



Normative Study On Criminal Liability Of The Captain For The Occurrence Of A Fatal Accident That Causes The Death Of A Person

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Abstract. The purpose of this study is to describe criminal liability for the captain for the occurrence of fatal accidents that cause the death of people. The method provided uses a data normative law research approach using secondary data and techniques with document and literature studies. The study results show that the captain is the highest leader on a ship and is responsible for the occurrence of ship accidents unless it can be proven otherwise. The captain's criminal liability for a fatal accident is caused by technical, human, and natural factors. Ship accidents caused by technical and human factors result from a lack of caution (negligence) or a mistake. Because of the fulfillment of the elements of criminal liability, namely mistakes (*schuld*), being able to take responsibility, and the absence of excuses, the captain is burdened with criminal liability. Meanwhile, ship accidents caused by natural factors are included in *noodtoestand*. This force majeure circumstance is a reason for forgiveness in criminal law so that the captain is not burdened with criminal liability.

Keywords: criminal, fatal accident, negligence, liability

INTRODUCTION

The Unitary State of the Republic of Indonesia has thousands of islands and a large water area. With more than 17000 islands, 70% of the water area is covered by islands, making Indonesia one of the largest archipelagic countries in the world.¹With the number of islands and the vastness of the territorial waters of the Unitary State of the Republic of Indonesia, it is more appropriate to be called a maritime country. The concept of a naval state is a country that can utilize its marine wealth to achieve prosperity. Shipping is crucial to attain glory and prosperity as a maritime country. Shipping is an important factor

¹ Abraham Benedict Cahyasusila and others, 'ANALYSIS OF HUMAN FACTORS IN SHIP ACCIDENTS IN', Journal of Education And Development, 10.2 (2022), Pp.385.

<https://journal.ipts.ac.id/index.php/ED/article/view/3754> Accessed 5 May 2024

because it is related to the transportation process in the waters. Transportation in water is transporting or moving passengers and goods using ships.

Ships are a mode of water transportation, namely vehicles used to transport passengers and goods through sea routes (including rivers and so on). They are made of wood and iron, turbulent, and driven by engines or sails. In transportation in the waters, the ship runs according to a predetermined route, namely from the first port to the last port. A ship also includes ship equipment. Ship equipment is everything that is not part of the ship but is intended to be used forever with the ship.²

The captain is the leader of the ship and holds the highest command. As a leader, a captain has the authority to regulate the working relationship on the ship and is responsible for the actions carried out by the ship's officers and crew.³ The transportation process in the waters does not always run according to plan; in practice, ships have the potential to experience ship accidents. A ship accident is an incident caused by external and/or internal factors of the ship that can threaten and endanger the safety of the ship, cause property losses, and cause the loss of human life. Ship accidents can take the form of sunken ships, rooted ships, collision ships, or stranded ships. When a ship accident occurs, the responsible party is the captain because the captain is the highest leader in a ship unless it can be proven otherwise. The captain is responsible for allegedly making mistakes in applying maritime professional standards. Ship accidents can occur because they are caused by several factors, namely technical factors, natural factors, and human factors.⁴

Internal factors, namely technical and human factors (*human error*), contribute to ship accidents much more than external factors, such as bad weather. Technical and human factors contributed to 14 out of 15 shipping accident cases in Indonesia throughout 2020 – semester 1 of 2023.⁵ External factors such as bad weather are out of control, must be anticipated, and are preventive or preventive. Internal factors, namely technical and human factors, are the captain's responsibility to ensure that all ship officers and crew perform

² Christmas Christmas, Misbahul Huda, and Gunawan Nachrawi, 'The Role of the Shipping Court in the Follow-up Examination (Trial) of the Captain of an Accident Ship', *JlIP - Scientific Journal of Educational Sciences*, 5.3 (2022), Pp.44 <http://jiip.stkipyapisdompnu.ac.id/jiip/index.php/JlIP/article/view/493> Accessed 28 April 2024.

