A Juridical Review of the Criminal Offense of Sailing Without a Sailing Approval Letter (SPB) in Indonesian Territorial Waters Based on Law Number 17 of 2008 Concerning Shipping

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Abstract

The Sailing Approval Letter (Surat Persetujuan Berlayar/SPB) is a crucial state-issued document that serves as evidence that a vessel has fulfilled seaworthiness and safety requirements. However, violations involving vessels sailing without an SPB continue to frequently occur in Indonesian waters, significantly contributing to the high rate of maritime accidents. This study aims to analyze the juridical review of criminal sanctions imposed on ship captains who operate vessels without authorization from the Harbormaster authority based on Law Number 17 of 2008 concerning Shipping. The research employs a normative juridical method with a statutory approach. The findings reveal that violations of Article 323 paragraph (1) are not merely administrative offenses, but criminal acts that endanger human lives and the maritime environment. Weak supervision at small ports and economic pressures are identified as the primary factors contributing to these violations. This study recommends the need for digitalization of licensing systems and the strengthening of the integrity of law enforcement officials within port areas.

Keywords: Port Clearance Certificate (SPB), Harbormaster, Maritime Crimes, Maritime Safety

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2nd International Conference on Islamic Community Studies (ICICS)
Theme: History of Malay Civilisation and Islamic Human Capacity and Halal Hub in the Globalization Era
https://proceeding.pancabudi.ac.id/index.php/ICIE/index

Introduction

Indonesia is the largest archipelagic country in the world, consisting of more than 17,000 islands with maritime territory far exceeding its land area. This geographical condition makes maritime transportation the primary means of supporting national connectivity, logistics distribution, community mobility, and national economic growth. Maritime transportation not only functions as a connecting medium between regions, but also plays a strategic role in maintaining national defense, security, and integration. Therefore, the implementation of safe, orderly, and sustainable shipping activities has become a fundamental necessity within Indonesia's national transportation system [1].

In the practice of maritime transportation, shipping safety and security constitute the primary principles that must be fulfilled by every sea transportation operator. Shipping safety is not merely related to the physical condition of the vessel, but also encompasses the completeness of administrative documents, the readiness of the ship's crew, the technical seaworthiness of the vessel, and compliance with applicable legal procedures. One of the legal instruments that plays a significant role in ensuring shipping safety is the Sailing Approval Letter (*Surat Persetujuan Berlayar* / SPB). The SPB is an official state document issued by the Harbormaster as a form of authorization for a vessel to commence its voyage after fulfilling the administrative and technical requirements stipulated under prevailing laws and regulations [2].

The existence of the SPB serves a highly vital function because it indicates that a vessel has been declared seaworthy and safe to conduct navigation activities. In the issuance process, the Harbormaster examines various aspects, including vessel safety certificates, crew documentation, the technical condition of the ship, cargo stability, and compliance with maritime environmental protection standards. Accordingly, the SPB should not merely be viewed as an administrative formality, but rather as a preventive legal instrument employed by the state to minimize the risks of maritime accidents, environmental pollution, and losses affecting passengers and cargo [3].

Regulations concerning the mandatory possession of an SPB are explicitly stipulated under Law Number 17 of 2008 concerning Shipping. The law states that every vessel intending to sail must obtain approval from the Harbormaster before departing from port. Violations of this obligation may result in criminal sanctions as regulated under Article 323 paragraph (1) of the Shipping Law. Such criminal provisions demonstrate that the state places shipping safety as a legal interest that must be seriously protected through criminal law mechanisms [1].

Although regulations concerning the SPB obligation have been clearly established, in practice there are still numerous cases of vessels operating without possessing an SPB. This phenomenon frequently occurs in small ports, community docks, and maritime areas with limited supervision from the relevant authorities. In addition, economic factors, weak supervision, and administrative irregularities constitute the primary causes of continued violations of shipping safety regulations [4]. This condition reflects a gap between the applicable legal norms and the practical enforcement of law in the field.

