

Increasing Understanding of Legal Responsibilities in Ship Accidents (Study at Sinar Bahari Palembang Shipping Vocational School)

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Abstract

This study examines the effectiveness of a community service initiative aimed at enhancing understanding of legal responsibilities in ship accidents among participants from the Sinar Bahari Palembang Shipping Vocational School in Indonesia. Given the dense maritime activity in the region, which exposes vessels to various risks including shipwrecks, groundings, collisions, and fires, a clear comprehension of legal accountability is crucial. The initiative utilized legal counseling sessions incorporating presentations and interactive question-and-answer methods. These sessions engaged 40 participants, including both educators and students, in discussions concerning maritime safety protocols,



identification of liable parties in accidents, the role of the National Transportation Safety Commission, and law enforcement measures. Results indicate a significant improvement in participants' understanding across various key areas. Participants demonstrated heightened awareness regarding maritime security and safety protocols, enabling them to better navigate potential risks. Additionally, they gained clarity on the parties legally responsible for ship accidents, which is essential for ensuring accountability and fair compensation in case of incidents. Moreover, participants acquired insights into the role played by the National Transportation Safety Commission in handling ship accidents, including its investigative and regulatory functions. Understanding these roles helps in facilitating effective accident response and prevention strategies. Furthermore, participants developed a better understanding of the legal enforcement mechanisms applicable to ship accident cases. This knowledge is crucial for ensuring adherence to maritime laws and regulations, thereby promoting safety and accountability within the maritime industry.

KEYWORDS *Maritime Security and Safety, Ship Accident, Law Enforcement, Legal Responsibility*

Introduction

Sea transportation is one way to transition needs from primary needs to additional or supporting needs for archipelagic countries such as Indonesia¹. It is undeniable that in an archipelagic country like Indonesia, maritime facilities and infrastructure are the mainstay for the transportation of large quantities of goods by ship. In terms of economy and industry, the use of shipping is more efficient and has significant advantages². With sea transportation infrastructure such as shipping, it

¹ Karel Albert Ralahalu and M Yamin Jinca, "The Development Of Indonesia Archipelago Transportation," *International Refereed Journal of Engineering and Science* 2, no. 9 (2013): 12–18.

² Bijaksana Gena et al., "Competitive Advantage Improvement Strategy of Container Shipping Industry: Case of Indonesia," *International Journal of Shipping and Transport Logistics* 12, no. 4 (2020): 307–39.

makes sense to move goods and people from one place to another which has a positive impact on economic development in the territory of Indonesia.

Everyone travels from one place to another to meet their needs, such as shopping, working, school and others. In terms of speed and type of ship transportation, for example inter-island freighters, it is very different from ships crossing straits, lakes and so on³. This is the main concern of the government to compile rules governing the registration of ships for sailing, types of ships according to the shipping area, discretion in hiring professional skippers and crew according to the region.

Maritime safety is of paramount importance and central to all aspects of the world of navigation⁴. The main characteristics of maritime safety include attributes, values and actions relating to the importance of complying with safety and security requirements related to transportation in waters and Ports⁵. Neglecting transportation security often leads to higher economic and environmental costs, such as lower production, medical costs, pollution, and inefficient energy consumption⁶.

Sea transportation is a very tightly regulated sector, where there are clear arrangements about the role of each related party in sea transportation⁷. Maritime safety regulations take precedence over other regulations in the maritime industry due to the large number of navigational accidents caused by human error⁸. Therefore, every ship

³ Djohari Santoso, *Pokok-Pokok Hukum Perkapalan* (Yogyakarta: UII Press, 2004).

⁴ K. Formela, T. Neumann, and A. Weinrit, "Overview of Definitions of Maritime Safety, Safety at Sea, Navigational Safety and Safety in General," *TransNav: International Journal on Marine Navigation and Safety of Sea Transportation* 13, no. 2 (2019): 285–90.

⁵ Z. L. Yang, J. Wang, and K. X. Li, "Maritime Safety Analysis in Retrospect," *Maritime Policy and Management* 40, no. 3 (2013): 261–77.

⁶ Chengpeng Wan et al., "Analysis of Risk Factors Influencing the Safety of Maritime Container Supply Chains," *International Journal of Shipping and Transport Logistics* 11, no. 6 (2019): 476–507.

⁷ Aristotelis Komianos, "The Autonomous Shipping Era. Operational, Regulatory, and Quality Challenges," *TransNav: International Journal on Marine Navigation and Safety of Sea Transportation* 12, no. 2 (2018): 335–48.

⁸ D. A. Lasse, *Keselamatan Pelayaran Di Lingkungan Teritorial Pelabuhan Dan Pemandu Kapal* (Jakarta: Raja Grafindo Persada, 2014).

sailing must meet the ship's seaworthiness requirements, namely the state of the ship that meets the health and welfare requirements of the ship, crew, cargo, crew and passengers, as well as the legal status of the ship, safety regulations and pollution prevention, and ship safety arrangements in certain waters⁹.

The potential for disaster or disaster in shipping activities is very large and can cause ship accidents. This situation can occur due to ship collisions, ships running aground, shipwrecks, *human error*, and others¹⁰. If the accident results in goods and passengers requiring rescue and assistance, it will cause losses to the parties.

Based on data on marine transportation accidents monitored by the National Transportation Safety Commission (KNKT) during 2015-2021, the trend of accidents that occur in Indonesia is as shown in Figure 1.¹¹

