

## **Legal Analysis of Criminal Law Enforcement on Safety in Shipping of Ships That Are Negligent Towards Standard Operating Procedures from The Perspective of Shipping Law in Indonesia**

**Marizka P. Dianti<sup>1)</sup> & Arpangi<sup>2)</sup>**

<sup>1)</sup>Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: [marizkapdianti.std@unissula.ac.id](mailto:marizkapdianti.std@unissula.ac.id)

<sup>2)</sup>Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: [arpangi@unissula.ac.id](mailto:arpangi@unissula.ac.id)

**Abstract.** *Indonesia is an archipelagic country that has a dense flow in the maritime world with vital sectors that support logistics and economic flows. The high mobility of shipping in Indonesia requires compliance with established safety standards. However, in practice, negligence is still often found in the Standard Operating Procedure (SOP) for shipping safety. Many business actors and ship crews ignore these provisions, increasing the risk of maritime accidents and harming various parties. This condition shows the need for an in-depth study of efforts to enforce criminal law for violations of shipping SOPs. This study uses a juridical-sociological approach, namely combining normative legal studies with observations of social realities in the field. The approach that is the main basis is legislation, accompanied by references to relevant cases. The data used include primary and secondary data, collected through literature studies of laws and regulations, legal literature, and related investigative and investigative documents. The analysis technique used is descriptive-qualitative, in order to explain the relationship between legal norms and practices in their enforcement. The results of the study show that negligence towards shipping SOPs still often occurs, both in terms of technical operational aspects, miscommunication between related parties, and administrative negligence. This shows the still low quality of human resources (HR) in the shipping sector, minimal ongoing coaching, and less than optimal implementation of safety training. Criminal law enforcement is carried out through the involvement of authorized agencies, starting from the investigation and inquiry stages to the trial process. Therefore, there needs to be a systemic solution in the form of improving the quality of HR, strengthening regulations, and strict law enforcement to create an optimal shipping safety culture.*

**Keywords:** *Law Enforcement; Maritime Safety; Negligence; Standard Operating Procedure; Shipping Law.*

### **1. Introduction**

The philosophical basis of Indonesia as a country of law derived from Pancasila and the 1945

Master of Law, UNISSULA

Constitution of the Republic of Indonesia, is very relevant to the enforcement of criminal law against violations of Standard Operating Procedures (SOP) in the shipping world. In this context, a country of law means a country whose legal rules must be enforced fairly and consistently, including in the shipping sector. Law No. 17 of 2008 concerning Shipping (Shipping Law) is the legal basis for ensuring safety, security, and order at sea, and provides a basis for prosecuting parties who are negligent in providing legal accountability for negligence of SOP.

The Republic of Indonesia is a country of law, this is in accordance with Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia. In this case, what is meant by a country of law is a country that is subject to and stands on a country of law that guarantees justice to its citizens, by showing that Indonesia has a centralized government system. Justice is a requirement for achieving welfare for its citizens. Citizens need to be taught morality to every human being so that they become citizens who care about others in order to create welfare.

To realize the state of Indonesia as a country of law, law enforcement is very much needed, in this case law enforcement in the field of shipping is very important and strategic in order to support the effectiveness of shipping in a controlled manner and in accordance with the principles of shipping management so that shipping can run sustainably better. Law enforcement in shipping crimes is a system carried out to carry out investigations into crimes in the shipping sector, in accordance with the mandate of the Shipping Law to provide guarantees of safety, order and security in the shipping sector.

Investigations into crimes in the shipping sector as regulated in the Shipping Law are conducted by Civil Servant Investigators (PPNS) at the Directorate General of Sea Transportation. In addition to investigators from the Republic of Indonesia National Police and other investigators, in Article 282 of the Shipping Law, certain civil servants within agencies whose scope of duties and responsibilities are in the shipping sector are given special authority as investigators as referred to in the Shipping Law. The authority of PPNS is regulated in Article 282 and Article 283, while the criminal provisions are listed in Articles 284 to 336.

The position of the Shipping Law is positive law in Indonesia. As a lex specialist regulation, the Shipping Law has regulated all matters concerning shipping, including who and how to examine and investigate crimes related to shipping. Article 245 of the Shipping Law states that a ship accident is an incident experienced by a ship that can threaten the safety and/or lives of humans in the form of a ship sinking, a ship burning, a ship colliding and a ship running aground. In Article 1 Paragraph 1 of the Regulation of the Minister of Transportation of the Republic of Indonesia Number PM 20 of 2015 concerning Shipping Safety Standards Shipping Safety (PM 20/2015), it is emphasized that Shipping Safety is a condition of fulfilling safety requirements concerning transportation in waters, ports, and the maritime environment.

In Article 2 PM 20/2015 it is emphasized that port operators, sea transport operators and shipping navigation operators are obliged to fulfill shipping safety standards, shipping safety standards consist of human resources, facilities and/or infrastructure, SOPs, the environment and sanctions. Furthermore, shipping safety standards have a legal basis or are regulated in laws in the shipping sector, government regulations in the shipping sector,

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ministerial regulations in the shipping sector, director general regulations, and shipping announcements which refer to national regulations and the National and International Maritime Organizations, as well as international institutions in other shipping fields.

