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IMPLEMENTATION OF NON PENAL POLICY AGAINST NON-FULFILLMENT OF SHIP SEAVAILABILITY AND SAFETY

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Abstract— In accordance with Law Number 17 of 2008 concerning Shipping, this thesis addresses the implementation of non-punitive measures against the non-fulfillment of a ship's seaworthiness and safety requirements in shipping. One social issue is that a large number of ships continue to fall short of the legally stipulated eligibility requirements. Naturally, the goal of this research is to determine how non-punitive measures might be applied to prevent non-compliance with shipworthiness and safety requirements and to lessen the number of shipworthiness and safety infractions in general. The study gathers information through document studies, interviews, and observations. Based on the current issues, it can be concluded that high maintenance and operating costs, along with supporting variables like crew members' poor maintenance skills and aging safety equipment, are the primary causes of the failure to meet shipworthiness and safety requirements. Ships must be declared seaworthy, which is defined as meeting the requirements for ship safety, preventing pollution from ships, manning, loading lines, loading, crew welfare, passenger health, ship legal status, safety management, preventing pollution from ships, and ship security management for sailing in specific waters, as per Law No. 17 of 2008. Violations of the ship's safety and seaworthiness may subject the offenders to articles 302 and 303 of the Shipping Law. However, in order to reduce infractions, the government must use non-penal policies, such as offering subsidies to fulfill ship safety and seaworthiness requirements. Therefore, it follows that

having a government should help to lower the number of incidents involving ship and maritime safety infractions.

Keywords— *Seaworthiness; Ship Safety; Government Subsidie*

I. INTRODUCTION

Important ship and marine seaworthiness incidents still occur in Indonesia. Human carelessness with regard to established safety procedures is the cause of this. Furthermore, there is a notable deficiency in the emphasis placed on raising safety awareness in the transportation sector. This has ramifications for disregarding material and fatal accident losses. You must comply with certain regulations before embarking on a cruise. These include obtaining permission from the Harbor Master, who serves as a supervisor at the port and determines whether the ship is fit to sail as well as the overload capacity and safety amenities on board.

Non-compliance with these requirements constitutes disregard for legal regulations which results in the risk of death and material and immaterial losses. This condition cannot be left alone by the government as the holder of the obligation and responsibility to provide transportation services on the waters. Therefore, the author is interested in diving deeper into "Implementation of Non-Penal Policy for Non-Fulfillment of Ship Seaworthiness and Safety".

Based on the background described above, the author formulated several problems to be studied in this research,

including determining what is the cause of nonfulfillment of ship seaworthiness and safety and how to implement non-penal policies so that seaworthiness is met.

This research is an update on previous studies which discussed the same thing about seaworthiness and ship safety. Previous research only discussed what and how seaworthiness is related to existing regulations. This research will examine the causes of non-compliance with ship seaworthiness and safety as well as the implementation of non-penal policies in this regard.

It is expected that this research contributes to all related parties, theoretically this study enrich knowledge in the field of ship seaworthiness and apply theories obtained from lectures and connect them with practice in the field. Practically, this research is expected to make a contribution ideas for legal officers, especially shipping criminals, maritime personnel, ship owners and ship crews, especially in preventing ship accidents, as well as for ship safety inspectors (Marine Inspectors), this research is expected to provide insight for consideration in enforcing the law in the shipping sector, including for users of shipping services. Additionally, this research become a reference for knowledge regarding ship seaworthiness guidelines.

There are several theories and concepts in this research which will be used as a knife in discussing the problems in the research. The theories used include: seaworthiness theory which can be interpreted as the ability of a ship to navigate safely at sea as a carrier which is explicitly stated as the responsibility of the carrier or ship owner, among other obligations, the concept of shipping safety which is defined as safety and security. The water transportation, namely the conditions for fulfilling the requirements, seaworthiness of the ship and navigation, as well as the theory of criminal acts in shipping which is defined as a series of acts prohibited by law and reprehensible in relation to shipping activities, and the theory of legal policy (penal and non-penal) which can be interpreted as countermeasures Crime is essentially an integral part of efforts to protect society (social defence) and efforts to achieve prosperity (social welfare). The aim of this research is to find out the causes of nonfulfillment of ship seaworthiness and safety and to find out the implementation of nonpenal policies so that seaworthiness is fulfilled.

II. METHOD

This research using descriptive method to determine the value of independent variables, either one or more variables without making comparisons, or connecting one variable with another variable. According to Whitney, the descriptive method is a search for facts with correct interpretation.

Descriptive research studies problems in society and the

21 procedures that apply in society as well as certain situations, including relationships, activities, attitudes, views, as well as ongoing processes and the influences of a phenomenon, namely research that provides description of the failure to fulfill ship seaworthiness and ship safety in shipping crimes.

The data source in this research was obtained through library research which was carried out by searching for existing literature. The literature in question can be books, statutory regulations and other regulations related to research, as well as literature from the author's personal collection. Meanwhile, field research was carried out to obtain primary data through interviews with related parties.