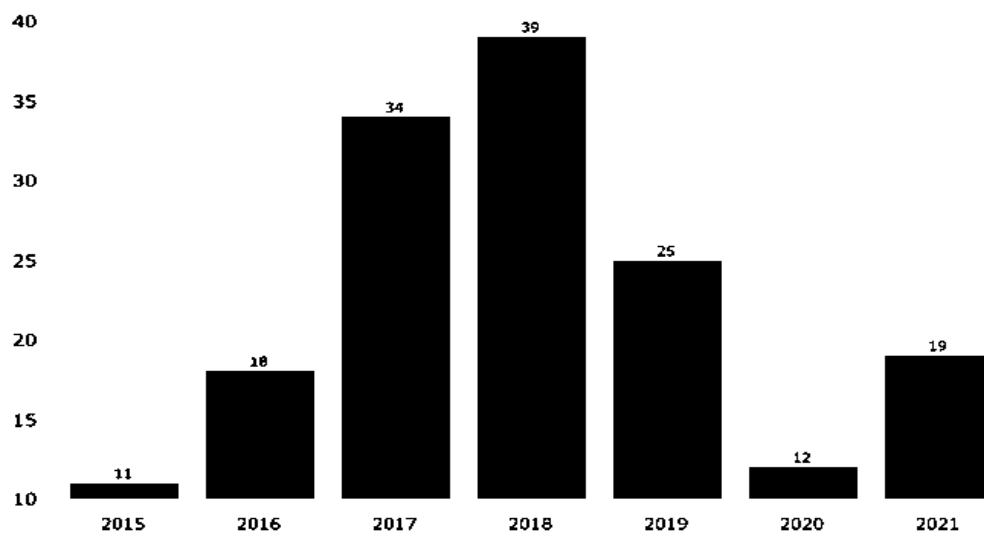


FIGURE 1. Trend of Ship Accidents Occurring in Indonesia

Source: National Transportation Safety Commission (KNKT), December 2021

⁹ Rahmi Erwin and Fahririn, "Tanggung Jawab Negara Untuk Mencegah Terjadinya Kecelakaan Kapal Sebagai Sarana Transportasi Menurut Hukum Internasional Dan Hukum Indonesia," *Supremasi Jurnal Hukum* 4, no. 2 (2022): 177–99.

¹⁰ L. P. Bowo, R. E. Prilana, and M. Furusho, "Human Error Assessment of Situation Awareness in Bridge Operations: A Case Study of Indonesian Maritime Accidents," in *IOP Conference Series: Materials Science and Engineering*, vol. 1052 (Surabaya, 2021), 1–15, <https://doi.org/10.1088/1757-899x/1052/1/012012>.

¹¹ Reza Pahlevi, "Sempat Turun, Jumlah Kasus Kecelakaan Pelayaran Kembali Meningkat Pada 2021," *katadata*, 2021.

Based on these data, it can be seen that the National Transportation Safety Committee (KNKT) has investigated 19 cases of shipping accidents during 2021. This number increased from 2020 which was 12 cases. When viewed since 2015, shipping accident cases peaked in 2018. There were 11 accidents in 2015, 18 in 2016, 34 in 2017, and 39 in 2018. KNKT recorded 31% of shipping accidents in 2018 - 2020 involving fishing vessels. KNKT emphasized that there needs to be an evaluation of regulations related to fishing vessels. The number of accident cases had decreased in 2019 and 2020. There were 25 accidents in 2019 and 12 accidents in 2020. Unfortunately, this number rose again to 19 cases in 2021.

This is quite worrying considering that sea transportation is still a popular transportation for use by the community. Sea transportation, apart from being a means of transportation to move from one place to another, is also still a means of livelihood because Indonesia is an archipelagic country so that the problem of ship accidents is an important thing that must be considered.

Based on the above facts, it is necessary to increase understanding in community service activities regarding legal responsibility for ship accidents, especially for educators and prospective seafarers who are educated at Shipping Vocational High Schools (SMK). This activity was carried out at SMK Pelayaran Sinar Bahari Palembang, which is located at Lorong Pasundan No.546, Lawang Kidul, Ilir Timur II District, Palembang City, South Sumatra. This community service is intended to increase the understanding of teachers and students at SMK Pelayaran Sinar Bahari Palembang regarding legal responsibility for ship accidents at sea, because the extension team views that many accidents at sea are caused by human error.

The necessity for legal counseling at SMK Pelayaran arises from the absence of legal aspects, particularly concerning responsibility in ship accidents, within the school's curriculum. The educational focus of this vocational institution primarily revolves around Commercial Ship Nautical and Commercial Ship Engineering, overlooking crucial legal dimensions. Given that graduates of this school are destined for careers in the maritime industry, particularly aboard commercial vessels, a comprehensive understanding of legal responsibilities in ship accidents

becomes indispensable. Hence, legal comprehension is essential to equip these vocational students with the knowledge and skills necessary to navigate the complexities of the maritime world responsibly and effectively.

Furthermore, it is highlighted that ship accidents can have serious consequences, both in terms of human lives and economic impact. Therefore, it is crucial to increase understanding of legal responsibilities in ship accidents in order to prevent them and mitigate their effects. The accidents in the shipping industry can result in loss of human lives, damage to the environment, and economic implications. To address this issue, a study was conducted at SMK Pelayaran Palembang to enhance understanding of legal responsibilities in ship accidents.

The purpose of this program is to provide increased understanding of the activity participants/target audiences regarding shipping security and safety, parties legally responsible for ship accidents, the role of KNKT in handling ship accidents, and law enforcement in ship accident cases. This community service is expected to contribute in the field of law enforcement, especially related to the security and safety aspects of shipping in Indonesia and additional knowledge for participants, so that they not only understand shipping technicalities, but also legal aspects related to maritime activities.

This paper commences with an overview of pertinent concepts concerning legal responsibility in ship accidents, encompassing the delineation of legal liability, definitions of ship accidents, and theoretical frameworks employed in the implementation of the legal counseling activities. In the subsequent core discussion section, the paper delineates the primary activities undertaken, namely legal counseling sessions and interactive question-and-answer segments. Furthermore, this section elucidates and expounds upon the key points conveyed during the legal counseling sessions, aiming to enhance the comprehension of participants or target audiences regarding their legal responsibilities in ship accidents.

Implementation Method

Understanding of legal responsibility in ship accidents should be understood by every student and graduate of SMK Pelayaran. Increasing

understanding carried out in community service activities is carried out through core activities, namely legal counseling. Based on the nature of the activity, the implementation of this legal counseling activity is carried out by presentation and question and answer methods with participants¹² or target audiences. The presentation was carried out face-to-face between the extension team and the participants or target audience with the aim of delivering a lecture on legal responsibility in ship accidents. After the presentation was over, a question and answer was conducted between the extension team and the participants of the extension activity.