The implementation of criminal law enforcement against negligence in implementing shipping SOPs in Indonesia can be analyzed through several cases of ship accidents that occurred due to such negligence, including, KM Sinar Bangun sank in the waters of Lake Toba on June 18, 2018 and killed 164 people. Based on the investigation report of the National Transportation Safety Committee of the Republic of Indonesia (KNKT), the accident was caused by several factors, including:

- a. The ship was carrying passengers exceeding its capacity (capacity 43 people, filled with 184 people)
- b. The ship is not equipped with adequate safety equipment
- c. The ship sailed in bad weather conditions
- d. Lack of accurate passenger manifest
- e. Lack of safety equipment

In the law enforcement process, the Samosir Police named the captain of the KM Sinar Bangun, Tommi Parulian Sihotang, as a suspect on charges of violating Article 302 in conjunction with Article 117 paragraph (2) of the Shipping Law and Article 359 of the Criminal Code concerning negligence resulting in death. However, because the captain was among the missing victims, the legal process could not be continued.

The ship owner, Samsul Nainggolan, was also named a suspect on charges of violating Article 302 and Article 330 of the Shipping Law. The Simalungun District Court sentenced Samsul Nainggolan to 2 years in prison. According to Sihombing (2022), the law enforcement process in the KM Sinar Bangun case showed several weaknesses, including:

- a. There is no law enforcement against Harbor Masters who are negligent in supervising ship departures.
- b. The court's verdict was relatively light compared to the number of fatalities.
- c. Lack of adequate compensation for the victims' families

For traditional boat operators on Lake Toba, recommendations are focused on meeting shipping safety standards, including the provision and use of safety equipment, limiting the number of passengers according to the boat's capacity, and requiring crew members to have a Certificate of Proficiency (SKK). In addition, operators are required to report any boat modifications to the safety authorities to ensure the boat's seaworthiness is maintained.

Analysis of the investigation results and recommendations shows that the KM Sinar Bangun accident was the result of systemic failure, both in terms of regulation, supervision, and business actor compliance. Therefore, the implementation of KNKT recommendations is key to strengthening law enforcement and encouraging a better shipping safety culture in Indonesia.<sup>1</sup>

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<sup>1</sup>National Transportation Safety Committee, KNKT Recommendations Regarding the Sinar Bangun Ship Accident, INSA (Indonesian National Shipowners' Association), 2024.

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In addition, there was the case of KM Karya Indah, which caught fire in Maluku waters on May 29, 2021, resulting in 7 deaths and 274 survivors. Based on the KNKT investigation, the fire was triggered by an electrical short circuit due to installations that did not comply with SOPs and the absence of an adequate fire prevention system. Some of the identified SOP omissions are:<sup>2</sup>

- a. The use of PVC pipes as part of machinery components.
- b. The exhaust manifold and the turbine side of the right main engine turbocharger, which are hot surfaces, have no heat-retaining insulation.
- c. The engine crew on duty at the time of the incident was not in the engine room, because the temperature of the engine room was hot for the people inside.
- d. The unavailability of fire detectors in the engine room and the 1-hour engine control (patrol) time gap on the KM Karya Indah contributed to the delay in the engine crew finding out about the fire, thus having limited time and opportunity to respond to the fire.
- e. The absence of a fire safety management system and abandonment of ship.

In the law enforcement process, the Maluku Police's Polairud Directorate in collaboration with the Baharkam Polri's Ditpol Airud, named four suspects, namely the ship's captain, the Head of the Engine Room (KKM), the ship's owner, and a crew member. They were charged with violating Article 330 paragraph (3) of the Shipping Law and Article 359 of the Criminal Code. The Ternate District Court sentenced the captain to 3 years in prison and the ship's owner to 4 years in prison.

Furthermore, there was the KM Barokah Jaya and MV Habco Pioneer Collision Case, which occurred on April 3, 2021 at around 13:28 WIB, the fishing vessel KM Barokah Jaya collided with the bulk carrier ship MV Habco Pioneer in the northern waters of Indramayu. As a result of the collision, the Barokah Jaya capsized and four Barokah Jaya crew members were found dead, 13 people were missing, and 15 others survived. The bow of the Habco Pioneer was not seriously damaged, but there were fatalities.

In this incident, the KNKT found contributing factors, namely, neither of the two vessels to notify the other of its intention in a timely manner to make a safe voyage, both vessels were late in taking response actions to avoid collision when the distance between the two vessels was close, and the mentality of the Habco Pioneer navigational watch crew was not appropriate in building an understanding of the situation with the fishing vessel so that its assumptions had placed the vessel in a collision situation. In addition, the failure of the crew to maintain continuous observation in the crossing situation has delayed the update of information for the navigational watch crew to make a decision to avoid the risk of collision.<sup>3</sup>

KNKT recommends that regulators who regulate fishing vessels pay attention to the findings in the incident, related to the rules for supervision of harbor masters at fishing ports to pay attention to ship safety and manning in terms of the number of crew members not

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<sup>2</sup>National Transportation Safety Committee, Burning of Beautiful Works in North Maluku Waters, 2023.

<sup>3</sup>National Transportation Safety Committee of the Republic of Indonesia, Final Report of the Investigation of the Maritime Accident Collision Between Habco Pioneer and Barokah Jaya, North Waters of Indramayu, West Java, Republic of Indonesia, 2021.

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exceeding the safety equipment and age limits for fishing vessel sailors, improving the safety rules for minimum manning of fishing vessels according to the size of the vessel, and reviewing shipping telecommunication regulations (equipment and frequency) that can connect fishing vessels and merchant vessels.

