

## Legal Analysis Related to the Role of the Maritime Court in Resolving the Problem of Legal Violations in the Shipping Sector

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**Abstract.** *The role of the Maritime Court as an institution that handles legal violations in the shipping sector is important, but its implementation still faces various regulatory obstacles and legal weaknesses. The lack of clarity regarding the authority of the Maritime Court in imposing civil and criminal sanctions has resulted in suboptimal enforcement of maritime law. Therefore, this study aims to analyze the regulation of the role of the Maritime Court and identify weaknesses and solutions that can strengthen regulations in handling legal violations in the shipping sector. This study uses a non-doctrinal legal research type with a socio-legal juridical approach, which views law as a symbolic meaning in social interactions and explores it through empirical interviews and literature studies. Data were obtained from primary sources through interviews with related parties such as the Ministry of Transportation, the Maritime Court, academics, and NGOs, as well as from secondary sources in the form of primary, secondary, and tertiary legal materials. Data analysis was carried out qualitatively through a process of coding, classification, interpretation, and validation, paying attention to aspects of credibility, transferability, dependability, and confirmability to ensure the validity of the research results. The research results show that the role of the Maritime Court is regulated in Law Number 17 of 2008 and Government Regulation Number 9 of 2019, but still has weaknesses in law enforcement authority. There are no regulations regarding civil or criminal sanctions for parties who negligently or intentionally cause ship accidents, and there is no clear obligation to resolve cases through the Maritime Court first. Therefore, it is necessary to strengthen regulations and establish representatives of the Maritime Court in the regions to ensure more effective enforcement of maritime law.*

**Keywords:** *Enforcement; Institutions; Law; Maritime; Regulatory.*

## 1. Introduction

The Unitary State of the Republic of Indonesia (NKRI) is the largest archipelagic country in the world consisting of 17,508 islands and a sea area of 5.8 million km<sup>2</sup> and a coastline of approximately 108,000 km, making Indonesia the second longest coastline in the world after Canada (Lestari, 2013). In addition, Indonesia has waters covering an area of 6.4 million km<sup>2</sup> consisting of a territorial sea area of 0.29 million km<sup>2</sup>, an inland water area and archipelagic waters of 3.11 million km<sup>2</sup>, and an Indonesian EEZ area of 3.00 million km<sup>2</sup>, an Additional water zone of 0.27 million km<sup>2</sup>, a continental shelf area of 2.8 million km<sup>2</sup> (Annual Report of the Ministry of Maritime Affairs and Fisheries, 2019).

Indonesia's position itself is located between two oceans and two continents, namely the Indian Ocean and the Pacific Ocean, as well as the Australian Continent and the Asian Continent. With this vast territory and strategic region, Indonesia has a variety of potential and natural wealth in various sectors such as agriculture, forestry and marine areas consisting of large biological and non-biological marine natural resources ("SDA") where biological natural resources consist of high fisheries products including the capture fisheries sector, tourism, seaweed cultivation, salt ponds, ecosystem protection, development of minapolitan areas and the fisheries industry (Triyono et al., 2019).

While states fundamentally have sovereignty over the exploitation of marine resources, they still have an obligation to protect the environment to ensure sustainable development. Sustainable development is a long-term process, the realization of which must be reflected in policies, management, and technological interventions, aimed at preventing and addressing conflicts of interest in the use of marine resources and ensuring environmental protection. This is reinforced by Chua Thia Eng (2013), who stated:

*It requires a good mix of central and local government policy, local capacity to plan and manage the coastal resources, availability of financial resources, adequate regulatory controls and law enforcement as well as a good system of monitoring environmental changes. Such a mix of efforts can only be achieved over time, with patience and collaboration among the various concerned agencies and sectors, It requires collectively coordinated efforts to do things in the right way and the right time.*

Indonesia's ratification of UNCLOS 1982 is inseparable from the history and spirit of other countries, namely to fight for Indonesian sovereignty over the sea, protect the rights to use the sea and demonstrate a commitment to the sustainable use of marine resources. This struggle for sovereignty over the sea is not without foundation, considering that at the beginning of independence, regulations regarding Indonesian maritime sovereignty still referred to regulations inherited from the Dutch East Indies colonial era. One of these, in the Territoriale Zee en

Maritieme Kringen Ordonnantie S.1939-442, Indonesia's territorial sea limit at that time was only 3 nautical miles measured from the coast. The impact was that the waters located between the Indonesian islands at that time were still international territory (high seas), while Indonesia's maritime territory under this regulation of maritime law was only 100,000 km<sup>2</sup>. Of course, this condition was difficult and disadvantageous for Indonesia, considering that Indonesia has thousands of islands separated from each other by sea.

