

# State Responsibility to Prevent Ship Accidents in the Sea According To International Law and National Law

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**Abstract:** *Transportation by sea by shipping ship becomes main transportation because it can reach inland areas and accommodate many people / goods. However, transportation by sea is classified as high risk because there are many things that are undesirable at sea. The International Maritime Organization (IMO) is a special agency of the United Nations (UN) that is responsible for maintaining the safety and security of shipping and preventing pollution of the marine environment due to ocean activities. At the time of the formation of IMO, several important international conventions had been developed such as the International Convention for the Safety of Life at Sea (SOLAS) 1974 concerning safety of life at sea and the International Convention on Regulation for Preventing Collision at Sea (COLREGs) 1972 about the collision at sea. This study aims to analyze how the regulation of state responsibility regarding the prevention of ship accidents at sea according to international law and its implementation of Indonesian national law. Based on the results of the research carried out, it can be concluded that the state's responsibility to prevent ship collisions at sea can be seen in two conventions, International Maritime Organization (IMO) namely: International Convention for the Safety of Life at Sea (SOLAS) 1974 and International Convention on Regulation for Preventing Collisions at Sea (COLREGs) 1972. Indonesia has ratified the convention. On that basis, Indonesia is carrying out its international obligations by enacting Law Number 17 of 2008 concerning Shipping.*

**Key Words:** *responsibility, state, shipping safety.*

## 1. INTRODUCTION:

The International Maritime Organization (IMO) is a special agency of the United Nations (UN) that is responsible for maintaining the safety and security of shipping and preventing pollution of the marine environment due to marine use activities. IMO has the authority to determine international regulations regarding safety and security standards in regulating all international shipping activities. [1] At the time of the formation of IMO, several important international conventions have been developed such as the *International Convention for The Safety of Life at Sea (SOLAS) 1974* concerning safety of life at sea and the *International Convention on Regulation for Preventing Collision at Sea (COLREGs) 1972* about the collision at sea. Indonesia's strategic position, which is located between two oceans, namely the Pacific and Indian oceans and is between two continents, namely the Asian Continent and Australia, makes Indonesia the center of global shipping activities. Indonesia must be able to utilize the potential of marine natural resources, both living and non-living, which are very abundant and beneficial for the survival of the Indonesian people. This potential includes resources derived from the seabed and the land beneath it, the water column, and sea level, including coastal areas and small islands. [2]

Accident analysis shows that for every accident there is a causal factor. These causes come from mechanical devices and the environment as well as to the humans themselves. Human error is often cited as the leading cause of accidents, both as an operator and as a decision maker. In addition, there is very little socialization to provide awareness of safety in transportation which results in negligence of sea transport users. Even though the impact of ship accidents at sea can cause the loss of other people's lives and property losses which are often not small in number.

Accidents in transit must be the responsibility of all parties involved in shipping practices. Ship accidents that are occurring increasingly show that the regulations regarding domestic shipping and international shipping conventions are not being obeyed, especially those from the IMO and Law Number 17 of 2008 concerning Shipping (hereinafter referred to as the Shipping Law). Guidance in the form of regulation, the government takes a regulatory action that is more a procedural process which includes the establishment of general and technical policies, among others, the determination of norms, standards, guidelines, criteria, planning and procedures including requirements for shipping safety and security as well as licensing. Coaching in form control, the government is the same as guidance in the form of regulation where it is focused on procedural processes, however, government control guidance controls the procedural process which includes providing direction, guidance, training, licensing, certification, and technical assistance in the fields of development and operation. The form of supervision carried out by the state, in this case,

includes activities to supervise development and operations in accordance with statutory regulations, including taking corrective actions and law enforcement.

## 2. CONCEPTUAL FRAMEWORK:

### a. Responsibilities

According to Shaw, Shaw implicitly states that the state to be held accountable must fulfill the three elements above and if one of the elements of state responsibility is not fulfilled then a state cannot be held accountable. [3]

### b. Country

Kelsen's conception of the state emphasizes that the state is a mere technical idea which states the fact that a certain set of legal rules binds a group of individuals living in a limited territorial area. [4]

### c. Ship Crash

accidents based on Article 245 Shipping Law, namely "the ship sank, the ship caught fire, the ship collided and the ship ran aground".