The act of operating a vessel without an SPB essentially does not merely constitute an administrative violation, but also potentially endangers human life, the vessel itself, cargo, and the marine environment. From the perspective of criminal law, such conduct may be classified as a maritime offense because it disregards the precautionary principle in maritime activities. Therefore, a more comprehensive juridical analysis is required regarding the qualification of the criminal offense of sailing without an SPB and the form of criminal liability borne by the shipmaster as the party holding the highest authority onboard the vessel [5].

Furthermore, the concept of *Nakhoda Responsibility* in maritime law places the shipmaster as the party fully responsible for shipping safety. A shipmaster is not only technically responsible for vessel operations, but also legally accountable for all navigation activities conducted by the vessel. In practice, it is often argued in defense that sailing without an SPB was carried out under the instructions of the vessel owner or shipping company. Nevertheless, legally such reasons do not automatically eliminate the criminal liability of the shipmaster

because the obligation to ensure the legality of navigation remains inherent in the shipmaster's position and authority [6].

Based on the foregoing explanation, this research is important to conduct in order to juridically analyze the actions of shipmasters who operate vessels without a Sailing Approval Letter (*Surat Persetujuan Berlayar* / SPB) based on the provisions of Law Number 17 of 2008 concerning Shipping. This study also aims to examine the forms of criminal liability of shipmasters as well as the factors influencing the effectiveness of law enforcement against violations involving navigation without an SPB within Indonesian waters.

Research Methodology 1.1 Types and Approaches to Research

This study employed a normative juridical legal research method, namely a legal research approach that focuses on examining positive legal norms contained within statutory regulations. Normative legal research was conducted by analyzing legal provisions governing the obligation of the Sailing Approval Letter (Surat Persetujuan Berlayar/SPB), the criminal liability of ship captains, and the enforcement of maritime law based on Law Number 17 of 2008 concerning Shipping. This approach was selected because the research aims to analyze legal constructions, legal principles, and the application of criminal law norms in maritime activities within Indonesian waters.

This research applied two principal approaches, namely the statute approach and the conceptual approach. The statute approach was conducted by examining various legal regulations related to maritime safety and the obligation to possess an SPB, including Law Number 17 of 2008 concerning Shipping, the Indonesian Criminal Code (Kitab UndangUndang Hukum Pidana/KUHP), as well as other relevant implementing regulations. Meanwhile, the conceptual approach was utilized to understand various legal doctrines and concepts developed within legal science, particularly those related to the concept of captain responsibility, criminal liability, the precautionary principle, and maritime law enforcement.

1.2 Sources and Types of Legal Materials

This study utilized secondary data obtained through library research. The secondary data consisted of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials constituted the main legal sources possessing binding authority, including statutory regulations related to the research object, such as Law Number 17 of 2008 concerning Shipping, Law Number 6 of 2023 concerning Job Creation, the Indonesian Criminal Code, and regulations of the Minister of Transportation regarding the procedures for issuing Sailing Approval Letters (SPB).

Furthermore, secondary legal materials were used to provide explanations, interpretations, and analyses of the primary legal materials. The secondary legal materials in this study included legal textbooks, scientific journals, academic articles, previous research findings, conference proceedings, and court decisions relevant to issues of maritime safety and criminal liability in maritime law. Meanwhile, tertiary legal materials were employed as supporting references to provide guidance and additional understanding of legal terms and concepts, such as legal dictionaries, legal encyclopedias, and other official digital reference sources.

1.3 Legal Material Collection Technique

The technique for collecting legal materials in this study was conducted through library research, namely by inventorying, reading, recording, and reviewing various literature related to the object of the research. The collection of legal materials was carried out systematically on various legal sources relevant to criminal acts in maritime navigation conducted without a Sailing Approval Letter (Surat Persetujuan Berlayar/SPB). In addition to examining statutory regulations, this study also reviewed legal doctrines, theories of criminal liability, and court decisions related to violations of maritime safety regulations.

Through this library research technique, the researcher obtained theoretical and juridical foundations used to analyze legal issues arising in maritime practices in Indonesia. This approach was considered relevant because the research focused on the analysis of legal norms and did not require the collection of empirical field data.

