

Marine Environmental Protection: Domestic Authorities and Responsibilities

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8 Marine Environmental Protection

8.1 *Domestic Authorities and Responsibilities*

The Joko Widodo government is working hard to achieve the vision of making Indonesia the global maritime fulcrum (GMF). Indonesia has enacted several laws and regulations aimed at becoming the global maritime fulcrum and in doing so is very concerned about ensuring the protection and conservation of the marine environment. This is reflected in several rules and regulations issued by the government to prevent accidents at sea that could affect the balance of the marine environment. Indeed, many navigational activities and mishaps can lead to endangerment of the marine environment, such as ship accidents, shipwrecks, and ship disposals. The objects that cause navigational accidents may be ships, floating equipment or concrete buildings floating on the ocean.

Law 17/2008 provides the government agency responsible for controlling and enforcing shipping safety is the Minister of Transport. However, the authority to control the safety of vessels, based on Law 17/2008, is delegated to the Harbour Master (*syahbandar*). In the event of such a shipping accident in port resulting in marine pollution, the *syahbandar* acts as a team coordinator and

cooperates with the relevant authorities, such as the Ministry of Environment, local authorities and other parties involved in the case (Presidential Regulation No. 109 of 2006 and Ministry of Transportation Regulation No. 58 of 2013).

Law 17/2008 provides a legal basis for Indonesia's maritime objectives, activities and law enforcement, such as those concerning vessels, marine transport, maritime traffic and maritime safety and security. Law 17/2008 consists of four main elements:

- a. The regulation of maritime transport based on the principle of cabotage.
- b. Port regulations, in which the law abolishes the monopoly of port management, separates the functions of the authority as regulator and operator, and establishes a balance between the private sector and the local government in port management.
- c. Maritime safety and security ordinances, which were created to implement the international standards concerning maritime safety and navigation systems, such as the 1974 International Convention for the Safety of Life at Sea (SOLAS), including the 1978 Protocol to SOLAS and the International Ship and Port Facility Security Code (ISPS Code); the 1972 Convention on the International Regulations for Preventing Collisions at Sea (COLREGS), and the International Safety Management Code (ISM).
- d. Regulations for the protection of the marine environment, which contain rules concerning the prevention and control of pollution from ships and other marine objects in accordance with international law, such as the International Convention for the Prevention of Pollution from Ships 1973 as modified and added to by the Protocol of 1978 (MARPOL 73/78); and the International Maritime Dangerous Goods (IMDG) Code.

The primary object of maritime law is vessels, which requires definition. Internationally, the United Nations Convention on Conditions for Registrations of Ships (7 February 1986, not in force), to which Indonesia is a signatory, "Ship means any self-propelled sea-going vessel used in international seaborne trade for the transport of goods, passengers, or both with the exception of vessels of less than 500 gross registered tons". Domestically, Article 1(36) of Law 17/2008 defines a ship as "water vehicles in certain shapes and types, which are driven by wind power, mechanical power, other energy, tugging or towing, including vehicles that are powered dynamically, under-water vehicles as well as floating devices and floating buildings which is not nomadic". Comparing these provisions, a different approach to defining vessels is evident, with Law 17/2008 including a broader definition not limited to water vehicles used for maritime activities, but also including permanent floating buildings.

Article 245 of Law 17/2008 regulates maritime accidents, with a shipwreck defined as “a circumstances experienced by a vessel caused by act of god, technical, and human negligence that can threaten the safety of the ship and /or human life as well as environmental pollution”. Article 245 of Law 17/2008 also provides that the cause of a shipwreck can be sinking, fire, a collision or being stranded. Where a ship accident involves an Indonesia vessel, the sea master has an obligation to take countermeasures, request and/or provide assistance, and share information about the accident with other parties. Furthermore, a sea master who finds a shipwreck in Indonesian territory, regardless of who the vessels belong to, must report the accident to the nearest port authority or *Syahbandar*. If a shipwreck is found outside of Indonesia waters, the sea master should contact the appropriate Republic of Indonesia Representative Officer and local authority officer.

