

CHAPTER II

LITERATURE REVIEW

A. The Liability of The Captain

A liability is defined as a company's legal financial debts or obligations that arise during the course of business operations. Liabilities are settled over time through the transfer of economic benefits including money, goods or services. Recorded on the right side of the balance sheet, liabilities include loans, accounts payable, mortgages, deferred revenues and accrued expenses.¹⁷

The carrier or transportation is people who bind themselves in charteragreements according to time or according to voyage as well as other agreements for arranging the transportation of people.¹⁸ An agreement for transportation obligates the carrier for safeguarding passengers from the time of boarding until the time of disembarking from the ship and also a mutual agreement between the carrier and the sender, where the carrier binds himself to carry out the transportation of goods and / or people from a certain place to the destination safely. The carrier or transport in water is the activity of transporting and / or transferring passengers and / or goods by boat.¹⁹

¹⁷ Rusniah Ahmad and Irma Rachmawati, 2016, "*Liability of A Sea Carrier in The Regulation of Ship Collision Under Indonesian Maritime Law*", online published, international journal of current research, vol 8, universiti utara Malaysia, p.3.

¹⁸ Sendy Anantyo 2012, "*Pengangkutan Melalui Laut*" Diponegoro Law Review, Volume 1, Nomor 4, p.5.

¹⁹ Article 1 paragraph 3 in Law no.17 of 2008 on Shipping

The carrier is responsible for the safety and security of passengers and / or goods that are removed,²⁰ or to render compensation for losses resulting from injuries which befall passengers in connection with the transportation, except if there is proof that such injury is the result of an event unable to be prohibited or prevented, or resulting from the passenger's own mistake or error. If those injuries are the cause of death, then the carrier is obligated to compensate for the suffering husband or wife, children and parents of that passenger.²¹

The captain in this case is carrier or transporter because the captain is employed by a transport company or individual to carry out the duties of the carrier. Captain or the skipper is one of the crew who became supreme leader in ship and have the authority and responsibilities in accordance with the provisions of the legislation.²² The captain is responsible to carry a ship on a shipping from one port to another port safely. The responsibility includes the safety of all passengers or goods on board.

Policies of the captain that needs to be implemented are 1. traffic procedures, 2. shipping lanes, 3. route systems, 4. ship traffic shipping areas, and 5. navigation aids.²³ The reason is, when sailing the skipper reports any information through the Beach Radio Station (SRBP) which can minimize

²⁰ Article 40 paragraph 1 in Law no. 17 of 2008 on Shipping

²¹ Article 522 in Law of Commercial Code Book II Rights And Obligations Arising From Shipping

²² Article 1 paragraph 4 in Law no. 17 of 2008 on Shipping

²³ Article 117 in Law No. 17 of 2008 on Shipping

the potential for having accidents. The captain must pay attention to the safety of the passengers, the safety equipment on board, managing his ship properly according to shipping procedures / rules, making seaworthy ships, responsible for shipping safety, responsible for the safety of the crew on board, comply with the orders of the shipowner as long as it does not deviate from the applicable laws and regulations.²⁴

The carrier must also fulfill the safety and security of the passengers, and the right to be responsible when passengers become victims due to sinking ships.²⁵ The law of shipping has also stated in article 40 which also explained that a carrier has responsibility for the safety of passengers and provides compensation for goods and passenger that have been registered.²⁶ Sea transport company is responsible for the consequences caused by the operation of the ship, including destroyed, lost, or damage to the goods transported, so it was the passengers who are entitled to reimbursement for the goods, and the carrier is also obliged to register insurance as its responsibilities as referred to in paragraph (1) and carry out basic public passenger protection insurance in accordance with the provisions of the legislation.²⁷

The fact is when accident in marine transportation happened, the society is not yet fully understand their rights, and therefore when there is an

²⁴ Article 138 in Law No. 17 of 2008 on Shipping

²⁵ Barmawi, Jenny, 2002, *Penelitian tentang tanggung jawab terbatas sebagai sarana perlindungan bagi penyedia jasa dan pengguna jasa dalam pengangkutan laut di Indonesia*, p.54.

²⁶ Article 40 In Law No. 17 of 2008 on Shipping. “ Transport companies in the waters of being responsible for the safety and security of passengers and / or goods are removed”.