KNKT also recommends that ship operators improve their safety management systems related to evaluating the navigation crew's understanding of navigation procedures and paying attention to the importance of maintaining an understanding of the situation in implementing the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREGs) and ensuring that all resources on board are always ready to be used at all times and utilized by the navigation crew to check for collision risks.<sup>4</sup>Law enforcement in this case was carried out by the West Java Regional Police's Ditpolair by naming the captains of the two ships as suspects. The captain of KM Barokah Jaya, Ishak, and the captain of MV Habco Pioneer, Muhammad Qosim, were charged with violating Article 359 of the Criminal Code and Article 330 paragraph (3) of the Shipping Law. The Indramayu District Court sentenced Ishak to 3 years in prison and Muhammad Qosim to 3.5 years in prison.

Based on the analysis of the three cases above, several patterns can be identified in the implementation of criminal law enforcement against negligence in implementing shipping SOPs, including:

1. Law enforcement is still focused on individuals (captains or crew) and has not yet reached the maximum extent of corporations. Although the Shipping Law has regulated corporate accountability, its implementation in judicial practice is still limited.
2. Court decisions against perpetrators of negligence in shipping SOPs tend to be lighter than the maximum criminal threat in the Shipping Law. Based on a study conducted by the Legal Research and Development Center, Ministry of Law and Human Rights (2023), the average sentence for perpetrators of negligence in shipping SOPs resulting in fatalities was only 3.2 years, far below the maximum threat of 10 years in the Shipping Law.
3. The aspect of victim loss recovery has not received adequate attention in the law enforcement process. Compensation to the families of ship accident victims is still voluntary and there is no clear mechanism regarding the responsibility of the perpetrator or corporation for material and immaterial losses experienced by the victim.

To regulate and ensure safety in the shipping sector, the Indonesian government has established the Shipping Law along with its amendments, namely the First Amendment, the Second Amendment and the latest amendment currently through Law Number 66 of 2024. One important part of this law is the criminal provisions which aim to provide a deterrent effect to parties who violate ship safety regulations. These provisions include various obligations, such as completeness of ship documents, compliance with safety standards, and implementation of shipping procedures in accordance with regulations.

However, in practice, violations of ship safety provisions still often occur. Incidents of ship accidents caused by negligence or violations of regulations continue to be a serious issue.

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<sup>4</sup>*Ibid.*



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Factors such as lack of supervision, weak law enforcement, and low awareness of the importance of ship safety are often the main causes.

Effective law enforcement plays a vital role in reducing existing violations. However, obstacles such as the lack of law enforcement capacity, inconsistency in the application of sanctions, and legal loopholes in the Shipping Law often hinder the achievement of this goal. This indicates the need for evaluation and revitalization in law enforcement on ship safety, especially in the criminal aspect, to ensure that existing regulations can be implemented more effectively and efficiently.

Ship accidents caused by negligence in implementing SOPs not only threaten the safety of the crew and passengers, but also have the potential to cause material losses and marine environmental pollution. In some cases, ship accidents even result in significant loss of life. Therefore, criminal law enforcement against shipping that is negligent in fulfilling SOPs is a must in order to provide a deterrent effect and increase discipline and compliance in the shipping industry.

Thus, based on the description above, the author is interested in discussing the title "Legal Analysis of Criminal Law Enforcement on Safety in Sailing Ships Negligent of Standard Operating Procedures from the Perspective of Shipping Law in Indonesia"

## **2. Research Methods**

The type of research used in this research is the normative legal research type, which is theoretical legal in nature, using secondary data such as using laws and regulations, court decisions, legal theories, legal principles, legal principles, and can be in the form of scientific works. The research writing approach used is the statute approach and the conceptual approach.<sup>5</sup>The statute approach is basically carried out by examining all laws and regulations related to the problem (legal issue) currently being faced in relation to law enforcement of maritime crimes.

## **3. Results and Discussion**

### **3.1. Criminal Law Enforcement Against Ships Negligent in Standard Operating Procedures**

Shipping SOP is a set of rules designed to regulate all operational activities of a ship, from crew training procedures, use of safety equipment, to handling emergencies. If negligence in implementing SOP occurs, the potential for shipping accidents can harm human lives. Therefore, the state through the criminal law system plays a role in imposing sanctions on parties responsible for such negligence. Regulations and laws governing negligence and shipping safety obligations are the main basis for the application of criminal law to perpetrators of SOP negligence.

Criminal law enforcement in cases of negligence of shipping SOPs does not only demand accountability from the individuals involved, such as the ship's captain or crew, but must also be viewed from the perspective of the responsibility of each related party. For example, based on Article 359 of the Criminal Code, a ship's captain or crew who is proven to be

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<sup>5</sup>Prof. Dr. Peter Mahmud Marzuki, Legal Research (Revised Edition), Surabaya: Prenada Media Group, 2016. p. 133

negligent in carrying out SOPs that cause accidents can be subject to criminal sanctions for negligence that causes death or injury. In addition, Article 330 paragraph (3) of the Shipping Law also stipulates that the ship's captain has an obligation to comply with the safety procedures set out in the SOP, and negligence in this case can have fatal consequences for shipping safety.

The court may consider *dolus* or *culpa* in imposing punishment. In this case, negligence may include the failure of the captain or crew to ensure that safety equipment is functioning properly, failure to conduct regular emergency training, or lack of supervision of the ship's safety procedures. It is important to understand that criminal law enforcement against negligence in shipping SOPs also involves the responsibility of the shipping company operating the ship. Article 333 of the Shipping Law regulates that criminal acts in the shipping sector are deemed to be committed by a corporation for and on behalf of the corporation, which must ensure that the ships operated meet the established safety standards and procedures.

