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# Analysis the Implementation Ministry of Transportation Decree Number KM 65 of 2009 in Shipping Crimes

Yusuf Amir Ardiansyah<sup>1\*</sup>, Dandi Umlati<sup>2</sup>, Ewi Yasdin<sup>3</sup>, Muhammad Faisal<sup>4</sup>, Amirul Adli Habib Hasibuan<sup>5</sup>

<sup>1,2,3,4,5</sup> Muhammadiyah Sorong of University, Indonesia

\*surel korespondensi: [ardiansyahyusufamir@gmail.com](mailto:ardiansyahyusufamir@gmail.com)

## Abstract

**The study aims** to analyze the effectiveness of the implementation of the Decree of the Minister of Transportation Number KM 65 of 2009 concerning the Standard of Non-Convention Vessels (Non Convention Vessel Standard) Flagged by Indonesia in a criminal act of shipping in Sorong Waters.

**The author uses** a normative legal approach with a descriptive analysis method. The descriptive analysis method is an analysis method that focuses on case problems, then linked to existing legal principles and conclusions are drawn from the analysis. The data collection technique uses a secondary data collection method consisting of primary legal materials in the form of legal regulations or the results of judges' decisions that have been final and binding, and secondary legal materials in the form of scientific research journals compiled by legal experts.

**In this study**, the author found that there had been a waiver of the KM 65 of 2009 regulation by the judge in a case of a criminal act of shipping violation with Decision number: 267 / Pid.B / 2023 / PN Son. In this case, the judge made a mistake by not conducting a thorough examination. The judge's mastery of shipping regulations is considered very weak. The judge has the authority to ask the public prosecutor to present an expert, namely the Harbor Master, to request expert information and also clarification on the Sailing Approval Letter that has been issued by him. There are quite a lot of shipping regulations so that the presence of an expert is needed to provide input to the judge on the technical regulations of the ship. Law enforcers in Indonesia are accustomed to focusing their views on a regulation at the level of the Law which already contains sanctions and types of violations.

**Therefore**, the author is of the opinion that the regulation KM 65 of 2009 concerning the Indonesian-flagged Non-Convention Vessel Standard must be formed at the level of the Law and the presence of an expert in the legal field is needed to explain clear legal regulations so as to minimize the judge's error in a regulation. These two things must be done so that the case of ignoring the regulation KM 65 of 2009 does not happen again, and the economic activities of shipping are not disrupted due to incorrect law enforcement.

**Keywords** : Judge; Seaworthiness; An Expert

## Abstrak

**Penelitian bertujuan** untuk menganalisis efektivitas penerapan Keputusan Menteri Perhubungan Nomor KM 65 Tahun 2009 tentang Standar Kapal Non Konvensi (Non Convention Vessel Standard) Berbendera Indonesia pada suatu tindak pidana pelayaran di Perairan Sorong.

**Penulis menggunakan pendekatan yuridis normatif** dengan metode analisis deskriptif. Metode analisis deskriptif adalah suatu metode analisis yang menitikberatkan pada masalah kasus, kemudian dikaitkan dengan kaidah hukum yang ada dan di susun kesimpulan dari analisis tersebut. Teknik pengumpulan data menggunakan metode pengumpulan data sekunder terdiri dari bahan hukum primer berupa regulasi hukum maupun hasil putusan hakim yang sudah inkrah, dan bahan hukum sekunder berupa jurnal penelitian ilmiah yang disusun oleh para ahli hukum.

**Pada penelitian ini penulis menemukan** bahwa telah terjadi pengesampingan peraturan KM 65 Tahun 2009 oleh hakim pada kasus tindak pidana pelanggaran pelayaran dengan Putusan nomor : 267/Pid.B/2023/PN Son. Dalam kasus tersebut hakim telah melakukan kesalahan dengan tidak melakukan pemeriksaan secara teliti. Penguasaan peraturan pelayaran oleh hakim di nilai sangat lemah. Hakim berwenang untuk meminta penuntut umum menghadirkan seorang ahli yakni Syahbandar untuk meminta keterangan ahli dan juga klarifikasi atas Surat Persetujuan Berlayar yang telah di terbitkan olehnya. Peraturan pelayaran cukup banyak sehingga kehadiran seorang ahli diperlukan untuk memberikan masukan kepada hakim terhadap regulasi teknis kapal. Para penegak hukum di Indonesia terbiasa memfokuskan pandangan kepada suatu peraturan dengan level Undang-Undang dimana sudah dimuat sanksi dan jenis pelanggarannya.

