7 May 2008 in Jakarta by Minister of Law and Human Rights Andi Mattalatta.

Law Number 17 of 2008 concerning Shipping is placed in the State Gazette of the Republic of Indonesia of 2008 Number 64. An explanation of Law 17 of 2008 concerning Shipping is placed in the Supplement to the State Gazette of the Republic of Indonesia Number 4849. The considerations for Law Number 17 of 2008 concerning Shipping are¹⁴:

¹² Suwarso Suwarso, Janoko Janoko, and Linggar Sandhy Pratama, "Prosedur Pergantian Awak Kapal (Crew Change) Melalui PT. Pelayaran Bahtera Adhiguna Cabang Paiton," *Discovery: Jurnal Kemaritiman dan Transportasi* 5, no. 1 (2023): 26-35.

¹³ Samuel Dumak Parerungan et al., "Legal Protection for Passanger in the Event of an Accident on the Ship By Regulation Number 17 of 2008 Concerning Shipping," *International Journal of Law and Legal Ethics (Ijle)* 3, no. 1 (2022): 1-9.

¹⁴ Ong Argo Victoria, M. Aji Luhur Pambudi, and Ratna K. Dewi, "The Reconstruction of Indonesian Shipping Law in the Sea Transportation System for a Successful Sea Toll Program and Improvement of Shipping Administration," *International Journal of Law Reconstruction* 6, no. 2 (2022): 156-171.

- a. that Republic of Indonesia is an archipelagic state characterized by an archipelago united by a very extensive territorial waters with boundaries, rights and sovereignty determined by law;
- b. that an effort to achieve national goals based on Pancasila and the 1945 Constitution of the Republic of Indonesia, realizing the Archipelago Insight and strengthening national resilience, a national transportation system is needed to support economic growth, regional development and strengthen state sovereignty;
- c. that shipping, which consists of transportation in waters, ports, shipping safety and security, and protection of the maritime environment, is part of the national transportation system whose potential and role must be developed by create an effective and efficient transportation system, as well as helping to create a stable national distribution pattern and dynamic;
- d. that the development of the national and international strategic environment requires the implementation of shipping in accordance with developments in science and technology, private participation and business competition, regional autonomy, and accountability of state administrators, while still prioritizing shipping safety and security in the national interest;
- e. that Law Number 21 of 1992 concerning Shipping is no longer appropriate to the current needs of shipping, and therefore, needs to be replaced with a new law;
- f. that based on the considerations as intended in letters a, b, c, d and e, it is necessary to establish a Law on Shipping;

Based on initial observations made by the author, shipping companies or service users who take care of issuance of Sailing Approval Letters are often faced with a lot of uncertainty, when they are faced with certainty of time, they often experience delays in issuance as a result of which the ship's sailing schedule is hampered. The attitude of service providers who are less responsive to service recipients, and there are also indications of excess costs incurred by people who will process the Sailing Approval Letter, outside the applicable provisions because the processing still uses a manual system and is not yet online.

2. *The Legal Consequences of Not Having Sailing Approval Letter Based on Republic of Indonesia Law Number 17 of 2008 concerning Shipping*

a. Case Study of Decision Number 42 Pid.Sus 2016 Lembata District Court

With charges of having sailed without having a Sailing Approval Letter issued by the Harbor Master of Balauring Port. Arriving at Balauring village, Lembata Regency, the defendant did not report himself to the harbor master of Balauring Regency, Lembata Regency as stipulated in shipping regulations, namely "before the ship arrives at the port, the owner or operator of ship notifies the arrival of the ship at the port of destination, after the ship arrives at the port of destination the harbormaster carries out an inspection of the ship and cargo as well as letters, documents and ship information and stored for re-issuance of sailing approval letters. Every ship that enters the port while in the port and when leaving the port is obliged to comply with the regulations and carry out the harbormaster's instructions for smooth ship traffic and activities at the port." Before the sailing approval letter is reissued by the harbormaster, the harbormaster checks the requirements and completeness of the ship, However, all the provisions of this regulation were not carried out by the defendant. That the defendant never asked permission from