In addition, a shipping company that is proven not to carry out its obligations in supervising SOPs can be subject to sanctions in accordance with applicable legal provisions. In today's era, one of the weaknesses in enforcing criminal law against violations of SOPs in shipping is the lack of supervision of corporations. In many cases, punishments are often only imposed on individuals, while companies as larger legal entities do not receive appropriate sanctions, even though they are also responsible for the negligence that occurs.

Criminal law enforcement against violations of shipping SOPs is inseparable from various challenges, both in terms of the legal process and in coordination between law enforcement agencies. One of the main challenges is the lack of coordination between agencies involved in investigations and prosecutions, such as the National Police, the Ministry of Transportation, and the Indonesian Navy. In the Shipping Law, there are several authorities who have the following functions and positions:

THE AUTHORITY	AUTHORITY	LEGAL BASIS (ARTICLE)
Harbor Master	Technical inspections, ship detention, administrative investigations and in carrying out law enforcement in the field of safety and security, the Harbor Master carries out his duties as a Civil Servant Investigator Officer in accordance with the provisions of laws and regulations.	Articles 207, 208, 212 of the Shipping Law
Water Police (Polairud) & Indonesian National Army	In the investigation and prosecution of maritime crimes, the Harbor Master may request assistance from the Indonesian National Police and/or the Indonesian National Armed Forces.	Article 212 of the Shipping Law in conjunction with the Criminal Procedure Code
PPNS	tasks and his responsibilities in the field of shipping are given authority specifically as an investigator, under the coordination and supervision of investigators of the Republic of Indonesia National Police.	Article 282 of the Shipping Law
Prosecutor's Office &	Prosecution and criminalization for violations of	Article 212 of the Shipping Law in

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Courts	maritime law	conjunction with the Criminal Procedure Code
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The KM Sinar Bangun case revealed gross negligence regarding the supervision of the number of passengers exceeding the ship's capacity and the lack of adequate safety equipment. Although the law enforcement process has been carried out, with the determination of the ship owner and captain as suspects, the sentences imposed are considered relatively light considering the very large number of victims. This shows weaknesses in law enforcement, especially regarding supervision by authorities such as the harbor master. In Article 138 paragraph 2 of the Shipping Law, before a ship sails, the captain is required to ensure that his ship has met seaworthiness requirements and report this to the Harbor Master. Furthermore, Article 209 of the Shipping Law emphasizes that in carrying out the functions and duties as referred to in Article 207 and Article 208, the Harbor Master has the authority to: a. coordinate all government activities at the port; b. check and store letters, documents, and ship news; c. issue approvals for ship activities at the port; d. conduct ship inspections; e. issue Sailing Approval Letters; f. conduct ship accident inspections; g. detain ships by court order; and h. implement Ship Crew certificates. In the article, it is clear that the harbor master has the authority to inspect ships and issue sailing permits. This confirms that the harbor master is tasked with inspecting and ensuring that the ship is in seaworthy condition, both in terms of technical aspects, ship administration, and the readiness of the ship's crew before being given sailing permission (clearance).

Meanwhile, in the case of KM Karya Indah, negligence in the ship's technical SOP, such as the use of substandard materials and inappropriate safety equipment, were the main factors causing the fire that claimed lives. Although four suspects were named, law enforcement here seemed to focus more on individuals, namely the captain, the head of the engine room, and the ship owner, while the factor of negligence in supervision by larger parties, such as shipping companies or regulators, still received less attention. In the case of the use of substandard materials and inappropriate safety equipment, the captain and crew play an important role because the main responsibility lies with the captain and crew. The captain and crew need to ensure that fire extinguishers are functioning, procedures are being carried out, and there are no violations of SOPs on board.

In the KNKT report, it was explained regarding the factual information of the incident which initially, on March 30, 2021, at around 18:18 WITA,<sup>6</sup>The bulk carrier Habco Pioneer departed from Balikpapan waters, East Kalimantan, bound for Merak, Banten, carrying 29,000 MT of coal with a draft of 9.9 m.<sup>7</sup>The ship plans to sail from Balikpapan along the north of Java Island to Merak.

On April 2nd at around 18:00 WIB<sup>8</sup>, the Barokah Jaya fishing vessel anchored southwest of Rakit Island and prepared for fishing. The Barokah Jaya crew used a bangkrak lamp and prepared the net. Furthermore, at 22:00 WIB, the spreading of the net began. The process

<sup>6</sup>Eastern Indonesia Time

<sup>7</sup>National Transportation Safety Committee of the Republic of Indonesia, Final Report of the Investigation of the Maritime Accident Collision Between Habco Pioneer and Barokah Jaya, North Waters of Indramayu, West Java, Republic of Indonesia, op. cit, p. 1.

