

The Impact of Business Legal Regulations on the Security and Safety of Commercial Vessels in International Waters

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Abstract. *This study aims to examine the extent to which business legal regulations contribute to improving merchant ship safety standards in international waters and to analyze their impact on maintaining shipping safety. This study uses a normative legal approach, which emphasizes the study of applicable laws as norms or guidelines in practice. The type of data used is secondary data, with data sources in the form of case studies of court decisions and literature reviews referring to related laws and regulations. The data collection method is carried out through document studies, including analysis of legal regulations, academic literature, and other official documents. Based on the research, it is concluded that business law plays a crucial role in creating a regulatory framework that supports shipping safety. Strict law enforcement against violations, including illegal fishing, not only provides a deterrent effect but also protects the country's image and natural resources. In addition, business law regulations also have positive implications for ship safety supervision and management, including licensing, training, and certification for captains and crew. Therefore, shared responsibility between the government, operators, and service users is very important to ensure shipping safety and the sustainability of the maritime environment.*

Keywords: *Business; International; Safety; Waters.*

1. Introduction

The Majapahit and Srivijaya kingdoms are the origins of Indonesia's maritime heritage. The era of the Royal Package Company (KPM, 1888-1960) in Indonesia was also marked by a vibrant maritime history, which had the largest fleet of ships in the world, in addition to these historical kingdoms. In addition, the Djakarta Lloyd fleet has a wide presence in various ports around the world. The sea has significant geo-strategic significance for Indonesia, serving as a unifying force but also having the ability to cause conflict between regions or countries. Indonesia, with a maritime territory covering 80% of its 5,800,000 km², is home to 17,504 islands connected by the sea and has a coastline of 80,791 km. Indonesia is strategically located where two oceans and two continents intersect, making its sea territory an important route for global trade and national and international shipping. This makes Indonesia part of the global supply chain system. This position also places Indonesia in an important role in the

international world as the center of gravity of the Asia Pacific region.¹Indonesia has a strategic location because it borders 10 neighboring countries, including Thailand, India, Timor Leste, Singapore, the Islands, Papua New Guinea, the Philippines, Malaysia, Vietnam, and Australia. In addition, Indonesia also has 11 provinces located in the maritime border area, namely Nanggroe Aceh Darussalam Province, Riau Province, North Sumatra Province, North Kalimantan Province, Riau Islands Province, North Sulawesi Province, North Maluku Province, Maluku Province, East Nusa Tenggara Province, Papua Province, and West Papua Province.²Indonesia's geographical location covers four of the nine globally recognized sea lines of communication.

Indonesia plays an important role in maintaining the safety and security of international maritime trade in the Straits of Malacca, the South China Sea, and three Indonesian archipelagic sea lanes.³ This strategic position has two important meanings: first, it has strategic importance, and second, it is a strategically advantageous location. Indonesia's strategic position has two important implications. First, Indonesia is located at the intersection of two cultural movements shaped by market dynamics and conflicting primary identities in the era of globalization.⁴ Second, Indonesia is located between the southern maritime defense system and the northern continental defense system in terms of defense. On the contrary, Indonesia has extensive marine resources including marine life, fisheries, and technological advances derived from the ocean. Indonesia's marine quality is the result of its marine nature, which makes it both a country and a nation.⁵

The sea plays an important role as a major route connecting various parts of the world. Across the ocean, individuals from different countries engage in a variety of interactions, including trading goods and sharing scientific knowledge. Therefore, the sea plays an important role in global diplomatic interactions.⁶ International maritime law is very important, because the sea plays a vital role in international relations. The purpose of this law is to regulate various activities carried out at sea, including its role as a means of transportation, a reservoir of resources, and a potential source of energy. The legal status of these vessels must be determined by maritime law, because the sea can only be accessed by special vehicles, such as ships.

In addition, the distribution of marine resources must be effectively regulated by maritime law, especially in the context of industrialized and developing countries. The less than optimal utilization of marine resources by the Indonesian government poses a threat to Indonesia's interests in international waters, this danger is also influenced by Indonesia's national environmental conditions, which continue to face unresolved problems related to territorial

¹ Kartika, Shanti Dwi. "Maritime Security From The Aspects Of Regulation And Law Enforcement." State of Law: Building Law for Justice and Welfare Vol.5, No.2 (2016): Pages 143-167, <https://dprexternal3.dpr.go.id/index.php/Hukum/article/view/238/179>

²Ministry of National Development Planning/Bappenas. Technocratic Draft of RPJMN 2015-2019, Jakarta. Page 33

³ Y. Paongan, RM Zulkipli, and Kirana Agustina, 9 Perspectives Towards Indonesia's Maritime Future, Jakarta: Indonesian Maritime Institute Foundation, 2012. p. 414

⁴Ministry of National Development Planning/ Bappenas, Op.,Cit

⁵Wahyuno SK, 2009. Indonesia as a Maritime Country, Teraju Publisher, Jakarta, p. 4.

⁶Boer Mauna, 2005. International Law, Second Edition, PT. Alumni, Yogyakarta, p. 305.

boundaries, including land and sea borders.⁷ Despite the many potentials that exist in Indonesia, there are also some risks. In 2007, statistics from the International Maritime Bureau (IMB) indicated that Indonesia's advantageous location has led to an increase in pirate attacks, which poses a security risk. Indonesian waters in the Strait of Malacca are one of the most crime-prone areas, as evidenced by statistics, which show a 10% increase in pirate attacks.⁸ The act of piracy in Indonesian waters has now been classified as an international offense. Given its status as an archipelagic country with large sea access and extensive maritime borders, Indonesia's maritime security issues largely revolve around transnational criminal activities.