²⁷ Article 41 paragraph 3 in Law No. 17 of 2008 on Shipping

accident the people just let go of what happened to him until the government just ignored it.²⁸ It is because the users of the marine boat are poor people who have not been legally literate, so most victims just surrender and do not do any lawsuits.²⁹

The carrier in maritime transport is responsible for the consequences caused by the operation of the ship, including destroyed, lost, or damaged of the goods transported. It is not only items/goods that are lost or damaged. Passengers who experience death due to maritime transportation accidents are entitled to be reimbursed for their goods and are given compensation.³⁰ Therefore if referring to the existence of the Act, the improvement efforts for maritime transportation services should begin with designing more involvement and accommodating the interests of passenger.³¹

When accident happened, only the passengers who had a ticket and have been registered in the ship manifest have received compensation. Meanwhile, if passengers did not have the ticket and were not registered in the ship manifest, they did not receive compensation of damages related to the accident. However, Government Regulation Number 20 Year 2010 pro-

²⁸ Hendra Cipto, published Tuesday, 3 July 2018, “Kapal Feri tenggelam di Selayar Polisi Sebut 4 Penumpang Tewas” ” Availabel on: <https://regional.kompas.com/read/2018/07/03/15250821/kapal-feri-tenggelam-di-selayar-polisi-sebut-4-penumpang-tewas>, Accessed on : Friday, 20 July 2018, 11:30pm.

²⁹ Muhammad Arief Andry dan Febri Yuliani, 2014 “*Implementasi Kebijakan Keselamatan Pelayaran*”. Jurnal Administrasi Pembangunan, Jakarta:Yayasan Pancur Siwah , Volume 2, No. 3, p.260.

³⁰ Law No. 33 and 34 of 1964, determine based on the Republic of Indonesia Minister of Finance Regulation No. 36 / PMK.010 / 2008 and 37 / PMK.010 / 2008 26 February 2008 the types of compensation provided for land and sea are the same while for air there are some that are differentiated.

³¹ Sedy Anantyo, 2012, “*Pengangkutan Melalui Laut*”, p.2.

vides a limitation of responsibility, which is limited to what is agreed between the carrier and passengers stated on the ticket. Most passenger tickets are written in clauses, namely "the company is not responsible for the damage or loss of objects carried by passengers."³²

B. The Liability of Shipowner

In each law made by the legislator, a number of principles usually underlie the issuance of the law. The principle of law is the basic of legal regulations on the basis of two reasons, first, the principle of law is the broadest foundation for the birth of a legal regulation. Second, the principle of law contains ethical guidance; the legal principle is like a bridge between legal regulations and social ideals and an ethical view of the society.³³

Based on article 477 on Commercial Code, it is explained that the liability of the carrier is responsible for losses caused by the late delivery of the goods transported, unless proven that the delay was caused by a disaster which could not be prevented or avoided.³⁴

There are also several principles of liability of the carrier, including;

1) The principle of fault liability

According to this principle, every carrier who makes a mistake in carrying out transportation must be responsible for paying

³² Article 180 and 181 Government Regulation No.20 of 2010 in Marine Transportation.

³³ Fadia Fitriyanti and Ani Yunita, 2017, *Hukum Perniagaan Internasional*, Buku Ajar, Available at : <http://repository.umy.ac.id/bitstream/handle/123456789/14218/Buku%20Ajar%20Hukum%20Perniagaan%20Internasional%20.pdf?sequence=1>, Yogyakarta, Accessed on: 7 January 2019, 10:23 AM, p.29.

³⁴ Article 477 in Commercial Code

compensation for any losses arising from the mistake. Onus of proof is on the injured party not on the carrier.

2) The principle of presumption of liability

According to this principle, each carrier is considered to be always responsible for any losses arising from the transportation carried out. But if the transporter can prove that he is innocent, then its released from the obligation to pay compensation.

3) The principle of absolute / strict liability

According to this principle, each carrier is considered to be always responsible for paying for any losses arising from the transportation carried out without the obligation to prove the presence or absence of a carrier error.

There also legal principles on the law transport. The principle of public is the legal basis of transportation that is valid and useful for all parties, namely parties in transportation, third parties who have an interest in transportation, and the government, while the principles of a civil nature are the legal basis of transportation which only applies and is useful to both parties in the transportation of commerce, namely the transporter and passenger or shipper.³⁵

³⁵ *ibid*

Shipowner is an individual or company that owns a ship and fulfill the regulations and applicable laws, so that it can claim that the ship belongs to an individual or company. Shipowner have to fulfill the requirements of ship safety, prevention of water pollution from ships, manning, load line, loading, welfare and health of the crew of the passenger, the legal status of ships, safety management and the prevention of pollution from ships, and safety management sailing in certain waters.³⁶

Shipowners can also be said to be business entities or private companies that fulfill desires of consumers, because it is an individual person or a company, in the form of a legal or non-legal entity established and domiciled or engaged in activities within the legal territory of the Republic of Indonesia, conducting various kinds of business activities in the economic sector through contracts, both individually and collectively.³⁷

A shipowner must meet the requirements of ship safety, prevention of water pollution from ships, manning, load line, loading, welfare and health of the crew of the passenger, the legal status of ships, safety management and the prevention of pollution from ships, and safety management sailing in certain waters.³⁸ Shipowners are also entitled to know the safety conditions of the ship, a state of the vessel that meets the requirements of materials, construction, building, machinery and electrical, stability, and the

³⁶ Article 1 paragraph 33 in Law No. 17 of 2008 on Shipping

³⁷ Article 320 in Law of Commercial Code

³⁸ Article 33 in Law No. 17 of 2008 on Shipping

arrangement of equipment including auxiliary equipment and radio apparatus, electronic ship, as evidenced by a certificate after inspection and testing.

