

Reconstruction of Seafarer Certificate Ownership Regulations for Ship Crews Based on the Value of Justice

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Abstract

The Seafarers Workforce Report, which was last published in 2015, published forecasts for the growth of trade shipping, which said the sector would need an additional 89,510 seafarers by 2026. The purpose of this study was to analyze the various causes of regulation of ownership of seafarers' certificates for Ship's Crew (ABK) is not based on the value of justice; To analyze the form of reconstruction of seafarer's certificate ownership regulations for Ship's Crew (ABK) based on the value of justice. In this research it is qualitative in nature with the approach method used is sociological research. The type of legal research used is doctrinal legal research. And the specification of the research conducted is analytical descriptive. The results of this study found that the regulation on ownership of certificates for Ship Crews (ABK) is not based on justice, because there are causal factors, namely inequality in terms of ownership of seafarer certificates, for example crew members who have BST KLM certificates cannot take part in BST Commerce training. Based on Government Regulation No. 7 of 2000 concerning maritime affairs stipulates that a seafarer who wants to become part of the Ship's Crew (ABK) must have skill qualifications which are stated in the form of certificates, one of which is the BST certificate (Basic Safety Training) which is a certificate that contains basic safety training and training. in preventing an unwanted disaster both on land and at sea. In issuing BST, it is divided into 2 (two) types, namely BST for KLM (Motor Sailboats) and BST for commercial ships. reconstruction of certificate ownership regulations for ship crew (ABK) with justice, among others; Creating job opportunities in the maritime sector evenly; carry out planning in determining and career development; The construction of regulations regarding the ownership of maritime certificates.

Keywords: Regulation; Maritime Certificate; Ship's Crew; Value of Justice;

DOI: 10.7176/JLPG/129-01

Publication date: February 28th 2023

A. INTRODUCTION

Transportation activities using ships as a means of transportation have a positive impact on the need for manpower on board. Based on The Baltic and International Maritime Council (Bimco) and the International Chamber of Shipping (ICS), in 2020, 1,593,198 seafarers are needed worldwide, but currently the supply is only 1,555,281 seafarers, resulting in a shortage of 37,917 seafarers.¹ The Seafarers Workforce Report, last published in 2015 issued growth forecasts for trade shipping, which said the sector would need an additional 89,510 seafarers by 2026.

This phenomenon will be directly proportional to the need for training programs in the marine sector as a requirement to support this work. Because to work on a ship one must have adequate skills and competencies, to obtain these skills and competencies a Skills Training Program is needed. One of the basic skills training programs that must be owned by prospective seafarers is Basic Safety Training (BST)². This training program is a training program to teach training participants to have an understanding and skills regarding basic safety on board and be able to practice how to prevent and deal with emergency situations on board which can occur at any time. This Basic Safety Training (BST) education and training program is a requirement to be able to continue other skills training programs.

However, Basic Safety Training (BST) training for commercial vessels and fishing vessels, especially those of the Motor Sailboat type, has a slight difference. Based on the Government Regulation of the Republic of Indonesia Number 7 of 2000 concerning Maritime Affairs, it is explained that the qualifications of expertise and skills do not apply to seafarers who work on motorized sailing ships, sailing ships, motor ships with a size of less

¹ Kompas Dunia, *Penelitian: Dunia Kekurangan Pasokan Pelaut Profesional Layani Rantai Pasokan Global*. <https://www.kompas.tv/article/196742/penelitian-dunia-kekurangan-pasokan-pelaut-profesional-layani-rantai-pasokan-global>, At November 12, 2021 On 10:12.

² Global Wind Organisation, *Gwo Basic Safety Training V14.0*, Publication Date: April 1, 2021.

than 35 GT (thirty five Gross Tonnage), private yachts used not for commercial use, special ships. However, due to the high number of fatal accidents that cause the death of crew members and workers on fishing vessels and/or fishermen and improve the safety of people's shipping, a special Non-Conventional Basic Safety Training (BST) Standard is needed that is in accordance with the conditions of the community.¹

The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978 (STCW 1978) ,as amended in 1995, was a convention that regulates education and training standards, certification for watch officers. The 1978 STCW provisions apply to seafarers, seafarers' education and training institutions regulated by the national maritime authority. In the shipping world, we will hear the terms CVS (Convention Vessel Standard) and NCVS (Non Convention Vessel Standard).