1.4 Legal Material Analysis Technique

The collected legal materials were subsequently analyzed using a descriptive qualitative analysis method. Descriptive analysis was conducted by systematically and structurally describing, explaining, and interpreting legal provisions related to the obligation of possessing an SPB and the criminal liability of ship captains. Meanwhile, the qualitative approach was employed to understand the meaning, objectives, and substance of the applicable legal norms in order to obtain a comprehensive understanding of the implementation of maritime criminal law in Indonesia.

The analysis was carried out by correlating normative provisions contained in statutory regulations with legal concepts developed in legal doctrines. In addition, this study also analyzed factors influencing the effectiveness of law enforcement against maritime navigation conducted without an SPB, including aspects of supervision, integrity of law enforcement officers, and economic pressures within national maritime practices. Therefore, the results of this analysis are expected to provide systematic legal arguments as well as relevant recommendations regarding maritime safety issues in Indonesia.

Research Findings 1.5 Juridical Qualification of a Captain's Act of Sailing Without a Sailing Approval Letter (SPB) Under Article 323 Paragraph (1) of Law Number 17 of 2008 concerning Shipping

A Sailing Approval Letter (Surat Persetujuan Berlayar/SPB) is a state-issued document that serves a strategic function in ensuring maritime safety and security. Within the Indonesian maritime legal system, the SPB is not merely regarded as an ordinary administrative document, but rather as a form of state legality declaring that a vessel has fulfilled seaworthiness requirements, navigation safety standards, marine environmental protection obligations, and other administrative requirements prior to departure. Therefore, the obligation to possess an SPB constitutes an essential preventive instrument aimed at minimizing the risk of maritime accidents and losses arising from voyages that fail to meet safety standards.

The legal obligation to obtain an SPB is explicitly regulated under Law Number 17 of 2008 concerning Shipping, particularly Article 219, which stipulates that every vessel intending to sail must possess a Sailing Approval Letter issued by the Harbormaster (Syahbandar). Furthermore, violations of this provision are criminalized under Article 323 paragraph (1), which imposes criminal sanctions upon a captain who sails a vessel without first obtaining an SPB. This criminal provision demonstrates that the legislator considers violations of SPB obligations as serious acts with the potential to endanger public safety.

From a juridical perspective, the act of a captain sailing a vessel without an SPB may be classified as a maritime criminal offense because it fulfills the essential elements of a criminal act under criminal law. Such conduct falls within the category of a formal offense (formeel delict), meaning that the offense is considered complete at the moment the prohibited act is committed, regardless of whether any harmful consequences have occurred. In this context, the criminal act is deemed to have occurred once the vessel departs from port without obtaining official authorization from the Harbormaster, even if no maritime accident or environmental damage has yet taken place. This formal offense construction indicates that Indonesian maritime law places greater emphasis on preventive measures against potential dangers rather than merely imposing sanctions after harmful consequences arise.

The qualification of sailing without an SPB as a criminal offense is also based on the existence of an unlawful act element (wederrechtelijkheid). This unlawful element is fulfilled because the captain consciously disregards legal obligations established by statutory regulations. Essentially, the SPB serves as evidence that the vessel has undergone technical and

administrative inspections regarding engine conditions, safety equipment, cargo stability, crew competence, and navigational feasibility. Without an SPB, there is no legal guarantee that the vessel is in a safe condition to conduct a voyage. Therefore, sailing a vessel without an SPB may be regarded as a violation of the precautionary principle within maritime law.

In addition to fulfilling the element of unlawfulness, such conduct also has the potential to endanger human safety and the marine environment. Vessels that sail without inspection and verification by the Harbormaster are exposed to various risks, including technical failures, leakage, overloading, and maritime accidents that may result in the loss of human life. From the perspective of environmental protection, vessels operating without compliance with operational standards may also cause marine pollution due to fuel leakage or ship waste discharge. Consequently, through the criminal provisions stipulated in the Shipping Law, the state seeks to provide legal protection for public safety and the marine environment through administrative supervision mechanisms and criminal sanctions.

From the perspective of criminal policy, the criminalization of sailing without an SPB represents a form of state intervention intended to establish a safety culture within the national maritime sector. The imposition of criminal sanctions is not only intended to create a deterrent effect for offenders but also serves as a preventive instrument to ensure that all maritime business actors comply with established safety standards. Accordingly, from a juridical standpoint, the act of a captain sailing a vessel without an SPB fulfills the elements of a criminal offense as regulated under Article 323 paragraph (1) of Law Number 17 of 2008 concerning Shipping and cannot merely be regarded as an ordinary administrative violation.