<sup>8</sup>Western Indonesian Time



Master of Law, UNISSULA

was carried out by forming a circle with the bangkrak lamp placed in the middle of the ring. The activity lasted until morning.<sup>9</sup>

At around 10:00 WIB, the reduction gear repair was completed. Barokah Jaya departed for the next fishing area in the north-northeast. The captain held the helm, while KKM was beside him. At that time the ship's course was 015° and the speed was around 6.5 knots. Not long after, KKM left the wheelhouse. KKM then distributed cigarettes and had lunch with the other crew members. After eating, most of the crew slept on the roof and in the supply room. While resting on the roof, KKM occasionally saw the exhaust water from the main engine cooling system being channeled to the left side of the ship's hull.<sup>10</sup>

At around 12:40 WIB, while working on the report, the second officer observed the water situation and saw a fishing vessel at the bow of the Habco Pioneer. The second officer ordered the Deck Cadet to watch the vessel. The vessel was sailing from the south heading north cutting the bow of the Habco Pioneer. The second officer then left his work and checked the movement of the vessel with binoculars. The second officer saw a net behind the vessel and saw the crew working on the deck. The second officer believed the vessel was fishing.<sup>11</sup>



Gambar I-1: Data AIS Habco Pioneer Tanggal 3 April 2021 dan Lokasi Kejadian (diolah dengan google earth)

The Second Mate had time to change course slightly to the left to avoid the ship's rear net. At that time, Barokah Jaya was seen moving north-northeast, crashing into the ocean waves. The Second Mate used binoculars again to make sure the fishing vessel was not netting and decided to maintain the Habco Pioneer course. After that, the Second Mate returned to the map table to continue his work. At 13:27 WIB, the Deck Cadet reported to the Second Mate that the fishing vessel was still on the left course. The Second Mate rushed to Radar 1 and to the left bridge. Barokah Jaya was seen still heading north. The Second Mate had time to tell the Deck Cadet that if he saw the movement of the vessel, it might collide with the Habco Pioneer. The Second Mate thought the vessel would still cut the Habco Pioneer's course. Seeing the fishing vessel's actions and the distance between the two vessels was close, the

<sup>9</sup>National Transportation Safety Committee of the Republic of Indonesia, Final Report of the Investigation of the Maritime Accident Collision Between Habco Pioneer and Barokah Jaya, North Waters of Indramayu, West Java, Republic of Indonesia, op.cit, p.12.

<sup>10</sup>Ibid.

<sup>11</sup>Ibid, p. 2.

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Second Mate decided to change the Habco Pioneer's course with manual steering to the left 10° so that the ship's course became around 260°. The Second Mate directed the Habco Pioneer's course to the starboard hull of the Barokah Jaya. After that, the Deck Cadet standing on the left bridge could no longer see the position of the fishing vessel. A few moments later, the Second Officer then decided to turn to the left.<sup>12</sup>

At around 13:28 WIB, on board the Barokah Jaya, a crew member who was in the supply room heard a shout of "there's a ship!". At that time, the crew also woke up because they heard the sound of the main engine slowly. Hearing the engine speed as if being lowered, the crew immediately noticed the exhaust of the main engine's cooling water on the left hull and suddenly the bow of the Habco Pioneer hit the left hull of the Barokah Jaya. On board the Habco Pioneer, the Watch Engineer who was performing maintenance on the auxiliary engine in the engine room heard the sound of the impact. The captain of the Habco Pioneer who was relaxing in the officer's room at that time also heard the sound of the impact.<sup>13</sup>

Due to the ship collision, 4 Barokah Jaya crew members were declared dead, 13 people were missing and 15 people survived. The damage that occurred to the Habco Pioneer ship can be said to not have resulted in major losses, unlike KM Barokah Jaya.



Gambar I-3: Bekas Tubrukan dengan Barokah Jaya di Haluan Habco Pioneer (Lingkaran Merah)



Gambar I-4: Bekas Tubrukan dengan Barokah Jaya di Haluan Kanan Habco Pioneer



Gambar I-5: Barokah Jaya Terbalik (sumber: Basarnas)



Gambar I-6: Kondisi Barokah Jaya (sumber: Basarnas)

According to the COLREGs rules in cross-over situations and inter-vessel responsibilities in this incident, Barokah Jaya which was not engaged in fishing activities and Habco Pioneer were two power driven vessels. Due to the situation, Barokah Jaya was required to deviate from the path of Habco Pioneer which acted as the defending vessel.<sup>14</sup>

With his long experience, it is possible that the Captain of Barokah Jaya could recognize and take appropriate action to avoid the risk of collision with Habco Pioneer. However, before the incident, Barokah Jaya maintained its course and had placed his ship in a collision risk situation. The Captain may have changed course when the distance between the two ships was close. The Captain of Barokah Jaya's actions were likely caused by the Captain not observing the movement of Habco Pioneer on his starboard side or the Captain believing

<sup>12</sup>Ibid, p. 3.

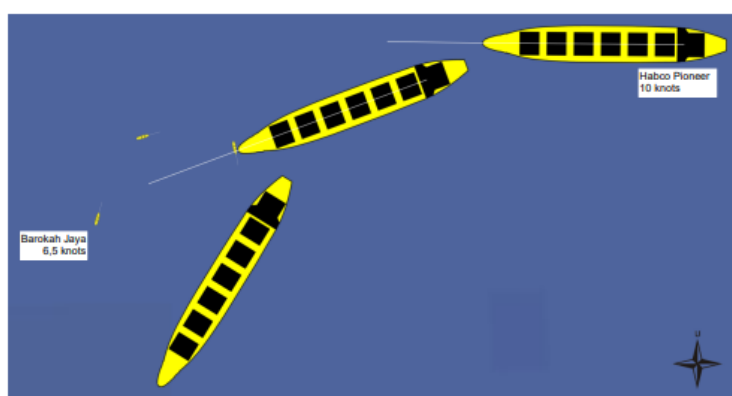
<sup>13</sup>Ibid, p. 3.