Based on inspections by Ship Safety Inspector Officials from 2021 to 2023, the types of data obtained are: Mr. at the Harbormaster and Port Authority Office for angina, Mr U, ISM Code Auditor at the Harbormaster and Port Authority Office for angina, Mr A, ISM Code Auditor at the Harbormaster and Port Authority Office for angina.

Identify applicable funding agency here. If none, delete this text box.

III. RESULTS AND DISCUSSION

Causes of Failure to Fulfill Ship Seaworthiness and Safety

From the research data obtained, it was found that the causes of noncompliance with ship seaworthiness and safety are as follows:

Expensive Maintenance and Operational Costs

High maintenance and operational costs are a major problem in the shipping industry, which can have a negative impact on the seaworthiness and safety of ships. This factor involves a number of aspects that need to be considered in depth by shipping companies and maritime authorities to ensure ships continue to operate safely and efficiently.

Ship maintenance and operations often involve advanced technology and state-of-the-art equipment. The costs of maintaining, updating, and training crew to use this equipment can be very high. Inability to update or properly maintain this equipment can reduce operational efficiency and increase safety risks.

Routine maintenance and emergency repairs require significant funds. Ships require regular maintenance to prevent failure of engines or other key systems. Not prioritizing this maintenance can result in equipment failure at sea, increasing the risk of accidents and harming vessel safety.

The condition of the equipment and maintenance of the

vessel directly affects the insurance premium. Ships that do not meet safety standards may face higher insurance premiums. Therefore, poor or inadequate maintenance can lead to increased insurance costs, increasing the financial burden.

In addition, global economic uncertainty can affect fuel costs, spare parts prices and other operational costs. These fluctuations can make financial planning difficult, which can affect vessel maintenance and operations.

Ship Owners Do Not Understand Ship Seaworthiness Issues

Ship owners who do not fully understand or appreciate ship seaworthiness issues can have serious consequences for operational safety and shipping safety. Ignorance or indifference to certain aspects of a ship's seaworthiness can create a potentially dangerous environment, both for the ship itself and for everyone on board.

Boat owners who do not understand the importance of scheduled maintenance may neglect routine maintenance and thorough inspections. This can cause a reduction in the quality of equipment and systems, increase the risk of equipment failure, and potentially cause serious accidents or damage.

Some shipowners may be reluctant to invest in the latest safety technology due to its high costs. This may include fire detection systems, rescue equipment, or advanced navigation devices. Without this technology, ships may be ill-equipped to handle emergency situations.

Ship owners' lack of understanding of maritime safety regulations can lead to low compliance. This may involve ignoring minimum safety requirements or maintaining the vessel to industry standards, increasing the risk of regulatory violations and legal sanctions.

Ship crew members are not good at maintaining ship safety equipment

The success of ship seaworthiness and safety depends greatly on the knowledge, skills and awareness of the ship's crew (ABK) in maintaining ship safety equipment. Unfortunately, in some cases, ship crew members may not have sufficient understanding or awareness of the importance of maintaining and handling safety equipment. This can pose a serious risk to the safety of the vessel and all those on board.

Crew members who do not fully understand the function and importance of ship safety equipment may tend to consider it a less critical part. This can result in a lack of attention to maintenance and routine checks, increasing the risk of failure when needed.

Crew members may face difficulties in carrying out routine

maintenance due to limited time, knowledge or resources. Poor maintenance can cause equipment to not function properly when needed.

Crew members who do not understand or are indifferent to maritime safety regulations may ignore the specified maintenance and inspection requirements. This can lead to non-compliance with regulations, increasing the risk of incidents and legal sanctions.

Safety equipment that is no longer suitable due to age

The age of a ship's safety equipment is a critical factor that can have a significant impact on a ship's seaworthiness and safety. Although safety equipment is designed to have a certain service life, over time, the effects of the marine environment, corrosion and wear can cause a decline in the performance and integrity of the device.

Of the several factors above that often cause ship seaworthiness and safety to be inadequate, namely ship maintenance and operational costs. So for this matter, criminal regulations are imposed. The regulations that ensnare the failure to fulfill the seaworthiness of this ship are articles 302 and 303 of the shipping law, but according to the author, these articles constitute a criminogenic factor, namely regulations that cause criminal acts. In essence, criminal law policy is a comprehensive or total criminal law enforcement process. Criminal law policy is an action related to:

- a. How does the government attempt to tackle crime with criminal law;
- b. How to formulate criminal law so that it is in accordance with community conditions;
- c. What is the government's policy to regulate society with criminal law;
- d. How to use criminal law to regulate society in order to achieve greater goals

One of the factors that causes a statutory regulation not to be obeyed or violated is the substance or law factor itself [1]. This is defined as the rules that exist and are applied in society. The law is static and only silent, like a promise, it is through its use by law enforcers that the law can be useful and beneficial with morals in it, as well as promises that are realized through the role of law enforcers themselves [2]. In summary a law can function well if the community has a high level of compliance and awareness to understand the law itself [3]. At least with that, the function of law can be felt.