C. The Rights and Obligation Passenger

Passengers can be interpreted as someone (individual) and one company (group) that uses transportation services for a particular trip by issuing some money in return for transporters; in other words they can be defined as people who have bought tickets, meaning people traveling using transportation equipment provided by the transporting party or commercial company and are bound by a contract and agreement with the carrier stated or according to the ticket with the carrier during the trip.³⁹

Basically, there are two parties in maritime transportation activities, namely the carrier in this case is a company shipping PT. Pelni Bulukumba / KM Lestari Maju and the consumer to use the services of maritime transportation or passengers.⁴⁰ The parties are bound by an agreement, namely the transport agreement. Benefit is the case with an agreement which is a manifestation of a legal relationship that is civil in nature; it contains rights and

³⁹ Edi Prawijayanto, published, Sunday, 13 April 2014, update Wednesday, 11 May 2016, "Pengertian Perlindungan hukum Menurut Para Ahli" Available at: <http://tesishukum.com/pengertian-perlindungan-hukum-menurut-para-ahli/>, Accessed on : Saturday, 21 July 2018, 8:34pm.

⁴⁰ Amanda putri, published Thursday, 7 February 2017, update Wednesday, 10 January 2018, "Memahami Hak Konsumen Dalam Kecelakaan Transportasi Laut" Available at : <http://www.hukumonline.com/berita/baca/lt589975c814fbd/memahami-hak-konsumen-dalam-kecelakaan-transportasi-laut>, Accessed on : Sunday, 22 July 2018, 6:30pm.

obligations that must be carried out and fulfilled, commonly known as "achievement."⁴¹

In terms of the rights of other passenger ships when using sea transportation, both sea transportation and crossing transportation. There are several rights of passenger ships as follows;

1. The Right in Form Discount Price of Ticket for The Elderly, Civil Servants and Toddlers⁴²
2. The Right To Get Insurance Accident⁴³
3. The Right to Obtain a Great Transportation⁴⁴
4. The Right to Get Health and Medicine Facilities⁴⁵
5. The Right of Special Facilities for Disabilities⁴⁶
6. The Right to Get Life Jacket and Other Safety Equipment⁴⁷
7. The Right to Freedom From Smoke of Cigarette⁴⁸

⁴¹ Barmawi, Jenny, 2002, *Penelitian tentang tanggung jawab terbatas sebagai sarana perlindungan bagi penyedia jasa dan pengguna jasa dalam pengangkutan laut di Indonesia*, *Op. cit.* p.72.

⁴² See on Article 2 paragraph (2) of The Regulation Minister of Transportation No. 38 of 2016 on Limits Value / Tariff on Domestic Economy Class in Sea Passenger Transportation.

⁴³ Article 40 and 41 in Law No.17 of 2008 on Shipping.

⁴⁴ Article 302 in Law No. 17 of 2008 on Shipping "(1) The skipper who sail the ship while the concerned know that the unseaworthy vessel referred to in Article 117 paragraph (2) shall be punished with imprisonment of three (3) years or a fine of not more Rp400.000.000,00 (four hundred million rupiah)".

⁴⁵ Article 152, Paragraph (1) and (2) in Law No. 17 of 2008 on Shipping. "(1) Every vessel that carries passengers are required to provide health facilities for passengers. (2) health facilities as referred to in paragraph (1) shall include: a). room treatment or treatment; b). medical equipment and medicines; and c). medical personnel".

⁴⁶ Nanda Narendra Putra, Published Friday, 23 June 2017, update Wednesday, 20 December 2017, "Mudik Pakai Kapal Laut Pahami Hak dan Kewajiban Anda Selama Diatas Kapal" Available at : <http://www.hukumonline.com/berita/baca/lt594a6a8b58301/mudik-pakai-kapal-laut-pahami-hak-dan-kewajiban-anda-selama-di-atas-kapal>, Accessed on : Monday, 23 July 2018, 8:30pm.

⁴⁷ Director General of Sea Transportation No. 167 / PHBL2011, October 21, 2011 and issue an instruction No. UM.008 / I / II / DJPL-17, January 3, 2017 on Obligations of The Captain in Handling Passengers During Cruise.