<sup>14</sup>Ibid, p. 16

Master of Law, UNISSULA

that his ship's maneuverability was better and only changed course when the distance between the ships was close enough. Meanwhile, the Second Mate of Habco Pioneer had known the situation of Barokah Jaya about 13 minutes before the incident and assumed that the ship would deviate from the Habco Pioneer's course. After realizing the presence of Barokah Jaya at that time, the Second Mate continued his work on his laptop. Only after the Deck Cadet again informed that Barokah Jaya was still on the port bow a few moments before the collision did the Second Mate take evasive action. The actions of the two ships were too late to take any effective evasive action. In accordance with rule 8 of the COLREGs and good seamanship, any action to avoid collision should be taken decisively and in ample time (as early as possible).<sup>15</sup>

The change of course must be quite large because in this case the ship is sailing in open waters so that it is clear to other ships that are observing. However, in this incident, both ships did not take this action so that a situation was too close (close quarter situation). So both ships took unexpected anticipatory action which caused both ships to turn towards the collision point. When seeing the movement of Barokah Jaya which did not change its course as he expected, the Second Officer finally decided to evade to the left when the distance between the two ships was so close. Unfortunately, this action did not follow the COLREGs rule for defending ships that help avoid the risk of collision not to change their course to the left towards the ship on their port side.<sup>16</sup>



Gambar II-1: Ilustrasi Tubrukan

The collision of KM Barokah Jaya and MV Habco Pioneer shows a failure in communication and safety oversight that led to the fatal collision. Although law enforcement has been carried out against the captains of both ships, many more systemic factors such as ship safety management and oversight by regulators have not received sufficient attention. Recommendations from the KNKT regarding the improvement of safety regulations and stricter supervision by related parties are essential to prevent similar incidents in the future.

Findings are statements of all conditions, events or circumstances significant to the accident sequence. They represent significant stages in the accident, but are not necessarily causal, or indicate deficiencies. Some findings indicate conditions that existed prior to the accident sequence, but are usually important to understanding their occurrence, usually in

<sup>15</sup>Ibid, p. 16

<sup>16</sup>Ibid.

chronological order. In this incident, the NTSC identified the following findings:<sup>17</sup>

1. Habco Pioneer's Second Mate has seven years of experience as a mate.
2. The captain of Barokah Jaya has SKK 60 and decades of experience as a fishing boat captain.
3. In accordance with COLREGs In Rule 15 on crossing situations, Habco Pioneer is the defending vessel while Barokah Jaya is the deviating vessel. The Second Mate understands Habco Pioneer as the defending vessel.
4. Navigation procedures in the HP-K03 PT HP Ship Operating Procedures state that the officer on watch must strictly implement the rules for preventing collisions at sea by observing around, using navigation equipment, and must check and ensure the presence of other vessels or the risk of collision. The officer on watch is also given the authority to operate the whistle and use it without hesitation.
5. Up until just before impact, it was not possible to maintain continuous observation because the crew on the Habco Pioneer bridge were discussing matters unrelated to the current environmental situation.
6. The Habco Pioneer's second mate could not detect Barokah Jaya's movement on the S-Band radar with waves and drizzle conditions even though he had changed the settings on the radar. Meanwhile, the X-Band radar which has better capabilities for detecting small objects was not operated.
7. The use of one radar every four hours of watch on the Habco Pioneer is not mentioned in the safety management system manual.
8. Fishing vessels with a gross tonnage of less than GT 60 are not required to install and activate AIS.
9. The Habco Pioneer's second mate assumed that the Barokah Jaya did not change course and did not think of using the ship's whistle to attract the fishing vessel's attention.
10. The second officer of the Habco Pioneer decided to turn left because he assumed that the Barokah Jaya, which was on the left bow, would continue to cut off the Habco Pioneer's bow.
11. At the time of the incident, only the captain was alone in the Barokah Jaya's wheelhouse while the other crew were resting.
12. Barokah Jaya only has one SSB radio unit on standby on the fishing vessel's internal frequency and does not have a VHF radio.
13. The number of life jackets on board the Barokah Jaya was 19, while the number of crew members was 32.
14. The entire crew of Barokah Jaya does not have a fishing vessel skills certificate.
15. There are several workers under the age of 18 at Barokah Jaya.
16. The Sailing Approval Letter is still issued even if there are workers under 18 years of age and the number of crew members exceeds the number of life jackets.
17. Audio recordings on the bridge and radar captures at the time of the incident in the VDR

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<sup>17</sup>Ibid, p. 21.

Master of Law, UNISSULA

data provided by PT HP are not available.