Pursuant to Article 1(64) of Law 17/2008, the Minister of Transportation has the authority to control, enforce and ensure compliance with shipping law in general. The Minister of Transportation then delegates particular powers on shipping safety or security to his agency by hierarchical structure, or *Syahbandar* within port (Articles 1(56) and 207(1) of Law 17/2008). Consequently, this agency is also acting as the officer in charge concerning marine accidents and other relevant circumstances in port. *Syahbandar* has a duty to ensure maritime safety and security at ports, which includes the implementation, supervision and enforcement of marine transportation, ports, and maritime environmental protection (Article 208 of Law 17/2008). Finally, *Syahbandar* should assist with search and rescue (SAR) in port (Article 207(1) of Law 17/2008).

Syahbandar's duties as maritime authority include implementing a series of tasks to perform the obligations on maritime safety in cases of shipwrecks. This includes, amongst others, providing search and rescue assistance, coordinating the prevention of pollution and fire fighting in ports, supervising the implementation of maritime environmental protection in ports. As a coordinator, *Syahbandar* coordinates other government agency through BKO (*Bawah Kendali Operasi*/under operational control) to investigate marine accidents, restrains the ships under court orders, and implements other relevant actions required during investigations. Consequently, *Syahbandar*, as BKO, has the power to control and coordinate related institutions, including security forces. Finally, *Syahbandar's* duty to ensure shipping security based on international rules and standards means *Syahbandar* also acts as a port security committee and may request the assistance of the police department or army.

On the other hand, Article 1(59) of Law 17/2008 provides for another agency under the structural hierarchy of the ministry of Transportation to serve as

the sea and coast guard unit, namely the *Kesatuan Penjagaan Laut dan Pantai Indonesia* (KPLP). Thus, KPLP has the authority in Indonesia waters to ensure and enforce maritime safety and security, protection of the marine environment, and search and rescue (SAR) (Articles 276(1) and 277 of No. 17/2008). Furthermore, in relevant circumstances KPLP has the authority to perform patrols, hot pursuits, and the rights to visit. In performing its duties, KPLP is supported by its infrastructure, equipment (ships and aircraft with the status of government vessels or aircraft) and coast guard bases located throughout Indonesia ports.

Curiously, *Badan Keamanan Laut* (BAKAMLA) has the same duties as KPLP and was formed based on the mandate set by Articles 59 and 63 of Law 32/2014 and Presidential Regulation 178/2014. Based on Law 32/2014, BAKAMLA is appointed to ensure maritime safety and security in Indonesia waters. Articles 59 and 62 of Law 32/2014 provide that BAKAMLA has the power to control, prevent, and enforce Indonesian law in Indonesia waters (internal waters, territorial sea, archipelagic waters, continental shelf, and EEZ), as well as protect Indonesia's marine resources. Consequently, BAKAMLA also have the power to prevent and take enforcement action against navigational activity which endangers marine resources. BAKAMLA is authorized to conduct hot pursuit, the rights to visit, vessel arrests, and the delivery of vessels to relevant authorities for further legal proceedings. BAKAMLA must work in integrated single command and control and is integrating security and safety information systems in Indonesia's territorial waters and jurisdiction (Article 4(2) of Presidential Regulation 178/2014).

The existence of two institutions with the same tasks and duties will result in overlapping practice. However, there is no Presidential Decision as a basis to legally establish the KPLP. Therefore, Presidential Regulation 178/2014 results in a coordinating system for maritime safety and security in Indonesia waters, with BAKAMLA as the coordinating authority above other agencies.

In 2010, the Indonesia government passed Governmental Regulation No. 21 of 2010 On the Protection of Marine Environment (hereinafter, Governmental Regulation 21/2010), as implementing regulation for Articles 232, 238, 240 and 243(3) of Law 17/2008. Governmental Regulation 21/2010 provides guidance on how to prevent, control and impose administrative sanctions upon marine pollution, be it from vessel activities, port activities or land-based disposal. Because Governmental Regulation 21/2010 is derived under Law 17/2008, Article 2 states that the duty to provide marine environmental protection rests with the Minister of Transportation. If any navigational mishap leads to environmental damage, the sea master or person in charge on the ship is obliged to take any necessary means and action to prevent and control pollution,

and then report to the nearest *Syahbandar* (Article 24 of Governmental Regulation 21/2010). The ship-owner, ship operator, or person in charge of the marine activity are liable to compensate the loss and damage caused by the pollution (Article 29 of Governmental Regulation 21/2010). Thus, insurance is a compulsory requirement to conduct marine activities.