**Oleh karena itu penulis** berpendapat bahwa peraturan KM 65 Tahun 2009 tentang Standar Kapal Non Konvensi (Non Convention Vessel Standard) Berbendera Indonesia wajib di bentuk pada level Undang-Undang dan hadirnya seorang ahli di bidang yuridisnya diperlukan untuk menjelaskan regulasi hukum yang jelas sehingga meminimalisir kesalahan hakim terhadap suatu regulasi. Dua hal tersebut wajib dilakukan agar kasus pengesampingan peraturan KM 65 Tahun 2009 tidak terjadi lagi, dan aktivitas perekonomian pelayaran tidak terganggu akibat dari penegakan hukum yang salah.

**Kata Kunci** : Hakim; Laik Laut; Seorang Ahli

## 1. INTRODUCTION

Indonesia has experienced thriving waterway, with various ships and harbor modernization.<sup>1</sup> Various types of ships sail in the territorial waters of Indonesia. Commercial ships are one of the many types of ships in Indonesia. Commercial ships, also known as merchant ships, are used by the public to transport passengers and goods with economic value.<sup>2</sup> Regulations on the seaworthiness of ships in Indonesia have been regulated internationally and nationally. As a large maritime country, Indonesia joined an international organization related to the maritime world, IMO (International Maritime Organization).<sup>3</sup> Indonesia has ratified the regulations of the IMO (International Maritime Organization) Chapter IX of the SOLAS Convention of 1974 concerning international codes that regulate the

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<sup>1</sup> Maira Triana, Dendi Wijaya Saputra, and Sri Inaningsih, 'Pengaruh Sejarah Perkembangan Alat Transportasi Darat, Laut, Dan Udara Di Indonesia Serta Dampaknya Terhadap Masyarakat', Seminar Nasional Dan Publikasi Ilmiah (SEMNASFIP), 2024, pp. 2584–92, DOI:<https://jurnal.umj.ac.id/index.php/SEMNASFIP/article/view/24066>.

<sup>2</sup> Murdjito Murdjito and others, 'Peningkatan Keselamatan Kapal Niaga Dengan Sistem Pemuatan Berbasis Komputer', Sewagati, 7.3 (2023), DOI:10.12962/j26139960.v7i3.495.

<sup>3</sup> Christina Aryani, 'Mendorong Lahirnya RUU Keamanan Laut Dalam Penguatan Sistem Keamanan Laut Nasional', Jurnal Pembangunan Hukum Indonesia, 3.2 (2021), pp. 155–73, DOI:10.14710/jphi.v3i2.155-173.

management of safety standards in the operation of ships and the implementation of pollution prevention carried out by ships into the sea.<sup>4</sup> The code has technical standards that must be met by the ship to be declared Seaworthy. Ships that are required to use SOLAS (Safety Of Life At Sea) provisions are ships that have a size of more than and equal to 500 GT.<sup>5</sup> While in Indonesia itself has regulated the seaworthiness of ships, namely in Law 17 of 2008 on Shipping in Chapter IX. To perfect the regulation, the Ministry of Transportation issued Ministry of Transportation Regulation number KM 65 of 2009 concerning the Indonesian-flagged Non-Convention Vessel Standard and Minister of Transportation Regulation number PM 45 of 2012 concerning Ship Safety Management. These improvements to legal regulations were made so that companies and captains had definite guidelines for preparing their ships to remain seaworthy when sailing. These two regulations are implemented to provide safety standards on Indonesian-flagged vessels.

Problems arise when law enforcement officers arrest a ship at sea due to the absence of ship navigation equipment, namely radar. The ship is a landing craft tanker (LCT) with a size of 170 GT. The community often uses LCT ships to transport vehicles and heavy equipment. These ships have high mobility and can land on islands that do not have piers.<sup>6</sup> The shipping area through which the ship travels is the local sea shipping area. Based on Government Regulation 51 of 2002, the local sea shipping area is a sea shipping area with a radius of 500 miles from the port area. This radius is measured from the location of the water boundary of the port area to the place for ships to dock, which is determined by the port authority. The results of the court judge's decision number 267/Pid.B/2023/PN Son stated that the skipper was clearly and convincingly proven guilty of committing a criminal act with the offense of "The skipper who sails his ship while he knows that the ship is not seaworthy." In the verdict, the skipper is required to pay a fine of Rp. 50,000,000. If the skipper cannot fulfill the fine, it must be replaced by serving a sentence of confinement for 2 months.