Participants or target audiences in this community service activity are teachers and students at SMK Pelayaran Sinar Bahari Palembang. The students and graduates of SMK Pelayaran will be able to work as ship captains, Syahbandar, port managers, *ship engineers*, and officers in shipping companies. The number of participants/target audiences present was 40 people, consisting of 27 students and 13 teachers of SMK Pelayaran Sinar Bahari Palembang, as targeted in the community service proposal. This legal counseling is intended so that participants/target audiences of this legal counseling understand the legal aspects of shipping security and safety, the parties responsible for ship accidents, and forms of law enforcement for ship accidents.

This service activity was carried out on July 28, 2022. This legal counseling activity actually began in mid-June 2022 by carrying out various preparations such as selecting the location of the target audience, determining the title, carrying out initial observations, compiling proposals, and taking care of permits. The total time spent in the preparation stage of legal counseling is three weeks.

The preparation stage of this service activity begins by determining the theme to be delivered to the target audience that has been adjusted to the needs of prospective legal counseling participants at SMK Pelayaran Sinar Bahari Palembang. At the beginning of the activity, the team conducted a pre-survey activity to see firsthand and conduct interviews with the principal regarding the material that needed to be conveyed to

¹² Herni Widanarti, "Penyuluhan Hukum Terpadu Mengenai Hukum Perkawinan Pada Masyarakat di Kecamatan Warung Pring Kabupaten Pematang," *Jurnal Pengabdian Hukum Indonesia* 3, no. 1 (2020): 29–39.

prospective participants in community service activities. This is done so that the counseling materials given to participants at the service location are right on target, in accordance with the needs and more useful.

After all the preparation stages are completed, an evaluation is carried out through *pre-test* and *post-test* through a list of questions prepared by the extension team. The question list contains ten multiple-choice questions, where the list of questions is the same between *pre-test* and *post-test*. *Pre-test* is conducted before the presentation and *Post-test* is carried out before the questions and answer session between extension workers and participants of community service activities. *Pre-test* and *post-test* are carried out to measure the level of understanding of participants, from before and after counseling. The list of questions on the *pre-test* and *post-test* is related to the materials presented, namely legal aspects of shipping security and safety, parties who must be legally responsible in ship accidents, the role of KNKT in overcoming ship accidents, and law enforcement in ship accident cases.

Based on results *pre-test*, A total of 26 participants or 65% of the total participants scored below 6. While 14 participants or 35% of the total participants got a score above 6. Then, at the time of *post-test* Conducted, as many as 36 participants or 90% of the number of participants get a score above 6 and 4 participants or 10% of the number of participants get a score below 6. To give a more detailed picture, compare the understanding of the participants at the time *Pre-test* and *post-test* displayed via participant scores on as shown on Figure 2 and Figure 3.

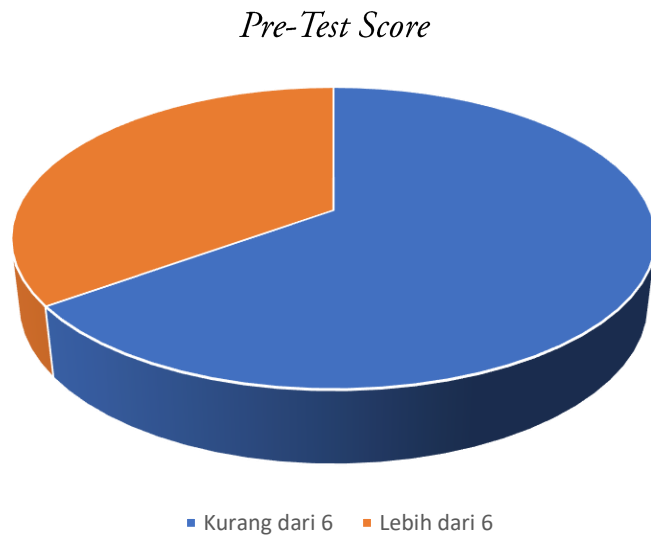


FIGURE 2. Participants’ Scores During *Pre-Test*

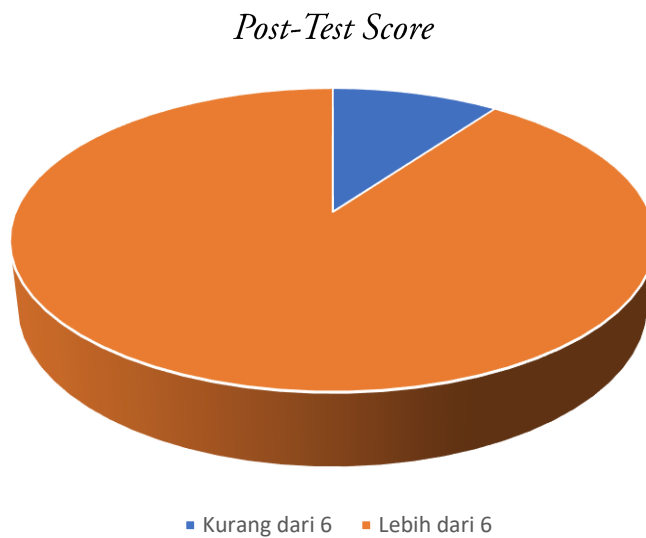


FIGURE 3. Participants’ Scores During *Post-Test*

Source: data processed by the team

Based on the Figure 2 above, it can be analyzed that, before this legal counseling, the majority of activity participants did not understand the legal aspects at the time of the ship accident. However, after this legal

counseling activity was carried out, the understanding of the community service participants increased significantly.

Legal counseling activities are carried out in accordance with what has been planned in the community service proposal. Participants of this legal counseling activity gave very good attention and response during this activity. Therefore, it can be concluded that the implementation of this legal counseling is running well and optimally.

Legal Liability for Ship Accidents

Every legal act has a responsibility and this is in line with the expression no authority without accountability or no authority no responsibility. Legal responsibility means the state of being obliged to bear everything that has legal implications¹³ (if something happens it can be sued, blamed by litigation, etc.). The basic concept of liability issues when related to unlawful acts can be divided into 2 (two) kinds of responsibility principles, namely: the principle of responsibility based on mistakes and the principle of accountability without fault¹⁴. The principle of *fault liability* can be further detailed into: First, responsibility based on fault due to default¹⁵; Second, liability based on guilt for committing unlawful acts, either as referred to in Article 1365 of the Civil Code¹⁶ or for violating other laws and regulations such as the principle of representative responsibility, the principle of responsibility based on errors, the principle of presumption of responsibility and the principle of presumption of irresponsibility.