For shipwrecks, Government Regulation No. 9 of 2019 governs shipwreck investigations. However, the rules therein elaborate the technical aspects of shipwreck investigations without and reference to marine environmental protection. Nonetheless, the regulation must refer to *syahbandar* when conducting investigations upon shipwrecks that caused environmental damage. Presidential Decision No. 105 of 1999 provides that another maritime accident investigation agency under the Ministry of Transportation is the *Komisi Nasional Keselamatan Transportasi* (KNKT, or National Transportation Safety Committee). KNKT is however likely a fact-finding committee and its recommendations cannot be used as evidence in court.

Offshore structures used in maritime mining are also defined as ships in the sense of Law 17/2008. When accidents occur involving these buildings, it is technically under the authority of the Ministry of Energy and Mineral Resources as the licensing agency. However, when the accident causes marine pollution, the handling of pollution will be under the coordination of the Ministry of Environment. Under the gazette, to resolve marine pollution issues, the Ministry of Transportation, through *Syahbandar*, will initiate collaboration and coordination with the following government agencies:

1. The Ministry of Environment, in terms of environmental protection and preservation.
2. The Ministry of Energy and Mineral Resources, in terms of marine mining accident or offshore mining.
3. The Ministry of Home Affairs, in terms of the policy of managing state property or assets.
4. Ministry of Maritime Affairs and Fisheries, in terms of fishing activities resulting in pollution.
5. The Ministry of Health, in terms of sanitary, health quarantine and other health issues.
6. The Ministry of Forestry, in terms of illegal logging.
7. The Ministry of Finance, in terms of economic crimes, smuggling, customs violations, and others.
8. The Ministry of Law and Human Rights, in terms of protecting human life.
9. The Indonesian National Armed Forces, in particular, *Pusat Hidrografi dan Oceanografi – Tentara Nasional Indonesia Angkatan Laut* (Pushidros-TNI

AL, or the Centre of Hydrography and Oceanography – Indonesia Navy) as the centre in charge of sea mapping, sea lanes, permanent off-shore buildings, and navigation.

10. The National Police of the Republic of Indonesia, in particular *Badan Narkotika Nasional* (BNN, or National Narcotics Boards) if the incident involving drug abuse.
11. The Implementing Agency for Upstream Oil and Natural Gas Business.
12. The Regulatory Agency for Supply and Distribution of Oil and Gasoline and Natural Gas Business Transporting Natural through Underwater Pipelines.
13. The governor or mayor where the incident occurred.

The Regulation of Minister of Transportation No. 29 of 2014 on Maritime Environmental Protection (hereinafter Minister of Transport Regulation 29/2014) was based on Articles 134 and 242 of Law 17/2008, and Articles 6, 11, 13–17, 33 and 36 of Governmental Regulation 21/2010. Article 1(1) of Minister of Transport Regulation 29/2014 defines pollution from ships as any compound that came from a vessel, accidentally or intentionally released, that endangers the marine environment, such as oil spills, toxic liquid, dangerous cargo, dirt or waste, including air and waters and all impacts caused from the ship. The scope of Minister of Transport Regulation 29/2014 includes all guidance and technical measures to prevent and control marine pollution during navigation in Indonesian waters or during port activities. To prevent unforeseeable circumstances, Minister of Transport Regulation 29/2014 requires a vessel to clean her tank, to remove waste, residual hazardous and toxic cargo, and to provide recycling facilities.

Finally, the Admiralty Court was established since 1934 by the colonial law, *Ordonnantie op den Raad voor de Scheepvaart* (Law No. 215 of 1934), and then Article 221 of Law 17/2008 as the court in charge of conducting further investigations into ship accidents after the preliminary investigation by *syahbandar*. Even though it is called a court, it does not function as a traditional court. The Admiralty Court is an expert panel to conduct a more comprehensive investigation into shipwrecks that caused environmental damage. The Admiralty Court falls under the Minister of Transportation and should therefore report to the minister. Its competence concerns the performance of maritime accident investigations, both shipwrecks and collisions, and to enforce professional ethics regarding shipwrecks for sea-masters or ship officers (Articles 251–252 of Law 17/2008). The result of the Admiralty Court process is a recommendation to the Minister of Transportation of what appropriate administrative

sanctions should apply for the sea-master or ship officer (Article 253(1)(b) of Law 17/2008).

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PAGE 2

PAGE 3

PAGE 4

PAGE 5

PAGE 6

PAGE 7