Furthermore, researcher's analyzed those fact. In this case found that the judge in giving a verdict, only focused on statutory regulations, namely Law 17 of 2008 on Shipping, especially in Article 302 paragraph (1). The judge did not carefully examine the various regulations in the shipping world. There are regulations under Law 17 of 2008 that technically provide complete shipworthiness requirements for ships under 500 GT, namely the Ministry of Transportation Regulation number KM 65 of 2009 on Non-Convention Vessel Standard with Indonesian Flag. The regulation then arose a new regulation in the form of practical guidance. It was written in

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<sup>4</sup> Rahmi Erwin, 'Tanggung Jawab Negara Untuk Mencegah Terjadinya Kecelakaan Kapal Transportasi Laut Menurut Hukum Internasional Dan Hukum Nasional', SUPREMASI: Jurnal Hukum, 4.2 (2022), pp. 177–99, DOI:10.36441/supremasi.v4i2.716.

<sup>5</sup> Anish Joseph and Dimitrios Dalaklis, 'The International Convention for the Safety of Life at Sea : Highlighting Interrelations of Measures towards Effective Risk Mitigation', Journal of International Maritime Safety, Environmental Affairs, and Shipping, 5.1 (2021), pp. 1–11, DOI:10.1080/25725084.2021.1880766.

<sup>6</sup> Bambang Agus Prihanto, 'Pengaplikasian Metode Elemen Hingga Pada Kapal Landing Craft Tank Teluk Katurei Akibat Perubahan Fungsi Tangki', Techno Bahari, 9.1 (2023), pp. 14–19, DOI:10.52234/tb.v9i1.127.

the Decree of the Director General of Sea Transportation Number UM.008/9/20/DJPL-12 concerning the Application of Standards and Technical Guidelines for implementing Indonesian-flagged Non-Convention Ships. Article 33 of the Decree of the Director General of Sea Transportation states that 9 GHz radar navigation devices must be installed on cargo ships with local shipping areas with a size of 300 GT and above. A radar is not required for ships with no more than 300 GT.

Regarding those contents of the Decree of the Director General of Sea Transportation, the ship should not be convicted of shipping crime based on verdict number 267/Pid.B/2023/PN Son. The judge should have given an acquittal verdict against the ship. An acquittal occurs when the defendant can prove himself legally and convincingly that what he did was not a criminal offence as charged by the prosecutor. However, the legal facts presented at the trial were not strong enough to provide confidence to the judge, so he still gave a criminal verdict to the skipper.<sup>7</sup> However, the legal facts presented at the trial were not sufficient to convince the judge to continue to give a criminal verdict to the skipper.

This study aims to analyze the implementation of the Ministry of Transportation Regulation Number KM 65 Year 2009 in the shipping world and its legal impact on ships under 500 GT. The analysis found that the implementation of the Ministry of Transportation Regulation Number KM 65 of 2009 was not carried out effectively due to problems both in the written regulation and in law enforcement.

In a study by Raihan Aradhana, it is stated that the Ministry of Transportation Regulation Number KM 65 of 2009 is still declared ineffective in applying to Indonesian-flagged vessels due to the lack of socialization to the public by the Syahbandar and because law enforcement in the form of sanctions in the regulations is not explicitly written.<sup>8</sup> His study also criticized the absence of a regulation that has the same level as a law to accommodate sanctions and penalties for ships under 500 GT.

Then, from the current study, it is found that, indeed, the KM 65 Year 2009 regulation has not been completely effective in Indonesia. The regulation does not mention sanctions and penalties for ships that do not meet the safety standards that have been formulated. In the concept of criminal law, it is explained that a person cannot be sentenced to a criminal penalty if the act is not regulated or given a prohibition in a legislative regulation.<sup>9</sup> The absence of sanctions and penalties will confuse the authorities in the process of law enforcement of the offence. In countries such as Singapore and the Philippines, the regulation and imposition of sanctions on vessels under 500 GT are formulated. Indonesian regulations only formulate

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<sup>7</sup> Ghoniyah Zulindah Maulidya and others, "Ratio Decidendi Putusan, Jenis-Jenis Putusan Dan Upaya Hukum Terhadap Putusan Yang Telah Memiliki Kekuatan Hukum Tetap Ditinjau Dari Perspektif Hukum Acara Pidana Di Indonesia", *HUKMY : Jurnal Hukum*, 3.1 (2023), pp. 211–30, DOI:10.35316/hukmy.2023.v3i1.211-230.