¹³ Alex Saputra Siregar, Iriansyah, and Indra Afrita, "Tanggung Jawab Hukum Pelaku Usaha Jasa Pengiriman Barang Terhadap Kerugian Konsumen," *Nusantara: Jurnal Ilmu Pengetahuan Sosial* 8, no. 7 (2021): 2398–2408.

¹⁴ Sari Murti Widiyastuti, *Asas-Asas Pertanggungjawaban Perdata*, 1st ed. (Yogyakarta: Cahaya Atma Pustaka, 2020).

¹⁵ Krisnadi Nasution, "Penerapan Prinsip Tanggung Jawab Pengangkut Terhadap Penumpang Bus Umum," *Mimbar Hukum* 26, no. 1 (2014): 55–68.

¹⁶ Hasuri Hasuri and Khoirul Anam, "Pertanggungjawaban Dokter Terhadap Kerugian Pasien Akibat Perbuatan Melawan Hukum," *Nurani Hukum* 2, no. 1 (2020): 1–11.

Then, the principle of responsibility without fault can be divided into 2 (two) types, namely; the principle of strict responsibility and the principle of absolute responsibility.¹⁷ The fundamental difference between the two principles of responsibility lies in the element of guilt, meaning that there is no element of guilt to demand one's responsibility. If an element of error is required, then the principle of responsibility based on error applies, while the principle of responsibility without fault is applied if the element of error is not required.

The principle of liability based on errors in some literature in the field of shipping states that parties must be responsible for any losses suffered by passengers, shippers/consignees or third parties, due to their faults during the voyage¹⁸. A claim of legal liability for damages based on this principle can be satisfied if there is an element of error in the performance of the voyage. This issue is not simple, because in practice, the parties do not always admit their fault when a ship accident occurs. If so, then it must be provable that there has been an error during the voyage that resulted in a ship accident. Such proof is made in court for decision by a judge, as also stated by Subekti that *default* has an important effect, therefore it must be determined in advance whether the person has committed *default* or negligence, and if it is disputed by him must be proved before a judge.

Furthermore, the principle of responsibility based on presumption according to Sendy Anantyo, et al¹⁹ is that the parties must be responsible for any losses suffered by passengers, freight forwarders or third parties, unless the parties can prove that the voyage has been carried out properly. In the event of a loss in shipping operations, the assumption is that the

¹⁷ Putri Utami Dian Safitri, "Tanggung Jawab Pelaku Usaha Terhadap Konsumen Atas Iklan Produk Kosmetik Yang Menyesatkan," *Legislasi Indonesia* 18, no. 4 (2021): 541–55.

¹⁸ Dhiana Puspitawati, Renny Meirina, and Fransiska Ayulistya Susanto, *Hukum Maritim*, (Malang: UB Press, 2019); M F Hidayat, "Tanggung Jawab Pelaku Usaha Transportasi Laut Terhadap Penumpang Di Provinsi Kepulauan Riau," *Jurnal Selat* 3, no. 1 (2015): 348–53.

¹⁹ Sendy Anantyo, Herman Susetyo, and Budiharto, "Pengangkutan Melalui Laut," *Diponegoro Law Review* 1, no. 4 (2012): 1–7.

parties are responsible for the losses incurred²⁰. These assumptions may be waived if the parties can prove that the loss was due to their fault or through no fault of the crew. To prove that the parties have carried out the voyage properly, it is enough to present documents related to the safety of the voyage²¹. The Carrier shall not be liable for losses if it proves that it and all employed have taken all necessary measures to avoid harm or that it is impossible for them to take such measures.

Based on Article 245 of Law 17 of 2008 concerning Shipping, a ship accident is an event experienced by a ship that can threaten the safety of the ship and/or human life in the form of: the ship sinks; the ship caught fire; ship collisions; and the shipwreck. Then, Government Regulation Number 9 of 2019 concerning Ship Accident Inspection defines a ship accident as an event and/or event caused by external and/or internal factors of the ship, which can threaten and/or endanger the safety of the ship, human life, property loss, and damage to the marine environment. From the definitions of ship accidents, it can be concluded that a ship accident is not an act or act done or not done, but purely an accident or a condition in which human error and negligence can occur and which can be seen or proven through a case examination.

Historically, shipwrecks in the Dutch East Indies were regulated in *the Wetboek Van Strafrecht; Staatsblad* 1915 No. 732 which was valid throughout the Dutch East Indies and examined according to the criminal procedure code contained in the *Inlandsch Reglement (IR): Staatsblad* 1848 No. 16 and updated with *Herziene Indonesisch Reglement (HIR): Staatsblad* 1941 No. 44²². In the Second Book of the Criminal Code (KUHP) Chapter XXIX concerning Shipping Crimes and the Third Book of the Criminal Code Chapter IX concerning Shipping Offenses, there is no formulation that ship accidents are criminal acts of shipping crimes and

²⁰ Samuel Ronatio Adinugroho and Anung Aditya Tjahja, "Tanggung Jawab Nakhoda Atas Keselamatan Muatan dalam Perspektif Hukum Pelayaran," *Jurnal Ilmiah Dunia Hukum* 3, no. 1 (2019): 43–54.

²¹ Andi Hendrawan, "Analisa Indikator Keselamatan Pelayaran Pada Kapal Niaga," *Saintara: Jurnal Ilmiah Ilmu-Ilmu Maritim* 3, no. 2 (2019): 53–59.

²² Handar Subhandi Bakhtiar, Abbas, and Rafika Nur, "Limitation of Harbormaster Responsibility in Ship Accidents," *Academic Journal of Interdisciplinary Studies* 10, no. 3 (2021): 375–83.

criminal acts of shipping offenses²³. To that end, there is a separation and distinction between shipping crimes, shipping offenses and ship accidents. Crimes and shipping violations are criminal offenses, although ship accidents are not defined as crimes, it is clear that ship accidents are not crimes²⁴ because they are not designed as criminal acts even though there is a possibility that such ship accidents are criminal acts.

