

Juridical Review of Criminal Liability for Negligence in Shipping Safety Standards on Motor Sailing Vessels

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Abstract

Maritime accidents involving Motor Sailing Vessels (Kapal Layar Motor/KLM) remain a serious concern in Indonesia because they frequently arise from negligence in complying with shipping safety standards. As an archipelagic state, Indonesia depends heavily on sea transportation for logistics distribution and community mobility, particularly in remote and island regions. However, economic pressure, weak supervision, overcapacity, inadequate safety equipment, and the neglect of weather information often place KLM operations in a high-risk position. This study aims to analyze the form of criminal liability for negligence in fulfilling shipping safety standards and to examine the parties who may be held responsible under Indonesian law. The research method used is normative legal research with a statutory and conceptual approach. The study finds that criminal liability should not be narrowly imposed only on the captain as the operational leader on board. Liability may also extend to shipowners, operators, and corporations when negligence in ensuring seaworthiness, crew adequacy, cargo safety, and voyage approval can be proven. Articles 302 and 303 of Law Number 17 of 2008 concerning Shipping, together with relevant provisions of the Criminal Code, provide a legal basis for imposing criminal sanctions when negligence causes losses, accidents, or death. The study concludes that strict enforcement, preventive supervision by the harbormaster, and expansion of liability to economic actors behind the vessel are necessary to reduce maritime accidents and strengthen safety culture in Indonesian shipping.

Keywords : Criminal Liability; Negligence; Shipping Safety; Motor Sailing Vessel; Seaworthiness.

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Introduction

Indonesia is an archipelagic state whose economic, social, and logistical connectivity depends significantly on maritime transportation. In many inter-island routes, especially those connecting small ports and remote areas, Motor Sailing Vessels or Kapal Layar Motor (KLM) continue to perform an important role. KLMs are often considered more accessible and economical than modern commercial ships, so they remain widely used for transporting goods, agricultural products, and passengers between coastal communities.

The strategic role of KLMs, however, is frequently accompanied by serious safety problems. Various maritime incidents involving small and medium vessels are not always caused by force majeure or natural factors alone. Many accidents originate from human negligence and the disregard of minimum safety standards, such as sailing in unseaworthy conditions, carrying cargo beyond capacity, failing to provide adequate life-saving appliances, ignoring weather forecasts, or allowing vessels to operate without proper documentation and crew competence.

In legal terms, negligence in shipping safety is not merely an administrative violation. When such negligence results in material loss, environmental damage, injury, or death, it can become a matter of criminal liability. This raises an important question concerning who should bear criminal responsibility when a KLM accident occurs. In practice, the captain is often treated as the primary party responsible because of his position as the highest authority on board. Nevertheless, a deeper legal analysis shows that responsibility may also involve shipowners, operators, or corporations that benefit economically from the voyage and have control over the vessel's compliance with safety requirements.

Law Number 17 of 2008 concerning Shipping provides the legal framework for seaworthiness, voyage approval, safety management, and criminal sanctions for violations of shipping obligations [12]. The law defines seaworthiness broadly, covering not only the technical condition of the vessel but also crew competence, load line, cargo arrangement, prevention of pollution, health and welfare of crew and passengers, legal status of the vessel, and safety management. Therefore, if a vessel is permitted or forced to sail despite failing to meet these requirements, the legal problem is not limited to the captain's decision but also includes the responsibility of those who should ensure the vessel's compliance before departure.

The problem becomes more complex because KLM operations are often informal, economically pressured, and less strictly supervised compared to larger commercial vessels. In many cases, the orientation toward profit and speed of delivery encourages operators to disregard risk assessment. Meanwhile, the harbor master's supervision in issuing Sailing Approval Letters (Surat Persetujuan Berlayar/SPB) becomes crucial, because formal approval to sail should only be granted when the vessel meets seaworthiness and safety requirements. Weak supervision at this stage may create a chain of negligence that contributes to maritime accidents.

Based on this background, this study focuses on two main issues. First, how criminal liability is constructed for negligence in shipping safety standards on Motor Sailing Vessels under Indonesian law. Second, how criminal responsibility can be expanded beyond the captain to include shipowners, operators, or corporations when their conduct or omission contributes to the occurrence of accidents. This research is expected to contribute to the strengthening of maritime safety law enforcement in Indonesia, particularly in relation to traditional and semi-traditional vessels that remain vital for inter-island transportation.

Research Methodology

This research uses normative legal research, which focuses on the study of legal norms contained in legislation, legal doctrine, and relevant legal literature [6]. The normative juridical method is appropriate because the object of analysis is the construction of criminal liability for negligence in shipping safety standards, particularly as regulated under Law Number 17 of 2008

concerning Shipping, the Criminal Code, and implementing regulations related to ship safety and seaworthiness.

The approaches used in this study are the statutory approach and the conceptual approach. The statutory approach is applied by examining provisions concerning seaworthiness, the authority of the harbormaster, voyage approval, the duties of the captain, and criminal sanctions for shipping safety violations. The conceptual approach is used to analyze legal concepts such as negligence (*culpa*), criminal liability, corporate liability, seaworthiness, and safety standard compliance.

