

THE RECONSTRUCTION OF INDONESIAN SHIPPING LAW IN THE SEA TRANSPORTATION SYSTEM FOR A SUCCESSFUL SEA TOLL PROGRAM AND IMPROVEMENT OF SHIPPING ADMINISTRATION

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Abstract

Indonesia uses Pancasila Democracy as the main foundation as well as a source of law in the nation and state (staatfundamentalnorm). One of the sounds of the 5th principle of Pancasila is, "Social Justice for All Indonesian People" which means fair to fellow human beings, fair to oneself and fair to God (Pancasila Justice Value). The purpose of this justice in particular must cover the growing system of exploitation of authority and ambiguity in the shipping world from the strong to the weak and must also narrow the socio-economic gap in the lives of seafarers, so that prosperity is achieved that reflects that Indonesia deserves to be called a World Maritime Axis Country as in history. Srivijaya & Majapahit. However, the fair principle has not been fully enforced and there is discrimination, especially the application of several articles in Act No. 17 of 2008 concerning Shipping. This research is a qualitative research with constructivism paradigm and sociological juridical approach. The formulation of the problem in this thesis are; 1) Why is Act No.17 of 2008 concerning Shipping in the Indonesian Sea Transportation System Not Fairly Pancasila?, 2) What are the Weaknesses of Act No.17 of 2008 concerning Shipping that Affects the Suboptimal Sea Transportation System in the Success of the Toll Program Sea and Shipping Administration in Indonesia?, and 3) How to Reconstruct Act No. 17 of 2008 concerning Shipping in the Sea Transportation System for the Success of the Sea Toll Program and Improvement of Indonesian Shipping Administration based on Pancasila Justice Value? The purpose of writing this thesis is to reconstruct several articles in Act No. 17 of 2008 concerning Shipping which contain weaknesses in the Sea Transportation System for the Success of the Sea Toll Program and the Improvement of Indonesian Shipping Administration Based on Pancasila Justice Value. The results of this research are that there are several reconstructions of articles, namely Article 28 paragraph (6) in terms of granting ship operating permits held by the Directorate General, Syahbandar and specifically ASDP by the Land Transportation Management Center (BPTD), Article 59 is reconstructed with the addition of revocation of one's authority to become a

crew member in the event of a serious criminal offense. Article 61, paragraph (3) is reconstructed with the addition of ship requirements and specifications. Article 151 (1) is reconstructed with the addition of a paragraph that regulates the affirmation of the welfare of seafarers and Article 169 (1) is reconstructed by giving criminal sanctions not only administrative sanctions. It is hoped that with this reconstruction the Sea Transportation system in the Sea Toll Program will be able to improve the Shipping Administration System in Pancasila Justice Value.

Keywords: *Justice; Pancasila; Reconstruction; Transportation.*

A. INTRODUCTION

The growth of domestic cargo volume requires additional capacity of the domestic maritime transportation fleet. However, the estimated additional capacity is influenced by several things, including market share growth or productivity levels. Stramindo targets ship productivity improvement *dry cargo*, namely from 7,649 ton-miles/DWT (2001) to 10,000 ton-miles/DWT (2024)¹. This can be done through various improvements and improvements in various fields, such as: increasing the volume of cargo, due to the extensification of containerization; increased ship speed, due to the use of a younger fleet; increase in the number of productive days (commissionable days), due to improved ship management; reduction of waiting time at the port, due to improvements in port management and so on².

In addition, Stramindo assumes an increase in its share from 60% (2001) to 86% (2014) and 100% (2024). This target of domestic fleet market share can be achieved through a policy of gradual implementation of the principle of cabotage, with the aim of forming a highly competitive fleet. Based on 2001 data, the national fleet capacity is 7.1 million DWT/GT with an average age of 21 years. At the end of the first decade, in 2014, the national fleet strength for domestic shipping could reach 86% of the final projected size, with an additional capacity of 3.4 million DWT. This can only be achieved by implementing cabotage on 7 selected commodities (petroleum, palm oil, coal, fertilizer, wood, rice, and rubber). Apart from maintaining *cabotage* as it is today, and replacement of old ships. At the end of the second decade, in 2024, if the ship modernization and shipping management are successfully carried out gradually and the full implementation of the principles of cabotage. Domestic shipping fleet capacity will increase by 3.2 million DWT to reach 13.1 million DWT for cargo and 0.7 million GT for passengers (or 14.4 million DWT/GT) with an average age of 14 years. Based on the projected capacity of the shipping fleet above, an investment of Rp. 54.5 trillion for the procurement of a fleet of ships in the period 2004-2014,