³ Anung Adityatjahja, Herman Susetyo, 'The Responsibility of the Captain in the Transportation of Goods by Sea', *Journal of Maritime Transportation Technology Science*, 4.1 (2022), Pp.24 <https://jurnal.akmicirebon.ac.id/index.php/akmi/article/view/45> Accessed 28 April 2024.

⁴ National Committee for Transportation Safety, '2023 Semester 1 Transportation Accident Investigation Statistical Report', *Knkt.Go.Id*, 5, 2023, Pp.15 Accessed 3 May 2024.

⁵ National Committee for Transportation Safety, *Ibid*, Pp.16.

their duties correctly. If a lack of caution causes an accident, it is a mistake because it causes a prohibited circumstance. And the captain, as the ship's captain, is charged with criminal liability.

Criminal law contains all provisions stipulating what conditions bind the state if the state wants to introduce a criminal law, as well as regulations regarding what kind of crime is allowed. Criminal law, in this sense, is a valid criminal law often also called positive law.⁶ Criminal liability in criminal law is known as the theory of criminal liability. In Dutch, it is called toerekenbaarheid, and in English, it is called criminal responsibility. Criminal liability is the application of existing penalties to the maker for acts that violate prohibitions and/or create prohibited circumstances.⁷

A ship accident is a prohibited situation. The occurrence of a ship accident causes a prohibited circumstance, including losses and casualties. In this study, the problem is focused on criminal liability for the captain for fatal accidents that cause the death of people. This study uses a normative legal research approach. The data used was secondary data. Data collection techniques by means of document studies and literature studies. The collected data is analyzed qualitatively and presented in a descriptive form.

DISCUSSION

Indonesia is an archipelagic country with an ocean area larger than its land area. In the context of a maritime country, the sea is not a land separator but a link between islands. Ships are a mode of water transportation that transports goods and people through water. In a maritime country, ships have an essential role as a liaison between islands in Indonesia. According to the report of the Ministry of Transportation of the Republic of Indonesia in 2019, the number of sea fleets in Indonesia was 39,510 cargo ships, 3243 passenger ships, and 39,330 fishing ships.⁸ The number of ships in Indonesia continues to increase to 72,313 units in 2021.⁹

Indonesia is located between two continents, namely Asia and Australia, and two oceans, namely the Indian Ocean and the Pacific Ocean, which gives Indonesia a strategic position, especially in international ship traffic. Based on the Coordination Meeting on Foreign Sea

⁶ Fitri Wahyuni, 2017, *FUNDAMENTALS OF CRIMINAL LAW IN INDONESIA*, PT. Nusantara Persada Utama, South Tangerang, p.1

⁷ Aryo Fadlian, 'Criminal Liability in a Theoretical Framework', *Positum Law Journal*, 5.2 (2020), Pp.13.

<https://journal.unsika.ac.id/index.php/positum/article/view/5556> Accessed 22 April 2024

⁸ https://ppid.dephub.go.id/fileupload/informasiberkala/20200729142224.JUMLAH_KAPAL_YANG_TERDAFTAR_DI_INDONESIA.pdf Accessed Saturday, May 11, 2024 at 12.05 WIB

⁹ <https://dataindonesia.id/otomotif-transportasi/detail/ada-72313-kapal-laut-di-indonesia-pada-2021> Accessed Saturday, May 11, 2024 at 12.20 WIB

Transportation held by the Ministry of Transportation of the Republic of Indonesia, since 2017-2022, import and export activities in Indonesian waters have been 37% Indonesian ships and 63% foreign ships. Throughout 2022, the number of ships carrying out activities in Indonesia reached 10,534 ships.¹⁰

With many ships operating in Indonesia, ship accidents can occur in the process of transportation in the waters. Ship accidents are incidents experienced by ships that can threaten ship safety and human life; ship accidents can be in the form of sunken ships, burning ships, collision ships, and stranded ships. Ship accidents occur due to two factors: internal factors in the form of technical and human errors and external factors, namely natural factors.¹¹