It can be seen that actions to avoid collisions must be taken firmly and early in carrying out preventive efforts. However, in this case, the evasive action was taken too late, thus creating a close quarter situation. In addition, it can be seen that the Barokah Jaya is a ship that is required to deviate (give-way vessel), but still maintains its course, this is contrary to the obligation to avoid collisions. The Habco Pioneer crew should have taken a number of significant steps to keep their distance from the Barokah Jaya. Changing course is the best step that should ideally be taken long before the two ships are at a distance that is difficult to avoid. Another step that can be taken is to attract the attention of other ships by using sound (ship's flute) which has been regulated in the COLREGs. However, shortly before the incident, when the Second Officer was in doubt and did not know the intention of the Barokah Jaya's movement, the Second Officer - apart from needing time to light the flute - did not think of using the flute to attract the attention of the Barokah Jaya. Both types of efforts, if carried out by the Habco Pioneer crew, would most likely have avoided the danger of collision. However, these actions are usually carried out by crew members who have the correct mental model that fishing vessels at sea are a hazard that must be avoided as much as possible.<sup>18</sup>This negligence can fulfill the elements of a maritime crime as regulated in:

Article 305 of the Shipping Law:

*"Any person who does not maintain his ship so that it does not meet the ship safety requirements as referred to in Article 130 paragraph (1) shall be punished with imprisonment for a maximum of 6 (six) months or a maximum fine of IDR 100,000,000.00 (one hundred million rupiah)"*

Article 306 of the Shipping Law:

*"Any person who operates a ship that does not meet the requirements for ship navigation equipment and/or electronic navigation as referred to in Article 131 paragraph (1) shall be punished with a maximum imprisonment of 2 (two) years and a maximum fine of IDR 300,000,000.00 (three hundred million rupiah)"*

In addition, law enforcement is not enough to only prosecute the captain, but must be directed at improving the ship safety management system, including supervision of sailing permits and crew skills, as well as evaluation of the function of regulators (Harbour Master and Directorate General of Sea Transportation), because Sailing Approval Letters are still issued even though the number of life jackets is inadequate and there are child workers.

The existence of negligence can be connected to the element of negligence or included in criminal responsibility. Negligence according to Jonkers<sup>19</sup> consists of 4 (four) elements as follows:

- a. This act is contrary to the law (law of the land)
- b. The consequences of actions can be imagined (noorzienbaarheid)
- c. The consequences of an act can actually be avoided (vermijdbaarheid)
- d. This action can be blamed on him (verwijtbaarheid)

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<sup>18</sup>Ibid, p. 17.

<sup>19</sup>Catherine Elliot and Frances Quinn, op. cit. p. 40



Master of Law, UNISSULA

Also, included in the category of negligence *Culpa Lata* (gross negligence) which occurs when someone intentionally or very carelessly violates his duty to act with care. Gross negligence reflects very serious carelessness or negligence that results in fatal things to the point of causing death, resulting in significant or detrimental impacts to others.

In the case of the application of sanctions in the Shipping Law, it can be emphasized that Criminal provisions in the Shipping Law aim to provide a deterrent effect on perpetrators of violations, especially since criminal provisions are a tool in enforcing SOP shipping discipline, including completeness of ship documents, seaworthiness, and crew skills, so that the risk of maritime accidents and on ships is expected to be reduced.

Overall, these three accident-related cases underscore the importance of more comprehensive law enforcement, not only highlighting individuals or ship captains, but also the supervisory responsibility of regulators and corporations that have a major role in maintaining shipping safety. With evidence of accident investigations, linked to law enforcement and regulations in the Shipping Law, the law is considered to be running and the law is not only written, but enforced. Therefore, strengthening the supervision system and implementing stricter sanctions against shipping companies and authorities who are negligent in carrying out their duties is the key to preventing the recurrence of shipping accidents that can harm many parties.

When associated with the theory of law enforcement as stated by Soekanto and Rahardjo, there is significant relevance to criminal law enforcement against negligence of shipping SOPs. One of them, regulations and laws become a basis and requirement for an achievement to have restrictions/prohibitions. In this case, the Shipping Law is a manifestation of efforts to realize the ideas of justice, legal certainty, and benefits in the context of shipping.

As emphasized by Prof. Soerjono Soekanto<sup>20</sup>, law enforcement is an activity to harmonize the relationship between values outlined in legal rules with real behavior aimed at achieving peace in community life. The function of law is as a tool to regulate behavior, prevent negligence/violations, and the existence of sanctions as a function in prosecuting violations in order to maintain shipping safety and protect the community.

Likewise with the theory of legal certainty, this is in line with the opinion put forward by Radbruch, "legal certainty is interpreted as a condition where the law can function as a regulation that must be obeyed". Thus, law enforcement and legal certainty are very much side by side with each other. Determination as a suspect is a form of application of legal certainty, and when there are authorities who are not involved and are not processed by law even though there is an element of negligence, this shows the weakness of legal certainty, because the law is not enforced comprehensively against all parties responsible. In this case, law enforcement plays a very important role. So that legal enforcement and certainty are the main keys in protection, justice and enforcement of norms or rules.

The laws and regulations that serve as the legal basis for the implementation and supervision of the shipping industry play a very important role in repressive enforcement, in this case, the application and enforcement of sanctions applicable in the Shipping Law and

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<sup>20</sup>Soerjono Soekanto, *Factors Influencing Law Enforcement*, Rajawali Press, Jakarta, 2008.

Master of Law, UNISSULA

the Criminal Code are very much the basis for the causal relationship of the negligence that occurs.

### **3.2. Obstacles in Enforcing Criminal Law Against Ships Negligent in Standard Operating Procedures**

Law enforcement is the process of concretizing legal norms so that they apply in real life in society. In a state system of law, law enforcement is not only interpreted as a repressive action against violations, but also a preventive effort so that the law functions effectively. According to Satjipto Rahardjo,<sup>21</sup> law should not stop at text, but must live in practice and answer the needs of community justice. Therefore, law enforcement cannot be separated from the role of law enforcement officers. All organs need to participate in adhering to applicable rules and norms as a process of creating a law enforcement system that prospers life together.