The basic basis for managing marine resources itself, when referring to the constitution, is rooted in Article 33 paragraph (3) of the 1945 Republic of Indonesia Constitution, which states:

(3) The land and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. (4) The national economy is organized based on economic democracy with the principles of togetherness, efficiency with justice, sustainability, environmental awareness, independence and by maintaining a balance between progress and national economic unity.

The formulation of Article 33 paragraphs (3) and (4) requires at least two main principles to be emphasized, namely:

- a. Natural resources, in the sense of the earth, water and natural resources contained therein, which are in the territory of the Republic of Indonesia, are under the control of the state.
- b. Natural resource management is carried out to achieve the greatest possible prosperity for all Indonesian people now and for future generations.

The Head of the National Narcotics Agency, Commissioner General Heru Winarko, stated that Indonesia's geographical location, which is predominantly oceanic, is a favorite route for drug syndicates to smuggle drugs from abroad. This is demonstrated by the fact that 80% of narcotics smuggling into Indonesia is via sea (National Institute for Narcotics Distribution, 2025). Meanwhile, the number of violations of shipping regulations according to the Indonesian National Shipowners' Association (INSA) reported 88 cases in 2019 (INSA, 2025). Violations of shipping regulations facilitate the commission of maritime crimes due to the lack of operational documentation for shipping in national waters.

To curb this crime rate, law enforcement in maritime and coastal areas is essential. This highlights the importance of the Maritime Court's role in curbing the high number of maritime regulation violations that can lead to crimes in Indonesian waters.

Handling of ship accidents is generally administrative and document-based, which does not address the root causes of shipping safety. As the world's largest

archipelagic nation, Indonesia does not yet have a Maritime Court or Admiralty Court like other countries. The existing Maritime Court can only provide disciplinary action. This action is limited to the captain. As a result, when an accident occurs, the judges and prosecutors handling the case do not fully understand the underlying causes. This clearly demonstrates the importance of the Maritime Court in Indonesia. The existence of the Maritime Court is regulated by Law Number 21 of 1992, but does not explicitly regulate the Maritime Court in its articles. Article 93 of this law only mentions the authority of an institution appointed by the government, which is authorized to examine the causes of accidents. The Maritime Court is emphasized as a purely government institution and not a judicial institution as stipulated in the Basic Law on Judicial Power. As stated in Article 93 of Law No. 21 of 1992 concerning Shipping above, the Shipping Court is the institution appointed to carry out further investigations into ship accidents.

The Maritime Court is currently based only in Jakarta, while its jurisdiction spans the entire country. Therefore, the Maritime Court certainly faces a heavy burden. The increasing intensity of shipping activities in Indonesian waters significantly increases the potential for accidents across Indonesian waters. In its implementation, the Court will be hampered by its limited competence. Despite its name, the Indonesian Maritime Court's jurisdiction and competence are not comparable to those of Maritime Courts or Admiralty Courts in other countries.

The position and authority of the Maritime Court, which can be said to be still narrow, results in the minimal role of the Maritime Court, this has resulted in the function of law enforcement against shipping violations being faced with new problems, the plurality of authorities of various law enforcement agencies in the maritime area makes shipping violations that should be resolved by the Maritime Court, have to be resolved through plural legal channels, thus impacting on the inappropriateness of legal selection in matters of prosecution of cases of violations of shipping law. Based on this problem, it is necessary to discuss the issue of "Optimizing the Role of the Maritime Court in Addressing the Problem of Legal Violations in the Shipping Sector".

## **2. Research Methods**

The type of legal research used is non-doctrinal. In this non-doctrinal legal research, law is conceptualized as a manifestation of the symbolic meanings of social actors as seen in the interactions between them (Soetandyo, 2002). The approach method used in this qualitative legal research is the socio-legal juridical approach, namely an approach by seeking information through direct interviews with informants empirically first and then continued by conducting secondary data research found in literature studies through theoretical steps.

The data collection techniques used were literature study, observation, and in-depth interviews. The types and sources of data in this study consisted of primary and secondary data. Primary data were obtained directly through field research by conducting in-depth interviews with informants related to the role of the Maritime Court in handling maritime law violations, namely from the Ministry of Transportation, the Maritime Court, academics, and non-governmental organizations engaged in the field of maritime law. Meanwhile, secondary data were obtained from a literature study that included primary, secondary, and tertiary legal materials. Primary legal materials included the 1945 Constitution of the Republic of Indonesia, Law Number 39 of 1999 concerning Human Rights, Law Number 32 of 2014 concerning Maritime Affairs, and Law Number 17 of 2008 concerning Shipping. Secondary legal materials included literature, scientific works, and relevant references, while tertiary legal materials included legal dictionaries and encyclopedias used to support the research analysis. The data analysis process in this study was carried out qualitatively by carrying out the following procedures, namely: a) Making notes from the results of data collection, coding, so that the data source can still be traced. b) Collecting, dividing in detail, classifying data according to the research problem, interpreting, searching for meaning, and finding patterns and relationships between each data category so that a new model can be found that is the research objective. Next, after data management is carried out, the next step is to validate the data. Data validation is used to determine the validity of the data. The necessary steps are to implement examination techniques based on the degree of trust (credibility), transferability (transferability), dependability (dependability), and certainty (confirmability).