If the definition of a ship accident refers to the Shipping Law, then Syahbandar conducts a preliminary examination and the Shipping Court conducts further examination, if a criminal element is found in the form of intentional or unintentional wrongdoing, it can be forwarded to the police for follow-up to the investigation stage. This means that the police must wait for the decision of the shipwreck investigation before conducting an investigation into the alleged criminal act.

In relation to a ship accident as an event, according to Moeljatno gave an explanation of the meaning of the event, namely that:²⁵

"An event cannot be prevented, unless it is caused by a person and the person cannot be punished unless it is a result of what happened. And just to illustrate this close relationship, the word action is used, which is an abstract meaning referring to two concrete situations; First, there is a special event and second, there are people who did what caused that event."

A ship accident is not an event that cannot be prevented and is not necessarily an act caused by someone²⁶. For this reason, an examination by Syahbandar and the Shipping Court is needed to find out the facts related to the ship accident.

²³ Pujiati, "Pertanggungjawaban Pidana Korporasi dalam Tindak Pidana Pelayaran," *Jurnal IUS Kajian Hukum dan Keadilan* 4, no. 1 (2016): 24–43.

²⁴ Yuli Dekri, "Penggunaan Alat Bukti Sebagai Dasar Penetapan Tersangka Pada Penyidikan Tindak Pidana Kecelakaan Kapal Wisata Yang Mengakibatkan Matinya Orang," *UNES Law Review* 4, no. 4 (2022): 584–91.

²⁵ Moeljatno, *Asas-Asas Hukum Pidana* (Jakarta: Rineka Cipta, 2002).

²⁶ Vita Cita Emia Tarigan and Eka N.A.M. Sihombing, "Kebijakan Pengendalian Pencemaran di Selat Malaka Yang Bersumber Dari Kecelakaan Kapal," *De Jure: Penelitian Hukum* 19, no. 4 (2019): 479–502.

Article 220 Paragraph 1 and paragraph 2 of the Shipping Law states that Syahbandar conducts an examination of every occurrence of a ship accident to find information and / or evidence of the beginning of the accident. The ship accident examination is a preliminary level examination and the results of the preliminary level examination of ship accidents can be forwarded to the Shipping Court for further examination.

Syahbandar in carrying out its functions and duties based on Article 209 letter (f) of the Shipping Law is authorized to conduct ship accident examinations. Furthermore, Article 3 of Government Regulation Number 9 of 2019 states that Ship Accident Examination is a series of investigation activities carried out by government officials authorized to determine the causes and supporting factors of ship accidents. Ship accident investigations are carried out on Indonesian-flagged or foreign-flagged vessels located in Indonesian territorial waters; and Indonesian-flagged vessels outside Indonesian territorial waters.

Ship accident examination consists of 2, namely preliminary level examination of ship accidents; and follow-up examination of ship accidents. The preliminary level examination of ship accidents is carried out by the Syahbandar or government officials appointed by the minister and the advanced level examination of ship accidents is carried out by the Shipping Court²⁷.

Preliminary level examination of ship accidents must be carried out no later than 7 (seven) working days from the receipt of a written report from the skipper²⁸. In conducting a preliminary examination of a ship accident, Syahbandar or a government official appointed by the Minister may ask for information from related parties, namely: the skipper, crew, ship owner/operator, guide officer, port entity, or special terminal that manages and operates the guide, and other related parties.

²⁷ Christmas Christmas, Misbahul Huda, and Gunawan Nachrawi, "Peran Mahkamah Pelayaran Dalam Pemeriksaan Lanjutan (Persidangan) Pada Nahkoda Kapal Yang Mengalami Kecelakaan," *JIIP - Jurnal Ilmiah Ilmu Pendidikan* 5, no. 3 (2022): 838–44.

²⁸ Yofie Aditama, Arief Daryanto, and Sugeng Hari Wisudo, "Studi Perencanaan Strategik Instansi Mahkamah Pelayaran," *Warta Penelitian Perhubungan* 26, no. 3 (2019): 177–89.

After the inspection, the results of the preliminary examination of the ship accident are stated in the minutes of the preliminary examination of the ship accident. The minutes of the preliminary examination of ship accidents contain at least the following: information and data of the ship examined, evidence of the occurrence of ship accidents, ship accident events, and suspected factors causing ship accidents.

After the preliminary examination of the ship accident is signed by the Examiner, it is then verified by Syahbandar or a Government Official appointed by the Minister no later than 3 (three) working days from the completion of the inspection. The Syahbandar or government official appointed by the Minister reports the results of the preliminary investigation of the ship accident to the Minister and also reports to ²⁹:

- a. Shipping Court, in the event that preliminary information or evidence is found regarding alleged errors and/or negligence in applying maritime professional standards committed by the master and/or ship officer in the event of a ship accident;
- b. Civil Servant Investigators, in the event that preliminary information or evidence is found regarding suspected shipping crimes as a factor causing ship accidents; and/or
- c. Police investigators, in the event that preliminary information or evidence is found regarding suspected general criminal acts as a factor causing a ship accident.

In a ship accident, there are often police who immediately take action to investigate ship accidents such as criminal acts and not a few porters become one of the parties accused in the accident. In fact, if referring to the Shipping Law, especially which regulates the issue of ship accidents, as in Article 249, then ship accidents are the responsibility of the skipper unless it can be proven otherwise. The meaning of "proven otherwise" is based on evidence that efforts and obligations have been made based on the provisions of laws and regulations.

Based on this, it can be said that the skipper is absolutely or fully responsible for what happens to the ship. While Syahbandar is a party that

²⁹ Elly Kristiani Purwendah and Agoes Djatmiko, "Peran Syahbandar Dalam Penegakan Hukum Pencemaran Minyak Di Laut Oleh Kapal Tanker," *Perspektif* 20, no. 1 (2015): 30–40.

carries out the function of supervising shipping safety and security which is carried out by providing a sailing approval letter after studying and checking all ship documents, meaning that in the event of a ship accident, Syahbandar has a bond of responsibility that is limited to fulfilling and complying with the entire series of procedures. In issuing sailing permits, Syahbandar is obliged to carry out and fulfill all procedures for granting sailing approval letters³⁰. Syahbandar is not responsible for events that occur after the ship leaves the port, because it is actually the authority and responsibility of the skipper. This can also be seen when referring to one of the requirements for submitting a sailing approval letter, namely the existence of a *Master Sailing Declaration*, which is a statement from the skipper stating that the ship, cargo and crew have met the requirements of shipping safety, marine environmental protection, and protection to sail to the destination port³¹. Based on the *Master Sailing Declaration*, the skipper is fully responsible for the ship and its contents, so the Syahbandar will grant administrative permission if it has fulfilled the requirements specified by the rules in issuing a sailing approval letter.