## 3. THEORITICAL FRAMEWORK:

### a. The Theory of Responsibility

According to Hans Kelsen in his theory of legal responsibility states that: "a person is legally responsible for a particular act or that he bears legal responsibility, the subject means that he is responsible for a sanction in the case of acts that are contrary." [5]

### b. Theory of State Sovereignty

According to the Montevideo Convention of 1933 above, the state must have 4 (four) essential components, namely residents or nation, presence of territory or power, government and finally the ability to relate to other countries. An independent country has progress or the power to freely and exclusively carry out various state activities in accordance with its interests, as long as it does not conflict with the interests of other countries and international law. [6]

### c. Theory of Legal Harmonization

According to Conel's DPO, the theory of harmonization of international law and national law must be interpreted in such a way that there is harmony between the two. Strictly speaking, the existence of international law and national law is in a harmonious relationship. [7]

## 4. LITERATURE REVIEW:

Maritime Law is a branch of international law. Bjune said that the international nature of Maritime Law is because the provisions of Maritime Law are generally the same in any country. [8] This is because the movement of ships can easily move from one country to another and thus move from one legal system to another. Thus, in its development, Maritime Law is more guided by conventions to ensure the safety of ships at sea.

In 1948 an international conference in Geneva adopted a convention to formally establish the IMO (its original name was the *Inter-Governmental Maritime Consultative Organization*, or IMCO, but its name was changed in 1982 to IMO). [9] IMO was established to coordinate and promote shipping that is based on safety and security, is environmentally sound, efficient, and sustainable through cooperation. Several international conventions produced by IMO to regulate the safety of ships, among others:

- *International Convention for The Safety of Life At Sea (SOLAS) 1974*, an international convention containing requirements for ships in order to maintain the safety of life at sea for avoid or minimize accidents at sea which include ships, crews and their cargoes.
- *International Convention on Regulation for Preventing Collision at Sea (COLREGs) 1972*, this regulation is a regulation to prevent collisions at sea where every crew member is obliged to know, understand and implement it. COLREGs 1972 is the main guideline that must be used as a reference to avoid collisions at sea. All the rules contained in these regulations aim to avoid or prevent collisions between ships.

## 5. METHOD:

The method used in this research is normative, that is, examining legal principles, legal systematics, legal history of legal synchronization level, and comparative law.

## 6. DISCUSSION:

Geographically, most of the earth consists of oceans, so that the sea plays a very important role in human life. It cannot be denied that the sea is the largest provider of natural resources on earth. So since the 15th century, countries have been fighting over access to the sea for the use of the sea for the welfare of their nation. Apart from

being a provider of natural resources, the role of the sea which is no less important is as a means of transportation that connects one hemisphere to another.

The sea as a means of transportation that connects one place to another is very important economically from the perspective of the movement of goods and services by ship as a means of transport. Although currently there are various kinds of transportation modes, sea transportation using ships is the main transportation because it can reach inland areas and accommodate many people / goods. Even so, transportation by sea is classified as high risk because there are many undesirable things at sea. The mode of transportation of ships passing as a means of transportation requires a comprehensive legal framework regarding maritime safety and security.

The role of IMO is very important for the development of Maritime Law internationally, especially in its role to provide recommendations to the United Nations on matters relating to what is under the authority of IMO itself. Several conventions and legal rules that have been produced by IMO relating to the prevention of ship accidents at sea such as the 1974 SOLAS convention and the 1972 COLREG convention.

Indonesia has ratified the 1974 SOLAS convention and the 1972 COLREG convention. As a consequence the two international products have become *the law of the nations* for Indonesia based on the principle *Pacta Sunt Servanda*. In Article 1 of the *Articles on The Responsibility of States for Internationally Wrongful Act 2001*, it states:

*"Every internationally wrongful act of a State entails the international responsibility of that State"*

It is emphasized that *state responsibility* is a principle in international law which regulates the emergence of accountability from one state to another. So it can be said that the responsibility of the state is an obligation of the state in carrying out what the state should fulfill.

## 7. ANALYSIS:

### A. State Responsibility to Prevent Ship Accidents at Sea According to International

The definition of state responsibility when referring to the *Dictionary of Law* is:

*"Obligation of a state to make reparation arising from a failure to comply with a legal obligation under international law."*[10]

From this formulation, state responsibility can be interpreted as an obligation to make *reparation* which arises when a country makes a mistake to comply with legal obligations under international law.