### **3. Results and Discussion**

#### **3.1. Regulation of the Role of the Maritime Court in Handling Current Legal Violations in the Shipping Sector**

Following the Proclamation of Independence on August 17, 1945, shipping regulations within Indonesian waters were still regulated by the Indonesian Shipping Ordinance (Indische Scheepvaartswet Staatsblad 1936-700). This regulation served as an umbrella for a number of national laws governing shipping, although it did not contain detailed provisions regarding the Shipping Court. Regulations concerning the main duties and functions of the Shipping Court are still scattered throughout several Indonesian national laws. Some regulations containing provisions regarding the Shipping Court include:

- 1) Law No. 21 of 1992 concerning Shipping as amended by Law of the Republic of Indonesia Number 17 of 2008 concerning Shipping;

According to Article 1 paragraph (58) of Law No. 21 of 1992 concerning Shipping as amended by Law of the Republic of Indonesia Number 17 of 2008 concerning Shipping, "The Shipping Court is a panel of experts under and responsible to the

Minister whose duty is to conduct further investigations into ship accidents." Article 250 of Law No. 21 of 1992 concerning Shipping as amended by Law of the Republic of Indonesia Number 17 of 2008 concerning Shipping states that:

- (1) The Shipping Court is established by and responsible to the Minister.
- (2) The Maritime Court has an organizational structure and work procedures stipulated by Ministerial Regulation.

Article 251 of Law No. 21 of 1992 concerning Shipping as amended by Law of the Republic of Indonesia Number 17 of 2008 concerning Shipping states that "The Shipping Court as referred to in Article 250 has the function to carry out further investigations into ship accidents and enforce the professional code of ethics and competence of the Captain and/or ship's officers after a preliminary examination by the Harbor Master." Article 252 of Law No. 21 of 1992 concerning Shipping as amended by Law of the Republic of Indonesia Number 17 of 2008 concerning Shipping states that "The Shipping Court has the authority to examine collisions that occur between merchant ships and merchant ships, merchant ships and state ships, and merchant ships and warships." Article 253 of Law No. 21 of 1992 concerning Shipping as amended by Law of the Republic of Indonesia Number 17 of 2008 concerning Shipping states that:

- (1) In carrying out further investigations into ship accidents as referred to in Article 251, the Maritime Court has the following duties:

- a. examine the causes of ship accidents and determine whether or not there were errors or negligence in the application of professional maritime standards by the captain and/or ship's officers in the event of a ship accident; and
- b. recommend to the Minister regarding the imposition of administrative sanctions for errors or negligence committed by the ship's captain and/or officers.

- (2) The administrative sanctions as referred to in paragraph (1) letter b are:

- a. warning; or
- b. temporary revocation of Seafarer's Certificate of Proficiency.

Article 254 of Law No. 21 of 1992 concerning Shipping as amended by Law of the Republic of Indonesia Number 17 of 2008 concerning Shipping states that:

- (1) In further examinations, the Maritime Court may present government officials in the field of maritime safety and security and other related parties.

- (2) In further inspections, the owner or operator of the ship is required to present the captain and/or crew.

(3) Owners or operators of ships who violate the provisions referred to in paragraph (2) will be subject to sanctions in the form of:

- a. warning;
- b. freezing of permits; or
- c. revocation of permit.

Article 255 of Law No. 21 of 1992 concerning Shipping as amended by Law of the Republic of Indonesia Number 17 of 2008 concerning Shipping states that "Further provisions regarding the functions, authorities and duties of the Shipping Court as well as the methods and procedures for imposing administrative sanctions are regulated by Government Regulation."

2) Government Regulation Number 1 of 1998 concerning Ship Accident Inspection as amended by Government Regulation of the Republic of Indonesia Number 9 of 2019 concerning Ship Accident Inspection

Article 1 paragraph (2) of Government Regulation Number 1 of 1998 concerning Ship Accident Investigations as amended by Government Regulation of the Republic of Indonesia Number 9 of 2019 concerning Ship Accident Investigations states that "The Maritime Court is a panel of experts under and responsible to the Minister whose duty is to carry out further investigations into Ship Accidents."