In general, the two have differences in their eligibility requirements. Meanwhile, from the regulatory aspect, CVS refers to the rules of international conventions, mainly SOLAS, MARPOL, Load-Line and other international conventions. Meanwhile, NCVS refers to the national regulations drawn up by the respective flag-states. In Indonesia, regulations regarding NCVS have been stipulated through the Minister of Transportation Regulation KM.65 of 2009 concerning Standards for Indonesian-flagged Non-Convention Ships and Decree of the Director General of Sea Transportation No. UM.008/9/20/DJPL – 12 concerning Enforcement of Standards and Technical Instructions for the Implementation of Non-Convention Ships with the Indonesian Flag. In addition, NCVS is also intended for ships weighing 73 – 500 GT (seventy three to five hundred Gross Tonnage) conducting domestic and international shipping activities, while CVS is required for ships weighing over 500 GT (five hundred Gross Tonnage).) sailing in international waters.

One example of NCVS is a motorized sailing ship (KLM) and CVS is a commercial ship. Based on the seaworthiness requirements, the certification held by the Ship's Crew (ABK) from each ship is very different. In terms of skills and economy, sailors from Commercial Ships are superior to sailors from Motor Sailing Ships. So that this is what encourages sailors of Motor Sailboats to also have a career in Commercial Ships because what is most expected is that the economy in their life can experience an increase. This request should have been allowed because it is hoped that by having 2 (two) types of Basic Safety Training (BST) certificates, a sailor can have the ability to control more than one type of ship. The Basic Safety Training (BST) certificate is very much needed as one of the requirements for making a seaman's book for KLM seafarers. However, until now there is still no clear regulation regarding the ownership of a Commercial Ship Basic Safety Training (BST) certificate for seafarers who have a Motor Sailing Ship (KLM) Basic Safety Training (BST) certificate and these are still in the form of temporary policies. So, in this research it is hoped that regulations will be issued that allow owners of Basic Safety Training certificates for Motorized Sailing Boats (BST KLM) to be able to have Commercial Ship Basic Safety Training certificates (BST Niaga). In this matter, we liken the holders of driving licenses (SIM), in which SIM C owners are allowed to have SIM A and SIM B. The purpose of this study is to analyze the various causes of regulation of ownership of seafarers' certificates for crew members (ABK) not based on the value of justice. ; To analyze the form of reconstruction of seafarer's certificate ownership regulations for Ship's Crew (ABK) based on the value of justice.

B. RESEARCH METHOD

The research method used constructivism paradigm, sociological juridical research approach², descriptive juridical research types, primary and secondary data types, library data collection methods, observations and interviews³. Qualitative data analysis methods.⁴

C. RESEARCH RESULTS AND DISCUSSION

1. The regulation of ownership of seafarers' certificates for Ship's Crew (ABK) is not based on the value of justice

Law is part of human creativity that is used to uphold human dignity. Humans do not serve the letters and semicolons contained in laws as the embodiment of reason, but laws serve human interests to uphold human

¹ Darul Prayogoa, Evaluation Of Basic Safety Training With Cipp, Turkish Journal Of Computer And Mathematics Education, Vol.12 No.6 (2021), 2719-2725.

² Mahyuni, Land Acquisition Of Toll Roads For Public Interest In The Kendal District, Jurnal Akta, Volume 6 Issue 1, March 2019, Pp. 153-158, Anis Mashdurohaturun, Zaenal Arifin, The Inconsistency Of Parate Execution Object Warranty Of Rights In Banking Credit Agreement In Indonesia, International Journal Of Applied Business And Economic Research, Vol.15 Issue.20. 2017, See Too Sukarmi Et.Al, Impact Of Traffic Congestion On Economic Welfare Of Semarang City Community, Journal Of Xidian University ,Volume 16, Issue 2, 2022.