Since 2020-2023, errors in internal factors have contributed to 14 out of 15 ship accidents, namely 7 incidents due to technical errors, 7 incidents due to human factors (human error) and 1 incident caused by natural factors. Throughout semester 1 of 2023 (January-June), ship accidents have caused 15 fatalities.¹²

In a ship accident, criminal liability is imposed on the captain as the supreme leader unless it can be proven otherwise. Factors that affect the criminal liability of the captain in the event of a fatal accident are:

1. First, the human factor that causes ship accidents is a lack of caution (negligence) in running the ship, including the placement of human resources that are not in accordance with the required qualifications so that they cannot carry out the company's operational standards properly, including not being able to communicate effectively in emergency situations.
2. The second is the technical factor. Technical factors are related to the lack of meticulousness in designing the ship, the lack of routine ship maintenance resulting in damage to the ship and/or ship equipment which is a factor causing ship accidents. Technical factors also include violations of existing provisions and regulations or procedures.¹³
3. Third, natural factors in the form of bad weather, such as storms, large currents, and fog, that result in limited visibility. Bad weather is a natural factor, but it should be anticipated as a readiness to face an emergency. In this case, the company or ship owner should be able to

¹⁰ <https://hubla.dephub.go.id/ksoppangkalbalam/page/news/read/15506/rakor-angkutan-laut-luar-negeri-kemenuhub-dorong-pertumbuhan-industri-pelayaran-nasional-dalam-perdagangan-internasional#:~:text=Pada%20tahun%202022%20yang%20lalu,merupakan%20kapal%20asing%2C%E2%80%9D%20jelasnya> accessed Saturday, May 11, 2024 at 12.43 WIB.

¹¹ National Committee on Transportation Safety, Op Cit, *hlm.*15

¹² National Committee for Transportation Safety, '2022 Semester 1 Transportation Accident Investigation Statistical Report', *Knkt.Go.Id*, 5, 2023, *Pp.*15-16.

¹³ Dwi Haryanto and Diyah Purwitasari, 'Analysis of Factors Causing Shipping Accidents in the West Surabaya Shipping Route in 2013 - 2017', *Journal 7 Oceans of the Surabaya Shipping Polytechnic*, 3.1 (June 2018), *Pp.*3 https://scholar.google.com/scholar?hl=id&as_sdt=0%2C5&q=analisa+faktor+penyebab+kecelakaan+pelayaran&btnG= Accessed 11 May 2024.

identify potential emergencies on board the ship and the procedures that must be taken to anticipate these situations.¹⁴

Based on the cause of the ship accident, natural factors are not the captain's responsibility because it is a force majeure circumstance or *Overmacht*. According to J.E. Jonkers, *overmacht* is divided into three categories: *absolute overmacht*, *relative overmacht*, and external emergency called *Noodtoestand*.¹⁵ Natural factors in the occurrence of ship accidents are *Noodtoestand*, which is an emergency that comes from nature or other situations that cause someone to commit a criminal act. So that *Noodtoestand* became a reason to remove the unlawful acts committed and then remove the criminal liability imposed on him.

Meanwhile, ship accidents caused by technical factors and human factors due to lack of caution are the captain's responsibility, and he is charged with criminal liability.

The human factors that cause ship accidents can be categorized into four categories: unsafe acts, a precondition for unsafe acts, organizational influences, and *unsafe supervision*. *Unsafe Acts* or unsafe acts are the biggest factor in ship accidents caused by wrong human actions in taking action (lack of caution). Circumstances included in *unsafe acts* include errors in controlling the ship, mistakes in assessing the situation, and errors in following up on the surrounding situation.¹⁶

Technical factors such as lack of precision in designing the ship and not carrying out ship maintenance that causes damage to the ship or ship equipment are related to human factors. Because the one who makes the design of the ship is a human being and the one who performs the maintenance of the ship and the ship's equipment is also a human technical factors can also be categorized as negligence or lack of caution so that it causes errors.