1 Ambe J. Njoh, Liora Bigon, Erick O. Ananga, Richard A. Ayuk-Etang, Institutional, economic and socio-cultural factors accounting for gender-based inequalities in land title procurement in Cameroon, *Journal of Public Transportation*, Vol. 78, November 2018, page. 116-125

2 Suparmin, Supervision function in improving the safety of traditional ferry crossing passengers in Perjiwa Village, Tenggara Seberang District, Kutai Kartanegara Regency, *Journal of Sociology*. Vol. 4, No. 1, page.126-140, 2016

and Rp 75.3 trillion in the next period, 2015-2024. Procurement of 4,617 vessels over a 20-year period requires a total fund of IDR 130 trillion (US\$15.3 billion), or equal to 8% of Indonesia's GDP in 2002³.

Due to the limited government budget, JICA recommends that the Government of Indonesia seek a loan of IDR 2.8 trillion from Official Development Assistance(ODA) through the inter-island shipping development program (interinsular), to meet 10% of domestic investment in the period 2005-2009. Through investment in the rejuvenation and modernization of the maritime transportation fleet, it is estimated that the Indonesian economy will enjoy multiplier-effect worth IDR 251.3 trillion in 2024. It should be underlined that in addition to some general basic assumptions (eg GDP growth), the above projection is prepared by assuming the success of reforms in several areas. Basically, these improvements aim to increase productivity and create a conducive investment climate for the shipping industry. The projection above will stop at paper, without any suggested corrections.

In the early stages, projections in study on Development of Domestic Sea Transportation and Maritime Industry in the Republic of Indonesia. This can be used to describe the great potential of the maritime transportation industry, which is compiled based on current factual conditions⁴.

The objectives of the study on the preparation of a fixed and regular route network for domestic sea transportation are: Evaluating the current domestic sea transportation route network system and preparing a fixed and regular route network plan for domestic sea transportation that supports national connectivity. The planned route pattern for container transportation in January to September 2011 totals 201 route networks with the support of a fleet of 218 vessels. Each route network includes several ports of call. The variation in the number of stopover ports from the 201 route network is from 2 to 18 ports. The combined number of stopover ports from the entire route network is 158 ports. However, the actual number of transit ports is only 79 ports. The plan for a fixed and regular route network for domestic sea transportation compiled through this study is the result of an evaluation of the planned route pattern that has been implemented until 2011. The evaluation is based on consideration of demand for transportation services, development of activity centers in six Indonesian economic corridors and strengthening of connectivity national, fixed and regular network pattern design. Based on this approach, the planned need for a fixed and regular route network for domestic sea transportation for container cargo is determined to be as many as 93 route networks. The arrangement of the route network plan referred to above can be used as material for the Decree of

3 Study on Development of Domestic Sea Transportation and Maritime Industry in the Republic of Indonesia of 2013.

4 Amir, HT., 2007. Development of Job Training Programs at the Instructor Training and Development Center in Surabaya. East Java Research and Development Journal, Horizon I edition, 6th month

the Minister of Transportation concerning the Fixed and Regular Route Network for Domestic Sea Transportation.⁵

For this reason, Government policies must be carried out in accordance with implementation instructions supported by loyalty, which will certainly encourage the desired results both by the Government itself as a regulator and for the safety of passengers and goods.

B. RESEARCH METHODS

This type of research is a qualitative research with descriptive and verification methods using the Constructivism Paradigm. Sociological juridical approach (approach) with a socially meaningful action system. Data collection techniques are literature study, interviews and documentation. Then the Data Analysis Techniques are 1) data reduction, 2) data presentation (data displays and 3) conclusion drawing/verification. Based on Theory; 1) Pancasila Justice Theory, 2) Authority Theory, and 3) Law Enforcement Theory.

C. RESULTS AND DISCUSSION

1. Regulations concerning Manning of Ships and Organizational Structures in Ships

With the enactment of the 1995 Amendment to the International Convention on Standards of Training Certification and Watchkeeping for Seafarers (STCW) as a refinement of the 1978 STCW, the Minister of Transportation stipulates a regulation in the form of Decree of the Minister of Transportation No.70 Th.1998 dated, 21 October 1998 concerning Manning of Commercial Vessels⁶.

