

Sea Transport Responsibility for Victims Caused by Explosion of Ferry Ship KM Zahro Express Based on Law Number 17 of 2008 Concerning Shipping (Study Case : 323 / PID.SUS / 2017 / PT.DKI)

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ABSTRACT

Based on the Related Liability of Sea Freight Against Victims Due to the Explosion of the Km Zahro Express Ferry Based on Law Number 17 Year 2008 Regarding Shipping (Study of Decision: 323 / PID.SUS / 2017 / PT.DKI), the transportation company must observe the regulations concerning the rules of sea transportation. Sea transportation as part of the national transportation system must be developed in order to realize the Archipelago Vision which unites the entire territory of Indonesia, including the archipelago sea as a national territory unit. The development of sea transportation must be able to drive the development of Indonesia. Based on the contents in this thesis there is a problem is how the legal protection of victims due to the explosion of the KM Ferry. ZAHRO EXPRESS According to the Shipping Law and how the responsibility of the ship owner to the victim due to the explosion of the ferry ferry KM. ZAHRO EXPRESS According to the Shipping Law.

Keywords: *Sea Transportation, Related Liability of Sea Freight, Rules Of Sea Transportation, National Transportation System*

1. INTRODUCTION

The unitary state Republic of Indonesia is a constitutional state¹⁾. The state is obliged to provide legal protection for each of its citizens. Indonesia is a maritime country that has thousands of islands with a vast area of sea territory. The size of Indonesian mainland is 1,904.5690km² and the sea is 3,288,683km² which stretches along the equator and located between the continents of Asia and Australia, the Pacific and Indonesian Ocean.²⁾

Sea transportation as part of the national transportation system needs to be developed in order to realize the "Wawasan Nusantara" which unites the entire territory of Indonesia, including sea as a unified national territory. The development of sea transportation must be able to drive the development of Indonesia.

Given Indonesia's geographical situation as the world's largest archipelago and two-thirds of its territory is water, Indonesia requires large amounts of mass sea transportation to support the distribution of goods as well as for mobilization (Travel means). An effective, efficient and integrated transportation system is important to create a reliable and dynamic national distribution pattern. It cannot be denied that sea transportation in Indonesia has been the main anchor of movement for large-scale distribution of goods using ships.

• Background

In the Constitution of Shipping it is stated that shipping is a unified system consisting of transportation in waters, ports, safety and security, and protection of the maritime environment. Shipping activities in general are transporting goods or passengers from one location to another or from port to another port, shipping safety and maritime environmental protection from pollution of pollutants originating from ships. That activity is regulated in the Shipping Law.³⁾

Here is a case that became a problem for the writing of this thesis proposal, the explosion of KM ZAHRO EXPRESS ferry from Jakarta heading to Tidung Island, it has inflicted financial loss to consumers who have purchased tickets at a certain price.

On Sunday, January 1, 2017 at around 08.30 WIB or January 2017, located in the Muara Angke Waters, North Jakarta or at least still included in the Jurisdiction Area of North Jakarta. When the consumer used the sea transportation services of PT. KM. ZAHRO EXPRESS, they was about to sail from Muara Angke Waters to Tidung Island, Thousand Islands, North Jakarta. On the way for about 10 minutes, a sound of an explosion came from the ship's engine, which contained 220 passengers, caused the ship to catch fire, causing fatalities consisting

of the 20 people found dead on the boat and 3 people at sea, in addition there were also injured victims as many as 21 people were taken to Atma Jaya Hospital, 5 people to Pluit Hospital and 1 person was referred to the Terakan Hospital.

Based on the above, the author wants to find out more about the case because the transporter (KM Zahro Express) until now does not give responsibility for the case above. This is contrary to Law Number 17 of 2008 concerning Shipping as regulated in Article 40 Concerning the Responsibilities of the Carrier.

Therefore the author would like to examine to make this journal entitled **“SEA TRANSPORT RESPONSIBILITY FOR VICTIMS CAUSED BY EXPLOSION OF FERRY SHIP KM ZAHRO EXPRESS BASED ON LAW NUMBER 17 OF 2008 CONCERNING SHIPPING (STUDY CASE : 323 / PID.SUS / 2017 / PT.DKI)”**

- ***Formulation of The Problem***

The problems that will be examined by the author in writing this journal are:

- I. How is the legal protection of the victim due to the explosion of KM ZAHRO EXPRESS, according to Shipping Law?
- II. What is the responsibility of the ship owner to the victim due to the explosion of KM ZAHRO EXPRESS, according to Shipping Law?