From a maritime security perspective, transnational crime poses a significant challenge in terms of violent conflict, as criminals can defy law enforcement and protection operations carried out by security forces or other relevant parties in Indonesian waters.⁹ Beginning in 1960, the SOLAS regulatory update replaced the 1918 Convention with SOLAS 1960, which included additional requirements aimed at improving ship safety. Topics included ship design, structure, machinery, electrical systems, fire prevention, safety equipment, methods of communication, and navigation. To improve this legislation, the International Maritime Organization (IMO) introduced a series of modifications in 1966, 1967, 1971, and 1973. However, efforts to implement these regulations internationally have been hampered by procedural obstacles, due to the fact that they require the approval of two-thirds of member states for ratification, a feat that is often difficult to achieve within the anticipated timeframe. The SOLAS 1974 Treaty was drafted in 1974, and requires that any modifications be implemented according to a predetermined timetable, unless they are rejected by one-third of member states or 50% of the world's shipowners by tonnage.¹⁰

The 1982 UN Convention on the Law of the Sea was voluntarily ratified by Indonesia in 1985. In accordance with Law No. 17 of 1985, this agreement came into force on December 31, 1985. Therefore, the validity of this agreement as the basis for Indonesia's national law cannot be denied.¹¹ The United Nations Convention on the Law of the Sea, which has been ratified, regulates maritime piracy in Article 101. Pirate activities within Indonesian waters are regulated in Articles 438, 439, 440, and 441 of the Criminal Code (KUHP), also known as Law Number 1 of 1946 concerning Criminal Law Regulations, State Gazette of the Republic of Indonesia 1946 Number 1660. For the purposes of this article, "piracy" means acts of violence and unlawful acts that occur in Indonesian territorial waters or on the high seas. The regulation of piracy in the Indonesian Criminal Code is far behind the development of international norms and the demands of contemporary situations and conditions, as it originates from Dutch colonial law.

⁷Nur Yanto, 2014. *Understanding Indonesian Maritime Law*, Mitra Wacana Media, Jakarta, page 3

⁸Aan Kurnia, 2017. *Between Threats & Opportunities*, Epicentrum Walk, Jakarta, p. 27.

⁹Wirantno, Kiki Hadi, Dwi Budiarti, and Wiwin Ariesta, 2022. *LEGAL PROTECTION OF SHIP CREW AGAINST PIRACY OF MERCHANT SHIPS IN INDONESIAN SEA*. *Yurijaya: Scientific Journal of Law* Vol.4. No.1, http://yurijaya.unmerpas.ac.id/index.php/fakultas_Hukum/article/view/70

¹⁰Suryani, Dedeh, Aprilia Yudi Pratiwi, and Andi Hendrawan, 2018. "The role of harbor masters in shipping safety." *Saintara: Scientific Journal of Maritime Sciences* Vol.2.No.2: Pp.33-39, <https://amn.ac.id/ojs/index.php/saintara/article/view/75>

¹¹I Wayan Parthiana, 2014. *International Maritime Law and Indonesian Maritime Law*, Yrama Widya, Bandung, p. 336

This document emphasizes the importance of shipping, which is a component of maritime transportation, as outlined in Law No. 17/2008 on Shipping, also known as the Shipping Law. Shipping is considered an important component in the national perspective of the Republic of Indonesia and plays an important role in preserving the unity and integrity of the nation as a maritime nation. Shipping, often known as sea transportation, is an important component of the overall transportation system and is closely interconnected with other modes of transportation. Shipping has unique attributes that allow it to efficiently facilitate large-scale transportation across regions via waterways. These characteristics provide significant capacity for development and an important role in the national and international context. By encouraging and supporting national development, shipping plays a role in improving the welfare of society, in line with the principles of Pancasila and the 1945 Constitution. Therefore, the safety and security system of shipping is a crucial aspect that needs to be considered as a basis and standard for decision-making in assessing the feasibility of shipping. This includes evaluating the adequacy of the ship, navigation system, and personnel involved.¹²

Business legal regulations governing merchant ship operations are an important factor in ensuring the safety and security of shipping. These regulations cover various aspects, ranging from work safety regulations, ship technical standards, environmental protection, to regulations related to protection against piracy and other illegal activities. With the implementation of effective regulations, it is expected to be able to minimize risks and improve shipping safety standards. Indonesia, as an archipelagic country with a vast sea area, plays a significant role in international shipping. With its strategic position across world trade routes, Indonesia is faced with a great responsibility to ensure that ships passing through its waters are safe and secure. The various business legal arrangements implemented in Indonesia need to be evaluated to see how far they affect the security and safety of merchant vessels in international waters.

The objectives of the research that the author wishes to achieve in this research include:

- a. To identify and examine the contribution of business legal regulations to improving merchant ship security standards in international waters.
- b. To find out and study the impact of business legal regulations in maintaining the safety of merchant ships in the context of globalization and market competition.

2. Research methods

This study uses a normative legal approach, which focuses on the study of applicable laws as norms or guidelines in practice. The type of data used in this study is secondary data, which includes case studies of court decisions and literature reviews referring to related laws and regulations. Data were collected through document studies, including analysis of legal regulations, academic literature, and other official documents. The data analysis method used is a qualitative analysis of the legal sources obtained, to understand and interpret the legal rules relevant to the object of research.