In CHAPTER II Article 2 paragraphs (1) and (2) that every sailing commercial ship must be manned with an arrangement consisting of: a captain, a number of officers, a number of ratings. The composition of the crew is based on: shipping area, gross tonnage (GT) and the size of the ship's propulsion (kilowatt/KW). Article 8 stipulates and clarifies that ship crews manning commercial vessels as referred to in Article 2 paragraph (1) must meet the following requirements:⁷

- a. for the skipper, officer or engineer must have a certificate of seafaring expertise, the type and level of the certificate is in accordance with the shipping area, gross tonnage and size of the propulsion force of the ship and has a certificate of seafarer skills;
- b. for radio operators must have a certificate of expertise in the field of radio sailors whose type and level of certificate are in accordance

5 Alif Kholifah, *The Government Continues to Strive to Realize the World Maritime Axis*, in <http://redaksiindonesia.com/read/government-terus-berusaha-make-a-axis-maritime-world.html>, access August 16, 2018.

6 Oil Pollution in the Sea by Tankers. *Legal Journal*, Vol. 10, No. 1;

7 Rifdy Fachry, Imam Muchlas, Soetrisno, Department of Mathematics, Mathematics and Natural Sciences, Determination of Optimal Logistics Movement Network Patterns in Sea Transportation using a minimum Spanning Tree Based on Genetic Algorithms, *ITS Journal of Science and Arts*

with the radio equipment on board and have a certificate of seafarer skills;

- c. for rating, they must have a certificate of seafarer expertise and a certificate of seafarer skill whose type of certificate is in accordance with the type of task, size and type of ship and the arrangement of the ship.

The ship's organizational structure consists of a captain as general leader on board and crew members consisting of ship's officers and non-officers/subordinate crews. The organizational structure of the ship above is not a standard structure, because each ship can have different organizational structures depending on the type, function and condition of the ship. For example, on a cruise ship there are positions of Bartender, cabinboy, swimming pool boy, general purpose and so on. On other ships, for example, there are positions of electrician, greaser and so on. Everyone who has a position on board the ship is called the crew, including the captain, but the crew or crew (ABK) are all people who have positions on the ship except for the position of the captain.⁸ For fishing vessels there are still other positions, namely Fishing master, Boy-boy (bait thrower, for pole and Line fishing boats), etc.⁹

2. Regulation of the Route Network in the Marine Transportation System

The development of the implementation of sea transportation is reflected through the addition and expansion of the route network. The development of the sea transport route network can be done through a promoting function approach and a service function approach. The push function approach is planning that is carried out by considering the government's desire to expand the range of services and equitable development. The service function approach is planning that fully follows the trend of demand for transportation services. Since the enactment of Government Regulation of the Republic of Indonesia Number 22 of 2011 jo. Government Regulation of the Republic of Indonesia Number 20 of 2010 concerning Transportation in Waters, the preparation of the domestic sea transportation route network has not been carried out in accordance with the mandate of the Government Regulation¹⁰. Therefore, it should be necessary to prepare a fixed and regular route

8 Suparmin, Supervision function in improving the safety of traditional ferry crossing passengers in Perjiwa Village, Tenggara Seberang District, Kutai Kartanegara Regency, *Journal of Sociology*, Vol. 4, No. 1, 2016, page. 126-140.

9 Rifusa, Agus Imam. 2010. Analysis of Busway Transportation Demand Factors. http://www.lontar.ui.ac.id/file/file=digital_132635-T_27840 accessed on December 10, 2018 at. 21.30 WIB

10 Prihartono, Bambang, 2015, Development of the Sea Toll Road in the 2015-2019 RPJMN and 2015 Implementation, National Development Planning Agency of the Republic of Indonesia

network for domestic sea transportation such as:¹¹:

- a. Evaluating the current domestic sea transport route network system.
- b. Prepare a fixed and regular route network plan for domestic sea transportation. In accordance with the objectives mentioned above, the limitations of the problem in the study of the preparation of a fixed and regular route network for domestic sea transportation;
- c. Identification and evaluation of the fixed and regular route network of domestic sea transportation for containers, as well as their respective service areas.