- ***Research Methodology***

According to Parsons, research is a search for something systematically with the emphasis that this search is carried out on the problems that can be solved.⁴⁾ Legal research is a matter contained in the science of law to be able to find solutions to a problem and obtain the truth about something that is not done as it should or as it should be.⁵⁾ Legal research methods are things that are based on a method, as well as certain thoughts in order to find solutions to problems so we know what is supposed to be done.

The research method used by the author is a normative legal research method. Normative research is a method used in legal research carried out by examining existing materials.⁶⁾ In this method the collection of legal materials is by the following methods:

1. ***Research Type***

This type of research is normative legal research. Legal research is a process to find the rule of law, legal principles, and doctrine to be able to answer the problems.

2. ***Nature of Research***

The nature of the research used in this study is research with normative, practical and prescriptive nature.⁷⁾

3. ***Types and Techniques of Collecting Legal Materials***

1. **Primary Legal Materials**

Primary material is data obtained or collected by researchers directly from the data source. Primary data is also referred to as original data or the latest data. In addition, the data obtained or collected by researchers from various existing sources such as documentation and literature studies. It can be from studying books, documents, and applicable laws and regulations relating to the issues to be discussed.

2. **Secondary Legal Material**

The secondary legal material used in this paper consists of: literature relating to the responsibility of the victim, books relating to the responsibility of the victim, the results of scientific research relating to the problem, legal journals / journals that correspond to the problem, and material other materials related to the issue.

- III. **Non Legal Material**

Non-legal material is material outside the legal discussion which is legal material that provides instructions or explanations for primary and secondary legal material.⁸⁾ Besides that, it is also useful to broaden horizons, as well as provide explanations to resolve existing problems.⁹⁾ Non-legal materials used in this research form. The Great Indonesian Language Dictionary (KBBI), Law Dictionary and encyclopedia, and newspapers.

- IV. **Research Approach**

Regarding normative research, there are various approaches.

The approach used in writing law according to Peter Mahmud Marzuki is as follows:¹⁰⁾

- a) Case approach;
- b) Statute approach;
- c) Historical approach;
- d) Comparative approach; and
- e) Conceptual approach

The research approach method used in this study is the statutory approach. This method was chosen because it is considered the most appropriate method to be able to answer the problems in this writing, which examines the legal protection for consumers due to the explosion of PT. KM. ZAHRO EXPRESS Ferry's and the responsibility of transporting victims due to the explosion of the Ferry.

- V. **Legal Material Analysis Techniques**

The analysis technique in this study uses the technique of analyzing legal materials by means of deductive logic or processing, which is to explain something that is general in nature and then draw it to a more specific conclusion.

The steps used in carrying out a legal research are:¹¹⁾

- f) Data identification, i.e. identifying data related to the problem discussed. Data selection, namely the process of filtering data that really relates to the subject matter discussed.
- g) Collection of legal and non-legal materials that have relevance;
- h) Examine the legal issues raised based on the materials that have been collected;
- i) Draw conclusions in the form of arguments that answer legal issues or problems;
- j) Give a prescription based on the argument that has been built in the conclusion.

2. STUDY

Agreement is as a legal relationship regarding property between the promise of two parties to do something or not doing something while the other party has the right to demand the implementation of the promise.¹²⁾ According to Subekti, Agreement is an event where someone promises to another person or where two people promised each other to do something¹³⁾.

Under civil law, compensation can arise due to default due to an agreement and can also arise due to acts against the law¹⁴⁾. Compensation that arises due to default if the parties in an agreement do not carry out their commitments as set forth in the agreement, then according to the law they can be held responsible, if the other party in the agreement suffers a loss because of it¹⁵⁾.

The Civil Code details the losses (which must be replaced) in three components as follows:¹⁶⁾

- 1) Cost.
- 2) Loss.
- 3) Interest.

On Sunday, January 1, 2017 at around 08.15 West Indonesia Time, Located in Muara Angke Waters, the Port of Kaliadem Dis Hub, North Jakarta, KM Zahro Express was about to sail to Tidung Island, Thousand Islands, North Jakarta, MOH NALI BIN MAT SIRAN (deceased) is the Regional Head from KM Zahro Express and the well-listed crew in KM Zahro Express., Lahmuudin, Selamet, Suhardi, Subur and Misan. Subur and Suhardi

alias Reji did not sail. While Tata, whose name is not on the Crew list sailed along.

