

Strict Liability of Shipping Corporations on Unseaworthy Ships

Husein Layn*, Elsa R. M. Toule, D. J. A. Hehanussa

Universitas Pattimura, Indonesia

Email: huseinlayn936@gmail.com*

ABSTRACT

Shipping safety is a fundamental aspect of connectivity in the Maluku archipelago. However, the high rate of maritime accidents caused by unseaworthiness factors such as overloading and the absence of safety equipment indicates weaknesses in the current legal liability system, which tends to focus solely on individual shipmasters (captains). This study aims to analyze the urgency and mechanism of applying the principle of strict liability to shipping corporations that operate unseaworthy vessels within the working area of the Class I Port Authority and Office (KSOP) Ambon. The research method employed was normative juridical, utilizing statutory and conceptual approaches. The results indicate that operating an unseaworthy vessel is a type of regulatory offense that carries significant risks to public safety, therefore, the requirement to prove criminal intent (*mens rea*), which is often difficult to establish within corporate structures, can be waived. Under the strict liability principle, corporations can be held criminally liable based on objective evidence of violating seaworthiness standards (*actus reus*). Geographic challenges in Maluku, where only 24 out of 75 ports have permanent officers, reinforce the need for a firm legal doctrine to create a deterrent effect for shipowners. This study concludes that the explicit application of strict liability in maritime regulations will encourage corporations to systemically improve safety standards and ensure legal certainty for the public utilizing sea transportation services.

Keyword: Ship Seaworthiness; Strict Liability; Shipping Corporation; KSOP Class I Ambon.

INTRODUCTION

The Unitary State of the Republic of Indonesia as the largest archipelago in the world with more than 17,000 islands has a very high dependence on sea transportation as the backbone of national connectivity. The large water area with archipelago characteristics makes shipping the main mode of transportation to connect between islands, distribute goods, and drive the wheels of the economy. In the journal *Lex Administratum* Volume 13 Number 2 of 2025, Jeyfer Victori Lioso, Cornelis Dj. Massie, and Natalia Lana Lengkong explained that the safety and security of shipping at sea is a fundamental aspect that must be guaranteed by the state considering the high risks inherent in sea transportation, both risks to human lives, property, and the maritime environment (Lioso et al., 2025). Indonesia's unique geographical conditions demand an effective surveillance and enforcement system to ensure every vessel sailing in Indonesian waters meets the seaworthiness standards set.

Shipping safety has been comprehensively regulated in Law Number 17 of 2008 concerning Shipping which is an update of Law Number 21 of 1992. In the consideration of the law, it is stated that the development of the national and international strategic environment requires the implementation of shipping in accordance with the development of science and technology, while still prioritizing shipping safety and security for the sake of the national interest. Article 1 number 32 of Law Number 17 of 2008 defines shipping safety and security as "a state of fulfillment of safety and security requirements related to transportation in waters, ports, and maritime environments". This definition shows that shipping safety is a multidimensional condition that includes various technical, human resources, and managerial aspects that must be fulfilled simultaneously (Lasse, 2014).

One of the key concepts in the Shipping Law is *seaworthiness* which is defined in Article 1 number 33 as "the state of the ship that meets the requirements of ship safety, prevention of water pollution from the ship, manning, loading line, loading, crew welfare and passenger

health, legal status of the ship, management of safety and prevention of pollution from ships, and management of ship safety for sailing in certain waters". This very broad definition suggests that seaworthiness concerns not only the physical aspects of the ship such as construction, engines, and navigation equipment, but also non-physical aspects such as crew competence, safety management, and document legality. Violations of just one aspect can categorize a ship as unseaworthy and have the potential to endanger shipping safety.

Article 117 paragraph (1) of Law Number 17 of 2008 expressly states that: "Every ship sailing in Indonesian waters is required to meet the requirements of ship worthiness." This provision is imperative and does not provide room for bargaining between safety interests and economic interests. Furthermore, Article 323 of the same law threatens with a maximum prison sentence of 5 years or a maximum fine of Rp 600,000,000.00 for every person who operates a ship that does not meet the requirements of seaworthiness. This criminal threat shows the seriousness of lawmakers in dealing with violations of due diligence, considering its very fatal impact on the safety of human lives and the environment (Martono & Singadimedja, 2011).

However, the reality on the ground shows that violations of seaworthiness provisions still occur frequently and result in marine accidents with many casualties. The Maluku region as one of the archipelagic provinces with dense shipping traffic recorded a number of ship accidents caused by ship lessness. On August 24, 2013, KM Sandar Jaya bound for Ambon-Manipa sank in the waters of Tanjung Alang, Central Maluku Regency, resulting in the death of 4 people. Survivors revealed that the ship was loaded with a lot of goods (overloaded) and there was no life jacket available, so passengers were forced to use used oil jerry cans as buoyancy devices (Liputan6.com, 2013). A similar accident occurred on January 3, 2025, the Dua Nona speedboat on the Tahalupu route to Tahoku Port sank in Maluku waters with 8 people killed (Kompas.id, 2025).