¹² Kadarisman, Muh. 2017. Maritime safety and security policies in supporting the marine transportation system. *Journal of Transportation Management & Logistics (JMTRANSLOG)* Vol.4.No.2 pp: 177-192, <https://journal.itltrisakti.ac.id/index.php/jmtranslog/article/view/121>

3. Results and Discussion

3.1. Contribution of Business Legal Regulations to Improving Commercial Ship Safety Standards in International Waters

Business law plays an important role in improving the safety standards of merchant ships in international waters. With clear regulations and policies, business law can create a framework that supports shipping safety and encourages compliance with established standards. The contribution of business law regulations to improving the safety standards of merchant ships in international waters can be seen through the following aspects, namely the formation of International Standards.

With the existence of business law regulations through international agreements and conventions, such as SOLAS (Safety of Life at Sea), UNCLOS (United Nations Convention on the Law of the Sea), and ISM-Code (International Safety Management Code), it provides a legal framework that requires member countries to implement merchant ship safety standards.

1. SOLAS regulates ship safety, including safety equipment, ship stability, fire-fighting equipment and emergency evacuation.
2. UNCLOS establishes the obligations of states to ensure the safety of navigation in their waters and the protection of the marine environment.
3. The ISM-Code encourages shipping companies to develop and implement safety management systems (SMS).

The participating countries of the international convention have standardized it into their respective national laws. This means that business law functions as a law enforcement tool against violations of safety standards. The court decisions that the author obtained and the author describes below are the author's review of the results of the application of business law to improving ship safety standards in international waters,

1. Decision Number: 8/Pid.Sus-PRK/2019/PN.Bit

The fisheries court and the Bitung district court issued the following verdicts:

- a. Declaring that the defendant CHECKLET ALIA SONSONA has been proven legally and convincingly guilty of committing the crime of "owning and/or operating a foreign-flagged fishing vessel carrying out fishing in the EEZ without a Fishing Permit (SIPI)" as we have charged in the Second indictment which is regulated and subject to criminal penalties in Article 93 paragraph (2) in conjunction with Article 27 paragraph (2) in conjunction with Article 102 of Law of the Republic of Indonesia No. 45 of 2009 concerning Amendments to Law of the Republic of Indonesia No. 31 of 2004 concerning Fisheries.
- b. Imposing a fine of IDR400,000,000,- (four hundred million rupiah) on the defendant CHECKLET ALIA SONSONA. If the fine is not paid, it will be replaced with imprisonment for 6 (six) months.

On the Charges: At some point in July 2019, at approximately 01.40 WITA on Sunday, July 28, 2019, in the Fisheries Management Area of the Republic of Indonesia or elsewhere in Indonesian Jurisdictional Waters, the Philippine-flagged ship FB JHON CARL captained by CHECKLET ALIA SONSONA. The Bitung Fisheries Court at the Bitung District Court has jurisdiction over the location and has the authority to investigate and try this case.

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That on Sunday, July 28, 2019, or at least in another place that is still included in the Indonesian Jurisdictional Waters, the defendant CHECKLET ALIA SONSONA in his position as captain of the Philippine-flagged ship, FB JHON CARL, on Sunday, July 28, 2019 at around 14.00 WIT, or at least in another place that is still included in the Indonesian Jurisdictional Waters, at the coordinates 020.27.208' N - 1240.17.906' E, carried out illegal fishing activities in Indonesian waters, precisely in the Sulawesi Sea waters at the coordinates 020.27.208' N - 1240.17.906' E. The location is still included in the jurisdiction of the Bitung Fisheries Court at the Bitung District Court, which has the authority to examine and try the accused "any person who owns and/or operates a foreign-flagged fishing vessel carrying out fishing in the ZEEI without a Fishing Permit (SIPI)."

In accordance with the request of the Public Prosecutor regarding the evidence used in the fisheries crime, the Panel of Judges has determined that the ship FB. JHON CARL and all its equipment be confiscated for destruction. This is in accordance with the provisions of the Criminal Procedure Code (Article 46 paragraph (2)), Law No. 45 of 2009 (Article 104 paragraph (2)), and the amendment to Law No. 31 of 2004 (Article 194 paragraph (1)) relating to fisheries. The Panel of Judges rejected the demands of the public prosecutor to destroy FB. Jhon Carl and its fishing gear as a means to enforce Positive Law (as long as it does not conflict with UNCLOS 1982) and to deter fishermen from other countries from carrying out illegal fishing throughout the waters of the Republic of Indonesia. One of the objectives of criminal punishment is to "achieve the principle of the benefit of the decision", and the Panel of Judges considered the fact that the evidence of the ship and its equipment can still be used and has economic value. On the other hand, the Panel of Judges decided that the vessel and its fishing gear could still be used for fishing even though there had been economic losses and a domino effect caused by the defendant's activities, especially Illegal Fishing. Thus, there would be significant financial consequences if the vessel were destroyed. The defendant in this case was aggravated by the following:

- a. "The Defendant's actions in entering the territory of the Republic of Indonesia to carry out tuna fishing activities without a permit from the Indonesian government will damage Indonesia's image because it allows IUU Fishing in Indonesian waters;
- b. The defendant raised the Indonesian national flag, the Red and White, which constitutes an insult to the State Emblem, and was used for illegal fishing in Indonesian waters."