The captain writes or fills in the passenger manifest list, crew list and Master Sailing Declaration in which letters as a request for the issuance of a Sailing Agreement (SBP) by Syahbandar for the KM Zahro Express Ship departure on Sunday January 1, 2017, then obtain approval from Syahbandar for a Sail Approval Letter, which made KM Zahro Express passenger manives before leaving on Sunday, January 1, 2017, is the Captain on the basis of a ticket sales note. Before departure, the captain did not physically check the manives, crew list or to other completeness because it has become a habit, even though the Captain knows and realizes that what is written in Manivest and Crew List is not in accordance with the original physical of the Nahkoda before the ship's departure. In this case KM Zahro Express Captain is obliged to do a physical check first, at that time the number of passengers who entered and died in manives was 100 (one hundred) people. While the remaining 120 (one hundred and twenty) people are passengers from other ferries.

When the ship sailed on the Captain realized that KM Zahro Express passengers on board more than those listed in the Manifest are 100 (one hundred) people, to the difference in the number of passengers on the KM Zahro Express ship, but still departed because it had is in a position to leave for Tidung Island, on the way at around 08.30 WIB suddenly heard an explosion from the engine room and KKM opened the engine room door with a burst of fire, but the fire could not be controlled, the passengers frantically escaped and scrambled out through the door the front, but not accommodated by the exit that says passengers piled up before and after the front door of the ship and subsequently the passengers partly jumped into the sea and some were left behind in the ship and the fire scattered.

As a result of the incident, 20 (twenty) people were found died aboard the ship and 3 (three) people were critical, in addition there were also injured as many as 21 (twenty one) people were taken to the Atma Jaya hospital, 5 (five) people to Pluit hospital and 1 (one) person was referred to Tarakan hospital.

The author will analyze the problems of transportation and translate into all the activities of transporting and moving cargo (goods and / or people) from the place of origin to the place of destination.

Transport in traffic is divided into 3 (three), namely, the transportation of land, sea transportation, and air transportation.

Sea Transportation basically consists of two parties namely the passenger and the carrier where the passenger has the obligation to pay for a ticket and the carrier has an obligation to maintain the safety of the passenger and be responsible to the passenger who suffered a loss. In this case an agreement between the passenger and the carrier that is proven by the existence of a ticket.

Law Number 17 of 2008 concerning Sailing was prepared with the intention of adjusting shipping law and regulating the legal needs of both passengers and transporters all

accommodated by the law. Passengers have legal rights and obligations and the transporter also has legal rights and obligations that must be fulfilled.

Transportation companies are responsible for losses suffered by passengers, shippers, or third parties due to negligence in carrying out the transportation service. During the course of transportation, the safety of passengers or goods is the basis of the responsibilities of public transport companies. be careful in carrying out transportation in anticipation of this, transport companies must insure their responsibilities.

According to the Regulation of the Minister of Transportation of the Republic of Indonesia in 2015 concerning Sea Transport Passenger Service Standards, Ships are water vehicles of a certain shape and type, which are driven by wind power, mechanical power, other energy, withdrawn or delayed, including vehicles with dynamic carrying capacity, subsurface vehicles water, as well as buoyancy tools and the building of non-movable floating anthers.

One of the travel documents required by passengers using sea transport in the form of ships is a ticket. In accordance with the Regulation of the Minister of Transportation of the Republic of Indonesia Number PM 28 of 2016 concerning Passenger Transport Passenger Obligations to Have a Ticket, a Ticket is a travel document issued by a company containing the origin and destination port, date, price, passenger data used to travel.

In Wikipedia, a ticket is a card or slip that is used to enter a location or event. The vehicle ticket is a document created by a public vehicle operator or travel agent to certify that someone has reserved a seat in a vehicle.

Ship Ticket means a document stating that someone has reserved a seat in a boat. According to the 2011 National Land Transportation Regulations on Passenger List and Crossing Transport Vehicles, every passenger before entering the passenger terminal is required to buy a ticket. The port operator at the ticket sales office is required to record passenger identification data. Passenger identity data contains:

- 1) Name
- 2) Gender
- 3) Age
- 4) Address (city of residence)

Before entering the ship, passengers who already have tickets are required to submit their tickets to the ship operator. Ship operator officers are required to rip tickets from passengers. Then the ship operator officers submit a discounted ticket to the passenger.

Based on the Regulation of the Minister of Transportation of the Republic of Indonesia Number PM 28 of 2016 concerning Passenger Transportation Passenger Obligations to Have a Ticket, every passenger of crossing transportation both pedestrian passengers and passengers on vehicles must have a ticket. Tickets can be in the form of pieces of paper that can be printed via electronic

devices, where the information contained in the ticket must match the identity of the passenger.

Tickets can be obtained at pedestrian passenger counters, passenger vehicle counters, and information technology-based ticketing places or services. Each passenger is required to submit a ticket to the ship operator officer.