the harbormaster of Balauring to sail to Bantaeng Regency, South Sulawesi Province. On his way to sail to Bantaeng Regency, South Sulawesi Province, the defendant did not have a Sailing Approval Letter issued by the Harbormaster of Balauring. The defendant sailed only using a road permit issued by the Balauring sub-district head. The defendant's actions are regulated and punishable by crime in Article 323 Paragraph (1) of Law of the Republic of Indonesia No. 17 of 2008 concerning Shipping. Paying attention to Article 323 Paragraph (1) of Law No. 17 of 2008 concerning Shipping and Law No. 8 of 1981 concerning Criminal Procedure Law, as well as other relevant laws and regulations; judge: Declare the Defendant Abdul Latif Alias Latif to be legally and convincingly proven guilty of committing the crime: "Sailing Without Having Sailing Approval Letter issued by the Harbor Master"; and Sentenced the Defendant to prison for: 3 (three) months and a fine of Rp. 5,000,000,- (five million rupiah) with the provision that if the fine is not paid it will be replaced by imprisonment for 1 (one) month¹⁵.

b. Case Study of Decision Number 49 Pid.Sus 2017 PN Tj Balai Karimun

Declare that the Defendant Suaib Bin Mardi has been legally and convincingly proven guilty of committing the crime of "sailing without having a Sailing Approval", which is regulated and punishable by crime in Article 323 Paragraph (1) Jo. Article 219 Paragraph (1) Republic of Indonesia Law No. 17 of 2008 concerning Shipping as described in the Indictment. Sentenced the Defendant Suaib Bin Mardi to prison for 8 (eight) months and a fine of Rp. 2 (two) months¹⁶.

c. Case Study of Decision Number 60 Pid.B 2018 Rote Ndao District Court

Declare that the Defendant Abu Hari Nuru has been legally and convincingly proven guilty of committing the criminal act of "Master sailing without having a Sailing Approval Letter issued by the Harbormaster and operating the ship without being equipped with radio communication equipment and equipment that meets the requirements" as stated in the cumulative indictment of the Public Prosecutor. Impose a crime on the Defendant therefore by imprisonment for 9 (nine)¹⁷

Conclusion

Article 219 paragraph (1) of Law Number 17 of 2008 concerning Shipping, the sailing approval letter is one of the important and mandatory documents issued by the Harbor Master and must be owned by every ship that sails leaving the port. Legal consequences if you do not have a letter of approval from the harbormaster will be threatened with imprisonment and a fine as regulated in Article 323 Paragraph (1) of Law Number 17 of 2008 concerning Shipping and Law Number 8 of 1981 concerning Criminal Procedure Law, as well as statutory regulations others concerned.

Suggestion

Before ship arrives at the port, owner or operator of the ship notifies the ship's arrival at the port of destination. After the ship arrives at the port of destination, the port harbormaster

¹⁵ Direktori Putusan et al., "Putusan Nomor : 42/Pid.Sus/2016/PN.Lbt PN Lembata" (2016).

¹⁶ Direktori Putusan, Mahkamah Agung, and Republik Indonesia, "Putusan Nomor: 49/Pid.Sus/2017/PN.Tbk PN Tj. Balai Karimun" (2017).

¹⁷ Direktori Putusan et al., "Putusan Nomor 60/Pid.B/2018/PN Rno PN Rote Ndao Nahkoda Kapal Layar Motor (KLM) Jaya Baitullah" (n.d.).

inspects the ship and its cargo as well as letters, documents and ship record and keeps them for reissuing a letter of approval to sail.

