

CHAPTER I

INTRODUCTION

A. Background

Indonesia is an archipelago which consists of 17,504 islands included in the territory, and also the 2/3 of Indonesian territory is the sea. This condition indicates that Indonesia is a maritime nation. Indonesia as an archipelago needs transportation, especially sea transportation to connect the islands. Sea transportation in Indonesia is very important for moving goods and people, and it is also very important to advance the economy of the local community, so the facilities of sea transportation must be increased to make users (passengers) more comfortable and safe by reducing the accidents rate.¹

Sea transportation is needed to facilitate the transportation of people and goods, and shipping safety should also be a concern by the company, especially for users of transportation services in the field of shipping, namely KM Lestari Maju. In 2018, there were several problems that occurred in KM Lestari Maju related to safety, comfort and ship equipment, such as what happened a few months ago when KM Lestari Maju was drowned in front of Pa'badilang, Selayar Regency.

Accidents do not only occur on land and air, travel of sea is also frequent. KM Lestari Maju serves the crossings from Bira Port, Bulukumba Re-

¹ Eko Prasetya, published Saturday, 19 August 2017, "Dari 17.504 Pulau Di Indonesia 16.056 Telah Diverifikasi PBB" Available on : <https://www.merdeka.com/peristiwa/dari-17504-pulau-di-indonesia-16056-telah-diverifikasi-pbb.html>, Thusday, 4 December 2018, 7:23pm.

gency, to Pamatata Port, Selayar Regency, South Sulawesi. KM Lestari Maju reportedly sank in front of Pa'badilang, Selayar Regency, when he was about to dock. KM Lestari Maju sank due to a leak in the hull. KM Lestari Maju transports hundreds of passengers, minibus ,cars and motorcycles². The capacity of cargo KM Lestari Maju was compiled from the port; the vessel's manifest contained 139 people, 18 motorbikes and 32 cars. The ship had a problem, where water entered the lower floor deck, the ship was allegedly hit by waves on the ship's body while in the middle of sea and was reportedly wrecked around 1:00 a.m. WITA.³

While the captain tried to squeeze the ship about 200 meters from the shoreline (seaside) to minimize the number of victims. Many irregularities occurred starting from the overload capacity, water entered the lower floor deck, it is suspected that there was a leak in the ship, the lack of life jackets available, so that no skids are seen on the ship, bad weather occurred and big waves that hit the ship to the engine ships died suddenly and much more⁴.

² Pebriansyah Ariefana, published Tuesday, 3 July 2018, “Angkut Ratusan Orang KM Lestari Maju Tenggelam di Bulukumba” Available on: <https://www.suara.com/news/2018/07/03/134849/angkut-ratusan-orang-km-lestari-maju-tenggelam-di-bulukumba> , Accessed on : Thursday, 19 July 2018, 7:23pm.

³ Ady Anugrahadi, published Wednesday 4 July 2018, “Korban Tewas KM Lestari Maju di Selayar” Available at : <https://www.merdeka.com/peristiwa/korban-tewas-km-lestari-tenggelam-di-selayar-jadi-25-orang.html> , Accessed on : Thursday, 19 July 2018, 7:45pm.

⁴ Yosep, published Tuesday, 3 July 2018, “ Kronologi Tenggelamnya KM Lestari Maju Angkut 139 Orang, 18 Motor dan 32 Mobil” , Available on: <http://www.radarbogor.id/2018/07/03/kronologis-tenggelamnya-km-lestari-maju-angkut-139-orang-18-motor-dan-32-mobil/> , Accessed on : Thursday, 19 July 2018, 9:42pm.

Based on data the capacity of KM Lestari Maju was compiled from the port; the vessel's manifest contained 139 people, 18 motorbikes and 32 cars, but the total number of victims found, both dead and the survivors, reached 201 people. So, this manifest data is still inaccurate (uncertain).

Sumadi Budi Karya, the minister of transportation, said that there was indeed a mistake from the authority of port (syahbandar) and those who were officers and of course the officers had to bear what was not done according to the applicable law,⁵ so the ministry was still waiting for official report for the National Transportation Safety Committee (KNKT/ NTSC) and currently NTSC is still investigating the sink of KM Lestari Maju that serve crossings from Bira Port, Bulukumba District and Pamatata Port, Selayar District.⁶

NTSC still had not investigated the issue, because there were many factors that caused the ship to sink. Starting from the manifest, it exceeded the capacity of the ship; there was a leak in the ship; and at that time the big waves also hit the ship.⁷ From the recognition of the captain KM Lestari Maju, at the departure time there was a leak on the ship hull, so the water entered the ship which made the ship experience a loss of balance and this was also still in the process of investigation by the NTSC.

⁵ Indiana malia, published Wednesday, 4 July 2018, “kapal lestari yang tenggelam angkut 139 penumpang”, Available on:<https://www.idntimes.com/news/indonesia/indianamalia/kapal-km-lestari-yang-tenggelam-angkut-139-penumpangnbspnbspn/full> , Accessed on : Thursday, 19 July 2018, 11:27pm.