3. Regulations for the Operation of Crossing Transportation

The laws and regulations governing the operation of ferry transportation, namely:¹²

- a. Act No. 17 of 2008 concerning Shipping;
- b. Government Regulation No. 22 of 2011 jo. Government Regulation Number 20 of 2010 concerning Transportation in Waters;
- c. Regulation of the Minister of Transportation Number PM. 104 of 2017 concerning the Implementation of Crossing Transportation.

4. Maritime Transportation Problems in Indonesia

Data for 2018 shows that Indonesia's national fleet shipping is getting worse in the domestic cargo market. Its shareholding shrank 19% to only 50% (2017: 69%). Meanwhile, international cargo remains in the range of 5%. From a financial perspective, Indonesia lost the opportunity to earn US\$10.4 billion in foreign exchange, only from sea transportation for export/import cargo. Instead of benefiting from the application of the principle of cabotage (which is not strict), Indonesia's national shipping industry relies heavily on foreign chartered vessels. Indonesia's national shipping fleet faces many problems, such as: many ships, especially conventional types, are idle due to prolonged cargo waiting times; overcapacity occurs, which sometimes triggers unhealthy price wars; there are quite a number of ships, but only a few are able to provide satisfactory service; the productivity level of dry cargo fleet is very low, only 7,649 ton-miles/DWT or around 39.7% compared to similar fleets in Japan which is 19,230 ton-miles/DWT¹³.

Indonesia's national shipping fleet is less able to increase competitiveness and grow due to several factors, namely ship owners are not able to strengthen the fleet with their own financing; high interest rates in the national banking system; and no subsidies; no impartial policies (such as the application of the cabotage principle); remnants of unsup-

11 www.google.com/m?q=justice+according

to+rawls+implementation+justice+social+Indonesia+anil+dawan&client=ms-opera-mini&channel=new

12 <http://www.republika.co.id/berita/ramadhan/info-mudik/16/07/04/o9r6iu280-homecoming-port-bakauheni-up-six-percent>

13 Big Indonesian Dictionary, second edition, (Jakarta: Balai Pustaka, 1991) Yan Pramadya Puspa, Legal Dictionary, (Jakarta: Aneka Ilmu Publisher, 1977), p. 320

portive policies, such as the necessity to scrap old ships (though technically and economically they can still be operated) and the necessity to buy domestically produced vessels (even though their supply capacity is still relatively limited) the limitations of national port facilities and infrastructure (more on cargo) export Import); unavailability of adequate information network¹⁴.

The national shipping situation also depends on foreign charter vessels occurring along with the excess capacity of the domestic fleet. The situation is like an endless loop because the shipping investment environment is not conducive. Many shipping companies want to rejuvenate their fleets, but find it difficult to get loans from the domestic money market. And on the other hand it is easier to obtain loans from foreign sources. Some large companies tend to register their vessels abroad (flagged-out). But small and medium-sized companies cannot afford it, so there is no alternative but to use cheap, old and scrappy vessels. As a result, there is a growing dependence on foreign chartered vessels and a decline in fleet productivity.

5. Shipping Safety Supervision is Still Weak, Especially LLASDP (River Lake and Crossing Traffic)

After independence, this supervision of shipping safety is specifically regulated in Act No. 21 of 1992 concerning Shipping Article 40 which reads: "Every ship that enters the port and while in the port is obliged to comply with regulations to maintain order and smooth ship traffic in the port whose supervision is carried out by the harbormaster", which was last amended by Act No. 17 of 2008 concerning Shipping.

According to the Joint Regulation of the Minister of Transportation with the Head of the State Civil Service Agency Number KM. 61 of 2005 and Number 20 of 2005 concerning Instructions for the Implementation of the Functional Position of Shipping Safety Supervisor and its Credit Score. In Article 1 it is stated that¹⁵:

- a. Shipping Safety Supervisor, is a Civil Servant who is given full duties, responsibilities, authority and rights by the authorized official to carry out the duties/activities of supervising shipping safety and smooth sea transportation traffic;
- b. Credit Score, is the value of each item of activity and/or the accumulated value of item of activity that must be achieved by the Shipping Safety Supervisor and is used as one of the requirements for appointment and promotion of position/rank;

14 AS Hornby, *Oxford Advanced Learner's Dictionary*, Oxford University Press, Oxford, 1995, page. 109

15 Amir Santoso, Public Policy Analysis: An Introduction, *Journal of Political Science*, No. 3, Gramedia, Jakarta, 1992, page. 4 in Hernani's thesis, *Factors Affecting the Implementation of Liquor Circulation Control and Control Policy: A Descriptive Research on the Successful Implementation of Liquor Policy in the Province of West Kalimantan*, Department of Government Science, UGM, 1997, page. 25.