The 1974 SOLAS Convention is an international convention which contains requirements for ships in order to maintain the safety of life at sea to avoid or minimize accidents at sea which include ships, crews and the payload. To be able to ensure the ship operates safely, it must comply with the provisions above, especially the international convention on the 1974 SOLAS convention which includes the design of ship construction, machinery and electrical installations, fire suppression, safety equipment and means of communication and navigation safety. [11]

The 1972 COLREG Convention consists of 6 chapters, namely chapter i: general provisions, chapter ii: rules for piloting a ship and sailing a ship, chapter iii: lighting and figures, chapter iv: sound signals and light signals, chapter v: exemptions. There are 38 rules containing legal arrangements and state obligations in the 1972 COLREG convention.

### B. Law Implementation of International Law in Indonesian National Law on Prevention of Ship Accidents at Sea

Based on the principle of *Pacta Sunt Servanda*, Indonesia has an obligation to embed and implement these regulations into national regulations. This regulation is contained in Law Number 17 of 2008 concerning Shipping. The state is responsible for maintaining the security and safety of shipping. The actions he has taken are / in order to increase security and safety surveillance of matters relating to shipping. [12]

It refers to the provisions of the international convention on safety of life at sea *Safety of Life at Sea* (SOLAS), 1974, which was agreed on November 1, 1974 and in effect since May 25, 1980 through Presidential Decree Number 65 Year 1980 on Ratifying the "*International Convention For The Safety Of Life At Sea, 1974*" as a result of the 1974 international conference on life safety at sea. The 1974 SOLAS Convention contains requirements for ships to maintain the safety of ships at sea.

Ship / shipping activities in Indonesia can create opportunities for collisions between ships. Indonesia has ratified the *International Convention on Regulation for Preventing Collisions at Sea* (COLREGs) 1972 to prevent ship accidents at sea with Presidential Decree No. 50/1979 on Ratifying the "*Convention on The International Regulations for Preventing Collisions at Sea, 1972*." arrangement *Collision* in Indonesia or what in Indonesian is referred to as the International Regulation for the Prevention of Collisions at Sea (P2TL) is regulated in Chapter XIII (Ship Accidents and Search and Rescue. Furthermore, in the second part, Article 245 of the Shipping Law identifies that one form of ship accident is in the form of collision ship.

## 8. CONCLUSION:

From the discussion as explained earlier, several conclusions can be drawn, including:

- The responsibility of the state to prevent ship collisions at sea can be seen in two conventions, International Maritime Organization namely: International Convention for The Safety of Life at Sea, 1974 and International Convention on Regulation for Preventing Collision at Sea, 1972. Based on the International Convention for The Safety of Life at Sea, 1974 every country including Indonesia is obliged to make national legislation to require every ship owner to have safety equipment on board, such as: construction-subdivision and stability, mechanical and electrical installations, construction protection, fire fighting, rescue equipment, radiotelegraphy and radiotelephony. Referring to the International Convention on Regulation for Preventing Collision at Sea, 1972 each country is required to make national legislation to prevent ship collisions at sea, for example the obligation to carry out a proper lookout by prioritizing sight (sight) and hearing (hearing), equipment which adequate, especially a radar that must function properly, and to always be on the side of the starboard, especially when passing narrow waters. The next provision is the obligation of ships to prioritize other ships if the ship sees other ships first.
- Indonesia has ratified the International Convention for The Safety of Life at Sea, 1974 with Presidential Decree Number 65 of 1980 concerning Ratification of the "International Convention for The Safety of Life at Sea, 1974" and the Convention on The International Regulations for Preventing Collisions at Sea, 1972 with Presidential Decree Number 50 of 1979 concerning Ratification of "Convention on The International Regulations for Preventing Collisions at Sea, 1972". As a consequence, these two international products have become the law of the nations for Indonesia based on the principle of Pacta Sunt Servanda. On that basis, Indonesia is carrying out its international obligations by enacting Law Number 17 of 2008 concerning Shipping.

## 9. SUGGESTIONS:

The suggestions given by researchers are as follows:

- In order for the state to consistently and consistently apply the International Convention for The Safety of Life at Sea, 1974 and the Convention on The International Regulations for Preventing Collisions at Sea, 1972 in its national laws so that ship collisions at sea are minimized.
- To prevent ship accidents in the sea, Indonesia must complete existing laws and the most important thing is that the Indonesian government must be more serious in enforcing laws and regulations relating to the prevention of ship collisions at sea.

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