Criminal law is a legal regulation regarding crime or a law regarding offenses threatened with a crime. According to W.L.G Lemaire, criminal law consists of imperatives and prohibitions associated with a sanction in the form of punishment, that is, a special suffering.¹⁷ Thus, criminal law is a system of norms that determines which actions (whether or not to do something that is necessary) and under what circumstances the law can be imposed, as well as what kind of punishment is imposed on those acts. In imposing a criminal sentence against a person, the elements of a criminal act must be met. The elements of criminal acts are divided into two views, namely monistic and dualistic. The monistic view states that criminal acts/acts include prohibited

¹⁴ Harnoli Rahman and others, 'Determination of the Dominant Factor Cause of Ship Accidents in Tanjung Priok', *Albacore*, I.3 (2017), *low-cost housing*.284 https://scholar.google.com/scholar?hl=id&as_sdt=0%2C5&q=harnoli+rahman&oq=harnoli#d=gs_qabs&t=1715667223416&u=%23p%3DwsXjnrESn6cJ. Retrieved 11 May 2024.

¹⁵ Raldo Rattu, 'Overmacht in Article 48 of the Criminal Code from the Perspective of Doctrine and Jurisprudence', *Lex Crime*, VIII.11 (2019), hlm.16. <https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/27385> Accessed 11 May 2024

¹⁶ Abraham Bennedict, Cahyasusila and others, *Op Cit*, *low-cost housing*.386.

¹⁷ Fitri Wahyuni, 2017, *Op Cit*, p.2.

acts and criminal liability. While the dualistic view separates criminal acts from criminal liability, criminal acts only include criminal acts without questioning whether the person who commits the criminal act can be responsible.¹⁸

In the case of a ship accident that causes the death of a person, this study refers to a dualistic theory that separates criminal acts and criminal liability. In a fatal accident on a ship, the captain is the party burdened with criminal liability unless it can be proven otherwise. Ridwan Halim defines legal responsibility as a further consequence of the implementation of roles, both rights and obligations and powers. Legal responsibility can generally be interpreted as an obligation to do something in a certain way and not deviate from existing regulations.¹⁹

In criminal liability, a person can be held accountable for criminal acts committed intentionally or due to negligence.

In the future, criminal liability refers to Article 36 of Law No.1 of 2023 concerning the Criminal Code (KUHP). Criminal liability is the criminalization of the perpetrator of a criminal act with the intention of determining whether a defendant is responsible for the act that occurred or not. Thus, it can be interpreted that criminal liability is forwarding objective reproaches contained in laws and regulations to the perpetrators of criminal acts.

A person can only be charged with criminal liability if he meets the three elements of criminal liability: fault (schuld), ability to take responsibility, and absence of excuses. This means that the perpetrator cannot be sentenced if he does not commit a criminal act, but even if he commits a crime, the perpetrator cannot always be convicted.²⁰

The captain or captain of a ship is a licensed seafarer who holds the highest command and is responsible for a ship in processing transportation in the waters. With his license, a captain is able to be responsible for the fatal accident of the ship he leads. This is in accordance with the mandate of Law No. 17 of 2008 concerning Shipping, which states that in the event of a ship accident, it is the responsibility of the captain unless it can be proven otherwise. So, the element of being able to be responsible in the theory of criminal liability has been fulfilled.

Mistakes are acts that violate the rule of law or violate the rules. In criminal law, it is known as *the principle of Geen Straf Zonder Schuld*, which means that there is no crime without guilt. So that in criminal law, mistakes are a very important element and are considered fair in accounting for a delix.²¹

¹⁸ Fitri Wahyuni, 2017, *Op Cit*, p.44.

¹⁹ Julista Mustamu, 'Government Criminal Liability', *SASI Journal*, No.20 Vol. 2 (2014), *low-cost housing*.²².
https://scholar.google.com/scholar?hl=id&as_sdt=0%2C5&q=julista+mustamu+pertanggungjawaban+hukum+pemerintah&btnG= Accessed May 11, 2024.