Law enforcement in the shipping sector is often hampered by several aspects, including the limited number and quality of certified and trained human resources (HR)/man power in shipping supervision and understanding of SOPs. This is exacerbated by the limited capacity of harbormaster officers who have great responsibility in supervising the implementation of ship SOPs, both when the ship departs and while the ship is sailing.

The Harbor Master is responsible for supervising the safety and security of shipping, including compliance with applicable SOPs. However, with the limited number and capacity of human resources, supervision of SOPs is often not optimal, this results in gaps in law enforcement against violations that occur in the field. Law enforcement in the shipping sector is also limited by the lack of adequate facilities and infrastructure in certain ports and water areas. Some port areas with inadequate facilities, poorly organized infrastructure hinder the implementation of effective supervision. Especially in certain situations, there are factors that cannot be interfered with by humans, such as bad weather, and in waters that are not directly supervised by the Harbor Master, although if the technological aspect supports, all can be implemented well, but because there are still limitations, this causes the SOP that has been set to often be ignored.

One of the main obstacles in criminal law enforcement is the lack of supervision of ship operators and ship owners. In many cases, violations of SOPs more often involve negligence by parties who should be fully responsible for ship operations. Although there are regulations governing the obligations of ship owners to ensure ship seaworthiness and compliance with SOPs, in reality, supervision of their compliance is often not running well.

The implementation of the law against violations committed by ship owners is often hampered by the difference between existing regulations and practices in the field. The limitations of a transparent and efficient reporting and investigation system also worsen the enforcement of criminal law in shipping. In several cases of ship accidents, inaccurate or incomplete reporting was found to have slowed down the investigation and law enforcement process against the violations that occurred. Therefore, a better reporting system and more efficient investigation procedures are needed to ensure that violations of SOPs are immediately identified and processed according to law.

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<sup>21</sup>Satjipto Rahardjo, *Progressive Law Enforcement*, Kompas Book Publisher, 2010.

Master of Law, UNISSULA

In the theory of law enforcement there isThe obstacles in enforcing criminal law against ships that are negligent in their SOPs can be linked to what was stated by Satjipto Rahardjo,<sup>22</sup>that law enforcement is not just about implementing norms firmly, but involves important elements, including legal structure, legal substance, and legal culture.

The legal structure includes institutions and law enforcement officers, in the maritime world such as harbor masters, investigators, to prosecutors and courts. Furthermore, the legal substance includes applicable norms and regulations, such as in this case, Law Number 17 of 2008 concerning Shipping, Government Regulation Number 20 of 2010 concerning Transportation in Waters, Government Regulation Number 5 of 2010 concerning Navigation, and other regulations. The obstacles to enforcing criminal law against ships that neglect SOPs do not only lie in the weak implementation of the law, but:

1. The legal structure is not yet fully professional and synergistic,
2. The legal substance is not yet sharp enough to effectively ensnare violations as criminal acts,
3. As well as a permissive legal culture that has not placed shipping safety as a top priority.

The problems that occur in law enforcement against violations of shipping SOPs indicate that the elements of law enforcement are not functioning optimally. Furthermore, if the law is not enforced consistently and firmly, it will affect the theory of legal certainty, which basically requires the law to provide clarity, certainty, and predictability to the community.

Legal certainty will be uncertain when violations of shipping SOPs are not always dealt with equally, resulting in unclear legal standards in force, and opening up loopholes for similar violations to occur in the future. Furthermore, obstacles in enforcing criminal law against ships that neglect SOPs reflect the weak application of the theory of law enforcement and the theory of legal certainty simultaneously. Law enforcement that is not running effectively hinders the creation of public welfare and trust in the law, while the absence of legal certainty raises doubts about the ability of the law to provide protection.

The failure to meet safety standards shows that the implementation of the law has not been effective. The cases that occurred are an important lesson that shipping safety does not only depend on regulations, but also on the awareness, responsibility, and integrity of all parties involved in ship operations.

#### **4. Conclusion**

It can be concluded that: 1. Shipping Standard Operating Procedures (SOPs) are a crucial element in ensuring the safety of ships, crew, passengers, and cargo, including training, use of safety equipment, and handling emergency situations. Criminal law enforcement against violations of shipping safety is highly dependent on the firmness in determining the responsible party, be it the ship operator, captain, or shipping company management. The Shipping Law and the Criminal Code provide a strong legal basis for identifying negligence and errors in the implementation of SOPs that cause shipping accidents. However, in its implementation, law enforcement against negligence that causes criminal liability needs to be studied in depth. Viewed from a criminal law perspective, law enforcement is not only

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<sup>22</sup>Satjipto Rahardjo, *Law Enforcement: A Sociological Review*, Yogyakarta: Genta Publishing, 2009, pp. 24–25.

Master of Law, UNISSULA

repressive, but also preventive. Strict law enforcement against violations of shipping safety will provide a deterrent effect and prevent similar violations from occurring in the future. 2. Shipping companies or ship owners need to implement a good management system and ensure that all crew members understand and follow established safety procedures and carry out seaworthiness while on board. Most importantly, strict supervision of the implementation of SOPs is needed as well as capacity building and training for crew members and other related parties. In this case, the Ministry of Transportation of the Republic of Indonesia, through the Directorate General of Sea Transportation, plays an important role in conducting observations and supervision in accordance with applicable standards. Good cooperation and coordination are needed between the government, shipping companies, and the community to maintain high safety standards in order to prevent accidents in the maritime sector.

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