6. Weak ASDP Mode Safety Conditions

The condition of the harbormaster at River, Lake and Ferry Ports is currently not optimally carrying out its functions, namely supervising shipworthiness, safety, security and order at the port, so that in the future it needs to be improved both from the aspect of human resources and institutions. Accidents on river, lake, and crossing modes of transportation that have occurred consecutively in the last one that are of concern include:

Table 6.1 Incidents of Inland Waterways Transportation

No.	Incident	Cause of accident
1	On 18 May 2018, the Dharma Kencana Ro-Ro Ship from Semarang to Sampit caught fire. At around 12.00 WIB this fateful ship caught fire. The location of the ship that caught fire was about 20 miles from the Sampit port. Evacuation of passengers on the self-help of the crew of the	electric short circuit on the car deck
2	On June 18, 2018, there was an accident at KM Sinar Bangun sank in Lake Toba, North Sumatra. A total of 21 passengers were rescued but 164 passengers were declared missing and were estimated to be on a ship that ran aground at a depth of 450 meters.	overload
3	On July 3, 2018 there was an accident, namely the run aground of the Motor Ship (KM) Lestari Maju in the waters of Selayar, South Sulawesi, the number of victims as many as 34 passengers	The ship has a leak and bad weather conditions

From the events in the table above, it shows that there is still a lack of shipping safety conditions, especially the weak ASDP mode. That does not include small ships under 7 GT or between 7-35 GT that have sunk/wrecked/lost and have not been recorded.

7. Weak Implementation of Regulations to Support Sea Transportation Connectivity in the Sea Toll Program which Causes Many Accidents

Accidents in sea transportation have happened a lot. Incidents that occur usually are drowning due to overload, fire or explosion, or drowning due to natural factors. However, based on data from the Maritime Court, human error is the main cause of marine transportation accidents. As many as 88% of incidents are caused by human error from people in the sea transportation system. And only a few are caused by natural factors or weather.

The *human error* that occur in marine transportation accidents can be caused by various factors in the existing marine transportation system. For example, the lack of understanding of the crew on the signs

on the route, the negligence of port officials in supervising sailing ships. Or the negligence of the crew in performing maintenance on the machines on the ship.

Various ways and means to avoid accidents and minimize the risk due to accidents at sea. As did the Gresik port administration (Adpel) some time ago, the agency in the port complex held a shipping safety socialization. They held a socialization in front of the ship's passengers heading to Bawean. In addition to the presentation, the passengers, captain and crew were shown visualizations of video images of what to do when the situation was critical at sea. In addition, before sailing, the condition of the ship must be the main factor so that when sailing there are no accidents¹⁶.

8. The weakness legal protection of seafarers on Indonesian ships

There is none other than the goal of balanced legal protection between seafarers and Indonesian ship entrepreneurs, in order to realize the welfare of seafarers, harmonization of the welfare of seafarers and the productivity of Indonesian Shipping Companies based on the value of justice. However, in reality there are still several problems regarding the legal protection of seafarers on Indonesian ships, including the following:¹⁷

- a. Weaknesses of Legal Substance.
- b. Welfare arrangements regarding salaries and allowances are still general in nature, there is no standard regarding the amount of salary / minimum wage and seafarer work allowances.
- c. Weaknesses of the Legal Structure, including:
 - 1) The settlement of seafarers' industrial relations disputes at the Industrial Relations Court has not been able to resolve the problems that have occurred. In the Sea Work Agreement, it is regulated regarding the place of work, namely on a ship with a location that is always moving. If while on duty on a ship with a place that is always moving, the certainty of the place of dispute is also a separate problem.
 - 2) Law enforcement officers who still have a positivism paradigm in making decisions in the judiciary. Because from the beginning they were educated with this method, when law enforcers enter the field of work, they will still carry the paradigm they have learned so far that law is a written regulation, so that in solving cases, they are also guided by the existing articles.
- d. Weaknesses of Legal Culture. Among others:
 - 1) Lack of awareness and understanding of Indonesian Seafarers regarding Act No. 17 of 2008 concerning Shipping. One of the important factors in the implementation of Act No. 17 of 2008 on

16 http://kpu.go.id/koleksigambar/VISI_MISI_Jokowi-JK.pdf accessed on December 5, 2018

17 (<http://www.jawapos.com/read/2016/04/25/25407/tol-laut-lampung-surabaya-tak-Rifusa>, Agus Imam. 2010. Analysis of Busway Transportation Demand Factors.