2. Decision Number: 9/Pid.Sus-PRK/2019/PN.Bit

The Fisheries Court and the Bitung District Court have issued the following decisions:

- a. Demanding that SADDAM NOR BALUAN be proven legally and convincingly guilty of committing the crime of "anyone who owns and/or operates a foreign-flagged fishing vessel carrying out fishing in the EEZ without a Fishing Permit (SIPI)" as we charged in the Second indictment which is regulated and subject to criminal penalties in Article 93 paragraph (2) in conjunction with Article 27 paragraph (2) in conjunction with Article 102 of Law of the Republic of Indonesia No. 45 of 2009 concerning Amendments to Law of the Republic of Indonesia No. 31 of 2004 concerning Fisheries.
- b. Sentencing the defendant SADDAM NOR BALUAN to a fine of IDR 400,000,000 (four hundred million rupiah) with the provision that if the fine is not paid, it will be replaced with imprisonment for 10 (ten) months.

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On the Charges: Defendant SADDAM NOR BALUAN as the Captain of the Philippine-flagged FULL BLAST Ship, on Thursday, August 1, 2019 at 17.50 WITA or at least at another time in August 2019 in the Waters of the Republic of Indonesia Fisheries Management Area (WPPRI) Sulawesi Sea at the coordinates 030 47.205' N - 1220 58.302' E or at least at another place in the Waters of the National Jurisdiction of Indonesia, which is still included in the jurisdiction of the Bitung Fisheries Court at the Bitung District Court, which has the authority to examine and try him, anyone who intentionally in the Indonesian fisheries management area carries out fisheries business in the fields of catching, cultivating, transporting, processing and marketing fish that do not have a Fisheries Business License (SIUP).

Therefore, several questions arise: Countries bordering the Exclusive Zone can only use economic power there, according to the 1982 UNCLOS International Convention. In certain areas/limits stipulated by the 1982 UNCLOS Convention-maximum 200 Nautical Millimeters (Nm) from the baseline of the waters-coastal states exercise their exclusive rights (sovereign rights) to exploit, explore, and manage natural resources, including fish resources. Given that the International Convention has established regulations for non-coastal states or individuals who will carry out activities regulated in this convention, they are required to comply with the positive law of the sovereign coastal state over the Exclusive Economic Zone, as outlined in Article 58 paragraph (3) of UNCLOS 1982 "In exercising their rights to fulfill their obligations under this Convention in the exclusive economic zone, States must pay proper attention to the rights and obligations of the coastal State and must comply with the laws and regulations stipulated by the coastal State in accordance with the provisions of this Convention and other international legal regulations as long as these provisions do not conflict with these provisions". The trial facts revealed that the owner of the FULL BLAST - 4 ship was not the Defendant, who was actually Mr. Tony Tabin, a Filipino citizen living in Cawa Maitum Sarnggani, Philippines Province. Therefore, the defendant "Saddam Nor Baluan" will be considered the element of "Operating a foreign-flagged fishing vessel to catch fish in the Indonesian Exclusive Economic Zone (ZEEI) without a Fishing Permit (SIPI)". The aggravating factors for the defendant in this case are:

- a. The Defendant's actions in entering the territory of the Republic of Indonesia to carry out tuna fishing activities without permission from the Indonesian government are feared to have caused the international community to consider Indonesia as an archipelagic state to be incapable of protecting its waters.
- b. The Defendant's actions, apart from harming state revenues from the fisheries business, indirectly damaged the image of the Indonesian nation as an archipelagic state;

3. Decision Number: 190/PDT/2020/PN.SMR

The East Kalimantan High Court in Samarinda, which examines and tries civil cases in the Appellate Court has issued a verdict: TNB FUEL SERVICES Sdn. Bhd., domiciled in a company established under the laws of the State of Malaysia with a domicile at Level 16, Menara TM, Jalan Pantai Baharu, 50672 Kuala Lumpur, Malaysia represented by Zainal Abidin Shah bin Mahamood, in this case grants Power of Attorney to Afriyan Rachmad, SH, et al. Advocates at Roosdiono & Partners with an address at Energy Building, 32nd Floor, SCBD Lot 11A, Jl. Jend. Sudirman Kav. 52-53, Jakarta 12190, based on a Special Power of Attorney dated February 27, 2020 which has been registered at the Balikpapan District Court Clerk's Office with register Number 200/SK/03/20/PN Bpp and to Frida Imelda, SH Advocate at the Frida Imelda, SH &

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Rekan office at Jalan Tirtayasa Number 59 RT. 61 Gunung Sari Ilir Balikpapan based on a Substitution Power of Attorney which has been registered at the Balikpapan District Court Clerk's Office on April 9, 2020 which has been registered at the Balikpapan District Court Clerk's Office with register Number 256/SK/04/20/PN. Against, THE GOVERNMENT OF THE REPUBLIC OF INDONESIA cq BALIKPAPAN DISTRICT ATTORNEY'S OFFICE, residing at Jl. Jenderal Sudirman, Gn. Bahagia, South Balikpapan, Balikpapan, East Kalimantan, represented by Dr. Josia Koni, SH, MH in this case gave Power of Attorney to Adi Wibowo, SH, MH et al based on a Special Power of Attorney dated April 2, 2020 which has been registered at the Balikpapan District Court Clerk's Office with register Number 237/II/SK/04/2020/PN. The facts of the case in this case are:

- a. Pelawan is a company established under the laws of Malaysia, engaged in the provision and sale of coal to be used for several power plants in Malaysia.
- b. On December 21, 2016, Pelawan placed an order to purchase coal from PT Firman Ketaun Perkasa (PT FKP), a company engaged in the sale of coal established under Indonesian law, through Coal Purchase Contract No. TF 112/16 (Coal Purchase Agreement) for a delivery period of 5 (five) years from April 1, 2017 to March 31, 2022.
- c. Based on an email dated March 23, 2018, Pelawan proposed the MV Ever Judger vessel to be used to transport cargo from BCT to Manjung Lumut, Perak, Malaysia.
- d. On March 30, 2018, due to the negligence of the captain of the MV Ever Judger, the MV Ever Judger damaged Pertamina's underwater oil pipeline which then resulted in environmental pollution in Balikpapan Bay, resulting in loss of life.
- e. An investigation has been conducted by the East Kalimantan Regional Police, which was continued with prosecution by the Defendant, and the trial of the captain of the MV Ever Judger ship at the Balikpapan District Court with registration number 749/Pid.B/LH/2018/PN.Bpp (Case 749) in which in the examination of the case, the Cargo was submitted as evidence by the Defendant.
- f. On April 11, 2019, the Balikpapan District Court issued a decision in case 749 (Decision 749/2018) which stated, among other things, that the evidence in the form of cargo was confiscated for the state.