<sup>8</sup> Raihan Aradhana, "Efektivitas Penerapan Non Convention Vessel Standard (NCVS) Berdasarkan Peraturan Menteri Perhubungan KM.65/2009 Tentang Standar Kapal Non Konvensi Berbendera Indonesia", 1.4 (2023), pp. 11–22 <<https://doi.org/10.51903/jaksa.v1i4.1395>>.

<sup>9</sup> Uki Masduki M. Muchtar Riva'i Berlianingsih Kusumawati, Sulistyio Seti Utami, 'Jurnal IUS Kajian Hukum Dan Keadilan', *Jurnal IUS Kajian Hukum Dan Keadilan*, 9.1 (2021), pp. 96–111, DOI:10.29303/ius.

sanctions and punishment at the level of laws and regional regulations.<sup>10</sup> The researcher encourages law enforcers to immediately formulate laws and regulations governing the operation and imposition of sanctions on vessels under 500 GT. However, if there is no intention from the executive and legislative branches to form such a law, then the deadlock and arrests of vessels will continue.

The judge in a trial is considered an entity that knows all the laws in line with the principle of *Ius Curia Novit*.<sup>11</sup> However, from the above case, it can be concluded that the judge does not necessarily know all types of law. Surely, this will harm the dignity of the judge. Regulations related to shipping are very broad. The basis of shipping law regulations in Indonesia is not only taken from the cultural values that exist in Indonesian society but also uses international standards formulated by the IMO (International Maritime Organization).<sup>12</sup> Therefore, in a court of law, an expert is required to provide expert testimony based on his/her field of expertise. An expert is someone who, because of his special expertise in a field obtained from education or training and proven by a certificate, can be presented in court, where his testimony can be used as evidence.<sup>13</sup> The information obtained from an expert can be a means of consideration for the judge in giving a decision. Article 180 of the Criminal Procedure Code stipulates that the judge, in terms of clarifying the subject matter of the case, may request the parties concerned to present an expert in a court to be asked for expert testimony.<sup>14</sup>

Hence, the author has a solution, namely the presence of an expert in every shipping criminal trial. An expert in the field of shipping can be directed to the Syahbandar. A Syahbandar is a government official who functions in law enforcement, control, and supervision of shipping safety.<sup>15</sup> Formulating a law and having an expert Syahbandar in each trial is expected to reduce the ineffectiveness of implementing the Ministry of Transportation Regulation KM 65 of 2009.

## 2. METHOD

The researcher used the normative juridical method. This method is carried out by analyzing legal regulations, legal principles, doctrines published through legal journals and the results of a judge's decision from a case.<sup>16</sup> This study material is obtained from secondary

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<sup>10</sup> Novendri M. Nggilu, 'Tinjauan Yuridis Pengaturan Sanksi Pidana Dalam Peraturan Daerah Provinsi Gorontalo', *Lambung Mangkurat Law Journal*, 5.2 (2020), pp. 109–21, DOI:10.32801/abc.v5i2.102.

<sup>11</sup> I Made Dera Januartha, I Made Suwitra, and Ni Made Puspasutari Ujianti, 'Keberadaan Asas *Ius Curia Novit* Dalam Perkara Perdata', *Jurnal Konstruksi Hukum*, 4.3 (2023), pp. 268–74, DOI:10.55637/jkh.4.3.8028.268-274.

<sup>12</sup> Bayu Putro Suwito, Elfatha Borromeu Duarte, and Alfina Puspita Prayogo, 'Institutional Strengthening Of Sea And Coast Guarding In Unclos 1982 And Shipping Law 2008', *Jurnal Lemhannas RI*, 11.3 (2023), pp. 146–58 <[https://www.un.org/depts/los/clcs\\_new/](https://www.un.org/depts/los/clcs_new/)>.

<sup>13</sup> Khafifah Nuzia Arini and Herman Sujarwo, 'Kedudukan Saksi Ahli Dalam Persidangan Perkara Pidana', *Syariat : Jurnal Studi Al-Qur'an Dan Hukum*, 7.2 (2021), pp. 245–56, DOI:10.32699/syariat.v7i2.2244.