References

- Erwin, Rahmi, and Fahririn Fahririn. "Tanggung Jawab Negara Untuk Mencegah Terjadinya Kecelakaan Kapal Transportasi Laut Menurut Hukum Internasional Dan Hukum Nasional." *Supermasi: Jurnal Hukum* 4, no. 2 (2022): 177-199.
- Faridah, Hana, and Rona Apriana Fajarwati. "Pengawasan Transportasi Laut Demi Mewujudkan Keselamatan Dan Keamanan Pelayaran Nasional." *Jurnal Keamanan Nasional* 8, no. 2 (2022): 396-407.
- Febriansyah, Febriansyah, Maghdalena Febriani, and Elfita Agustini. "Maritime Safety and Security Policies to Support Marine Transportation Systems." *Inland Waterways Journal* 2, no. 1 (2020): 46-56.
- Marasabessy, Zulfikri, and Dwi Aryanti Ramadhani. "Perlindungan Hukum Terhadap Perusahaan Pelayaran Atas Wanprestasi Pencarter Dalam Perjanjian Pengangkutan." *Mimbar Keadilan* 16, no. 1 (February 2023): 55-66.
- Marlina, Endy, and Tutut Herawan. "Geotourism Concept Development in the Basis of Environment Sustainability, Socioculture, and Natural Science Wealth: A Case Study in Indonesia." *Journal of Environmental Management and Tourism* 11, no. 1 (2020): 145-158.
- Parerungan, Samuel Dumak, Upik Widyaningsih, Femmy Asdiana, and Politeknik Pelayaran Surabaya. "Legal Protection for Passanger in the Event of an Accident on the Ship By Regulation Number 17 of 2008 Concerning Shipping." *International Journal of Law and Legal Ethics (Ijlle)* 3, no. 1 (2022): 1-9.
- Patarai, Muhammad Idris. "Representative Democracy and Constitution Pancasila Perspective with the 1945 Constitution." *Budapest International Research and Critics Institute-Journal* 4, no. 4 (2021): 12941-12951. <https://doi.org/10.33258/birci.v4i4.3355>.
- Purwanto, Harry, and Dewa Gede Sudika Mangku. "Legal Instruments of the Republic of Indonesia in Border Management Using the Perspective of Archipelagic State." *International Journal of Business, Economics and Law* 11, no. 4 (2016): 51-59. <https://www.ijbel.com/wp-content/uploads/2017/01/LAW-112.pdf>.
- Putusan, Direktori, Mahkamah Agung, and Republik Indonesia. "Putusan Nomor: 49/Pid.Sus/2017/PN.Tbk PN Tj. Balai Karimun" (2017).
- Putusan, Direktori, Mahkamah Agung, Republik Indonesia, Demi Keadilan, Berdasarkan Ketuhanan, and Yang Maha. "Putusan Nomor 60/Pid.B/2018/PN Rno PN Rote Ndao Nahkoda Kapal Layar Motor (KLM) Jaya Baitullah" (n.d.).
- Putusan, Direktori, Mahkamah Agung, Republik Indonesia, Desa Lumpangan, and Kecamatan Pajukukang. "Putusan Nomor : 42/Pid.Sus/2016/PN.Lbt PN Lembata" (2016).
- Sitanggang, Sondang Novita. "Jokowi Administration's Maritime Axis Development Policy." *International Journal on Social Science, Economics and Art* 11, no. 1 (2021): 20-32.
- Suwarso, Suwarso, Janoko Janoko, and Linggar Sandhy Pratama. "Prosedur Pergantian Awak Kapal (Crew Change) Melalui PT. Pelayaran Bahtera Adhiguna Cabang Paiton." *Discovery: Jurnal Kemaritiman dan Transportasi* 5, no. 1 (2023): 26-35.
- Taher, Palmawati. "Pancasila as the Basis of the State Unity of the Republic of Indonesia." *Pancasila and Law Review* 2, no. 2 (2021): 133-140.

<http://jurnal.fh.unila.ac.id/index.php/plr>.

Victoria, Ong Argo, M. Aji Luhur Pambudi, and Ratna K. Dewi. "The Reconstruction of Indonesian Shipping Law in the Sea Transportation System for a Successful Sea Toll Program and Improvement of Shipping Administration." *International Journal of Law Reconstruction* 6, no. 2 (2022): 156–171.

Yuliana, Sri. "Tinjauan Yuridis Fungsi Dan Tugas Kantor Administrasi Pelabuhan Muntok Ditinjau Dari Undang - Undang Pelayaran." *Viva Themis Jurnal Ilmu Hukum* 6, no. 1 (2023): 33–53.

How to Cite :

Anis Rifai, Prosper Maguchu. "Judicial Review of the Obligation to Have an Approval Letter for Sailing in the Crime of Sailing in Indonesia". *Unifikasi: Jurnal Ilmu Hukum* 11.1 (2024): 21-28.