Article 18 of Government Regulation Number 1 of 1998 concerning Ship Accident Inspection as amended by Government Regulation of the Republic of Indonesia Number 9 of 2019 concerning Ship Accident Inspection states that:

(1) The Maritime Court will conduct an examination of the completeness of the preliminary examination minutes and other supporting documents submitted by the Harbor Master or a government official appointed by the Minister.

(2) If the preliminary examination report document and other supporting documents as referred to in paragraph (1) are incomplete, the Shipping Court will ask the Harbor Master or government official appointed by the Minister to complete them.

Article 19 of Government Regulation Number 1 of 1998 concerning Ship Accident Inspection as amended by Government Regulation of the Republic of Indonesia Number 9 of 2019 concerning Ship Accident Inspection states that:

(1) The Chairman of the Maritime Court will form a Panel of Experts within a maximum period of 7 (seven) working days from the date of receipt of the preliminary examination report of the Ship Accident and complete supporting documents for the follow-up examination of the Ship Accident.



(2) The formation of the Expert Panel Team as referred to in paragraph (1) is carried out by appointing the chairman and members of the Expert Panel Team according to the expertise required in the follow-up investigation of the Ship Accident.

Article 20 of Government Regulation Number 1 of 1998 concerning Ship Accident Inspection as amended by Government Regulation of the Republic of Indonesia Number 9 of 2019 concerning Ship Accident Inspection states that:

(1) The number of members of the Expert Panel Team must be odd and at least 5 (five) people, consisting of:

- a. 1 (one) level I nautical expert as chairman;
- b. 1 (one) level I nautical expert;
- c. 1 (one) level I technical expert;
- d. 1 (one) marine engineering graduate; And
- e. 1 (one) law graduate.

(2) In certain cases, the chairman of the Maritime Court can determine the number or composition of the Expert Panel Team, which must be an odd number of at least 3 (three) people, adjusted to the type of Ship Accident, and one of them must be a law graduate.

Article 21 of Government Regulation Number 1 of 1998 concerning Ship Accident Investigation as amended by Government Regulation of the Republic of Indonesia Number 9 of 2019 concerning Ship Accident Investigation states that "In the event that the chairman or member of the Expert Panel Team is prevented from carrying out the hearing, the chairman of the Maritime Court shall appoint a replacement chairman or member of the Expert Panel Team according to their expertise."

Article 22 of Government Regulation Number 1 of 1998 concerning Ship Accident Inspection as amended by Government Regulation of the Republic of Indonesia Number 9 of 2019 concerning Ship Accident Inspection states that:

(1) The Expert Panel Team as referred to in Article 19 paragraph (1) is assisted by the Expert Panel Team secretary whose duty is to record the implementation of the hearing.

(2) The Secretary of the Expert Panel Team as referred to in paragraph (1) is appointed by the Chairman of the Maritime Court from elements of the Maritime Court secretariat who have legal qualifications.

Article 23 of Government Regulation Number 1 of 1998 concerning Ship Accident Investigation as amended by Government Regulation of the Republic of Indonesia



Number 9 of 2019 concerning Ship Accident Investigation states that "The Expert Panel Team must hold the first hearing no later than 20 (twenty) days from the date of its formation by the Chairman of the Maritime Court."

Article 24 of Government Regulation Number 1 of 1998 concerning Ship Accident Investigation as amended by Government Regulation of the Republic of Indonesia Number 9 of 2019 concerning Ship Accident Investigation states that "The trial shall be held at the seat of the Maritime Court or outside the seat of the Maritime Court."

Article 25 of Government Regulation Number 1 of 1998 concerning Ship Accident Inspection as amended by Government Regulation of the Republic of Indonesia Number 9 of 2019 concerning Ship Accident Inspection states that:

- (1) The Maritime Court summoned the Suspect, Witnesses and Experts to provide testimony in the follow-up examination of the Ship Accident.
- (2) The summons to the Suspect, Witness and Expert as referred to in paragraph (1) must be received by the person concerned no later than 7 (seven) working days before the trial date.
- (3) In the implementation of the follow-up examination hearing for the Ship Accident, the Suspect, Witnesses and Experts must be present to provide the necessary information.
- (4) The Expert Panel Team through the Maritime Court can summon and request information from Suspects, Witnesses and Experts to conduct field inspections or other matters deemed necessary.

Article 26 of Government Regulation Number 1 of 1998 concerning Ship Accident Inspection as amended by Government Regulation of the Republic of Indonesia Number 9 of 2019 concerning Ship Accident Inspection states that:

In the event that the Witness and/or Expert cannot attend the trial for justifiable reasons, the Expert Panel Team may request assistance from the Harbor Master to request the witness and/or Expert to provide written information.