<sup>14</sup> Marzuan Else Suhaim, 'Law Dewantara Law Dewantara', *Jurnal Ilmu Hukum*, 1.September (2023), pp. 25–35 <<https://ejournal.unitaspalembang.com/index.php/ld/article/download/230/104>>.

<sup>15</sup> Yuna Sutria, Dirhamsyah Dirhamsyah, and Jufriyanto Jufriyanto, 'Peranan Bagian Operasional Dalam Mengurus Izin Olah Gerak Kapal Di Kantor Kesyahbandaran Utama Belawan Pada Pt.Naval Global Trans Cabang Belawan', *Journal of Maritime and Education (JME)*, 4.2 (2022), pp. 386–93, DOI:10.54196/jme.v4i2.82.

<sup>16</sup> David Tan, 'NUSANTARA: Jurnal Ilmu Pengetahuan Sosial', 8.8 (2021), pp. 2463–78, DOI:<http://jurnal.um->

legal materials by collecting various legal norms, doctrines based on journal publications and a judge's decision in a criminal case. Legal research in this journal uses a case approach that has obtained an *inkrah* decision and a statutory approach. The researcher used evaluative descriptive gap analysis. Evaluative descriptive gap analysis is carried out by studying the implementation of laws and regulations in an *inkrah* judge's decision. Then, the researcher analyzes whether the decision follows or deviates from existing regulations. From the results of this analysis, the researcher evaluated and provided solutions if there was a deviation in the application and existing rules. The researcher's evaluation is expected to provide regulatory reform so that there are no deviations in applying laws and regulations.

### 3. DISCUSSION

#### 3.1. Indonesia as an archipelagic state is included in the International Maritime Organization

Indonesia is an archipelago with abundant natural resources at sea and on land. Indonesia has a sea that covers 2/3 of the total area, where the number of Indonesian islands totals more than 17,000 and has a length of 81,000 coastlines, showing how Indonesia is a large maritime country.<sup>17</sup> This fact makes Indonesia rely heavily on ships as a means of transportation. Mobilizing passengers and goods will be more effective if ships are used. At this time, the mode of transportation has developed rapidly. However, people still rely on ships as a mode of transportation. Despite that, transportation using ships has a very high risk due to weather conditions. Therefore, comprehensive regulations are needed to maintain the safety and security of transportation at sea. The United Nations (UN) established a special unity that deals with ship safety and shipping security at sea. The unity is called the International Maritime Organization (IMO).<sup>18</sup> This unity has the authority to formulate international regulations on ship safety standards, shipping security, and maritime protection.

The Indonesian government, which became an IMO member state in 1961 and then became an IMO council in 1973, is obliged to ratify the regulations issued by the IMO related to shipping safety and security. It is realized by the ratification of the IMO (International Maritime Organization) regulations Chapter IX of the SOLAS Convention of 1974 on international codes governing the management of the safety of ships at sea and efforts to prevent environmental pollution resulting from a ship's activities at sea. This ratification was carried out on December 17, 1980, with the issuance of Presidential Decree Number 65 of 1980 concerning Ratification of the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74). To implement the provisions of the IMO, the Government of Indonesia stipulates

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tapsel.ac.id/index.php/nusantara/index.

<sup>17</sup> Gia Nikawanti, "Ecoliteracy: Membangun Ketahanan Pangan Dari Kekayaan Maritim Indonesia", Jurnal Kemaritiman: Indonesian Journal of Maritime, 2.2 (2021), pp. 149–66, DOI:10.17509/ijom.v2i2.37603.

<sup>18</sup> E T Januarsi and A S Burhanuddin, "Kerja Sama Indonesia-Australia Dalam Mewujudkan Visi International Maritime Organization (IMO) Dalam Merealisasikan Laut Bersih", ...: Jurnal Ilmu Teknik Dan ..., 2.4 (2023) <<https://journal.unimar-amni.ac.id/index.php/ocean/article/view/1608%0Ahttps://journal.unimar-amni.ac.id/index.php/ocean/article/download/1608/1294>>.

regulations related to sea shipping contained in Law Number 21 of 1992, which was later revoked with the enactment of Law Number 17 of 2008 concerning Shipping. The regulations contain provisions regarding ship transportation at sea, port management, safety and security management on ships and ports, and protection from pollution hazards in the maritime environment.<sup>19</sup>