The legal materials used in this study consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include the Criminal Code, Law Number 17 of 2008 concerning Shipping, Government Regulation Number 51 of 2002 concerning Shipping, and other related regulations. Secondary legal materials consist of books, journal articles, and scholarly writings on criminal law, maritime law, transportation safety, and corporate criminal liability. Tertiary legal materials include legal dictionaries and supporting references that clarify legal concepts used in this study.

The legal materials are analyzed qualitatively using descriptive-analytical and prescriptive methods. Descriptive analysis is used to explain the legal framework governing shipping safety and criminal liability, while prescriptive analysis is used to formulate an ideal construction of liability that can ensure accountability not only for the captain but also for shipowners, operators, and corporations that contribute to unsafe sailing conditions.

Results

1. Criminal Liability for Negligence in Shipping Safety Standards on Motor Sailing Vessels

Criminal liability in Indonesian criminal law is based on the principle that there is no punishment without fault. Fault may take the form of intent (*dolus*) or negligence (*culpa*) [1]. In the context of shipping accidents involving KLM, negligence becomes the central basis of liability when a person or legal entity fails to exercise the level of caution legally required in maritime operations. This negligence may appear in the decision to operate a vessel that is not seaworthy, to overload cargo, to ignore weather warnings, or to sail without adequate safety equipment.

Negligence in shipping cannot be assessed only after an accident occurs. It must be examined from the entire chain of preparation before sailing. A KLM may be considered unsafe not only because of its physical condition, but also because of deficiencies in crew competence, cargo loading, documentation, safety equipment, navigation readiness, and compliance with voyage approval requirements. Therefore, criminal liability should be constructed by identifying whether the parties involved had a legal duty to prevent danger and whether they failed to fulfill that duty. The importance of examining negligence from the pre-departure stage can also be seen from maritime accident investigations in Indonesia. The sinking of KMP Yunicee, for example, shows that a vessel may formally possess certain documents, yet still face serious safety risks when loading, stability, passenger control, and operational supervision are not carried out carefully. This illustrates that shipping safety cannot be reduced to administrative compliance alone. In criminal liability analysis, investigation findings concerning overcapacity, weak control of loading, and insufficient risk anticipation may become relevant indicators for determining whether negligence occurred before the vessel actually sailed [16].

Law Number 17 of 2008 concerning Shipping places seaworthiness as a fundamental requirement before a vessel is allowed to sail [12]. Seaworthiness includes vessel safety, pollution prevention, manning, load lines, cargo loading, crew welfare, passenger health, legal status, safety management, and security management. This broad definition indicates that safety is not a single technical requirement, but a comprehensive legal condition that must be fulfilled

cumulatively. When a KLM sails without meeting these requirements, the violation may become the basis for criminal responsibility if it causes danger or loss.

Articles 302 and 303 of Law Number 17 of 2008 provide an important foundation for imposing criminal sanctions against parties who operate or allow vessels to sail without fulfilling safety and seaworthiness requirements [12]. These provisions demonstrate that shipping safety obligations are not merely administrative in nature. They carry criminal consequences when violations endanger life, property, or the marine environment. In addition, Article 359 of the Criminal Code may apply when negligence results in death, thereby connecting general criminal law with the special regime of shipping law [11].

In the case of KLM operations, the captain has a central operational responsibility because he controls the vessel during the voyage. However, it would be legally incomplete to place all responsibility on the captain when the root of the negligence lies in the owner's decision, operational pressure, lack of maintenance, absence of safety equipment, or manipulation of cargo manifests. A captain may be the final actor who conducts the voyage, but he is not always the only party who creates the unsafe condition.

Therefore, criminal liability for negligence in KLM accidents should be understood as layered liability. The first layer is operational liability borne by the captain for decisions made during navigation. The second layer is managerial or ownership liability borne by shipowners or operators who fail to ensure vessel maintenance, safety equipment, proper loading, and crew adequacy. The third layer may involve corporate liability when the unsafe voyage reflects an organizational policy, profit-oriented pressure, or systematic disregard of legal obligations [7].

2. Expansion of Liability to Shipowners, Operators, and Corporations

In many maritime accident cases, law enforcement tends to focus on the captain as the most visible actor [10]. This approach is understandable because the captain is legally responsible for the safety of the vessel during navigation. However, in the context of criminal law policy, such an approach may become too narrow if it ignores the role of shipowners and operators in creating unsafe operational conditions before the vessel departs.

Shipowners and operators have control over budget allocation, vessel maintenance, crew recruitment, cargo arrangements, and operational schedules. If they knowingly allow a vessel to operate without adequate safety equipment, instruct the captain to depart despite bad weather, tolerate overloading, or fail to repair known defects, their conduct may constitute negligence with criminal relevance. This means that liability is not limited to the person who physically navigates the vessel, but extends to those who have decision-making authority over the vessel's readiness.

The expansion of liability is also consistent with the development of corporate criminal liability [8]. A corporation may be held accountable when a criminal act is committed within the scope of corporate activity, benefits the corporation, or results from corporate policy or neglect. In KLM operations, if the business model systematically prioritizes economic efficiency over safety compliance, the corporation or operator should not be shielded behind the captain's individual responsibility.