In the main case of this case, the risk of the Appellant's business activities in running a coal trading business Based on Article 3 paragraph (3) of the Memorandum and Article of Association of TNB Fuel Sendees Sdn. Bhd., (vide P-1a, P-1b) is not the cause of the pipe leak caused by the captain's negligence in driving the MV Ever Judger. The risks are the risks of PT Pertamina (Persero) and the Captain of the MV Ever Judger and not risks arising from the Appellant's business activities.

In the legal considerations of Criminal Decision 749/2018 (vide P-17), it is clear that the Convict Zhang Deyi's deliberate act of pollution was the cause of the MV Ever Judger accident which caused the seawater quality standards to be exceeded as can be quoted by the Appellant as follows:

Legal Considerations page 110 of Criminal Decision 749/2018: "Considering, the defendant's balnea as the captain had known about the prohibition in the waters of Balikpapan Bay based on ECDIS data on the MV Ever Judger ship and the prohibition in the form of a foam sign in the area where anchoring is prohibited because there is an underwater pipeline belonging to

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PT Pertamina based on the Indonesian sea map Number 157 and Electronic National Charts (ENC) ID400157 which is an official vector sea map based on electronics in accordance with the SOLAS (Safety of Life at Sea) Conversion Mandate IMO (International Maritime Organization); Considering, that the defendant who knew about the prohibition read from the ECD1S and the foam that could be seen at sea, should have avoided or overcome it so as not to lower the anchor but the defendant instead ordered the mate I to lower the anchor 1 seal (27.5 meters) in the water when entering the underwater pipeline area."

The individual who has been punished is the captain of the MV Ever Judger, who was responsible for the safety, security and order of the ship, its crew and cargo in the event of an accident. The following is an excerpt from the provisions of the Shipping Law relating to the captain's responsibilities, as stated in Law Number 17 of 2008 concerning Shipping (Shipping Law).

4. Decision Number: 941/Pid.Sus/2023/PN.Btm

The Batam District Court, Riau Islands, has decided on the case of oil pollution in the North Natuna Sea by the Iranian-flagged tanker MT Arman. In the decision, the defendant Mahmoud Mohamed Abdelaziz Mohamed Hatiba denied working as the captain of the MT Arman tanker. The Panel of Judges' Decision Number 941/Pid.Sus/2023/PN Btm dated December 14, 2023 concerning the determination of the trial date; Case files and other relevant letters; After hearing the statements of the Witnesses, Experts and the Defendant and considering the written evidence and evidence presented at the trial;

After hearing the reading of the criminal charges submitted by the Public Prosecutor, which in essence are as follows:

a. Declaring the Defendant MAHMOUD MOHAMED ABDELAZIZ MOHAMED HATIBA legally and convincingly guilty of committing an environmental crime, as regulated and threatened in the Indictment of Article 98 Paragraph (1) of Law Number 32 of 2009 concerning Environmental Protection and Management as amended by Law Number 06 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law;

b. Sentencing the Defendant MAHMOUD MOHAMED ABDELAZIZ MOHAMED HATIBA to 7 (seven) years imprisonment and a fine of IDR 5,000,000,000,- (five billion rupiah) subsidiary to 6 (six) months imprisonment, with an order that the Defendant be immediately detained;

After hearing the response of the Defendant's Legal Counsel and the Defendant to the Public Prosecutor's response which in essence remained true to his defense;

Considering that the Defendant was charged based on the Public Prosecutor's indictment Number PDM-276 / Eku.2 / BATAM / 12 / 2023 dated December 4, 2023 as follows:

That the Defendant MAHMOUD MOHAMED ABDELAZIZ MOHAMED HATIBA, on Friday, July 7, 2023 at around 07.30 WIB or at least still in July 2023, in the North Natuna Sea Waters of the Riau Islands Province (At Position 03o 39' 25" N – 104o 48' 9" E) or at least in a place that is still included in the jurisdiction of the Natuna District Court, but because the Defendant was found on the MT. ARMAN 114 Ship and most of the witnesses who were called were closer to the Batam District Court, then based on Article 84 paragraph (2) of the Criminal Procedure Code, the Batam District Court which has the authority to examine and try this case,

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intentionally carried out activities that resulted in the exceedance of seawater quality standards, the Defendant's actions were carried out in the following ways:

That starting on Friday, July 7, 2023, the KN Marore 322 ship belonging to BAKAMLA RI (Maritime Security Agency of the Republic of Indonesia) led by witness YULI EKO PRIHARTANTO bin DIDIK SUHARIANTO as the Ship Commander, conducted a sector patrol in the North Natuna Sea waters at position 03o 33' 22" N – 104o 57' 04" E, at around 07.30 WIB the left Patrol Supervisor reported seeing contact between 2 (two) foreign ships attached to each other at the red position 20°. Then the Radar Officer reported that the contact was a silent contact without AIS (Automatic Identification System) at bearing 330° distance 11 Nm (Nautica Mile) at position 03o 40' 6" N – 104o 48' 28" E exactly 1 Nm inside the Indonesian continental shelf, and was suspected of being a ship that was carrying out a cargo transfer/ship to ship transshipment. Then witness YULI EKO PRIHARTANTO bin DIDIK SUHARIANTO as the Commander of KN Marore 322 owned by BAKAMLA RI tried to approach the two ships, then based on visual identification there were 2 (two) tankers carrying out ship to ship transshipment with the name Lambung Kapal MT. ARMAN 114 flagged Iran IMO 9116912 and MT. S TINOS flagged Kribi (IMO deleted) and there was a hose connecting the two ships.