The next discussion was about the implementation of the core community service activities, namely counseling activities on legal responsibility in ship accidents at SMK Pelayaran Sinar Bahari Palembang, which provided several additional points of knowledge for participants/target audiences.

Enhancing Legal Responsibility Awareness in Ship Accidents at SMK Pelayaran Sinar Bahari Palembang

³⁰ Muhammad Said Sitompul, "Harmonisasi Pengaturan Tentang Kewenangan dalam Penerbitan Surat Persetujuan Berlayar (SPB) Kapal Ikan di Pelabuhan Belawan Ditinjau dari Undang-Undang Nomor 17 Tahun 2008 Tentang Pelayaran dan Undang-Undang Nomor 45 Tahun 2009 Tentang Perikanan," *Mercatoria* 9, no. 2 (2016): 136–53.

³¹ Wisnu Handoko and Willem Thobias Fofid, *Hukum Maritim dan Pengelolaan Lalu Lintas Angkutan Laut dan Kepelabuhanan* (Semarang: Politeknik Ilmu Pelayaran Semarang, 2020).

The core activities of this legal counseling begin by explaining matters related to ship accidents, such as transportation activities at sea, as well as legal aspects related to shipping security and safety. Then this counseling activity also describes the parties who must be legally responsible for ship accidents, such as the skipper, Syahbandar, and shipping companies. In addition, this legal counseling also explains the role of the National Transportation Safety Committee (KNKT) in overcoming ship accidents. The last presentation of this counseling activity is about law enforcement in ship accident cases, which discusses the sanctions that can be imposed on officials in the shipping sector and the jurisdiction of the Shipping Court in handling and deciding ship accident cases.

The enthusiasm of the participants was very high even though the teaching and learning activities at SMK Pelayaran Sinar Bahari Palembang continued as usual. This high curiosity is due to this devotion material in the field of law that discusses ship accidents. This counseling material is very different from what they learned such as Commercial Ship Nautical and Commercial Ship Engineering, and the participants/target audiences have never learned about ship accidents in terms of legal science. However, most target audiences have understood some technical terms in Law 17 of 2008 on Shipping and various international treaties governing ship safety.

The participants were very active in conducting questions and answers about legal counseling materials and asking for legal consultations related to ship accidents. The high enthusiasm of the participants was driven by circumstances, high curiosity, and the need for this legal counseling activity.

In the question and answer session, the extension team received 6 (six) questions related to this legal counseling material. These questions have been well responded to by the community service team. Questions asked by the participants included the implementation and benefits of applying *the International Safety Management (ISM) Code* on board; what criminal acts may be committed by the skipper; what things Port State Control (PSC) needs to do in conducting ship inspections; what sanctions can be imposed on Syahbandar who are careless or do not inspect the ship's cargo resulting in overloaded ships; the jurisdiction of the shipping court

in examining accidents on foreign-flagged vessels; and the authority of the shipping court to decide the penalty of damages to the guilty party.

Broadly speaking, four main points have been conveyed in the counseling material and generated additional knowledge for participants/target audiences related to legal responsibility in ship accidents, which are detailed as follows:

1. Participants understand about cruise security and safety

Many ship accidents are caused by human error both on land and when sailing and also by shipping owners or companies. Many freight ships do not have a safe design for passenger safety. For this reason, every ship design must meet the security and safety requirements of the ship.

Article 1(34) of Law 17 of 2008 explains that ship safety is proven by a ship safety certificate after inspection and testing, which is mandatory for ships that have a size of more than 7 *Gross Tonnage* (GT). These safety requirements apply to every procurement, construction and work of ships including when operating in Indonesian sea areas. The ship's safety certificate is valid until the validity period is complete and the ship needs to carry out certification confirmation. Government Regulation Number 31 of 2021 concerning the Implementation of the Shipping Sector stipulates that ship certificates can be canceled if the information contained in the documents for issuance is different from the actual situation or when it does not meet the safety of the ship.

Regarding the security and safety aspects of shipping, the participants of this legal counseling then understood that a ship requires a ship safety certificate / *Seaworthiness Certificate* for its operation. After this counseling, the participants understood the procedure for issuing ship safety certificates. The shipowner must submit an application where the technical examination, nautis and condition of the ship are first carried out by government officials, namely inspection of safety equipment, ship condition, radios and ship engines. After the inspection is carried out and the ship is considered good, the applicant needs to complete the letters / documents which are the requirements based on the Decree of the Minister of Transportation Number KM. 132 of 2019 concerning

Minimum Service Standards at the Shipping Safety Technology Center include:

- 1) Application Letter;
- 2) Fixed Measuring Letter;
- 3) Sea Mail / Great Pass / Grosse Deed;
- 4) Examination Report:
 - a. *Docking* / Drying / Builder Certificate;
 - b. Construction;
 - c. Equipment;
 - d. Radio;
- 5) Load Line Certificate;
- 6) Picture Verification Recommendation;
- 7) Class ships (hull, engine, *load line* certificates).

A safety certificate will be issued if all requirements are complete. The participants of this legal counseling also finally learned that this safety certificate is only one of the requirements of the ship's seaworthiness. There are many other requirements that must be met so that the ship can be categorized as seaworthy according to article 117 of the Law. 17 of 2008 about Shipping.

2. The participants understand who are the parties who are legally responsible for ship accidents

The participants of this legal counseling understand that in general there are 3 parties who need to be legally responsible at the time of a ship accident, namely the Syahbandar, the skipper, and the shipping company. According to Article 1 (56) of the Law. 17 of 2008, Syahbandar is a government official at the port appointed by the minister and has the highest authority to enforce and supervise the implementation of legal provisions to ensure shipping safety. Syahbandar must be properly able to account for its duties and functions when carrying out the functions and duties given by law.

