

A Juridical Analysis of Port Authority Qualifications and Competencies in Issuing Sailing Approval Letters: A Study at Batam Port

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Abstract

The sailing approval letter is regulated explicitly in Law No. 17 of 2008. Even though there have been regulations governing sailing approval letters, sea transportation accidents are often encountered due to negligence in giving shipping permits. Indeed, the problem of safety, security, and overall shipping activities is the port's responsibility. Therefore, the problem with this research is regarding the legal arrangement for the qualification and competence of the harbormaster in issuing sailing approval letters for sailing safety: A Study at the Port of Batam. Then, regarding the implementation of the qualification and competence of the harbormaster when issuing sailing approval letters so that sailing safety is guaranteed. Then, the inhibiting factors or obstacles and solutions to overcome the issue of the qualification and competence of the harbormaster in issuing sailing approval letters for sailing safety. The purpose of this research is to explore the legislative framework for harbormaster qualification and competency in issuing sailing approval letters for sailing safety. Second, to explore the legal analysis of harbormasters' qualifications and competencies for issuing sailing approval letters for sailing safety. Third, to identify impediments or obstacles and strategies to resolve them, the harbor master's qualification and competence in issuing sailing approval letters for sailing safety. The descriptive technique combined with normative legal research is used to collect primary data through field research. The findings indicated that although the legal regulations for the qualification and competence of the port authorities in issuing sailing approval letters for sailing safety (A Study at Batam Port) have been implemented successfully in principle, numerous obstacles remain in the field, most notably human resource issues. As a result, it is essential to strengthen human resources via training and education.

Keywords: Harbormaster, Sailing Approval Letter, Batam, Indonesia.

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INTRODUCTION

Indonesia is an archipelagic nation sandwiched between two continents, the Asian and the Australian, and two seas, the Pacific and the Indian. Indonesia is the world's biggest archipelago, consisting of 13,466 islands, commonly known as Nusantara. Since Indonesia is an archipelago, ships play a crucial role in national shipping, particularly in delivering products and transporting passengers between Indonesian regions or facilitating the flow of goods exported and imported from and into the country (Sari, S. K., 2011). As one of the modes of transport, sea transportation is organized into an integrated national transportation unit to ensure the provision of transportation services that meet the requirements and are safe, pleasant, orderly, and efficient. To do this, the government, of course, plays a crucial role in facilitating smooth shipping, namely by enforcing maritime law. Supervision of ships sailing in the Indonesian seas is one of the initiatives in marine

law enforcement. Ships are the primary mode of transportation for transporting goods between islands because they are significantly less expensive and can transport a greater volume of goods than other modes of transportation, and they can reach remote locations that are inaccessible by other modes of transportation. Since the development of the National and International Strategy environment necessitates shipping operators who adhere to science and technology, private participation and business competition, regional autonomy, and state administrator accountability, all while prioritizing shipping safety and security for the national interest.

Considering the ship's function as a mode of transportation for goods and passengers, the ship's condition while performing sea transportation services must prioritize elements of shipping safety and security in order to minimize the risk of maritime accidents

resulting in the loss of human life and property, or pollution of the marine environment. Given the ship's extensive function in the transportation of goods and passengers, particularly for shipping within the archipelago and also for crossing shipping, such as ferries that facilitate the transportation of people and motorized vehicles to various coastal cities, providing direct transit at low cost, and pioneering ships that transport passengers and goods to islets and bays. Due to the area's lack of commercial value, shipping entrepreneurs are hesitant to send their ships into remote regions.

Indonesia also organizes people's shipping. People's shipping is an inter-island voyage using motorboats, phinisi sailing boats, and motorized sailing ships with the Indonesian flag of a specific size and family-friendly management. People's shipping is still an essential means of transportation to distribute goods throughout the archipelago because people's shipping ships can serve shipping to areas that can not be served by conventional ships. Public shipping is very suitable for transportation with small demand or for inland transportation to meet the needs of people in watersheds (Susantono, 2013). In addition to the transport ships mentioned above, traditional building ships are also used as fishing vessels. This ship is used by fishing communities in coastal areas throughout Indonesia. As with other fishing communities on the coast, traditionally built boats are used as fishing vessels. Supervision of the ships is also carried out, as for the transport ships mentioned above. The supervision is carried out by the harbormaster of the Ministry of Transportation, the Directorate General of Sea Transportation, and the implementation. In addition to serving national and international shipping, of course, many aspects must be considered for the ship's safety.