### **3.2. The Establishment of Regulations for Non-Convention Ships**

The Ministry of Transportation issued Ministry of Transportation regulation number KM 65 in 2009 on the Indonesian-flagged Non-Convention Vessel Standard. This regulation contains standards that must be met by Indonesian-flagged vessels that, by size and type, are not required to use SOLAS 74 convention standards. This NCVS regulation was implemented due to the large number of vessels owned by Indonesian companies that are less than 500 GT. To provide practical guidance on the application of NCVS, the Ministry of Transportation delegated the Directorate General of Sea Transportation to issue a Decree of the Directorate General of Sea Transportation Number: UM.008/9/20/DJPL-12 on the Application of Standards and Technical Guidelines for the Implementation of Indonesian Flagged Non-Convention Ships. In the regulation, there are technical requirements that must be fulfilled by the ship to be declared seaworthy.

To supervise and enforce shipping safety and vessel seaworthiness, the Ministry of Transportation established an agency as a technical implementation unit, namely the harbour master and port authority office, Kantor Kesyahbandaran dan Otoritas Pelabuhan (KSOP).<sup>20</sup> KSOP is responsible for the Directorate General of Sea Transportation's main duties and functions. One of the tasks of the KSOP is to carry out shipworthiness inspections. A Marine Inspector plays a role in checking the ship's seaworthiness while providing recommendations on the ship's equipment and construction condition.<sup>21</sup> Vessels that the Marine Inspector has inspected are then given a ship safety certificate, which illustrates that the ship, in terms of equipment, machinery, and ship construction, has fulfilled the standards determined through laws and regulations.

When the ship carries out a voyage to the sea, KSOP will assign the syahbandar to issue a Sailing Approval Letter (SPB) document. SPB is a document stating that the ship has fulfilled all the requirements for seaworthiness and has completed all PNPB administration at the port.<sup>22</sup> With the SPB, the ship can sail to the destination port safely and securely. Juridically, a

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<sup>19</sup> Nur Aripkiah, 'Tinjauan Yuridis Keselamatan Dan Keamanan Berlayar Berdasarkan Undang-Undang No. 17 Tahun 2008 Tentang Pelayaran', *Jurnal Ilmu Sosial Dan Humaniora*, 3.2 (2023), pp. 71–83, DOI:<https://jurnal.fkip.unmul.ac.id/index.php/langgong> Tinjauan.

<sup>20</sup> A Sugiarno and A Wahyuni, "Peran Kantor Syahbandar Dan Otoritas Pelabuhan Kelas II Tanjungpinang Dalam Menjaga Keselamatan Penumpang Kapal", *Aufklarung: Jurnal Pendidikan ...*, 2.3 (2022), pp. 183–90 <<http://www.pijarpemikiran.com/index.php/Aufklarung/article/view/239%0Ahttp://www.pijarpemikiran.com/index.php/Aufklarung/article/download/239/240>>.

<sup>21</sup> Iqbal Kurnia Wahyudi Nadiya Lifa Ningrum, Galih Satriyo, 'DISCOVERY : Jurnal Kemaritiman Dan Transportasi', 4.2 (2022), DOI:<https://ejournal1.akaba-bwi.ac.id/ojs/index.php/discovery>.

<sup>22</sup> Usman Usman, Bakhtiar Abbas, and Nofal Supriadin, "Efektivitas Pengawasan Surat Persetujuan Berlayar Dalam



ship with an SPB may not be inspected again by other law enforcement officers in the middle of the sea before the ship reaches its destination port. SPB is a reflection that the legal aspects of the ship have been fulfilled.<sup>23</sup>

In 2012, the Ministry of Transportation issued a Ministry Regulation, namely PM 45 Year 2012, concerning Ship Safety Management. This regulation complements the NCVS regulation where, after observation, several types of ships are less than 500 GT but are required to use the provisions of SOLAS 74. The ship types referred to in the above legal regulations are as follows: 1. All high-speed and conventional passenger vessels of all sizes. A passenger vessel is a vessel that carries at least 12 persons; 2. Fuel or CPO transport tankers, tankers that have the form and function to transport chemicals, and ships that function as gas transporters, all of which have a gross weight size of 150 GT and above..