Broadly speaking, the participants have understood that the legal responsibility of Syahbandar is in the field of shipping security and safety in accordance with the law, namely: as law enforcers in the field of shipping safety and security; as the head of government at the port or as

coordinator of all actions at the port, as supervisor and responsible for the security and safety of shipping in Indonesia; and as a publisher of shipping documentation. From the results of this community service activity, the participants finally learned that in principle, based on the Shipping Law, ship accidents are not necessarily a criminal offense. In a ship accident, a preliminary examination by the Syahbandar and further examination by the Shipping Court is required. If the results of the examination show a criminal act, the Police can conduct an investigation into the incident of a ship accident based on the results of the examination by Syahbandar and the Shipping Court. The participants also finally learned that in the event of a ship accident, Syahbandar has relative or limited liability. The purpose of this relative or limited liability is limited to the implementation of security, and shipping safety in the form of issuance of a sailing approval letter for ships leaving the port in accordance with applicable regulations and procedures. Therefore, the Syahbandar is not fully responsible for the circumstances that occur after the ship leaves the port, because it is the authority and responsibility of the skipper.

In addition, the community service participants have understood the legal responsibility of the skipper at the time of the ship accident. From these counseling activities, they finally learned that under Article 249 of the Shipping Law, ship accidents that occur are the responsibility of the skipper unless it can be proven otherwise. The skipper must be responsible when a ship accident occurs because the skipper as the leader on the ship, is fully responsible for the safety of the ship, passengers and goods during the voyage from the loading port to the destination port. Criminal sanctions can be imposed to enforce these responsibilities, and sanctions that have been regulated in Article 330 of Law Number 17 of 2008 concerning Shipping. Based on the provisions of the article, skippers who know the dangers and accidents on the ship, and do not take precautions, and disseminate news about these rights to other parties, and disseminate news about it to other parties by not reporting to Syahbandar, are threatened with imprisonment for a maximum of 3 years or a maximum fine of Rp. 400,000,000,-. The participants finally understood that the skipper was obliged to take countermeasures, request or provide assistance and spread the word about the ship accident to the Syahbandar/other parties. Based on Article 248 of Law Number 17 of 2008, if there is an

accident on board, the skipper must be on board and record the incident of the accident in a logbook and reported to the Syahbandar. In addition to criminal liability, the skipper is also civilly liable for the resulting losses. This is regulated in Article 342 paragraph (2) of the Commercial Law Code (KUHD), which regulates the obligation of the skipper to provide civil liability for losses incurred due to the skipper's actions.

Then, the participants of this legal counseling finally also understand the legal responsibility of shipping companies at the time of a ship accident. Participants eventually learned that shipping companies regulate oversight of their safety through the *International Safety Management Code* (ISM Code). The ISM Code is an international standard for the safe management and operation of vessels and preventing pollution emanating from ships³². The benefits of enacting ISM include: preventing loss of life or injury to humans, ensuring safety at sea, preventing marine pollution, and preventing loss of property. The ISM Code has become a guideline in every country as an initial effort to prevent ship accidents, and by agreement of the participating countries, this *code* has become part of The 1974 SOLAS (*Safety Of Life At Sea*) *Convention*³³. In addition, in the event of a ship accident, the shipping company for which the skipper works is civilly liable. Based on Article 1367 of the Civil Code (KUH Perdata, a person is responsible for losses incurred by him and also his dependents. The jurisdiction of the Shipping Court that renders judgments regarding civil liability is quite unique. Here the counseling participants finally also learned that the civil responsibility verdict imposed on the guilty party cannot be executed directly. The decision of the Shipping Court must first pass the filing of a lawsuit in the local District Court. Parties who feel aggrieved must file a lawsuit with the local District Court by bringing the Shipping Court Decision as the basis for their lawsuit.

³² Sedat Baştuğ, Ender Asyali, and Turgay Battal, "Beyond the ISM Code: A Conceptual Proposal for An Integrated System Within the Seven C's Approach," *Maritime Policy and Management* 48, no. 3 (2021): 354–77.

³³ Anish Joseph and Dimitrios Dalaklis, "The International Convention For the Safety of Life at Sea: Highlighting Interrelations of Measures Towards Effective Risk Mitigation," *Journal of International Maritime Safety, Environmental Affairs, and Shipping* 5, No. 1 (2021): 1–11.

3. The participants understood the role of the National Transportation Safety Committee (KNKT) in handling ship accidents

The National Transportation Safety Committee (KNKT) is an independent institution in Indonesia directly responsible to the President, which has the main task of conducting objective and independent transportation safety investigations on four modes of transportation, and one of them is sea transportation. The participants of this counseling finally learned that based on Article 256 of Law Number 17 of 2008 concerning Shipping, KNKT is tasked with investigating ship accidents in order to find facts to prevent ship accidents with the same cause.³⁴ The

³⁴ Article 256 of Law Number 17 of 2008 concerning Shipping, a pivotal legislation in Indonesia's maritime domain, delineates the legal framework for liability in ship accidents. This statute encapsulates the principle of strict liability, holding shipowners, charterers, operators, and other stakeholders accountable for damages arising from maritime incidents, irrespective of fault or negligence. By imposing strict liability, the law aims to ensure that victims of ship accidents receive adequate compensation for their losses, fostering accountability and safeguarding the rights of affected parties. Furthermore, Article 256 provides exemptions and limitations to liability, which may apply in cases of force majeure events or circumstances beyond the control of responsible parties. Additionally, the statute may prescribe insurance requirements to ensure that shipowners maintain adequate coverage, facilitating timely compensation for victims and expeditious resolution of claims. Article 256 of the Shipping Law serves as a cornerstone for the regulation of liability in ship accidents in Indonesia. By establishing clear legal responsibilities and mechanisms for compensation, the statute enhances safety standards and promotes accountability within the maritime sector. Its provisions contribute to the protection of maritime interests, the mitigation of risks, and the facilitation of efficient dispute resolution, thereby fostering a robust and sustainable maritime environment in Indonesia. See Rahmi Erwin, "Tanggung Jawab Negara untuk Mencegah Terjadinya Kecelakaan Kapal Transportasi Laut Menurut Hukum Internasional dan Hukum Nasional." *SUPREMASI: Jurnal Hukum* 4, no. 2 (2022): 177-199; Hari Utomo, "Siapa yang bertanggung jawab menurut hukum dalam kecelakaan kapal (legally responsible parties in ship accident)." *Jurnal Legislasi Indonesia* 14, no. 1 (2017): 59-60; Kurratul Akyun, et al. "Analisis Yuridis Pertanggung Jawaban Hukum Perusahaan Pelayaran Terhadap Keselamatan Dan Kesehatan Pekerja Di Laut (Studi Pada PT. ASDP Indonesia Ferry (PERSERO)

investigation is carried out into every ship accident, but not to determine the fault or negligence of the occurrence of the ship accident. The results of the investigation conducted by KNKT are submitted to the Minister of Transportation accompanied by recommendations to improve policies related to transportation systems, facilities and infrastructure, and human resources.