Then at 08.30 WIB, witness YULI EKO PRIHARTANTO bin DIDIK SUHARIANTO as the Commander of KN Marore 322 owned by BAKAMLA RI and the Communications Officer tried to communicate using VHF Channel 16 radio, but it was inactive and did not get a response from the two ships and showed uncooperative actions. Then the Team was sent to sea using a Small Ship/RHIB (Rigid Hull Inflatable Boat) to approach the MT Ship. ARMAN 114 flying the Iranian flag IMO 9116912 and MT. S TINOS flying the Kribi flag (IMO removed) while communicating by radio and taking photos and videos. The Team on the RHIB Ship (Rigid Hull Inflatable Boat) communicated again via radio and visually (waving, giving hand signals to stop the engine) while circling the two ships that were stuck together twice, but neither ship responded and started moving and maneuvering slowly then the Team saw a spill suspected to be waste at the rear of the MT Ship. ARMAN 114 with the Iranian flag IMO 9116912 which has changed the sea water to black and rainbow, when the RHIB (Rigid Hull Inflatable Boat) Ship team took samples of sea water that looked rainbow and oil in two points, namely at the stern of both ships with the condition that the ships were maneuvering and maneuvering, When the MT Ship. ARMAN 114 with the Iranian flag IMO 9116912 and MT. S TINOS with the Kribi flag (IMO removed) began to move and separate themselves, the KN Marore 322 ship belonging to BAKAMLA RI continued to follow and stick to the MT Arman 114 Ship while the MT Ship. S TINOS with the Kribi flag moved in a different direction;

That the Defendant MAHMOUD MOHAMED ABDELAZIZ MOHAMED HATIBA as the Captain of the Iranian-flagged MT Arman 114 Ship at that time was conducting a ship to ship transshipment with the Kribi-flagged MT. S TINOS Ship with the cargo being transferred in the form of crude oil. That the Iranian-flagged MT. ARMAN 114 Ship IMO 9116912 and MT. S TINOS with the Kribi flag (IMO removed) deliberately turned off the AIS (Automatic Identification System) so that it could not be read on the radar and turned off the VHF Radio, to carry out ship to ship transshipment so that when the cargo was transferred, a Sludge Oil spill occurred so that rainbow and brown water was seen coming out of the left stern (rear) hole of the MT Arman 114 Ship, which had spread in the sea around the MT Arman 114 Ship and Based on the results of drone monitoring, there was a discharge of liquid from the stern

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of the left hull of the MT ARMAN 114 ship which was suspected of dumping waste into the sea. However, the Defendant MAHMOUD MOHAMED ABDELAZIZ MOHAMED HATIBA as the Captain of the MT Arman 114 Ship with the Iranian flag ignored the warning from BAKAMLA and tried to escape from Indonesian Waters;

That then at 17.00 WIB the MT Arman ship attempted to escape and enter Malaysian waters so that BAKAMLA RI requested assistance from the Malaysian Coast Guard to stop the ship, then the Malaysian Coast Guard using a helicopter was able to board the MT Arman 114 ship and stop the MT Arman 114 ship with the Iranian flag, so that the Defendant MAHMOUD MOHAMED ABDELAZIZ MOHAMED HATIBA and the ship's crew were secured and handed over to the KLHK (Ministry of Environment and Forestry) investigator in Batam to be further processed legally;

That due to the actions of the Defendant MAHMOUD MOHAMED ABDELAZIZ MOHAMED HATIBA, the Natuna Sea Water at the position point 03o 39' 25" N – 104o 48' 9" E has been polluted and exceeds the sea water quality standards, this is in accordance with the results of laboratory tests on sea water samples in Report No. 01/LAP/DPMP/VII/2023 dated July 25, 2023 from the Lemigas Oil and Gas Testing Center, Ministry of Energy and Mineral Resources which was approved by Muh Kurniawan, Ph.D (Head of the Analytical Group Team) with the conclusion:

- a. Visually, an oil layer was observed on the contaminated sample;
- b. Test results on contaminated seawater samples showed values above other qualities.
- c. Seawater samples with ARM Code were proven to be contaminated by oil and grease parameters, TPH and phenol content;

That the Sea Water sample has undergone fingerprint analysis with sample codes Tier-1 to Tier-4 to match the spilled oil extracted from contaminated sea water samples with 5 (five) types of comparative samples taken from the MT Arman 114 Ship. Among the five types of samples, there is one sample that is declared MATCHING with the contaminant/spill oil sample, namely the sample with the code MT-ARM-4 which is Oil Sludge taken from the slope tank. This is in accordance with the Biomarker Fingerprint Identification Report for Oil Spill Samples in the North Natuna Sea Number 023/DPMR.4.1/VII/2023 issued by the LEMIGAS Geochemical Laboratory, with the Conclusion:

- a. Biomarker ratios indicate that the ARM oil spill sample has the same characteristics as the MT-ARM-4 sample;
- b. The results of observations on 15 "Key" Biomarker Diagnostic Ratio data between ARM oil spill samples and MTARM-4 comparison samples, showed that all diagnostic ratios had small differences (CD<14%) so that they were declared "SUITABLE" according to CEN requirements;
- c. Meanwhile, observations of the ratio of "key" biomarkers between ARM oil spill samples with MT-ARM-1, MT-ARM-3, MT-ARM-5 and MT-ARM-6 showed a "mismatch" because most of the diagnostic risks had CD values greater than 14%;
- d. Based on the diagnostic evaluation of the "key" biomarkers, it can be stated that the oil spill sample in the North Natuna Sea (ARM) originated from the comparison sample MT-ARM-4 which is oil sludge from the Slope tank;

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Considering, that based on the legal facts in the trial it was revealed that the MT Arman 114 Ship, flying the IRAN flag with a cargo of light crude oil of 166,975.36 Metric Tons, was the ship that caused the activity that exceeded the sea water quality standards in the waters of North Natuna, Riau Islands Province as has been considered by the Panel of Judges and also linked to the principles of Environmental Law, one of which is the importance of implementing the principle of preventing environmental hazards in order to maintain the environmental ecosystem, especially sea water in the waters of North Natuna, then the Panel of Judges is of the opinion that regarding the evidence of 1 (one) unit of the MT ARMAN 114 Ship, flying the Iranian flag with a cargo of light crude oil of 166,975.36 metric tons, because the evidence is a tool or means to commit a crime in the aquo case, namely a crime against the environment, then by continuing to pay attention to the provisions of Article 46 paragraph (2) of the Criminal Procedure Code, the evidence has legal grounds to be confiscated for the State;

Considering, that based on the description of the legal considerations above, then the defense note of the Defendant's Legal Counsel regarding the status of the evidence of the MT ARMAN 114 Ship and its cargo must be set aside; Considering, that before sentencing the Defendant, it is necessary to first consider the aggravating and mitigating circumstances of the Defendant;

Aggravating circumstances:

- a. The Defendant's actions could damage the marine ecosystem in the territory of Indonesia, especially the Natuna sea area, Riau Islands Province;
- b. The Defendant's actions are contrary to the Government's efforts to actively maintain and protect the sustainability of the environment in the territory of the Republic of Indonesia;
- c. The defendant was evasive in providing information at trial, thus complicating the trial process;

Mitigating circumstances:

- a. The defendant was polite at the trial;

Considering that based on the above circumstances with reference to the provisions of Article 12 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power which states "in the event that the Defendant is not present while the examination is declared to have been completed, the verdict can be pronounced without the Defendant being present", then by taking into account the absence of the Defendant at the trial of the aquo case and in connection with the provisions relating to this matter, the Panel of Judges will decide the aquo case without the Defendant being present with the verdict as stated below;

Considering, that because the Defendant was found guilty and the Defendant had not previously submitted an application for exemption from paying court costs, then based on Article 222 of the Criminal Procedure Code, the Defendant is also burdened with paying court costs;

Taking into account the provisions of Article 98 Paragraph (1) of Law Number 32 of 2009 concerning Environmental Protection and Management as amended by Law Number 06 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become Law and Law Number 8 of 1981 concerning Criminal Procedure Law and other relevant laws and regulations; and to try:

- a. The defendant MAHMOUD MOHAMED ABDELAZIZ MOHAMED HATIBA has been proven legally and convincingly guilty of committing the Criminal Act of “Intentionally carrying out activities that resulted in exceeding the sea water quality standards” as in the first alternative charge;
- b. Sentencing the Defendant to a prison sentence of 7 (seven) years and a fine of IDR 5,000,000,000.00 (five billion rupiah) with the provision that if the fine is not paid, it will be replaced with a prison sentence of 6 (six) months;
- c. Ordering that the Defendant be detained;
- d. Determine evidence in the form of:

The four decisions above show various cases that are relevant to the contribution of business law to shipping safety, maritime law enforcement, and marine environmental protection, as well as the application of increased merchant ship safety standards in accordance with the implementation of UCLOS, SOLAS and ISM Code: International Safety Management (ISM) Code which is an international regulatory framework designed to improve ship safety and prevent accidents. The application of UCLOS, SOLAS and ISM Code by companies engaged in shipping lines serves as a legal consideration in the operation of ships, ensuring that all ships meet the established seaworthiness standards.

1. Decision Number 8/Pid.Sus-PRK/2019/PN.Bit and Decision Number 9/Pid.Sus-PRK/2019/PN.Bit are cases of operating foreign-flagged fishing vessels in the Exclusive Economic Zone (EEZ) without a Fishing Permit (SIPI). The violations committed were Article 93 paragraph (2) in conjunction with Article 27 paragraph (2) in conjunction with Article 102 of Law No. 45 of 2009 concerning Amendments to Law No. 31 of 2004 concerning Fisheries.

- a. In terms of Business Legal Interests: This regulation provides a framework for business actors in the fisheries sector to operate legally and in accordance with established standards.
- b. Contribution to Security: Enforcement of these rules prevents illegal activities that could disrupt the marine ecosystem and ensures that activities in the EEZ are strictly monitored.

2. Decision Number 190/PDT/2020/PN.SMR is a case of environmental pollution due to the negligence of the captain of the MV Ever Judger in Balikpapan Bay. The violations committed were the captain's deliberate dropping of anchor in a prohibited area (the location of the underwater pipeline), violating the data-based rules of ECDIS (Electronic Chart Display and Information System) which must be used according to the SOLAS Convention.