²⁰ Ni Made and others, 'Criminal Liability Without Unlawful Nature in the Perspective of Criminal Law Reform', *Journal of Legal Construction Vol. 4 No 1 2023*, 4.1 (2023), *low-cost housing*.²⁹
<https://www.ejournal.warmadewa.ac.id/index.php/jukonhum/article/view/6027> Accessed 25 April 2024 .

²¹ Ni Made and others, *Ibid*, hlm.29.

In criminal law, two types of mistakes are known: intentional (*dolus*) and negligence (*culpa*). Intentionality is the willingness to do an act that is prohibited or not to do something ordered by law. Negligence does not have a definite definition according to the law, but in *Mvt* (Memory van toelichting), it is said that negligence lies between intention and coincidence.²²

According to Moelyatno, the measure that can be used in assessing an action as negligence is not to use the views or stances of people in general but the views or stances of people who are of the same ability as the defendant. If the defendant is the captain, then negligence can be assessed according to the captain's view or stance.²³

In the process of transportation in the waters, a ship must sail according to a predetermined route; the route is the route that the ship must pass from the initial port to the final port. The occurrence of a ship accident is something that should not occur in the process of transportation in the waters, so it is a mistake because it causes a prohibited situation.

Judging from the factors that cause ship accidents, technical factors and human factors are mistakes (*schuld*), namely lack of caution or negligence (*culpa*). Ship accidents caused by lack of caution or negligence that cause their death have been regulated by law.

Negligence is regulated in Article 359 of Law No.1 of 1946 concerning Amendments to the Criminal Code: "Whoever by his fault (negligence) causes the death of another person, is threatened with imprisonment for a maximum of 1 year". In the future, negligence that causes the death of a person is regulated in Article 474, paragraph 3 of Law No.1 of 2023 concerning the Criminal Code, it is written, "Every person who, due to his negligence, results in the death of another person, shall be sentenced to a maximum of 5 (five) years in prison or a maximum fine of category V". Furthermore, in Article 475 paragraph 1 it is written "If the criminal act as referred to in Article 474 is committed in the exercise of office, livelihood, or profession, the penalty may be increased by 1/3 (one-third)".

Suppose a ship accident is caused by natural factors such as bad weather or storms. In that case, it is included in *the noodtoestand*, an emergency from nature so that the captain is not burdened with criminal liability. In criminal law, the reason for the criminal abolition is known and *noodtoestand* is included in these reasons. This will become a positive law in the future, as regulated in Article 48 of Law No.1 of 2023 concerning the Criminal Code. A person cannot be burdened with criminal liability if he has a reason to forgive the mistake that occurred.

Criminal liability for the captain in the event of a fatal accident that causes the death of a person depends on the causative factor. If it is caused by human and technical factors, the captain is charged with criminal liability. In contrast, if it is caused by natural factors, then there is a forgiving

²² Aryo Fadlian, *Op Cit*, *hlm*.15-16.

²³ Aprianto J Muhaling, 'Negligence that results in the death of a person according to the applicable laws', *Lex Crime*, 8.3 (2019), *Pp*.30 <https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/25628> Accessed April 28, 2024.

reason that makes the captain no longer burdened with criminal liability. This is by the phrase "otherwise provable" in shipping laws.

CONCLUSION

The incident of the ship accident is an offense that creates a forbidden situation. When a ship accident occurs, the captain is the party responsible for the accident. The factors that affect the criminal liability of the captain in the event of a fatal accident that causes the death of a person depend on the causal factors. Namely caused by technical factors, human factors, or natural factors. The captain's criminal liability theory uses three elements: mistakes, the ability to take responsibility, and the absence of excuses.

In the future, when ship accidents are caused by technical factors and human factors that are the result of lack of caution or negligence, the captain will be burdened with criminal liability, namely article 474 j.o article 475 of Law No.1 of 2023 concerning the Criminal Code. Meanwhile, if the cause of the accident is a natural factor, such as bad weather, it is included in noodtoestand, which is a force majeure circumstance that is a reason for forgiveness in criminal law. With the excuse of forgiveness, the captain is not burdened with criminal liability.

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