Article 27 of Government Regulation Number 1 of 1998 concerning Ship Accident Inspection as amended by Government Regulation of the Republic of Indonesia Number 9 of 2019 concerning Ship Accident Inspection states that:

- (1) The Expert Panel Team examines based on factual data in the preliminary examination documents of the Ship Accident and other evidence or documents whose truth can be legally accounted for.
- (2) The Panel of Experts assessed the evidence submitted together with the preliminary examination minutes of the Ship Accident and other supporting

documents submitted during the trial by paying attention to the suitability between one piece of evidence and another.

Article 28 of Government Regulation Number 1 of 1998 concerning Ship Accident Inspection as amended by Government Regulation of the Republic of Indonesia Number 9 of 2019 concerning Ship Accident Inspection states that:

The evidence referred to in Article 27 consists of:

- a. letter or writing;
- b. statement of the suspect;
- c. witness statement;
- d. expert testimony;
- e. statements of the parties;
- f. instructions or pictures; and/or
- g. information that is spoken, sent, received, or stored by optical or similar means.

Article 29 of Government Regulation Number 1 of 1998 concerning Ship Accident Inspection as amended by Government Regulation of the Republic of Indonesia Number 9 of 2019 concerning Ship Accident Inspection states that:

In the follow-up examination of the Ship Accident, the Panel of Experts through the Chairman of the Maritime Court can present government officials in the field of maritime safety and security and other related parties as Witnesses and/or Experts.

Article 30 of Government Regulation Number 1 of 1998 concerning Ship Accident Inspection as amended by Government Regulation of the Republic of Indonesia Number 9 of 2019 concerning Ship Accident Inspection states that:

(1) In the follow-up investigation of a ship accident, the ship owner or operator is required to present the captain and/or crew members who are designated as suspects and/or witnesses.

(2) In the event that the owner or operator of the ship as referred to in paragraph (1) is unable to present the Defendant and/or Witnesses during the trial, the trial will still be held.

Article 31 of Government Regulation Number 1 of 1998 concerning Ship Accident Inspection as amended by Government Regulation of the Republic of Indonesia Number 9 of 2019 concerning Ship Accident Inspection states that:

The results of the trial by the Expert Panel Team in the follow-up investigation into the Ship Accident are the Decision of the Maritime Court which at least contains:

- a. Shipwreck incident overview;
- b. the results of the evidence obtained during the trial;
- c. opinion of the Shipping Court regarding:
  - 1) ships, ship documents, and ship crew;
  - 2) weather conditions;
  - 3) cargo/passengers;
  - 4) navigation and locomotion;
  - 5) Cause of Ship Accident;
  - 6) rescue efforts; and
  - 7) errors and/or omissions.
- d. administrative sanctions against the ship's captain and/or officers as long as the ship's captain and/or officers are proven to have made mistakes or negligence in implementing maritime professional standards.

Article 32 of Government Regulation Number 1 of 1998 concerning Ship Accident Inspection as amended by Government Regulation of the Republic of Indonesia Number 9 of 2019 concerning Ship Accident Inspection states that:

- (1) The decision-making process of the Shipping Court in the form of imposing administrative sanctions must be attended by the entire Expert Panel Team.
- (2) In voting regarding the decision making of the Shipping Court as referred to in paragraph (1), it begins with members of the Expert Panel Team and ends with the chairman of the Expert Panel Team.
- (3) For members of the Expert Panel Team who have a different opinion regarding the results of the trial, they are required to submit their differing opinions and include them in the Decision of the Maritime Court.

Article 33 of Government Regulation Number 1 of 1998 concerning Ship Accident Inspection as amended by Government Regulation of the Republic of Indonesia Number 9 of 2019 concerning Ship Accident Inspection states that:

- (1) The decision-making of the Maritime Court is based on evidence, international law, and provisions of laws and regulations in the shipping sector.

(2) The decision of the Maritime Court as referred to in paragraph (1) is set out in written form and signed by the head of the Expert Panel Team, members of the Expert Panel Team, and the secretary of the Expert Panel Team.

Article 34 of Government Regulation Number 1 of 1998 concerning Ship Accident Inspection as amended by Government Regulation of the Republic of Indonesia Number 9 of 2019 concerning Ship Accident Inspection states that:

(1) Based on the Decision of the Maritime Court as referred to in Article 33, the Maritime Court makes a written recommendation to the Minister in the form of imposing administrative sanctions on the Captain and/or Ship's Officers.

(2) In addition to recommending the imposition of administrative sanctions on the Captain and/or Ship's Officers as referred to in paragraph (1), the Maritime Court may convey to the Minister:

- a. recommendations regarding the imposition of sanctions on owners or operators who do not fulfill the obligations as referred to in Article 30; and/or.
- b. a written report if, based on initial evidence, it is suspected that there has been a violation of statutory provisions by government officials or other parties which are directly or indirectly related to the cause of the ship accident.