8. The Right to Get Compensation⁴⁹
9. The Right to Get Compensation When The Ship's is Late⁵⁰
10. The Right to Get a Good Services in Port⁵¹

There are rights, and of course there are obligations. Some of these rights certainly cannot be collected by passengers as long as their obligations have not been fulfilled. One of the most substantial obligations is that every passenger must buy a ticket according to the price. Without a ticket, passengers would not be allowed to board the ship⁵² and of course do not get any right.

D. Insurance

Compensation caused by an accident is the consumer's right because every time buying a ticket it includes insurance. The value of compensation for the sea is so small that it does not suit the victims' suffering. The provision of consumer benefits does not erase the authority of consumers to use

⁴⁸ Circular Letter of Ministry of Transportation Number: SE 29 of 2014, December 3, 2014 concerning the Prohibition of Smoking in All Public Transportation.

⁴⁹ Article 40 Paragraph (1) and (2) in Law No. 17 of 2008 on Shipping. "(1) transport companies in the waters of being responsible for the safety and security of passengers and / or goods are removed; and (2) The company responsible for transport in the waters of the cargo ship in accordance with the type and the amount stated in the document charge and / or an agreement or contract of carriage that has been agreed upon".

⁵⁰ Article 7 and 8 in The Regulation Minister of Transportation No. PM.37 of 2015 on Standards for Passenger Marine Transport Services.

⁵¹ Nanda Narendra Putra, Published Friday, 23 June 2017, update Wednesday, 20 December 2017, "Mudik Pakai Kapal Laut Pahami Hak dan Kewajiban Anda Selama Diatas Kapal".

⁵² Article 2, Paragraph (2) in the Regulation of The Minister of Transportation of PM No. 28 of 2016 on Obligations of Passenger marine Transport Must Have Tickets. "Every Passenger of Marine Transport as Referred to in Paragraph (1) Must Have a Ticket".

civil sea transport.⁵³ In the accident, only the passenger who has a ticket and has been registered in the ship manifest has received compensation. While passengers who do not have a ticket do not get compensation or compensation related to the accident.⁵⁴

PT. Jasa Raharja (Persero) provides basic protection to the community through social insurance programs, namely Public Transport Passenger Accident Insurance implemented under Law No. 33 of 1964 on Passenger Accident Insurance Funds. The victims who are entitled to compensation are every legitimate passenger from a public passenger transportation who has a personal accident, which is caused by the use of public transportation equipment, as long as the passenger concerned is in the transport, that is when riding from the departure point to dropping off at the destination.⁵⁵

Mandatory legal relationship to accident insurance is created between the passenger funding contributions and the fund's authority. Each passenger legitimate public vehicles, trains, national airline company and ship of a national shipping / shipping company, are required to pay dues through entre-

⁵³ Danny Faturachman, Muswar Muslim, Agung Sudrajad, 2015 *“Analisis Keselamatan Transportasi Penyeberangan Laut Dan Antisipasi Terhadap Kecelakaan Kapal”*, p.20.

⁵⁴ Maria Okita, published Thursday, 21 February 2017, update Wednesday, 15 November 2017, “Yang Harus di Ingat Dari Asuransi Penumpang” Available at :<https://www.kabarpemumpang.com/yang-harus-diingat-dari-asuransi-pemumpang/>, Accessed on : Saturday, 21 July 2018, 7:42pm.

⁵⁵ Government Regulation (PP) No. 17 of 1965 on The Implementation of Passenger Accident Insurance Funds.

preneur / owner in question to cover the financial result due to accidents passengers.⁵⁶

Insurance or coverage is an agreement, whereby an insurer binds himself to an insured by receiving a premium (premi), to provide reimbursement to him for a loss, damage or loss of expected benefits, which he may suffer because of an unspecified event in general⁵⁷; insurance is also divided into 2, namely;

1. Life Insurance

The closing of coverage to pay a certain amount of compensation due to death or permanent life of a person within the period of coverage. In life insurance, the insurer receives the premium from the insured and if the insured dies, then the compensation (money insured) is paid to the heir or someone appointed in the policy as the recipient of compensation.⁵⁸

2. Losses Insurance

The closing of coverage for losses due to damage or destruction of the insured property because of the causes or the insured event. In loss insurance, the insurer receives the premium

⁵⁶ Article 3 paragraph 1 in Law No. 33 of 1964 on Passenger Accident Insurance Funds

⁵⁷ Article 1 Law No.40 of 2014 on Insurance.

⁵⁸ Article 10 in Government Regulation (PP) No. 17 of 1965 on The Implementation of Passenger Accident Insurance Funds.

from the insured and if there is damage or destruction of the insured property, the compensation will be paid to the insured.⁵⁹

The value of compensation paid or get insurance for victims of accidents of ships has been regulated by the ministry of finance decree.⁶⁰

⁵⁹ Article 180 in Government Regulation No.20 of 2010 in Marine Transportation

⁶⁰ Article 3 and 4 in the Ministry of Finance Decree No. KEP.15 / PMK.010 / 2017