³ Carto Nuryanto, Gunarto, Anis Mashdurohaturun, Reconstruction Of Criminal Sanction And Rehabilitation Combating On Narcotic's Victims Based On Religious Justice, The 5th International Conference And Call For Paper Faculty Of Law 2019, Sultan Agung Islamic University, 2019, Pp.91-95. See Too Wawan Setiyawan And Anis Mashdurohaturun, The Reforming Of Money Politics Cases In Election Law As Corruption Crime. Law Development Journal, Volume 3 Issue 3, September 2021, Pp.621 – 629.

⁴ Yeltriana, Ideal Reconstruction Of Protection For Layoff Victim At The Industrial Relations Court Based On Justice, International Journal Of Law, Government And Communication, Volume: 4 Issues: 14 [March, 2019]. Pp.32-49. Irwansyah, Ahsan Yunus, Penelitian Hukum Pilihan Metode & Praktik Penulisan Artikel, Mirra Buana Media , Yogyakarta. 2020.

values. Law is not only a product of ratios, but part of intuition. Its relevance to the basic values of nationality is to embody the conception of civilized regulations, such as the second precept in Pancasila.¹

The function of the rule of law is essentially to protect human interests. The rule of law is tasked with seeking a balance of order in society and legal certainty so that its goal is achieved, namely public order. In order for human interests to be protected, the law must be implemented. The implementation of the law can take place normally and peacefully, but it can also occur due to violations of the law. In this case the law that has been violated must be upheld. It is through law enforcement that law becomes a reality. Law enforcement is a pillar (main pillar) that strengthens the fundamentals that support the welfare of people's lives, in various aspects of life. According to Soerjono Soekanto, the essence of the (good) law enforcement process is the harmonious application of values and principles which are then manifested in behavior. This pattern of behavior is not limited to members of the public, but also includes groups of "pattern setting groups" which can be interpreted as law enforcement groups in a narrow sense.

First, there is an imbalance in terms of ownership of a seaman's certificate, for example crew members who have a BST KLM certificate cannot take part in the BST Commerce training. Based on Government Regulation no. 7 of 2000 concerning Marine Affairs stipulates that a seafarer who wants to become part of the Ship's Crew (ABK) must have skill qualifications expressed in the form of a certificate, one example is the BST (Basic Safety Training) certificate. BST (Basic Safety Training) is a certificate that contains basic safety training and training in preventing an unwanted disaster both on land and at sea. In issuing BST, it is divided into 2 (two) types, namely BST for KLM (Motor Sailboats) and BST for commercial ships.

Based on the Regulation of the Minister of Transportation of the Republic of Indonesia Number PM 39 of 2016 concerning Ship Loading and Loading Lines, what is meant by a Motorized Sailing Boat (KLM) is a sailing ship with the main material being wood with a gross tonnage size of up to GT 500 with an auxiliary powertrain of up to 535 horsepower (TK) specifically transporting goods and or animals, not carrying passengers.

Based on the Government Regulation of the Republic of Indonesia Number 47 of 1957 concerning Shipping Permits, commercial ships are sea vessels used for public transportation. The basis for public transportation is transportation with the collection of fees based on a transportation agreement as is common in civil law. In addition to these ships, there are also ships that carry out transportation by charging the fees referred to in an agreement which are not solely related to the transportation agreement, but other agreements, in the agreement the cost of transportation is part of the price of the goods.

In registering to take part in BST training, several requirements are required, including:

1. ID on the Family Card along with the Birth Certificate
2. High school diploma/equivalent
3. Health certificate from a hospital or other health institution that has received recognition/appointment/appointment from a Doctor appointed by the Directorate General of Sea Transportation.

However, there is one difference in the requirements for participating in training for BST Commerce, namely that BST KLM certificate holders are not allowed to take part in BST Commerce training. This matter causes inequality and social jealousy in terms of ownership of BST certificates indirectly.

Second, crew members cannot develop their careers. Work has a very important meaning in human life so that everyone needs a job. Work can be interpreted as a person's source of income to meet the necessities of life for himself and his family. It can also be interpreted as a means to actualize oneself so that a person feels his life becomes more valuable, both for himself, his family and his environment. Based on this matter, the right to work is a fundamental right that is inherent in a person who must be upheld and respected.