1.6 Criminal Liability of Captains Based on the Principle of Captain Responsibility and the Factors Affecting Law Enforcement in Indonesian Waters

Within maritime law, the captain holds a highly significant position as the highest authority on board a vessel and bears responsibility for the safety of navigation, crew members, passengers, cargo, and the vessel itself. This position places the captain as the principal legal subject responsible for all operational activities during the voyage. Therefore, when a vessel sails without a Sailing Approval Letter (SPB), criminal liability is directly attached to the captain as the individual responsible for making the decision to conduct the voyage.

The principle of Captain Responsibility in maritime law emphasizes that a captain bears full legal responsibility for navigation safety. This principle emerged from the necessity to establish a clear control system in vessel operations, considering that the captain is the party with the highest authority in determining whether a vessel is seaworthy to sail. Accordingly, prior to departure, the captain is legally obligated to ensure that all administrative and technical requirements have been fulfilled, including the possession of an SPB, the condition of the vessel, the availability of safety equipment, and the adequacy of crew members.

In law enforcement practice, it is often argued that voyages conducted without an SPB were carried out under instructions from ship owners or shipping companies. However, legally, such arguments cannot serve as grounds for exemption from criminal liability. Captains remain under a legal obligation to refuse departure if safety requirements have not been fulfilled. This demonstrates that criminal responsibility in maritime law is personal in nature and cannot be transferred to other parties. The obligation to ensure navigation safety is directly attached to the captain's authority and position as the leader of the vessel.

This principle of criminal responsibility is reinforced through judicial practice, particularly in Supreme Court Decision Number 2351 K/Pid.Sus/2016 concerning the KM Jasa Baru case. In this decision, the panel of judges rejected the captain's defense claiming that the voyage had been conducted under the ship owner's instructions. The court held that the captain still bore the legal obligation to ensure that all navigation safety requirements had been fulfilled before departure. This ruling reaffirmed that the position of captain carries substantial legal responsibility that cannot be avoided merely due to pressure or instructions from the company.

In addition to the individual criminal liability of captains, Indonesian positive law also recognizes the possibility of corporate criminal liability. Such liability may arise if a shipping company is proven to have intentionally ordered, allowed, or benefited from voyages conducted without an SPB. In this context, corporations may be regarded as parties participating in maritime criminal offenses because corporate policies deliberately disregard safety aspects for economic interests. Therefore, law enforcement concerning maritime crimes is not solely directed at individuals but may also be extended to legal entities as perpetrators of criminal offenses.

Although legal provisions concerning the obligation to possess an SPB are clearly regulated, law enforcement against voyages without an SPB within Indonesian waters continues to face numerous obstacles. One of the primary factors is the weak supervision at small ports and traditional docks, which still lack integrated administrative and technical monitoring systems. The limited number of enforcement personnel, inadequate supervisory facilities, and the vast territorial waters of Indonesia have enabled many vessels to sail without undergoing official inspection by the Harbormaster.

In addition to weak supervision, illegal practices within shipping operations also affect the effectiveness of law enforcement. In practice, there are still instances of document manipulation, concealment of vessels' unseaworthy technical conditions, and the transportation of cargo or passengers beyond vessel capacity (overloading). Such practices are generally carried out to obtain greater economic profit while neglecting navigation safety aspects. This condition demonstrates that violations of SPB obligations are influenced not only by weak supervision but also by the low level of legal awareness among maritime business actors.

Economic factors also constitute one of the primary causes of voyages conducted without an SPB. High vessel operational costs, competition within the shipping industry, and demands for rapid distribution of goods frequently encourage business actors to bypass safety procedures. In certain circumstances, vessels are forced to sail despite not meeting administrative or technical requirements in order to avoid economic losses. Consequently, the safety of passengers and crew members becomes neglected.