The NCVS regulation was enacted before Law Number 12 of 2011 on the Formation of Laws and Regulations. The legal effect is that the existing regulations still follow the rules stipulated by Law Number 10 of 2004 on the Establishment of Laws and Regulations. However, the NCVS regulation is part of a Ministry Regulation that is prepared based on orders from higher-level regulations.<sup>24</sup> It is therefore categorized as a legal regulation based on delegation. This delegation comes from Law 17 of 2008. Ministry regulations can be divided into two types: a Ministry Regulation that qualifies as a legal regulation and a Ministry Regulation that qualifies as a government apparatus policy.<sup>25</sup> Those have generally binding legal force.

### **3.3. Analysis of Shipping Crime Cases with KM 65 of 2009 Regulation**

In the case of shipping crime with case verdict number 267/Pid.B/2023/PN Son stated that the skipper was clearly and convincingly proven guilty of committing an offense with the offense, namely, "The skipper who sails his ship while he knows that the ship is not seaworthy." In this decision, the skipper is required to pay a fine Rp. 50,000,000. If the skipper cannot fulfill the fine, then the skipper is required to serve a prison sentence of 2 months. The verdict decided by the judge to the skipper resulted in the ship being sailed and not being equipped with a functioning radar. The vessel was a Landing Craft Tanker (LCT) type freighter with a local shipping area. LCT ships are low-draft ships capable of landing on the shoreline without moving at the dock. At the beginning of World War II, LCT ships were used by the military to transport equipment and combat vehicles because of their effectiveness in being able to land

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Mewujudkan Keselamatan Dan Keamanan Berlayar Di Kantor Unit Penyelenggara Pelabuhan Kelas I Molawe", JIM : Journal Of International Management, 3.01 (2024), pp. 01–26, DOI:10.62668/jim.v3i01.1008.

<sup>23</sup> Fajriani L. Prasetyo A, Fadlan, 'Analisis Yuridis Terhadap Keberangkatan Kapal Penumpang Tanpa Adanya Surat Persetujuan Berlayar (Studi Penelitian Kantor Kesyahbandaran Dan Otoritas Pelabuhan Khusus Batam)', Zona Keadilan, 10.03 (2020), pp. 1–15, DOI:<https://doi.org/10.37776/zkih.v10i3.398>.

<sup>24</sup> Ady Supriadi and Fitriani Amalia, "Kedudukan Peraturan Menteri Di Tinjau Dari Hierarki Peraturan Perundang Undangan Di Indonesia", Unizar Law Review, 4.2 (2021), pp. 146–52 <<http://legalitas.unbari.ac.id/index.php/Legalitas/article/view/191>>.

<sup>25</sup> Juwita Putri Pratama, Lita Tyesta ALW, and Sekar Anggun Gading Pinilih, 'Eksistensi Kedudukan Peraturan Menteri Terhadap Peraturan Daerah Dalam Hierarki Peraturan Perundang-Undangan', Jurnal Konstitusi, 19.4 (2022), pp. 865–85, doi:10.31078/jk1947.



directly on the shore. LCT vessels in Indonesian shipping are very effective as cargo carriers and heavy equipment, such as excavators, bulldozers, etc. The LCT ship in the case above has a size of 170 GT so that it can be categorized as a freighter under 500 GT. The ship is not a carrier of fuel oil or chemicals, so it can be included in ships that use NCVS regulations. Based on the certificate of safety of construction of goods ships issued by the KSOP Class I Sorong Office, it states that the ship sailed in the local sea shipping area. The local shipping area has a radius of 500 miles measured from the port area and does not include waters belonging to other countries.

In the Decree of the Directorate General of Sea Transportation Number: UM.008/9/20/DJPL-12, precisely in Article 33, Navigation devices for local sea shipping area freighters point j states that for freighters, GT less than 300 are not required to have radar. Based on these regulations, the judge should not have been able to decide that the ship had committed a shipping crime because the ship's condition was still seaworthy. It proves that the judge's error resulted in a law enforcement defect. The judge, in his decision, only assessed by referring to Law Number 17 of 2008 concerning Shipping Article 302 paragraph 1, which states, "The skipper who sails his ship while he knows that the ship is not seaworthy as referred to in Article 117 paragraph (2) shall be punished with a maximum imprisonment of 3 (three) years or a maximum fine of Rp 400,000,000.00 (four hundred million rupiah)". In contrast, there are implementing regulations related to the seaworthiness of ships that can be technical guidelines in applying legislation that judges can use to assess whether the ship has violated the rules. At this point, the judge failed to include KM 65 Year 2009 as a consideration for the decision. The investigation's report of the examination results to an expert in the shipping field stated that it did have a damaged radar. However, the incident then involved a ship with a size of 170 GT only sailing in the local sea shipping area, so the syahbandar was guided by the KM 65/2009 regulation to dare to issue an SPB. The judge should have also seen that a ship with an SPB could no longer be questioned on its juridical aspects. This mistake by the judge led to a deviation from the principle of legal certainty. It will cause doubts to arise from the general public towards existing regulations. Doubts from the public towards law enforcement officials will occur because the applicable legal regulations cannot guarantee legal protection for them. If the judge is in a position of doubt, he can ask the prosecution to present an expert from the shahbandar to assess the case.