The ship operator officer is obliged to reject passengers who do not have a ticket to enter the ferry transportation ship. What is meant by the Ship Operator is the Indonesian Legal Entity whose activities are to operate vessels used to serve ferry transportation.

Regarding the case, there are 3 (three) types of basic concepts of legal responsibility of each concept of responsibility in sea transportation, so there is a concept of legal responsibility that can be explained as follows:

1. Legal Liability for Mistakes
2. Legal responsibility for errors or (based on fault liability) is contained in Article 1365 of the Civil Code. That article, known as an unlawful act (*onrechtmatigdaad*) generally applies to anyone, including transportation companies. According to the article, acts against the law that cause harm to others are required to compensate (to compensate the damage). Based on these provisions each person¹⁷⁾ must be liable (liable) legally for their own actions means that if the actions result in losses to others, then that person must be responsible (liable) to pay for compensation suffered.¹⁸⁾
3. According to Article 1367 of the Civil Code, legal liability to persons who suffer losses is not only limited to their own actions, but also the actions, employees, employees, agents, representatives if causing harm to others, as long as the person acts according to their duties and obligations imposed on that person. In principle, legal liability based on fault (liability on fault liability) applies to all transport companies.

Responsibility on the basis of mistakes must meet the elements of error, there are losses and losses have to do with mistakes, victims who must prove the existence of mistakes, victims as plaintiffs with the company as defendants have the same position in the sense that they can prove to each other:

- a) There are Errors (Fault) and Losses (Damages)

Responsibilities based on mistakes must meet three elements, namely: 1) there are mistakes; 2) there are losses; 3) the loss has something to do with error. If there is a mistake, but does not cause a loss, then the company will not be responsible, so will the loss, but the loss has nothing to do with mistakes, then the company will also not be responsible.

- b) Unlimited Liability¹⁹⁾

If the Passenger and / or the goods are able to prove the error of the transportation company, there are losses and losses caused by mistakes, then the transportation company must pay compensation for the damage suffered by the passenger and / or the sender of the goods. The transportation company has unlimited liability in the sense that any loss suffered by the passenger and / or the sender of the goods must be paid in full by the transportation company, except on the basis of an agreement on both parties²⁰⁾

c) The Presumption of Liability

As mentioned earlier, in the development in advance, in its development responsibility on the basis of error (based on fault liability) can not be applied in transportation, because the position between the passenger and / or sender of goods with the transport company is not balanced. In transportation companies, especially airlines or sea transportation entrepreneurs / operators master high technology, meanwhile passengers and / or senders of goods do not master the high technology of transportation, so that if passengers and / or senders of goods must prove the mistakes of transportation companies, especially airlines and shipping companies certainly will not succeed, because it was introduced the concept of legal responsibility presumption of guilt (presumption of liability concept).

The concept of legal liability on the basis of presumption of liability began to be implemented since the 1929.²¹⁾ According to the presumption of liability concept, the transportation company is considered guilty, so the transportation company by law must pay compensation suffered by passengers and / or senders of goods without being proven wrong beforehand, unless the transportation company proves innocence. Passengers and / or senders of goods do not need to prove the mistakes of the transportation company, it is enough to inform the loss that occurred at the time of the accident, so that passengers and / or senders of goods do not have to prove the fault of the transportation company. In return, the transportation company has the right to enjoy the limited liability limit that has been determined in the convention or regulation meaning that whatever the loss suffered by the passenger and / or the sender of the goods, the transportation company will not be responsible for paying all losses suffered by the passenger and / or the sender of goods.

The elements of the concept of liability presumption (presumption of liability) are the burden of proof reversed, limited liability (limited liability), legal protection (exoneration), contributing to guilty (contributory negligence), and intentional mistakes (willful misconduct) as follows:

a) Burden of Proof

The concept of presumption of liability concept, passengers and / or senders of goods do not need to prove the mistakes of transportation companies, because transportation companies have been considered guilty. If the passenger and / or sender of goods must prove the fault of the transportation company, it is definitely not possible

to succeed, because the passenger and / or the sender of the goods does not master high-tech transportation. In the concept of legal liability presumption of guilt that must prove the existence of errors is a transportation company that is often called the burden of proof reversed or commonly called negative proof. Transportation companies must prove their innocence (negative proof). What if the transport company, including its employees, employees, agents or representatives can prove their innocence, the free transportation company is not responsible in the sense that it will not pay any compensation for passengers and / or the sender of goods.