Furthermore, the integrity of law enforcement officers significantly influences the effectiveness of maritime law enforcement in Indonesia. If supervision and law enforcement are not conducted professionally and consistently, violations concerning SPB obligations will continue to recur. Therefore, strengthening supervisory systems, improving the integrity of law enforcement officers, and implementing digitalized shipping services such as the Inaportnet system are necessary to minimize irregular practices and enhance transparency in the issuance of SPBs.

Thus, the criminal liability of captains for sailing without an SPB constitutes a form of legal protection for national maritime safety. However, the effectiveness of its enforcement is strongly influenced by the quality of supervision, the legal awareness of maritime business actors, economic conditions, and the integrity of law enforcement officers within Indonesia's maritime system.

1.7 Research Recommendations

Based on the findings of this study, strategic measures are required to improve the effectiveness of law enforcement against voyages conducted without a Sailing Approval Letter (SPB) in Indonesia. One important effort that must be undertaken is the strengthening of maritime supervision systems, particularly at small ports and traditional docks, which continue to experience limitations in both administrative and technical supervision. Strengthening supervision may be achieved through increasing the number of personnel, providing adequate monitoring facilities, and establishing integrated coordination among Harbormasters, law enforcement agencies, and other maritime-related institutions.

In addition, the government should accelerate the implementation of digitalized shipping services through electronic systems such as Inaportnet in order to enhance transparency, efficiency, and accountability in the issuance process of Sailing Approval Letters. Such

digitalization is expected to minimize document manipulation, abuse of authority, and administrative violations within maritime service processes. Through an integrated digital system, supervision of vessel legality and seaworthiness may be conducted more effectively and accurately.

Furthermore, improving the integrity and professionalism of law enforcement officers is also a crucial factor in supporting effective maritime law enforcement. Supervisory and law enforcement officers must perform their duties consistently, objectively, and free from irregular practices in order to establish legal certainty within the maritime sector. The government should also strengthen legal education and socialization programs for shipping business actors, captains, and maritime communities regarding the importance of compliance with navigation safety standards as a form of protection for human safety and the marine environment.

Finally, it is necessary to strengthen regulations and impose stricter sanctions against violations of maritime safety, both for individuals and corporations involved in such activities. Consistent and fair law enforcement is expected to create a deterrent effect and foster a safety culture within Indonesia's national maritime transportation system.

Conclusion

Based on the results of the study, it can be concluded that the act of a ship captain sailing a vessel without a Sailing Approval Letter (*Surat Persetujuan Berlayar* / SPB) constitutes a maritime offense that carries criminal legal consequences as regulated under Article 323 paragraph (1) of Law Number 17 of 2008 concerning Shipping. From a juridical perspective, such a violation cannot merely be regarded as an administrative offense, but rather fulfills the elements of a criminal act because it contravenes legal obligations intended to ensure maritime safety and security. The legal construction within this provision indicates that sailing without an SPB falls within the category of a formal offense, whereby the violation is deemed to have occurred at the moment the vessel departs without official authorization from the Harbormaster, regardless of whether any maritime accident or other losses subsequently arise.

Furthermore, this study demonstrates that the principle of *Nakhoda Responsibility* places the ship captain as the party bearing full legal responsibility for the safety of the vessel, crew members, passengers, and cargo throughout the voyage. Therefore, a ship captain cannot invoke compliance with the ship owner's orders as a justification to eliminate criminal liability. Such responsibility is inherently attached to the captain's position and authority as the highest leader on board the vessel. In certain circumstances, criminal liability may also be extended to corporations when shipping companies are proven to have systematically committed or tolerated violations of SPB obligations for the purpose of obtaining economic benefits.

This research also finds that law enforcement against vessels sailing without SPB in Indonesian waters still faces various obstacles, including weak supervision at small ports and community docks, document manipulation practices and illegal shipping activities, economic pressures within shipping operations, and the lack of optimal integrity among law enforcement officers. These factors contribute to the continued occurrence of violations of maritime safety regulations despite the existence of clear legal provisions. Therefore, the effectiveness of maritime law enforcement depends not only on the existence of legal norms, but also on the quality of supervision, the legal awareness of shipping business actors, and the professionalism of law enforcement authorities in carrying out maritime supervisory functions.

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