Ships that satisfy the seaworthiness standards are permitted to sail in Indonesia's sea region. Shipworthiness is defined in Article 1 number 33 of Law Number 17 of 2008 as the condition of a ship that complies with safety requirements, prevents water pollution from ships, is manned, has loading lines, is loaded, is safe for the ship's crew and passengers' health, has a legal status, is managed safely and prevents pollution from ships, and is managed safely to sail in certain waters. The sailing approval letter is mainly governed by Shipping Law No. 17 of 2008. Although rules govern sailing approval letters, it is not unusual to discover numerous maritime transportation incidents caused by negligent issuance of shipping licenses. The port is responsible for safety and security concerns and general maritime activity. One of the most severe issues surrounding ship accidents is a person's ability and expertise in carrying out harbormaster duties, including issuing ship seaworthiness certificates, obtaining sailing permits, ensuring shipping safety and security, and conducting all sea transportation shipping activities in Indonesian waters.

As regulated by Law No. 17 of 2008 on shipping, specific aspects of a ship's seaworthiness, where the ship must meet safety requirements, prevent water pollution caused by ships, manning, loading lines, pollution, ship crew and passenger welfare, legal status of ships, safety management, and ship security management when sailing in certain waters. The ship's safety is monitored from the moment it is planned and constructed until it is decommissioned. The government is responsible for carrying out this oversight role. In this situation, the government appoints an official with the highest authority to carry out and oversee compliance with the requirements of the law, ensuring the safety and security of ships. This person is known as the harbormaster, who is responsible for the safe and secure shipping function, which includes implementing, monitoring, and enforcing laws governing transportation in port waters and preserving the port's marine environment. The supervision of shipping safety is carried out through nautis, technical, and radio inspections. And through the conduct of tests on all ship safety requirements in the context of issuing ship certificates in order to satisfy the ship's seaworthiness aspect. The ship's seaworthiness is defined as the condition of the ship that complies with the ship's safety requirements, loading lines, loading, crew welfare, and passenger health, the legal status of ships, and ship safety management in order to sail in specific seas.

One aspect of the ship's seaworthiness is safety of the ship. Ship safety is the condition of the ship that meets the requirements for material, construction, building machinery and electricity, stability, arrangement, and equipment, including auxiliary equipment and radio, ship electronics, as evidenced by a certificate after inspection and testing by the surveyor, in this case, carried out by the marine inspector. It is stated that certificates stipulated by national rules and international rules in the form of conventions have been ratified by the government of the Republic of Indonesia. Further supervision, namely seaworthy supervision, is carried out by the harbormaster of ships that will sail from the port to ensure that the ship, crew, and their cargo meet the requirements for shipping safety and security and the protection of the maritime environment.

Before the issuance of the sailing approval letter, an administrative examination is carried out, namely:

1. Letters and documents attached at the time of submission of application and issuance of Port Clearance; and
2. Ship certificates and documents received by the harbormaster when the ship arrives at the port.

The following is a physical examination: inspection of the ship's nautical and radio conditions; and ship loading and stability.

Based on article 1, number 34 of Law Number 17 of 2008, the ship's safety can be proven by a certificate after inspection and testing. Safety certificates are given to all types of ships measuring more than 7 GT, except for warships and state ships. Following Government Regulation Number 51 of 2002 concerning shipping, ships that have obtained certificates are checked continuously until the ship is no longer used, which means that the ship's certificates are not valid when the certificate's validity period has expired. The ship's certificate can also be canceled if the information in the ship's document used for the issuance of the certificate does not match the current situation, if the ship does not meet the ship's safety requirements, or if the certificate was obtained illegally. This certificate is in the form of a passenger ship safety certificate and a cargo ship safety certificate. Harbor managers play a vital role in the port system, both in shipping, law enforcement, and coordinating activities in the port. The porter's responsibility is significant because the security and safety of sailing has become the porter's duty. The action taken by the harbormaster is to increase the supervision of security and safety matters related to shipping. The issuance of a sailing approval letter is a supervisory process carried out by the harbormaster on ships that will sail from the port to ensure that the ship, crew, and their cargo technically and administratively meet the requirements for shipping safety and security—obtaining a sailing approval letter automatically. It means the conditions that must be met to obtain the permit have met the requirements determined by the laws and regulations, so that there is a relationship between the sailing approval letter and sailing safety efforts.

The following issues may be posed against this backdrop:

1. How is the legal framework for the qualification and competence of the harbormaster when it comes to issuing sailing approval letters for sailing safety (A study at Batam Port)?
2. How is the harbormaster's qualification and competence in issuing sailing approval letters for sailing safety implemented (A Study at Batam Port)?
3. What are the impediments/obstacles to the harbormaster issuing sailing approval letters for Sailing Safety (A study at Batam Port)?