The massive violations of ship seaworthiness have an impact on ship safety which leads to high costs. The implication of this is that many ships are forced to sail because of the need for the economy to continue, apart from that other criminal acts such as corruption and collusion can occur. This requires appropriate policies to handle the problem of non-compliance with seaworthiness and ship safety.

Implementation of Non-Penal Policies to Ensure Seaworthiness is Fulfilled

The high number of ship seaworthiness violations cannot be considered a trivial problem. Considering that cases of ship seaworthiness violations have increased from year to year, as well as the many impacts that will be felt, it is necessary to have a policy that can prevent the level of ship seaworthiness violations from increasing.

One policy that is usually implemented is to do legal action or enforcement based on criminal law against violators. However, minimizing violations of ship seaworthiness does not always involve law enforcement alone. Of course other policies must be implemented beyond that to be able to overcome the level of violations of ship seaworthiness. The rational efforts to control or overcome crime (criminal politics) also need to be carried out, namely by using non-penal means [4]. According to G. P. Hoefnagels, crime prevention efforts that can be taken are by:

Application of criminal law (criminal law application).

Prevention without punishment and Influencing society's views on crime and punishment through mass media (influencing views of society on crime and punishment/mass media)

The Non-Penal Policy for violations of Ship Seaworthiness is carried out in order to create rational efforts to control or overcome violations, which of course not only use penal means (criminal law), but also use non-penal means. The dealing with crimes or violations by only providing criminal sanctions is only temporary, because it is possible that the crime or violation will reappear, whether committed by the same person or a different person [5].

Therefore, the original source of the crime or violation must be sought. By knowing the causes of crimes or violations, we can try and try to eliminate those crimes or violations or at least reduce them. To reduce crime or violations (especially those caused by social conditions) we should not only use penal means, but also use a non-penal approach in the form of social policies and include the community in efforts to prevent and overcome violations. To make efforts to overcome a form of crime or Violations can be committed in two ways. First, by implementing criminal/penal measures and the second method is non-penal or non-penal measures. If the first approach is taken, then this means that dealing with a crime is carried out using criminal law policies, namely efforts to realize criminal laws and regulations in accordance with the circumstances and situations at one time and for the future.

Criminal law functions as a means of social control, namely with sanctions in the form of criminal penalties to be used as a means of dealing with crimes or violations. In this

way, it is hoped that social norms can be enforced with sanctions provided by criminal law against someone who behaves not in accordance with these norms. Meanwhile, the second method is non-penal efforts, which are efforts to prevent crimes or violations that are preventive in nature, namely efforts to prevent possible crimes that are carried out before the crime or violation occurs.

In simple terms, it can be said that the Non-Penal policy is a preventive/deterrent/control step before a violation or crime occurs. The penal measures referred to here are policies outside of criminal law which aim to reduce the number of traffic violations. In summary, the aim of this Non-Penal policy is to prevent the public from committing violations of Ship Seaworthiness and to provide guidance or understanding to those who have gone too far or have frequently committed Ship Seaworthiness violations over the years.

In general, the following are efforts to prevent non-penal ship seaworthiness violations that parties should be able to carry out to reduce the number of ship seaworthiness violations, namely coaching ship owners and ship crews (ABK).

The non-penal policy to foster ship owners and crew is a proactive measure to ensure ship seaworthiness and safety. This approach prioritizes the implementation of preventative measures, comprehensive training, and counseling over relying solely on legal penalties.

Facilitate training initiatives centered on understanding maritime safety regulations, ship maintenance, and risk mitigation, thereby encouraging the active involvement of ship owners in regularly scheduled maritime safety seminars and workshops.

Ensure crew members receive frequent training regarding the proper use of safety equipment, evacuation protocols, and accident prevention while at sea. Apart from that, take the initiative

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IV. CONCLUSIONS

From the discussion above, the authors conclude several things, including the following: (1) the cause of non-compliance with ship seaworthiness and safety is expensive maintenance and operational costs, ship owners do not understand ship seaworthiness issues, this can cause big problems for safety when operating and sailing. The crew is not good at maintaining the ship's safety equipment. Lastly, safety equipment is no longer good because it is old. (2) Implementation of non-penal policies in fulfilling ship seaworthiness and safety, namely developing ship owners and crew, facilitating training initiatives centered on understanding maritime safety regulations, ship maintenance and risk mitigation, building an effective ship safety management system, developing protocols for inspections systematic and assessment of ship crew skills, educating ship crew about their rights and responsibilities regarding ship safety. Of this, the most important thing is the government's role in fulfilling ship seaworthiness and safety by subsidizing ship maintenance and operational costs to ensure that anything that is a factor in not fulfilling ship seaworthiness and safety does not happen again.

Based on the conclusions, the author provides suggestions for follow-up to this research, namely strengthening government/state efforts to provide subsidies to reduce maintenance and operational costs to ensure ship seaworthiness and safety, for the sake of running the community's economy, especially at sea.

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