Article 35 of Government Regulation Number 1 of 1998 concerning Ship Accident Inspection as amended by Government Regulation of the Republic of Indonesia Number 9 of 2019 concerning Ship Accident Inspection states that:

(1) The Minister, after receiving the recommendation of the Maritime Court as referred to in Article 34 paragraph (1), shall determine the imposition of administrative sanctions.

(2) The determination of the imposition of administrative sanctions as referred to in paragraph (1) is final.

(3) With certain considerations, the Minister may impose administrative sanctions other than those recommended by the Maritime Court.

Indonesia, the archipelagic nation of Indonesia, is also a major global shipping route, requiring special attention, particularly in legal regulation, to ensure shipping activities are carried out in accordance with international standards, commitments, and national interests. In reality, national shipping remains beset by various problems. This is due to numerous factors, such as the lack of awareness among shipowners and companies regarding the implementation of effective and enforceable safety systems. The government needs to establish a mechanism to monitor the accident track record of shipping companies that fail to adhere to safety regulations, which could result in their licensing being suspended. To ensure the seaworthiness of ships, the difficulties faced by shipping companies in

rejuvenating and maintaining their fleets require funding. Reports of shipping accidents are dominated by technical issues (capsizing and collisions) resulting from unreliable operational activities.

Safety equipment on these ships is not maintained, so research shows that generally three out of four safety devices are not functioning. This condition is particularly prevalent on ships serving passenger and ferry services. Meanwhile, handling of ship accidents remains administrative and documentary-based, failing to address the root causes of shipping safety. As the world's largest archipelagic nation, Indonesia also does not have a "Maritime Court" like other countries. Consequently, when ship accidents occur, cases are brought to the General Court. However, because neither the judges nor the prosecutors handling such cases fully understand the underlying issues, court decisions regarding legal issues arising from ship accidents are often considered unsatisfactory (Kompas, 2004).

This situation clearly shows how necessary the role of the Shipping Court is. The role of the Shipping Court in reducing the number of shipping violations and accidents is currently still not optimal. Based on the results of interviews, it was found that in 2001-2005 the Shipping Court decided 155 accident cases. In 2022-2014, it will decide 170 cases. In 2025, the Shipping Court will have received 19 cases, four of which have been decided. Even though the number of cases submitted to the Maritime Court in 2025 reached 19 cases, in reality, the number of accidents due to negligence of ship service providers in 2025 also continued to increase, such as the sinking of KMP Tunu Pratama Jaya in the Bali Strait on July 2, 2025 and the burning of KMP Barcelona V in the waters of North Minahasa on July 20, 2025. Preliminary data shows that there was an increase in the number of ship accidents in Indonesia in January-July 2025 to seven incidents, more than the same period the previous year.

### **3.2. Weaknesses and Solutions Regarding the Regulation of the Role of the Maritime Court in Handling Current Legal Violations in the Shipping Sector**

#### **a. Weaknesses of Legal Substance**

The weakness of legal substance is the absence of regulations in the Republic of Indonesia Law Number 17 of 2008 and the Republic of Indonesia Government Regulation Number 9 of 2019 regarding the authority of the Maritime Court in imposing civil sanctions in the form of compensation for parties who are harmed by ship accidents, as well as the absence of criminal sanctions for either the captain or the Port administration who intentionally or unintentionally uses and permits the use of ships that are not safe for sailing. The Maritime Court is only authorized to impose administrative sanctions on ship captains and provide written warnings to Port Administrators.

#### **b. Weaknesses of Legal Structure**

Empowering the existing ship accident investigation agency, the Maritime Court, is also no easy task. Given its current status and authority, the Maritime Court is still far from being a Maritime Court/Tribunal. The weakness of the legal substance means that the Maritime Court can only issue disciplinary action, and this action is only against the captain. For parties such as Port Administrators, it is only in the form of a letter, as action against such officials is the authority of the Directorate General of Sea Transportation.

The prosecution of the ship's captain when ship accidents are often caused by the seaworthiness of the ship is a legal claim that exceeds the captain's responsibility, this clearly deviates from the principle of authority above in the form of the principle of the duties and functions of each position in the hierarchy specifically different from each other. So it is clear that the examination of ship accident cases should go through the Maritime Court. Such a situation is clearly the root of the conflict between law enforcement agencies in maritime areas, where it is known that in addition to the Maritime Court, law enforcement in maritime and coastal areas also consists of:

1) Maritime Security Agency

The Maritime Security Agency was established based on Law Number 32 of 2014 concerning Maritime Affairs, which was then technically regulated through Presidential Regulation Number 178 of 2014 concerning the Maritime Security Agency. The Maritime Security Agency of the Republic of Indonesia (Bakamla RI or Bakamla) is an agency tasked with conducting security and safety patrols in Indonesian waters and areas under Indonesian jurisdiction. Bakamla is a non-ministerial government agency that reports to the President through the Coordinating Minister for Political, Legal, and Security Affairs.