Shipping to make this happen, of course, seafarers must be aware and believe that one of the functions of the shipping law is to provide legal protection for these seafarers. Lack of awareness and understanding of seafarers about the relevant laws or regulations is an obstacle to implementation in the field.

- 2) Lack of formal education competence of seafarers. The ability of Indonesian seafarers to penetrate the global market is in danger of being eliminated. This is because the work ethic of Indonesian seafarers abroad is considered to have decreased.
- 3) The low discipline of seafarers to manage the income from working at sea. The amount of income will be meaningless without good financial management. Lack of discipline in income management is very important to ensure life in old age.

9. Regulations to Support Sea Transportation Connectivity in Marine Toll Programs in Various Countries (International Wisdom)

Shipping regulation is one of the important instruments in the success of government programs and is able to bring the welfare of seafarers. In developed countries such as Japan, Korea and Singapore, regulations and regulations regarding the shipping system are emphasized, especially in ensuring regulatory clarity for the parties related to the shipping system itself, both from the government, entrepreneurs, ship owners, crew members and even everyone involved in port, port and sea transportation.

a. Japan

Japan, which is known as an archipelagic country surrounded by high seas, also enforces laws for every seafarer, this is contained in the Marine Law of Japan (Act No. 100, September 1, 1947) which regulates seafarers in general, including the authority of a sailor and the division of tasks above ships, work agreements and contracts, salaries and numerations, working hours, holidays, food and health, compensation and insurance. From this we can see that the Japanese government is really enthusiastic in regulating a seafarer to have an adequate standard of competence, especially the protection of crew members¹⁸.

b. Korea

For the Korean state, a sailor has an important position in advancing the country's economy. Not far from Japan, which is well-known as an industrial country, Korea is also a fairly large exporter in terms of electronic and beauty products. With the role of seafarers in distributing the country's products, it can be seen here that Korean

18 E. Herguido Sevillano, JF Lavado Contador, S. Schnabel, M. Pulido, J. Ibáñez, Using spatial models of temporal tree dynamics to evaluate the implementation of EU afforestation policies in rangelands of SW Spain, *Journal of Public Transportation*, Vol. 78, November 2018, page. 166-175,

seafarers have an important position in influencing the rise and fall of the country's foreign exchange. Therefore, the Korean government really pays attention to the welfare of the seafarers.

This can be seen in the regulation of Seafarer's Act No. 13186, February 3, 2015. In this regulation, the Korean government explicitly stated in the 27th article on the Clear Statement of Labor Conditions:

- 1) Where a shipowner enters into a seafarer labor contract, he/she shall make wages, working hours and other labor conditions specifically clear to a seafarer. The same shall also apply where he/she changes a seafarer labor contract.
- 2) When a shipowner enters into a seafarer labor contract with a seafarer, where the seafarer wishes, the shipowner shall give an opportunity that the seafarer may review the details of a seafarer labor contract and be provided with advice and suggestions about the same. The same shall also apply where the shipowner changes a seafarer labor contract.

It means:

- 1) Where a shipowner enters into a seafarer's employment contract, he/she must make the wages, hours of work and other conditions of work specifically clear with a seafarer. The same is also true where he/she changes the seafarer's employment contract.
- 2) When the shipowner enters into a seafarer's employment contract with the seafarer, where when the seafarer desires, the shipowner must provide an opportunity that the seafarer can review the details of the seafarer's employment contract and be given advice and advice on the same. The same applies where the ship owner makes changes to the seafarer's employment contract.

c. Singapore

The strategic position of the State of Singapore which is in the Malacca Strait makes this country an entry point for tankers, containers, cargo etc. from various parts of the world, especially Central, West and Southeast Asia. Good and professional port management standards make Singapore one of the countries that has a Standard Operation Procedure (SOP) both in maritime and customs matters. Singaporean sailors are also required to have adequate quality and ability to work on ships. Even though Singapore is a country in Asia, the level of professionalism of its seafarers is in accordance with European standards. This is regulated in the Merchant Shipping (Maritime Labor Convention) Act 2014 No. 6 of 2014.