The meaning of the importance of work for everyone is reflected in Article 27 paragraph (2) of the 1945 Constitution which states that every Indonesian citizen has the right to work and a decent living for humanity. However, in reality the limited wages for workers, especially seamen, have caused many seafarers to try to develop careers on other ships. For example, sailors who work on Motorized Sailing Ships must develop their careers to work on commercial ships in order to improve their welfare.² Career development is the process of increasing individual work ability achieved in order to achieve the desired career. Career development is a condition indicating an increase in one's status in an organization concerned.³

Third, the high interest of seafarers working on commercial ships and the large number of seafarers working on motorized sailing ships have a positive side, namely overcoming some of the unemployment problem in the country. But on the other hand there is a negative side, namely the existence of a very clear social gap between the two. *Layar Motor* was unable to develop his career to work on a commercial ship due to restrictions on his seafarer's certificate. Thus, arrangements need to be made so that motorized sailing ship sailors also have the

¹ Mawardi Muzamil, Anis Mashdurohatur, *Perbandingan Sistem Hukum (Hukum Barat, Adat dan Islam)*, Madina Semarang, Semarang, 2014

² Sudiro Achmad, *Perencanaan Sumber Daya Manusia Cetakan Pertama*, (Malang: Ub Press, 2011)

³ Samsudin Sadili, *Manajemen Sumber Daya Manusia*, (Bandung: Pustaka Setia, 2010)

opportunity to develop their careers on commercial ships.

2. Reconstruction of Seafarer Certificate Ownership Regulations for Ship Crews Based on the Value of Justice

Indonesia is a country based on law and not based on power. Law must be made commander in chief in carrying out the wheels of national and state life. Besides legal certainty and regulation, it also functions for the welfare of human life. So it can be said that law is a field and human struggle in the context of seeking happiness in life. Prof. Satjipto Rahardjo says:

“..., good factor; the role of humans, as well as society, is shown to the fore, so that law appears more as a field of human struggle and struggle. Law and the operation of the law should be seen in the context of the law itself. The law does not exist for oneself and one's own needs, but for humans, especially human happiness.¹

In enforcing the law there are 3 (three) elements that must be considered, namely: legal certainty (*rechtssicherheit*), expediency (*zweckmassigkeit*), and regulation (*gerechtigkeits*). Gustav Radbruch said these three elements are the pillars of the ideals of law (*ideedes rechts*). The ideals of this law will guide humans in their lawful life. These three basic values must exist in a balanced way, but often these three basic values are not always in a harmonious relationship with each other, but instead face, conflict, tension (*spannungsverhältnis*) with each other. In the event of such a conflict what should be prioritized is regulation.²

Law and regulation are two sides of a coin that cannot be separated. Law aims to create lawless regulations and regulations like a toothless tiger. However, to obtain regulation, regulation seekers must go through unfair procedures. So that the law becomes a frightening specter for the community, the law is no longer to make people happy but instead makes people miserable. The law failed to provide regulation in society. The rule of law that has been echoed so far is only a sign without meaning. Legal texts are only language games which tend to deceive and disappoint.

One of the causes that occurs in the world of law is because it still falls into a single paradigm of positivism which is no longer functional as an analysis and control that is in line with the life table of human characteristics which are actually in a dynamic and multi-interest context both in processes and in legal events so that the law only understood in a very narrow sense, namely only interpreted as a law, while values outside the law are not interpreted as a law.

According to Satjipto Rahardjo³, progressive law enforcement is implementing the law not only according to the black and white words of the regulations (according to the letter), but according to the spirit and deeper meaning (to very meaning) of the law or law. Law enforcement is not only intellectual intelligence but with spiritual intelligence. In other words, law enforcement is carried out with full determination, empathy, dedication, commitment to the suffering of the nation and accompanied by the courage to find other ways than what is usually done.