Research can not be separated from specific objectives to be accomplished. As such, this study is an effort to convey, develop, and verify the reality of business knowledge using the scientific method, in line with its goals. Several of the research goals are as follows. First, examine the legislative provisions governing the harbormaster's qualification and competence in issuing sailing approval letters for sailing safety (A Study at Batam Port). Second, investigate the application of the harbormaster's qualification and competence in issuing sailing approval

letters for sailing safety (A Study at Batam Port). Third, identify impeding causes or obstacles, as well as attempts to overcome them, in the execution of the harbormaster's qualification and competence in issuing sailing approval letters for sailing safety (A Study at Batam Port).

This research contributes to both theoretical and practical applications. Theoretically, the research results are expected to contribute to the development of legal science, especially the science of transportation law. The results of this study will provide clarity regarding the qualifications and competence of the harbormaster in issuing sailing approval letters at the Batam Port office. Practically, this research will benefit the harbormaster and seafarers through the harbormaster's office and the port authority. The results of this study will explain the qualifications and competence of the harbormaster in issuing sailing approval letters. Including seafarers, it is hoped that the right to land ownership for Indonesian citizens will get legal certainty because the results of this study provide explanations and guidelines regarding the laws and regulations applied to the qualification and competence of the harbormaster in issuing sailing approval letters.

LITERATURE REVIEW

The theory is a collection of constructs (concepts), definitions, and propositions that serve to organize phenomena by specifying connections between variables so that they may be used to explain and predict occurrences (Sugiyono, 2013). A Theory is a flow of logic or reasoning, a collection of organized ideas, definitions, and propositions (Sugiyono, 2013). In general, function theory serves the purpose of understanding, predicting, and regulating symptoms.

The theory utilized in a study must be transparent since the purpose of theory is to define and refine the scope or construction of the variables to be investigated, make hypotheses and design research instruments, and anticipate and discover facts about the subject being studied. Theories include assertions about specific phenomena, and these assertions must be validated via study. Research is a rigorous, systematic, and persistent scientific activity concerned with analysis and creation (Soekanto, 2007).

The theoretical framework is critical when writing scientific articles since it provides direction to address research issues. The theoretical framework serves as a vehicle for researchers to provide normative ideas pertinent to the study being conducted and explain the research variables and their connections (Soekanto, 2007).

The grand theory is based on the utilitarian philosophy pioneered by Jeremy Bentham. The aim of legislation, according to Bentham, is to maximize the welfare and pleasure of the greatest number of people

possible. As a result, the idea establishes the law's primary objective as a benefit. The law ensures that people experience happiness, the greatest pleasure attainable by the most significant number. This concept has to be qualitatively implemented since pleasure has a constant character. In order to promote individual and societal happiness, laws must accomplish four goals: (1) provide a livelihood; (2) provide abundant food for sustenance; (3) provide protection; and (4) achieve equality. Good laws will be those that benefit the largest segment of society. The state and the law exist only to accomplish fundamental goals, notably most people's pleasure (Soekanto, 2007).

The weakness of this theory concerns abstract and doctrinal rationality that prevents seeing people as complex wholes. It shows that there is a mixture of materialism and idealism, egoism, which increases the power of legislators and underestimates the need for discretion and flexibility in the application of the law. As a result of Bentham's failure to develop a clear conception of the balance between individual interests and the interests of society, the unlimited interests of the individual automatically result in the interests of society (Soekanto, 2007). The thoughts conveyed by Bentham have an essential meaning in the history of legal philosophy. Bentham connected the philosophical rationale with the postulates of practical law, laid individualism on a new materialistic basis, linked individual rights, and placed them under the happiness of a large number of individuals with the exact demands of life in society. Likewise, directing legal goals to practical social goals and abstract propositions also laid the basis for a new relativity trend in legal science or so-called sociological law. It connects law with definite social goals and the balance of various interests, viewing security guarantees as a vital object of law, as a developed function, ignoring others, with analytical positivism, emphasizing needs and developing ways of law formation, by codification by trial or evolution by habit.