10. Regulations to Support Sea Transportation Connectivity in the Marine Toll Program in Indonesia (National Wisdom)

Indonesia also should not be inferior to the countries above in terms of management and governance of seafarers. Moreover, Indonesia is known as a maritime country that has a noble maritime history. All laws and regulations have also been made but there are still some

regulations that are not appropriate and even some things that have not been regulated in these regulations¹⁹.

In Indonesia, regulations regarding the maritime world are contained in Act No. 17 of 2008 concerning Shipping regulates the management and regulation of marine issues, shipping, ports, harbormasters, ship crews, etc. In addition, it is also regulated in Government Regulation no. 22 of 2011 jo. Government Regulation No. 20 of 2010 concerning Transportation in Waters. In terms of ports, it is also contained in Government Regulation no. 64 of 2015 jo. Government Regulation No. 61 of 2009 concerning Ports does not include other laws and regulations. However, in reality there are still many accidents due to the negligence of the crew and improper regulatory patterns.

In terms of the welfare of Indonesian seafarers regulated in Article 151 of Act No. 17 of 2008 concerning Shipping, it is stated that²⁰: seafarer welfare includes salary, rest hours, guaranteed departure to destination and return to place of origin, compensation if the ship cannot operate due to an accident, opportunity to develop a career, provision of accommodation, recreational facilities, food or drink, maintenance and health care and provision work accident insurance. Everything related to the welfare of the crew is listed in the Sea Work Agreement which only concerns two parties, namely the crew concerned and the company where they work.

Talking about this problem, Pancasila has a flexible character or nature and is able to provide the demands of the times in following the globalization of changing times. In discussing justice issues that arise in society, Pancasila is able to provide answers to these problems. Pancasila is able to provide the values of justice as a legal reform in Indonesia. Legal reform in Indonesia is very much needed because there are still many new problems that cannot be reached by law. These problems should be resolved with one vision, mission, goals and perceptions of Pancasila in carrying out legal reform in Indonesia. In addition to new problems that have not been resolved, old problems are also problems that are also considered urgent to be resolved immediately.

The substance of Pancasila contains positive values that are able to provide change for this nation. These positive values are able to provide a foundation for the creation of justice for the Indonesian people. With relevance to justice, the value of justice contained in Pancasila can be the basic foundation for the formation of a just and civilized humane law and social justice for all Indonesian people.

Just and civilized humanity is the basis of the protection of human rights, namely humanizing human beings in a civilized manner without reducing their rights in the slightest. While social justice is justice that is

19 Hartanto, H.; Victoria, Ong Argo; Chuasanga, A. Maritime Transportation in Indonesian Policy, page. 36–44, *Unissula Journal of Legal Reform*, Vol. 6, No. 1 (2019), see *Journal of Prophetic Politics*, Vol. 1, No. 1 of 2013 Economic-Political Relations in Dependencia Perspective Ismah Tita Ruslin Department of Political Science Uin Alauddin Makassar

20 Act No. 17 of 2008 concerning Shipping

used to distinguish social justice from the concept of justice in law. Social justice is also one of the precepts in Pancasila, namely the fifth precept of Pancasila which is formulated in the Preamble to the fourth paragraph of the 1945 Constitution.

In the second and fifth precepts, the values of the state's aim to create justice in the context of shared life are stated. The meaning of the second and fifth precepts contains the meaning of justice in the form of values, of course it must be realized in common life. Justice is based on and imbued with the essence of social justice, namely justice in human relations with themselves, human relations with others, human relations with their nation and state, then the last is the relationship between humans and their God in the first principle.²¹

Fair and civilized human values reflect an attitude of respect and mutual respect between fellow human beings. This mutual respect is expected for the Indonesian people in achieving the goals of social life in accordance with Pancasila. This attitude is a fair attitude, namely humanizing humans as creatures of the same degree and position in obtaining justice, especially in terms of maritime and sea transportation. Pancasila is the philosophy and ideology of the Indonesian nation. Pancasila contains fundamental values and as the basic characteristics of the Indonesian nation. The characteristic of Pancasila justice is to humanize humans in a fair and civilized manner according to their human rights. Human rights have been inherent since humans were in the womb. Human rights must always be protected because the law exists for the community. Human rights are the right to equal treatment before the law. In addition to humanizing humans, the characteristics of Pancasila justice also provide social justice for all Indonesian people according to the fifth precept.