The law functions to protect human interests, for this reason, in order for humans to be protected, the law must be upheld. In enforcing the law in a judicial decision (judge), there are 3 (three) elements as basic values that must always be considered. First, juridical value (legal certainty), with the aim of creating order in society. Second, sociological (benefit), the aim of enforcing community law must also be to benefit and not to cause public unrest. Third, philosophical (regulation), that is, when the law is upheld, society will receive regulation. Smart judges will be able to compromise these three values in the event of a conflict.

Regulation is the core or essence of law. Justice can not only be formulated mathematically that what is called fair is if someone gets the same share as other people. In any legal system anywhere in the world, regulation has always been the object of hunting, especially through its court institutions. Regulation is fundamental to the functioning of a legal system. The legal system is actually a structure or equipment to achieve the concept of regulation that has been mutually agreed upon.

Formulating the concept of progressive regulation is like creating substantive regulations and not procedural regulations. As a result of modern law which pays great attention to procedural aspects, Indonesian law is faced with two major choices between courts which emphasize procedure or substance. Progressive regulation is not regulation that emphasizes procedure but substantive regulation. "Progressive law does not understand law as an absolute institution in the end, but is determined by its ability to serve humanity. In the context of such thinking, law is always in the process of continuing to be. Law is an institution that continuously builds and transforms itself towards a better level of perfection. The quality of perfection here can be verified into the factors of

1 Dwidja Priyatno, Resensi Buku (Book Review) Satjipto Rahardjo, Ilmu Hukum, Bandung: Pt. Citra Aditya, 2014.

2 Anis Mashdurohatun, *Mengembangkan Fungsi Sosial Hak Cipta* Indonesia (Suatu Studi Pada Karya. *Cipta Buku*), Uns Press, 2016, Surakarta.Pp.33, See Too Anis Mashdurohatun, *Hak Kekayaan Intelektual (Hki) Dalam Perspektif Sejarah Indonesia*, Madina.Semarang,2013,Pp.23. See Too Anis Mashdurohatun, *Hukum Hak Cipta: Model Fair Use/Fair Dealing Hak Cipta Atas Buku Dalam Pengembangan Ipteks Pada Pendidikan Tinggi*, Depok: Rajawali Pers, 2018,Pp.1. See Too Anis Mashdurohatun, M Ali Mansyur, *Identifikasi Fair Use/Fair Dealing Hak Cipta Atas Buku Dalam Pengembangan Iptek Pada Pendidikan Tinggi Di Jawa Tengah*, Yustisia Jurnal Hukum, Volume.4 Issue. 3 .Pp.522-540.

3 Satjipto Rahardjo, *Hukum Progresif*, Genta Press, Yogyakarta,2009.pp.56.

regulation, welfare, concern for the people and others. This is the essence of law which is always in the process of becoming (law as a process, law in the making)” prioritizing (human) behavior and humanitarian factors over regulatory actors, means shifting mindsets, attitudes and behavior from the legalistic-positivistic level to the humanitarian level whole (holistic), namely humans as individuals (individuals) and social beings. In such a context, every human being has an individual responsibility and social responsibility to provide regulations to anyone. Progressive law positions itself as a "liberation" force, namely freeing itself from legalistic-positivistic types, ways of thinking, principles and legal theory. With this characteristic, progressive law "liberation" prioritizes "objectives" rather than "procedures". In this context, in order to enforce the law, creative, innovative steps are needed, and if necessary carry out "legal mobilization" or "rule breaking".

The paradigm of "liberation" referred to here does not mean that it leads to acts of anarchy, because whatever is done must still be based on "the logic of social decency" and "regulation logic" and not solely based on "regulation logic". This is where the progressive law upholds the value of morality because conscience is placed as the mover, driver and controller of the "liberation paradigm". That way, the paradigm of progressive law that "law is for humans, and not vice versa" will make progressive law feel free to seek and find the right format, thoughts, principles, and actions to make it happen.

According to Scholten, the discovery of law (rechtsvinding) is different from the application of law (rechtstoepassing) because something new is found here. Legal discoveries can be made either through interpretation or analogy, as well as legal refinements (rechtsverwijning). Law enforcement is not only carried out with the logic of law application which relies on the use of logic (een hateren van logische figuren), but involves judgment, entering the realm of giving meaning. Through syllogisms and logical conclusions, nothing new will be found, as required by the discovery of law.