The legal system theory by Lawrence M. Friedman states that the effectiveness and success of law enforcement depends on three elements of the legal system: the structure of the law, the substance of the law, and legal culture, which will be used as the middle theory (Prasetyo & Halim, 2012). The legal structure concerns law enforcement officers. Legal substance includes statutory instruments. Moreover, legal culture is a living law and is adopted in society. The structure of the legal system consists of the following elements: the number and size of courts, their jurisdiction, including the types of cases they are authorized to hear, and the procedure for appeals from court to court. The structure can mean how the legislature is organized, what the president can and can not do, and what procedures the police follow. The legal structure consists of existing legal institutions and is intended to carry out existing legal instruments. The authors use the

theory of integrative law by Talcott Parsons as an applied theory (Prasetyo & Halim, 2012). These scholars state that four problems must be resolved first for the legal system to carry out its integrative function effectively. Legitimacy will be the basis for the observance of the rules. Interpretation concerns the issue of determining the rights and obligations of the subject through determining specific rules. Sanctions emphasize what kind of sanctions will arise if there is compliance and what sanctions will arise if there is binding to the rules and confirm who applies the sanctions. Jurisdiction determines the line of authority with the power to enforce legal norms (Sunggono, 1994).

From Parsons' perspective, it seems that the effectiveness of the integrative function of the Indonesian legal system is still facing problems in terms of legitimacy, interpretation, sanctions, and jurisdictional aspects. Next came the thoughts of Romli Atmasasmita through reflection on Integrative Legal Theory, who wanted to reconstruct the thoughts of Mochtar and Satjipto. Atmasasmita concludes that if the law is a system of norms according to Mochtar and is a system of behavior according to Satjipto, He concludes that law should be defined as a system of values. Juridical analysis in this study is an activity that finds and breaks down the components of a problem to be studied more deeply, then relates them to the law, legal rules, and applicable legal norms as a solution to the problem.

The activity of juridical analysis is to collect relevant laws and other bases to conclude solutions or answers to problems. The purpose of the juridical analysis activity is to form a mindset for solving a problem under the law, especially regarding the problem of the conceptual framework. The conceptual framework is a framework that describes the relationship between the specific concepts under study. Concepts are one of the concrete elements of theory. An analysis is an attempt to describe patterns consistently in the data so that the analysis results can be studied and translated and have meaning, while juridical is something that is recognized by law and is based on things that form regularities and have an effect on violations. Juridical is a method considered legal and justified in its application, in the form of rules, habits, ethics, and even morals, which are the basis for assessment. The activity of juridical analysis is to collect relevant laws and other bases to conclude solutions or answers to problems.

Qualifications and Competencies

In the harbormaster profession, qualification is a screening or elimination of harbormaster officers, and those who are competent are allowed to work to provide expert services as harbormaster officers. According to etymology, competence is the ability to carry out work and is based on knowledge, skills, and work attitudes.

Competence is the ability of a person who can be observed to complete a job or task per the established performance standards. Competence is also a characteristic owned by an individual and is used appropriately and consistently to achieve the desired performance. Competence is defined as knowledge, skills, and fundamental values reflected in the habit of thinking and acting. Competence is intended as the ability to carry out tasks through education and training. According to Finch and Crunkilton, competence is the mastery of a task, the skills, attitudes, and appreciation needed to support success. According to Law Number 13 of 2003, Article 1 (10), competence is the workability of each individual, which includes aspects of knowledge, skills, and work attitudes under established standards.

Competence is related to fundamental values reflected in the habit of thinking and acting consistently and continuously, which enables a person to become competent. The habit of thinking and acting is based on the noble character in personal, social, community, religious life, and the life of the nation and state.

Harbormaster

The Harbormaster is a government official at the port appointed by the Minister and has the highest authority to supervise the fulfillment of the provisions of laws and regulations, ensuring the safety and security of shipping. The harbormaster at the fishing port will be explicitly placed at the fishing port for administrative management and to maintain shipping safety.

Sailing Approval Letter

A sailing approval letter is a supervisory activity by the harbormaster of the ship that will sail based on the captain's statement letter. A sailing approval letter is a state document issued by the harbormaster. The master sailing declaration is a statement made by the captain explaining that the ship, cargo, and crew have met the requirements for shipping safety and security and protection of the maritime environment to sail to the port of destination.

The issuance of a sailing approval letter means that every sailing ship is required to have a sailing approval letter issued. To obtain a sailing approval letter, each ship must meet the ship's seaworthiness requirements and other obligations. The obligation to have a sailing approval is excluded for warships or state ships if they are not used for commercial activities.

RESEARCH METHODS

The method is a scientific activity related to a systematic way of working to understand a subject or object of research, as an effort to find answers that can be scientifically justified and include their validity (Ruslan, 2003). This type of research is a choice of research format for examining research objects in legal science. Specifically, according to the type, nature, and

purpose, they are divided into normative legal research and sociological or empirical legal research. This normative legal research is called doctrinal legal research and document study. It is called doctrinal legal research because it aims only at written regulations or other legal materials. It is called document study because this research is mainly done on secondary data in the library. Secondary data sources are data obtained or collected from sources that have been obtained in the form of opinions or writings of experts or other authorized parties and are used to obtain information in formal provisions or data through existing official texts.