b) Limited Liability

As a consequence of the concept of legal liability (presumption of liability concept), the transportation company is legally liable, without prior legal proof of the loss suffered by passengers and / or the sender of goods, however the responsibility of transportation companies is limited (Limited) the amount of the loss specified in international conventions or national legislation in force, for each passenger who dies or is permanently or temporarily injured or is lost, destroyed or cannot be used as a whole or in whole. Whatever the loss suffered by the passenger will not get a total loss.

c) Contributing to Negligence

Transportation companies can not only protect themselves, but transportation companies can also prove that passengers and / or shipments also make mistakes (contributory negligence). If the transportation company, including its employees, employees, agents and representatives can prove that the passenger and / or the sender of the goods are guilty, then the responsibility is not entirely borne by the transportation company, but is also borne by the passenger.

d) Unlimited Liability²²⁾

The responsibility of the transport company above the amount of loss specified in international conventions or national legislation that applies to losses suffered by passengers and / or senders of goods, however passengers and / or senders of goods are still open to obtain greater compensation, if passengers and / or senders of goods can prove that the transportation company, including employees, employees, agents or representatives made a deliberate mistake (willful misconduct). If a passenger and / or sender of goods can prove that the transportation company, including employees, employees, agents or representatives, made a deliberate mistake, the responsibility of the transportation company is not limited in any sense the loss suffered by the passenger and / or the sender of the goods must be replaced entirely, for example the company does not provide buoys, because buoys are no go items in ship operations.

e) Legal Liability without Fault

The concept of legal liability without fault concept or absolute liability or strict liability is used in article 44 of

Law No. 15 of 1992, Rome Convention 1952²³), Guatemala City 1971 Protocol, The Liability Convention of 1972²⁴) and Aircraft Product Liability. According to this concept of innocent liability, the transportation company is absolutely responsible for the losses suffered by third parties. arising from accidents or the fall of goods and / or people from the ship, without requiring any proof first.

The concept of legal liability without guilty (legal liability without fault concept) or absolute liability or industrial liability is applied to the responsibility of the passenger ship operator to third parties. In the concept of guilty responsibility or absolute responsibility the operator cannot free himself of the obligation to pay compensation. The words damage or loss can be found in articles 18,19, and 20 of the 1929 Warsaw Convention, Rome Convention 1952, the Liability Convention of 1972.

VI. Doctrine of the law (Doctrine)

According to the doctrine of the law (Doctrine), the concept of legal liability (legal liability without fault concept) or often also called absolute liability (absolute liability or industrial liability) was born in Europe since the industrial revolution in the 19th century. At that time in society there was a structure social layers in each upper layer which usually has access to various economic, social, cultural and political needs, and the lower layer which usually does not have the opportunity as enjoyed by the upper layer. The upper layer is generally controlled by industrialists. Industry revolution which occurred in Europe in addition to providing benefits for industrialists, can not be separated from the negative impact on social life. The lower classes are always victims of extortion, environmental pollution, poverty, misery of injustice and various other social suffering.

The American Common Law System is also known for shifting liability (transfer of liability) from passengers (injured people) to perpetrators (actors) that cause losses so that the perpetrators (transport companies) are responsible. According to the American Common Law System actors (absolute) responsibility is absolutely (absolute liability) without error, because people want the law to protect the public to achieve prosperity. Legally this is fair because the actors can share the risk (distribution of risk) with the people who enjoy activities that are very dangerous²⁵⁾

3. Closure

• *Conclusions*

Conclusions from the Journal entitled Responsibility of Sea Transportation Against Victims Due to the Explosion of the Ship KM Zahro Express Based on Law Number 17 Year 2008 About Shipping (Study Termination: 323 / PID. SUS / 2017 / PT.DKI):

1. Based on Law Number 17 of 2008 concerning Shipping prepared with the intent to adjust

shipping law and regulate the legal needs of both passengers and carriers all have been accommodated by the law. Passengers have legal rights and obligations and the carrier also has legal rights and obligations must be lived. The carrier is responsible for losses suffered by passengers, shippers, or third parties due to negligence in carrying out the transportation service. During the course of transportation, the safety of passengers or goods is the basis of the responsibility of public transport companies. Based on this responsibility, transporters are encouraged to be careful in carrying out transportation in anticipation of this, the transport company is obliged to insure its responsibilities.

• *Suggestion*

Suggestion for the writers are to have a Journal entitled Responsibility of Sea Transportation to Victims as a Result of the Explosion of the Km Zahro Express Ferry Based on Law Number 17 Year 2008 Concerning Shipping (Study of Decision: 323 / PID.SUS / 2017 / PT.DKI), the transportation company must look more closely at the regulations - regulations regarding sea transportation rules.

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