This construction is important because maritime accidents are often produced by collective negligence rather than a single individual error. Overcapacity, lack of safety devices, and unseaworthy conditions usually occur through repeated tolerance by owners, operators, and supervisory actors. If criminal law only punishes the captain, deterrence will be weak because the economic actors who create unsafe conditions may continue operating without meaningful accountability.

The harbormaster also plays a strategic role in preventing negligence through the issuance of Sailing Approval Letters [12]. The SPB should function as a legal filter to ensure that only seaworthy vessels are permitted to sail. If supervision is conducted merely as an administrative

formality, the preventive function of maritime law becomes weak. For this reason, strengthening the harbormaster's inspection authority and accountability is essential to prevent unsafe KLM operations.

A more effective model of criminal liability should combine repressive and preventive approaches. Repressive enforcement is necessary after an accident occurs, particularly when negligence causes death or serious loss. Preventive enforcement, however, is equally important, through strict inspection of seaworthiness, verification of cargo and passenger manifests, weather-based sailing restrictions, and mandatory safety equipment checks. Without preventive enforcement, criminal sanctions will only operate after victims have already suffered harm.

From a policy perspective, the law must encourage a safety culture in KLM operations. Safety culture means that compliance is not treated as a burden but as an integral part of maritime business [14]. Owners, operators, captains, and authorities must share responsibility in ensuring that a vessel does not depart unless it is legally and technically safe. This approach is more consistent with the purpose of shipping law, which is not only to punish after accidents but also to protect human life and prevent maritime disasters.

3. Sanctions and Preventive Legal Reform in KLM Safety Enforcement

The criminal sanctions provided under shipping law are intended to create a deterrent effect and ensure compliance with safety standards. However, the effectiveness of sanctions depends on the consistency of law enforcement. If sanctions are only imposed on lower-level actors while owners and operators escape accountability, the preventive function of criminal law will not be achieved. Therefore, law enforcement must examine the entire chain of responsibility in every KLM accident.

The imposition of sanctions should also consider the seriousness of the consequences. When negligence only creates administrative risk, administrative sanctions may be sufficient. However, when negligence causes accidents, injury, death, or major material loss, criminal sanctions become necessary. This distinction is important to ensure proportionality while maintaining the seriousness of safety obligations.

In addition to imprisonment and fines, additional sanctions may be considered, such as revocation of operating permits, prohibition from operating vessels, seizure of profits obtained through unsafe operations, and mandatory safety training. These sanctions are important because they directly address the economic motives that often underlie safety violations.

Legal reform should also strengthen inspection mechanisms for KLMs, especially in small ports where informal practices are still common. Digitalization of manifests, integration of weather information, periodic seaworthiness audits, and real-time reporting of vessel departure approvals can reduce opportunities for manipulation and negligence [13]. These measures can support criminal law enforcement by providing clearer evidence when violations occur.

In addition, preventive reform should adopt the logic of safety management as reflected in the International Safety Management Code. Although KLM operations may have different characteristics from large international commercial vessels, the basic idea remains relevant: every voyage must be supported by a structured system for identifying risks, assigning responsibility, documenting safety procedures, and evaluating operational readiness before departure. If owners or operators do not build such a safety management pattern, repeated violations may no longer be viewed as isolated mistakes, but as evidence of organizational neglect that strengthens the basis for managerial or corporate criminal liability [17].

Thus, the juridical review of criminal liability for negligence in KLM safety standards shows that the future of maritime safety enforcement must move beyond captain-centered liability. A more comprehensive model is needed, one that places responsibility on all actors who have legal duties and factual control over the safety of the vessel.

Conclusion

1. Criminal liability for negligence in shipping safety standards on Motor Sailing Vessels is regulated under the framework of Indonesian shipping law and general criminal law. Negligence may arise when a vessel is operated despite failing to meet seaworthiness requirements, when cargo or passenger manifests are manipulated, when safety equipment is inadequate, or when weather and navigation risks are ignored. If such negligence causes accidents, injury, death, or material loss, it may become the basis for criminal sanctions under Law Number 17 of 2008 concerning Shipping and relevant provisions of the Criminal Code.
2. The construction of liability should not be limited to the captain. Although the captain is responsible for operational decisions during the voyage, shipowners, operators, and corporations may also be held criminally liable when they contribute to unsafe conditions through omission, pressure, lack of maintenance, or systematic disregard of safety standards. Therefore, criminal liability in KLM accidents should be understood as layered liability involving operational, managerial, and corporate responsibility.
3. To strengthen maritime safety, law enforcement must combine repressive sanctions with preventive supervision. The government, particularly the harbormaster, must tighten the issuance of Sailing Approval Letters, verify seaworthiness, ensure adequate safety equipment, and prevent overcapacity before departure. Shipowners and operators must be required to build a safety-oriented operational culture and should not prioritize economic gain over human life. Through this model, criminal law can function not only as a punitive instrument but also as a preventive mechanism to reduce maritime accidents in Indonesia.

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