In law, there is indeed the principle of *lex superior derogat legi inferiori*, namely, the rule of law that has a higher level of position can override the rule of law that has a lower level of position if there is a conflict between the two.<sup>26</sup> However, in this case, the Minister of Transportation Regulation number KM 65 of 2009 and PM 45 of 2012 is a regulation that was born from the order of Law No. 17 Year 2008 itself. Article 133 of Law 17 of 2008 states, "Further provisions regarding the procedures for the approval of drawings and supervision of

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<sup>26</sup> Suparyanto dan Rosad (2015, 'Asas Lex Specialis Derogat Legi Generalis Dikaitkan Dengan Asas Lex Superiori Derogat Legi Inferiori Dalam Rekam Medis Elektronik Di Indonesia', *Jurnal Ilmiah Indonesia p-ISSN*; 7.12 (2022), pp. 1–16, DOI:<https://doi.org/10.36418/syntax-literate.v7i12.10907>.

ship construction, as well as inspection and certification of ship safety are regulated by Ministerial Regulation." From this article, the Ministry of Transportation Regulation number KM 65 of 2009 and PM 45 of 2012 align with Law Number 17 of 2008. Those regulations become implementing regulations that provide technical instructions to be applied to shipping arrangements.

The waiver of the Ministry of Transportation Regulation number KM 65 of 2009 proves that the regulation has not been fully effective because it does not yet contain sanctions and penalties. Of course, the override will lead to public distrust of the agency issuing the certificate of seaworthiness of the ship, in this case, the Syahbandar. A ship that has been declared seaworthy with the issuance of a sailing license, Surat Persetujuan Berlayar (SPB) from the Syahbandar, can still be inspected by other law enforcement officers in the middle of the sea and can even be prosecuted in court. Socialization and harmonization of the Ministry of Transportation Regulation number KM 65 of 2009, musicians must be carried out more actively to other law enforcement officials so as not to be toxic and not cause anxiety to entrepreneurs and ship captains. The Ministry of Transportation can evaluate the implementation of these regulations to be proposed to the legislature and reinforced into a regulation with the level of law. It is done to prevent confusion from law enforcement officials at sea about which regulations are the mecca for law enforcement. With the establishment of regulations at the level of the law, there will be two regulations, namely, Law Number 17 of 2008 concerning Shipping and Law on the operation of vessels under 500 GT. If the formation of the new law is still deadlocked, the best solution is to present an expert in every shipping criminal case. An expert can provide technical input on shipping regulations to judges to avoid making mistakes.

#### **4. CONCLUSION**

The waiver of Ministry of Transportation Regulation number KM 65 of 2009 concerning the Indonesian-flagged Non-Convention Vessel Standard in Decision number 267/Pid.B/2023/PN Son has created legal uncertainty. When deciding a case, the judge should examine all existing legal regulations. If there is doubt, the judge can ask the public prosecutor to present an expert to provide testimony. Expert testimony can be the basis for judges deciding a case and avoiding regulatory errors. The Ministry of Transportation, as a regulator in the shipping sector, has full responsibility to socialize all its regulations to the public and law enforcement. Socialization can occur through harmonization forums or technical meetings between law enforcement stakeholders. The Ministry of Transportation is obliged to evaluate the KM 65/2009 regulation and propose to the legislature to be upgraded to a regulation with the level of law. It is done so that the regulation has binding force so that the principle of legal certainty arises. The principle of legal certainty is the soul of a regulation. If the principle of legal certainty cannot be realized, the regulation can no longer provide legal protection for the community.

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