Broadly speaking, the counseling participants have understood the role of KNKT in handling ship accidents, including: conducting research and investigations which include analysis and evaluation of the causes of ship accidents; develop recommendations as input for the formulation of transportation safety policies; and cooperate with relevant professional organizations to research the causes of accidents. In carrying out its role, KNKT has the authority to enter the scene of a ship accident, secure recordings on board, call and ask for information from witnesses, and determine the cause of the ship accident and make ship safety recommendations.

4. The participants understood about law enforcement in the case of ship accidents

The participants of this community service activity have understood counseling materials related to law enforcement in ship accident cases, especially regarding sanctions that can be applied to officials in the shipping sector and the jurisdiction of shipping courts in resolving ship accident cases. Various sanctions can be applied to officials in the field of shipping, both administrative and criminal sanctions if there is sufficient evidence that the actions of the official caused the occurrence of ship accidents.

Ship accidents can also be caused by negligence or misconduct of officials in the shipping sector, for example: Syahbandar who does not inspect the ship's cargo resulting in overloading on the ship, or the seaworthiness inspection office who neglects to check the seaworthiness of the ship that causes accidents on the ship. If the official is found guilty and caused an accident on the ship, then the official can be threatened with a

Cabang Singkil)." *Jurnal Hukum Al-Hikmah: Media Komunikasi dan Informasi Hukum dan Masyarakat* 4, no. 2 (2023): 249-279.

maximum prison sentence of one year and a maximum fine of one hundred million rupiah, according to the provisions of Article 336 of the Shipping Law. In addition, the official concerned may be subject to additional penalties in the form of dishonorable dismissal from office. In addition to criminal sanctions, government officials who are authorized not to inspect, test and assess ship safety may be subject to administrative sanctions in accordance with the provisions of laws and regulations in the field of personnel.

The Shipping Court is a government agency responsible to the Minister of Transportation. Although structurally the Shipping Court is under the Director General of Sea Transportation, the Shipping Court reports directly to the Minister of Transportation. The main task of the Shipping Court is to conduct further investigations into ship accidents. The Shipping Court has the function to conduct research on the causes of ship accidents or the presence or absence of errors and / or omissions in setting professional standards. All duties and functions of the Shipping Court are aimed at realizing law enforcement in the field of shipping safety. In relation to further investigation of the ship accident, the Shipping Court only provides administrative sanctions which can be in the form of written reprimands and temporary suspension of the guilty party's Seaman Expertise Certificate, after going through the trial process in the Court, including procedures for determining evidence and guilt. In addition, the participants of this legal counseling also understand that the Shipping Court has the authority to examine the accident of a foreign-flagged vessel, as long as the location of the accident is within the jurisdiction of the waters of the Republic of Indonesia.

The participants of this legal counseling eventually learned that according to the rules on which the Court of Court has jurisdiction, the Shipping Court is not a judicial institution and its position is not in the general judicial environment. The Shipping Court has no authority to decide cases related to civil aspects (such as carrier liability or economic damages) or criminal aspects, even if they relate to ship accidents. However, although the Shipping Court does not have the authority to decide criminal cases in the event of a ship accident, the decision issued by the Shipping Court is used as preliminary evidence for investigators if there are indications of criminal acts, namely letter/document evidence.

This legal counseling material has socialized and informed legal responsibility for ship accidents. From the legal side, the solution to realize shipping security and safety and reduce ship accidents is to carry out law enforcement professionally and proportionately, and uphold the values of justice. However, what is even more important is to take preventive measures so that ship accidents do not recur. Therefore, there is a need for comprehensive cooperation among *stakeholders* who are competent in ship safety and security, both skippers, Syahbandar, ship owners, and other law enforcement officials. So it is expected that in the future, aspects of shipping security and safety will become the main concern in the shipping industry.

The implementation of the legal counseling activity successfully targeted its intended participants, comprising students and teachers from SMK Pelayaran, who initially lacked awareness regarding the importance of legal responsibility in ship accidents. However, following their participation in the legal counseling sessions, there was a notable enhancement in their understanding, as evidenced by the substantial improvement between pre-test and post-test results.

Moreover, the anticipated impact of the legal counseling activity was achieved, as evidenced by the overwhelmingly positive response from participants. Among the 40 attendees, only a minimal fraction of 4 individuals reported not gaining a sufficient understanding of legal responsibility for ship accidents post-counseling. This outcome underscores the effectiveness of the initiative in effectively imparting knowledge and fostering comprehension among the participants.

Conclusion

The understanding of legal aspects related to ship accidents among participants at SMK Sinar Bahari Palembang is currently limited due to the school's focus on technical shipping matters such as Commercial Ship Nautical and Commercial Ship Engineering. The provision of legal counseling on responsibilities in ship accidents is highly relevant for both teachers and students at the school, as it supplements their knowledge, particularly in maritime law. This community service activity has significant implications, as it broadens participants' understanding beyond

technical aspects of shipping to include legal responsibilities inherent in maritime activities. By imparting knowledge on topics such as shipping security and safety, identification of liable parties in accidents, the role of the National Transportation Safety Commission (KNKT) in accident resolution, and law enforcement in such cases, the initiative equips participants with a comprehensive understanding of legal obligations within the maritime sector. Continued implementation of this activity is crucial to ensure sustained progress in achieving its objectives. By consistently providing legal counseling, the initiative can foster a deeper understanding among participants, ultimately contributing to safer and more accountable maritime practices.

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