Bakamla's primary duty is to conduct security and safety patrols in Indonesian waters and jurisdiction. In carrying out its duties, the Maritime Security Agency performs the following functions:

- a) Formulate national policies in the field of security and safety in Indonesian waters and Indonesian jurisdictional areas;
- b) Organizing an early warning system for security and safety in Indonesian waters and Indonesian jurisdictional areas;
- c) Carrying out guarding, supervision, prevention and enforcement of legal violations in Indonesian waters and Indonesian jurisdictional areas;
- d) Synergize and monitor the implementation of water patrols by related agencies;
- e) Provide technical and operational support to related agencies;

f) Providing search and rescue assistance in Indonesian waters and Indonesian jurisdictional areas; and

g) Carry out other tasks in the national defense system.

## 2) Water Police

Based on the Regulation of the Chief of the National Police No. 22 of 2010 concerning Organizational Structure and Work Procedures at the Regional Police Level, Article 1 number 1 stipulates that: The Republic of Indonesia National Police (Polri) is a state apparatus that plays a role in maintaining public security and order, enforcing the law, and providing protection, protection and services to the community in order to maintain domestic security.

The Directorate of Water Police (Ditpolair) is an integral part of the Indonesian National Police which carries out duties in water areas in order to maintain public order and security, enforce the law, provide protection, patronage and services to the community, as an effort to create domestic security.<sup>1</sup> Based on the Regulation of the Chief of the National Police No. 22 of 2010 Article 6 letter f it is determined that the Regional Police (Polda) carries out the following functions: Implementation of water policing, which includes patrol activities including first handling of criminal acts, search and rescue accidents/Search and Rescue (SAR) in water areas, development of coastal or water communities in order to prevent crime and maintain security in water areas. Ditpolair which is an element implementing the main duties of the Chief of the Regional Police (Kapolda), has the task of carrying out duties in the field of waters carried out by the Polda, as regulated in the Regulation of the Chief of the National Police No. 22 of 2010 Article 6 letter (f). The Director of Water Police (Ditpolair) is led by the Directorate of Water Police (Dirpolair) who is responsible to the Kapolda, and in daily implementation, Ditpolair is under the control of the Deputy Chief of Regional Police (Wakapolda). In carrying out his duties, Dirpolair is assisted by the Deputy Director of Water Police (Wadirpolair) who is responsible to Dirpolair.

The Water Police is tasked with fostering and carrying out the functions of the Central Water Police in order to serve, protect, guard, and maintain public security and order and the implementation of shipping permit laws in Indonesian waters (POLAIR, 2017). Then the main function of the Water Police is the implementation of shipping permit laws, namely the development of the strength of the Police and the potential of the community in the context of public security and order which together with other social forces bear the task and responsibility of securing and succeeding national development and improving the welfare of the nation.

## 3) Indonesian National Navy (TNI AL)

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<sup>1</sup>(<http://wikimapia.org/16971843/id/MAKO-DIT-POLAIR-POLDADIY>, accessed October 13, 2020).



The Indonesian National Armed Forces (TNI) serves as a state defense instrument, carrying out its duties based on state policies and political decisions. The TNI's primary duties are to uphold national sovereignty, maintain the integrity of the nation's territory based on Pancasila and the 1945 Constitution, and protect the entire nation and its entire homeland. The TNI's structure comprises three vital areas or dimensions (regions) that must be guarded and protected: land, sea, and airspace. Each of these areas is commanded by a force with its own assigned duties.

The Indonesian Navy (TNI AL) is one of the agencies with a maritime patrol task force. The existence of TNI AL patrols at sea is justified by Article 9 of Law No. 34 of 2004. The TNI AL's main duties are:

- a) Carrying out the duties of the TNI as a maritime partner in the defense sector
- b) Enforcing the law and maintaining security in the maritime areas of national jurisdiction in accordance with the provisions of ratified international law.
- c) Implementation of naval diplomatic duties in order to support foreign policy established by the government.
- d) Carrying out TNI duties in the construction and development of maritime partner forces.
- e) Implementing empowerment of maritime defense areas.

Apart from the main tasks and functions above, the Indonesian Navy also has three strategic roles, including the following (Samudera, 2010).

- a) Military Role.
- b) Constabulary Role.
- c) Diplomacy Role.
- 4) Harbor Master

Based on Article 1 point (56) of Law Number 17 of 2008 concerning Shipping, the harbor master is a government official at the port who is appointed by the Minister and has the highest authority to implement and supervise the fulfillment of statutory provisions to guarantee the safety and security of shipping.