Location, population, and sample

This research was conducted at the Batam Port Office, where the study population was the sailors who would sail. While the sample uses a non-probability sampling technique using purposive sampling. This case is due to taking samples based on a specific purpose. This technique is usually chosen because of the limitations of time, effort, and cost, so that it is not possible to take a large number of samples, and they are far away.

Data Collection Techniques and Data Collection Tools

In this study, interview techniques were used to collect data. Open interviews by holding direct questions and answers based on a list of questions that were made previously and developed during the interview. Interviews were conducted with several sources from the section head for sailing safety assurance. All secondary data uses data collection techniques in the form of library document searches. Library research is a method of collecting data through library materials. From all the data that has been obtained and collected from the results of interviews and library materials, it is then re-examined to find out its completeness and clarity for further data management process by compiling it and classifying it so that it is easy to carry out data analysis.

DATA ANALYSIS

Data analysis is a stage to find sources of problems and answers to problems in research. There are two types of data analysis methods: qualitative and quantitative. Qualitative analysis is descriptive data obtained from interview transcripts, field notes, photos, videotapes, and personal documents. Quantitative analysis provides codes, numbers, measures, and operational variables. Collecting data using a literature study (legal research) and field studies in this study were then analyzed using qualitative data analysis. This analysis is a scientific way of getting valid data to be able to find, prove, and develop it so that it can understand, solve, and anticipate the problem in question and have deep accuracy. Decision-making from the data from this research uses a positive legal study method. In this study, the method is deductive (general) to induction (specific) as a method to

complete the normative system that has been compiled through collection and inventory efforts (Ruslan, 2003).

DISCUSSION & CONCLUSION

Legal arrangements for the qualification and competence of harbormasters in issuing sailing approval letters for sailing safety (A Study at Batam Port). Law enforcement in Indonesian waters and additional zones is a significant activity for the Indonesian state, considering the vast sea area of Indonesia. In order to resolve law enforcement problems in Indonesian waters and additional zones and anticipate existing developments, a series of related laws and regulations have been issued, both national and by ratifying various international conventions. However, it is felt that it still needs to be equipped to implement regulations in some cases. In addition, some of the provisions are still weak, so that legal loopholes are open to being used by perpetrators of criminal acts and violations of the law in Indonesian waters and additional zones, especially regarding law enforcement against sailing approval letters that must be clarified because they involve shipping safety.

The implementation of the qualification and competence of the harbor master in issuing sailing approval letters for sailing safety (A Study at Batam Port). It can be seen that the implementation of law enforcement at sea still faces many challenges, obstacles, and problems, including the existence of relatively acceptable illegal practices, and the high occurrence of making sailing approval letters without any strict inspection and supervision. Handling law enforcement in Indonesian waters and additional zones has a higher difficulty level than criminal acts and similar violations that occur on land. The availability of unique and appropriate facilities and infrastructure supported by relevant law enforcement officers can master both a vast and challenging field. A thorough understanding of the relevant laws and regulations is still inadequate, compared to both the prevalence of criminal acts and violations that occur and the vast territory of Indonesian waters and additional zones that need to be covered and reached.

Inhibiting factors/obstacles and solutions for the qualification and competence of harbormasters in issuing sailing approval letters for sailing safety (A Study at Batam Port); Factors influencing the issuance of sailing approval letters at Batam Port; First, External factors; The external factors in the issuance of the sailing approval letter for fishing vessels by the harbormaster officer at the Batam Port Office are: (a) Legal factors; (b) Coordination factors; Second, internal factors; (a) Number of human resources factors; (b) Factors of inaccuracy of the applicant. The harbormaster has qualifications and competency for solutions to issuing sailing approval letters (For sailing safety: (1) Maximize communication and socialization; (2) Improve human resources by providing training and

education; (3) Disposition (attitude of implementing) must be appropriate with the qualifications and competence of the harbormasters; (4) Appropriate and good bureaucratic structure.

Suggestions

It is necessary to improve the arrangement of law enforcement in a systematic, consistent, and firm manner. Coordination and cooperation between related parties and the drafters of academic manuscripts and draft laws must be intensified in order to achieve the national goal of obtaining international recognition for the extension of the continental shelf. Each party as a stakeholder must abandon its interests. It is necessary to carry out further research activities that specifically examine the shortcomings and weaknesses of the provisions in the laws and regulations regarding law enforcement in Indonesian waters and the available additional zones. It is necessary to think of a way or strategy so that law enforcement in Indonesian waters and additional zones can apply the rule of law equally to every lawbreaker at sea.

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