⁶ Danny Faturachmana, Shariman Mustafa, “Sea Transportation Accident Analysis In Indonesia”, *Journal Social and Behavioral Sciences*, Volume 40, No. 1, Jakarta, p. 617.

⁷ *Ibid*

Basically the ticket is a community fund in the form of compulsory contributions that exist on insurance. Compulsory contributions have been regulated in article 7 in Law no.33 of 1964 on Passenger Accident Insurance Funds.⁸ The implementation of provisions related to article 7 have been further stipulated in article 3 and Article 4 of Government Regulation (PP) No.17 of 1965 on Provisions on the Implementation of Passenger Accident Compulsory Insurance Funds.⁹ Therefore, the law which refers to the existence of improvement efforts for sea transport services should start being designed with more participation and should accommodate the interests of passenger.

For calculating 35 victims who died, the compensation was given only to 18 inheritance victims.' Among the 18 inheritance victims, 13 of them were domiciled in Selayar and 5 others outside Selayar, namely 4 people in Watampone, South Sulawesi and one person in Surabaya, East Java. Meanwhile compensation for 17 other people has not been given because officers still ensure the validity of the inheritance.¹⁰

They should also know that passengers are entitled to compensation which shall be provided by the carrier due to negligence during the operation of the transport operation. At least, there are two reasons for the emergence of

⁸ Article 7 “The amount of the contribution fee and the amount of compensation in article 3 paragraph (1) poin a and other implementing provisions of this Law are governed by Government Regulations”. Law no. 33 of 1964 on Passenger Accident Insurance Funds.

⁹ Article 3 and 4 Government Regulation (PP) No. 17 of 1965 on The Implementation of Passenger Accident Compulsory Insurance Funds.

¹⁰ Endan Puput, published Thursday, 5 July 2018, “ Menhub Santunan Korban KM Lesatari Maju Segera di Bayarkan” Availabel on: <https://kumparan.com/sumutnews/menhub-santunan-korban-km-lestari-maju-segera-dibayarkan-27431110790539274>, Accessed on : Friday, 20 July 2018, 08:14pm.

compensation, namely compensation for breach of contract (Wanprestasi) and compensation due to unlawful acts. Compensation for breach of contract (Wanprestasi) is regulated in book III of the Civil Code, which starts from Article 1246 until 1252 of the Civil Code. Whereas compensation due to Unlawful Acts (PMH) is regulated in Article 1365 of the Civil Code.¹¹

This study aims to discuss in detail whether the rights of survivors or not get compensation or insurance for their personal items,¹² for example cars, motorcycle, etc.¹³ Based on Law No. 17 of 2008 on shipping and related to many more regulations¹⁴. As for the main problem in this research is how the implementation of legal protection for passenger safety and the responsibility of KM Lestari Maju ships

B. Research Problem

The research problems are:

1. What is the liability of the carrier (the captain and shipowner) against the loss of passengers?
2. How to do legal effort for passengers who get loss in sea transportation?

¹¹ Article 1247 “The debtore only required to reimburse the costs, damages and interest, which was originally expected or foreseeable at the time of engagement is held, unless the non-fulfillment of the engagement is caused by the deceit was doing. (WANPRESTASI). Article 1365 “A party who commits an illegal act which causes damage to another party shall be obliged to compensate therefor” (PMH) Book III of the Civil Code

¹² Abdulkadir Muhamad, 2013, Hukum Pengangkutan Niaga, PT. Citra Aditiya Bakti, Bandung, p.20.

¹³ Echa Panrita Lopi, “ 8 fakta tenggelamnya kmp lestari maju di selayar”, Available at :<https://makassar.terkini.id/berikut-ini-8-fakta-tenggelamnya-kmp-lestari-maju-di-selayar/> , Accessed on : Thusday, 19 July 2018, 10:52pm.

¹⁴ Article 40 Paragraph 1 in Law No. 17 of 2008 Concerning on Shipping. “A company maritime transported are responsible for the safety and security of passengers and / or the goods be carried”. (Compensation)

C. Objective of Research

The objectives of the research are:

1. To know the liability of the carrier (the shipowner and captain) against the loss of passengers.
2. To understand the legal effort for passengers who get loss in marine transportation.

D. Benefits of Research

The benefit of research are:

1. Theoretical Benefits

This research would give the understanding of the basic laws governing consumer protection and security of shipping to have the fulfillment of the rights of victims on maritime transportation.¹⁵ This research will open the view on the settlement on responsibility of carrier against the loss of passengers.

2. Practical Benefits

This research would propose or benefits to society for bringing a change in the practice of marine transportation when accidents happen,¹⁶ getting the rights of accident victims, providing compensation for heirs, providing compensation for the property and provide accountability for victims and getting the right of passenger.

¹⁵ Mukti Fajar ND, Yulianto Achmad, 2015, *Dualisme Penelitian Hukum Normatif Dan Empiris*, Yogyakarta, Pustaka Pelajar, p.89.

¹⁶ *Ibid.* p.91.