- a. Business Legal Interests: International laws such as SOLAS and official nautical charts provide a framework for ship operators to manage operational risks.
- b. Contribution to Security: Law enforcement in this case demonstrates the importance of compliance with navigation technology regulated by international business law. This ensures the operational safety of ships and protects maritime infrastructure.

3. Decision Number 941/Pid.Sus/2023/PN.Btm with an environmental crime case related to pollution, involving violations by the defendant under Law No. 32 of 2009 concerning Environmental Protection and Management.

- a. Business Legal Interests: Environmental regulations ensure that business actors, including the shipping sector, are responsible for the environmental impacts they cause.

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b. Contribution to Security and Protection: This law enforcement emphasizes the need for efforts to prevent marine pollution that can impact ship safety and the balance of the marine ecosystem.

The conclusion of the four decisions above is that law enforcement in these cases provides a deterrent effect and ensures that business actors are responsible for their activities, supporting safety and operational sustainability in international waters which is a shared responsibility between the government, operators, and service users. The government as a regulator has an important role in establishing and enforcing policies that support shipping safety. This includes supervision of the implementation of safety standards by ship operators.

3.2. The Impact of Business Law Regulations on Maintaining the Safety of Commercial Vessels in International Waters

Business legal regulation plays an important role in creating a safe and sustainable shipping ecosystem. Through clear regulations and the implementation of international standards, business law ensures ship safety, protects marine ecosystems, and provides legal certainty for business actors. The overall impact of business legal regulation is the increased efficiency and security of maritime transportation in international waters. In an effort to maintain the safety of merchant ships in international waters, it has a significant impact, including:

1. Licensing of sea transportation companies, preservation of the maritime environment, and security and safety are regulated in Law No. 17/2008 concerning shipping. This shows that the Indonesian government highly values transportation security and safety, as well as the implementation of strict Supervision, Safety, and Control Standards for commercial vessels. This includes providing direction, guidance, training, licensing, certification, and technical assistance in the field of ship construction and operation. The ship's captain and crew also have an important role in maintaining ship safety. They must assume important responsibilities in operating the ship and ensuring that all safety requirements are met.

2. Implementation of SOLAS (Safety of Life at Sea) 1974, LLC (Load Line Convention) 1966, and the International Regulations for Preventing Collisions at Sea (P2TL) or Collision Regulation 1972. This shows that shipping safety is also influenced by international standards. International business law, through conventions such as SOLAS (Safety of Life at Sea), encourages the use of modern technology such as automatic navigation systems, radar, and sophisticated communication tools, supervises ship design to ensure operational feasibility, including stability and safety systems on board, and inspection standards that ensure ships always meet technical and safety requirements. The impacts of the implementation of Solas are:

a. Reduce the risk of accidents at sea such as collisions, sinking or fire.

b. Increasing business actors' confidence in the security of maritime transportation.

3. UNCLOS, and business law regulation provides a clear legal framework for ship operators and maritime business actors through regulations such as UNCLOS (United Nations Convention on the Law of the Sea) by guaranteeing safe navigation rights in international waters, providing legal protection for economic activities in maritime zones such as the EEZ. This has the following impacts:

a. Encourage investment in the shipping sector due to clear legal protection.

- b. Ensure that ship operations do not violate the territory or laws of other countries.
- 4. ISM-Code also needs to be implemented as a requirement for companies to have an adequate safety management system to ensure the safety of the ship. This system must follow the instructions and sample documents provided by the ISM-Code rules. Through the ISM-Code (International Safety Management Code), shipping companies are required to implement a Safety Management System (SMS) that involves the need for operational risk identification, crew training to deal with emergencies and structured incident reporting procedures to prevent future accidents. Thus, this rule has the following impacts:
 - a. Reducing the level of human error which is one of the main causes of maritime accidents.
 - b. Improving crew readiness in dealing with emergency situations.

4. Conclusion

From the results of the discussion above, the following conclusions can be drawn:

- 1. Business legal regulations can contribute to improving the safety standards of merchant vessels in international waters, namely:
 - a. Business legal regulations play a crucial role in creating a regulatory framework that supports shipping safety.
 - b. Business legal regulations play a role in the implementation of international conventions such as SOLAS, UNCLOS and the ISM-Code and provide the basis for ship safety standards that must be adhered to.
 - c. Business legal regulations accommodate law enforcement against violations, such as illegal fishing, not only providing a deterrent effect but also maintaining the country's image and protecting natural resources.
- 2. The impact of business law regulations in maintaining the safety of merchant ships in international waters, namely:
 - a. The impact of this business legal regulation has positive implications for ship safety supervision and management, which includes:
 - 1) Granting of permission,
 - 2) Training, and
 - 3) Certification for ship captains and crew.
 - b. Another positive impact is increasing the form of responsibility of the government, operators and service users in international waters.
 - a. With the existence of business legal regulations in maintaining the safety of merchant ships in international waters, the implementation of SOLAS, UNCLOS, and ISM-Code provides a basis for ship safety standards that must be adhered to and is fundamental in ensuring shipping safety in international waters, emphasizing the importance of compliance with international standards to prevent accidents and maintain the sustainability of the maritime environment.

In conclusion, comprehensive and effective business legal arrangements not only improve the safety standards of merchant vessels, but also play a role in maintaining the sustainability of the maritime environment, protecting the country's economy, and strengthening Indonesia's

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position in the international arena as a country that is serious about managing shipping safety and marine resources.

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