According to Sudikno Mertokusumo¹, legal discovery is the process of law formation by judges or other legal officers who are given the task of carrying out the law on concrete events. More concretely, it can be said that legal discovery is concretization, crystallization or individualization of legal regulations or das sollen, which are general in nature by remembering concrete events or das sein. The concrete event must be connected with the legal regulations so that they can be covered by the legal regulations. On the other hand, the legal regulations must be adapted to the concrete events so that they can be applied.

By laying down the rules regarding the certification of seafarers, KLM BST certificate holders are entitled to their rights to use their certificates properly.

Table

Reconstruction of Seafarer Certificate Ownership Regulations for Ship Crews Based on the Value of Justice.

| NO | BEFORE RECONSTRUCTION | WEAKNESSES | AFTER RECONSTRUCTION |
|----|---|--|--|
| 1 | Government Regulation of the Republic of Indonesia Number 7 of 2000 concerning Maritime Affairs. Chapter III, Commercial Vessel Manning and Office Authority. Article 4 paragraph (2) The types of seaman skills certificates as referred to in Article 3 paragraph (2) letter b consist of: a. Basic Skills Certificate b. Special Skills Certificate Article 6 paragraph (1) The basic seaman skills certificate as referred to in Article 4 paragraph (2) letter a is Basic Safety Training Certificate | Referring to the article, there is no certainty between Basic Safety Training certificates for Commercial Ships and Basic Safety Training for Motorized Sailing Ships (BST KLM). | As an alternative, the owner of the KLM BST certificate submits an initial data deletion and then re-registers as a participant in the Basic Safety Training for Commercial Ships. |
| 2. | Regulation of the Minister of Transportation Number PM 70 of 2013 concerning Education and Training, Certification and the Seafaring Watch Service. What is meant by a Seaman Expertise Certificate (Certificate of Competency/COC) is a certificate issued and confirmed for Masters, GMDSS Radio Operator Officers, in accordance with the provisions in Chapters II, III and IV of the 1978 STCW Convention, along with its amendments and the legal owner of the certificate to carry out tasks in accordance with capacity and carry out the functions in accordance with the level of responsibility stated | This applies only to people who take expertise certificates through special institutions/schools who will later become shipping officers. | Equalization of position in which the rating (diploma IV/V) can take on the role of an officer on a certain ship with the certificates they have. |

¹ Sudikno Mertokusumo, Penemuan Hukum Sebuah Pengantar, Liberty, Yogyakarta,2007. pp.111

| NO | BEFORE RECONSTRUCTION | WEAKNESSES | AFTER RECONSTRUCTION |
|----|--|---|--|
| | on the certificate. | | |
| 3. | Law of the Republic of Indonesia Number 17 of 2008 concerning Shipping Article 126 where the safety certificate consists of: 1. Passenger ship safety certificate; 2. Cargo ship safety certificate; 3. Certificate of seaworthiness and manning of fishing vessels | Vessel seaworthiness and manning certificates are only given to fishing vessels | Seaworthiness and manning certificates are also given to passenger ships and cargo ships |

D. CONCLUSION

The regulation on ownership of certificates for Ship Crews (ABK) is not fair, including: There is an imbalance in terms of ownership of seafarer certificates, for example crew members who have a certificate of Basic Safety Training for Motorized Sailing Boats (BST KLM) cannot take part in BST Commerce training. ABK cannot develop their career Contrary to Article 31 Paragraph (1) of the 1945 Constitution where every citizen has the right to receive education under the force of law without any discrimination Does not have the freedom to determine the type of training that is of interest to ABK, especially ABK KLM do not have the opportunity to improve the well-being of life and family. Reconstruction of certificate ownership regulations for Ship Crews (ABK) has not been fair, including: Creating job opportunities in the maritime sector evenly. Carrying out planning in determining and developing careers. There is a policy construction regarding the ownership of maritime certificates for crew members. By laying down the rules regarding the certification of seafarers, KLM BST certificate holders are entitled to their rights to use their certificates properly.

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