The functions, duties and obligations of the harbormaster are regulated in Articles 207 to 225 of Law Number 17 of 2008 concerning Shipping. Article 207 of Law Number 17 of 2008 concerning Shipping states that "The Harbormaster carries out the function of shipping safety and security which includes the implementation, supervision and enforcement of shipping permit laws in the field of transportation in waters, ports, and protection of the maritime environment in ports.

## 5) Coast Guard

The world organization that regulates activities that occur at sea, namely the International Maritime Organization (IMO), is a special agency of the United Nations (UN) that handles maritime issues, especially international shipping. IMO sets international standards for safety, security and environmental protection for the international shipping industry. Its role is to create a regulatory framework for the shipping industry that is fair and effective, and can be adopted and implemented universally. IMO was originally called IMCO (Intergovernmental Maritime Consultative Organization), founded based on its founding convention on March 6, 1948 in Geneva and officially began on March 17, 1958. The first IMO session was held in 1959. Since May 1, 1982, the name IMCO was changed to the International Maritime Organization (IMO). The IMO Secretariat is headquartered in London, United Kingdom. IMO emphasizes the importance of the role of Civil Agencies in maintaining maritime security.

The Sea and Coast Guard is an institution that carries out the function of guarding and enforcing laws and regulations at sea and on the coast, which is formed and is responsible to the President and is technically and operationally carried out by the Minister.

### c. Weaknesses of Legal Culture

The weakness of the legal culture is the position of the Maritime Court which is centralized and does not have an institution as a representative of the Maritime Court in each region. It is also known that in Law of the Republic of Indonesia Number 17 of 2008 concerning Shipping and Government Regulation of the Republic of Indonesia Number 9 of 2019 concerning Ship Accident Investigation, the position of the Maritime Court is only within the central government. This will clearly complicate the reach of the role of the Maritime Court in carrying out its functions. To carry out its functions effectively, the Maritime Court requires qualified Human Resources (HR) and has a deep understanding of ship accident investigation procedures as well as national and international regulations as well as representative institutions in the regions as an optimal effort to reach shipping issues in various regions in Indonesia. In reality, the Maritime Court is only located at the center so that in carrying out its role, the Maritime Court only waits for cases to be submitted to it, not actively involved directly in shipping cases in various regions.

### **3.3. Solutions to Problems Regulation of the Role of the Maritime Court in Handling Current Legal Violations in the Shipping Sector**

The issue of uncertainty about the position of the Shipping Court in Law of the Republic of Indonesia Number 17 of 2008 and Government Regulation of the Republic of Indonesia Number 9 of 2019. The problem of the less than optimal role of the Maritime Court in handling cases of maritime violations which have resulted

in increasing maritime accidents, is the basis for the need for a solution to this problem. The solution steps that can be taken are:

- a. Need to be regulated the authority of the Maritime Court to impose civil sanctions in the form of compensation for the injured party due to the occurrence of a ship accident, as well as criminal sanctions for both the captain and the Port administration who intentionally or unintentionally use and permit the use of ships that are not suitable for sailing safety in the Republic of Indonesia Law Number 17 of 2008 concerning Shipping and the Republic of Indonesia Government Regulation Number 9 of 2019 concerning Ship Accident Inspection.
- b. There is a need for affirmation regarding the obligation to resolve ship accident cases which must go through the Maritime Court first before going through other legal channels in the Republic of Indonesia Law Number 17 of 2008 concerning Shipping and the Republic of Indonesia Government Regulation Number 9 of 2019 concerning Ship Accident Investigations.
- c. It is necessary to regulate the representative institution of the Maritime Court at the regional level in the Republic of Indonesia Law Number 17 of 2008 concerning Shipping and the Republic of Indonesia Government Regulation Number 9 of 2019 concerning Ship Accident Investigation.

#### **4. Conclusion**

The role of the Maritime Court in handling legal violations in the shipping sector is currently regulated in Articles 250–254 of Law Number 17 of 2008 concerning Shipping and Articles 18–34 of Government Regulation Number 9 of 2019 concerning Ship Accident Investigation. However, these regulations still have weaknesses, primarily due to the lack of provisions regarding the authority of the Maritime Court to impose civil sanctions in the form of compensation to parties harmed by ship accidents, and the lack of provisions for criminal sanctions for captains or port administrations who negligently or intentionally operate ships that are not seaworthy. Furthermore, there is no affirmation that the resolution of ship accident cases must first go through the Maritime Court before pursuing other legal channels. Therefore, it is necessary to strengthen regulations through revisions to Law Number 17 of 2008 and Government Regulation Number 9 of 2019 to clarify the authority of the Maritime Court, add criminal and civil sanctions, and establish representative institutions of the Maritime Court at the regional level so that law enforcement in the shipping sector can be carried out more effectively and comprehensively.

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