11. Reconstruction of Act No. 17 of 2008 concerning Shipping in the Sea Transportation System to Succeed the Sea Toll Program and Improvement of Indonesian Shipping Administration

Act No. 17 of 2008 concerning Shipping as a Supporting Regulation of Sea Transportation Connectivity in Indonesia is currently Unjust. Pancasila is caused by several articles having multiple interpretations, namely; a. In article 28 paragraph (6) The struggle for regulatory authority to grant permits ship operation by the Regent/Mayor, Governor, and Minister. Besides that, there is also a struggle for authority between the Director General of Sea and the Director General of Land regarding the management of the Port in charge of crossings, this happens because of a legal vacuum such as who has the right to issue SPB

21 Ong Argo Victoria & Myska, Doctor's Contributions in Transportation Monitoring During the COVID-19 Pandemic. *KnE Social Sciences, Dubai-United Arab Emirates (UAE)*, Vol. 5, No. 1, 2021, page.598–618 see Ong Argo Victoria, Ade Riusma Ariyana, Policy Analysis Study of the Traffic Accident of Criminal System which Makes Loss of Life, *International Journal of Law Reconstruction*, Vol. 4, No. 2, 2020, page. 136-144,

(Sailing Approval Letter) and who has the right to take care of all problems around the ferry port even though the port is a facilities at the end of the ocean, river or lake to receive ships and transfer cargo and passengers into them, therefore because of this problem a new draft regulation will be born, b. In article 59 just explain administrative sanctions in the form of warnings, administrative fines, suspension of permits or suspension of certificates; or revocation of license or revocation of certificate and does not discuss the issue of revocation of a person's authority to become a crew member, c. In Article 61, paragraph (3), in the event that the technical requirements for seaworthiness and the minimum service requirements for pre-crossing transportation are not equipped with ship requirements and specifications, d. In article 151 (1) seafarers' welfare issues are ignored, e. In article 169 (1) there is uncertainty in the provision of sanctions because it does not include serious criminal sanctions, f. In addition, it also includes the problem of unequal regulations that collide with the demand for derived transportation due to economic, social and other activities as well as the lack of transportation facilities at sea, even though in the regulation the availability of the number of modes plays a vital role in the socio-economic aspect through function in the distribution between one region to another, especially in the marine highway program.

Weaknesses in Act No. 17 of 2008 concerning Shipping Affecting Regulations to Support Sea Transportation Connectivity in Indonesia Currently Unjust, Pancasila, among others because; a. Weak Implementation and Lack of Regulations to Support Sea Transportation Connectivity in the Sea Toll Program which Causes Many Accidents, b. Delay in Realization of Sea Toll Infrastructure Development as Inter-Island Connectivity in Indonesia In Facing the Globalization Era of the World Economy, c. Weak legal protection for Indonesian seafarers on board, d. Shipping safety supervision is still weak, especially LLASDP (River Lake and Crossing Transport Traffic), e. Maritime Transportation Problems In Indonesia Which Include Maritime Transportation Investment Problems, Obstacles In Financing Ships, Weak Port and Shipping Management, Unfavorable Investment and Financial Climate, Lack of Assistant Harbor Masters, Functional Positions of Shipping Safety Supervisors and Credit Scores Haven't Been Too Paying Attention To.

D. CONCLUSION

Reconstruction of Act No. 17 of 2008 concerning Shipping in the Sea Transportation System to Succeed the Sea Toll Program and Improvement of Indonesian Shipping Administration Based on Pancasila Justice Value is as follows; a. Article 28 paragraph (6) in terms of granting permits and shipping administration procedures and ship operation by the Regent/Mayor, Governor, and Minister. Besides that, there is also a struggle for authority between the Director General of the Sea and the Director General of Land regarding the management of the port in charge of crossings reconstructed in the Shipping Administration System, the permit is granted and the man-

agement is handed over to the Directorate General; and/or harbormaster and/or Land Transportation Management Center (BPTD), b. Article 59 reconstructed with the addition of paragraph (2) Revocation of one's authority to become a permanent crew member in the case of committing a serious crime based on the criminal law and/or the prevailing laws and regulations, c. Article 61, paragraph (3) is reconstructed with the addition of ship requirements and specifications, d. Article 151 (1) reconstructed with the addition of welfare monitoring guarantees in accordance with the standards set in the applicable labor laws and regulations, and e. Article 169 (1) reconstructed by adding sentences violation of this provision may be subject to criminal sanctions and/or administrative sanctions.

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