Both accidents show the same pattern of violations, namely neglect of the fundamental aspect of seaworthiness. KM Sandar Jaya is not only overloaded but also not equipped with adequate life jackets, while the Dua Nona speedboat has lost balance due to passenger distribution that is not in accordance with the ship's stability design. Ironically, the water conditions at the time of the two accidents were relatively normal and not in bad weather conditions, which further confirms that the main cause of the accident was internal factors of the ship, not external factors of nature. In an article Kompas.id dated January 3, 2025, Manipa Sector Police Chief Inspector Two Edwin Mangare stated that "the conditions at the time of the incident were known to be calm. The ship capsized allegedly due to a loss of balance."

The phenomenon of operating ships that are not seaworthy cannot be separated from the role of shipping corporations as ship owners or operators. In many cases, the decision to keep the ship operating in unseaworthy conditions is a business decision based on short-term economic considerations, such as pursuing maximum profits at the expense of maintenance costs, loading over capacity to increase revenue, or not equipping the vessel with expensive safety equipment (Lasse, 2015). Captains and crew are often in a dilemma between carrying out their professional duty to refuse to sail if the ship is unsuitable, at risk of losing their jobs, or staying sailed despite knowing the safety risks. In the *Lexology article* dated September 17, 2025 on "Passenger Ship Seaworthiness in Indonesia", it is emphasized that the skipper has an obligation to ensure that his ship is seaworthy before sailing and is obliged to report it to the syahbandar, and has the right to refuse to sail if the ship is deemed unqualified. However, these

provisions are often ineffective due to pressure from the shipowner (Anggraeni and Partners, 2025).

Corporations as legal subjects have different characteristics from natural humans (*natuurlijk persoon*) in terms of criminal liability. The Indonesian Criminal Code, which adheres to the Continental European legal system, initially did not recognize corporations as the subject of criminal law (*societas delinquere non potest*). However, in its development, various laws outside the Criminal Code have accepted corporations as subjects of criminal law in line with the increase in corporate crimes in various sectors (Muladi & Priyatno, 1991). As analyzed by Pakomius Darnosata Hamon (2014) in his research at Airlangga University, it is emphasized that the transformation of contemporary Indonesian criminal law has strengthened the position of corporations as legitimate criminal law subjects. This is confirmed through a number of *lex specialis* regulations, especially in Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, which explicitly adopts the doctrine of corporate criminal liability as a form of deviation from the conventional principles in the Criminal Code (Hamon, 2014).

In the context of shipping, Law Number 17 of 2008 recognizes transportation companies in waters as subjects that can be held accountable. Article 1 number 32 defines "Water Transport Company" as a business entity that can be in the form of a legal entity or not, so that the scope of the subject is broad to include both corporations that are legal entities and those that are not. Article 170 specifically regulates the obligation of transport companies in the waters to operate their vessels in accordance with seaworthiness requirements. This provision explicitly targets corporations as owners or operators of ships, so corporations cannot avoid liability under the pretext that the operation of ships is the technical authority of the captain alone. The principle of *strict liability* or absolute responsibility is one of the concepts in criminal liability that allows a person or corporation to be held accountable without the need to prove fault or *mens rea*. In an article by Hukumonline dated April 28, 2019 about "Recognize This Theory to Effectively Crack Down on Corporate Crimes", it is explained that the theory of *vicarious liability* in its development gives birth to *absoluteliability* or *liability without fault*, which means perpetrators who do not have *mens rea* (malicious intent) can still be held accountable, as applied in the Road Traffic and Transportation Law. This theory then gave birth to *strict liability* as applied in the Environmental Law (Mardatillah, 2019). This principle is very relevant to be applied to shipping corporations that operate ships that are not seaworthy, considering that such activities carry a great risk to public safety.

The application of the principle of *strict liability* in Indonesian criminal law is still sectoral and has not been uniformly regulated. The Airlangga University thesis identifies weaknesses in corporate criminal liability in Law Number 8 of 2010, including the lack of regulation of *strict liability* theory and weaknesses in criminalization of corporations, especially related to additional crimes. The study recommends that in the future, laws on money laundering should regulate the theory of *strict liability* in corporate criminal liability. This recommendation is also relevant for the shipping sector, given the high risks posed by the operation of unseaworthy vessels (Muladi & Priyatno, 1991).

The Ambon Class I Port Authority and Authority Office (KSOP) are a technical implementation unit within the Ministry of Transportation that has a strategic role in ensuring shipping safety in the Maluku Province area. Based on the Regulation of the Minister of

Transportation Number PM 122 of 2018, the Office of Municipal Affairs and Port Authority (KSOP) have the task of carrying out supervision and law enforcement in the field of shipping safety and security, coordinating government activities at the port, as well as regulating, controlling, and supervising port activities. In the research published in *SENGKUNI Journal* Volume 4 Number 2 of 2024, pages 123-135, Lilis Karlina and Muhammad Arif examined the performance of the Ambon Class I Port Authority Office (KSOP) in supervising ship seaworthiness and found that the supervision had gone quite well according to the SOP for the issuance of ship letters and documents on time and ship inspections were carried out every time the ship entered and exited. Although there are still some weaknesses (Karlina & Arif, 2024).

The working area of the Ambon Class I Port Authority and Municipal Office (KSOP) (KSOP) covers all waters of Maluku Province with a central point at Yos Sudarso Port Ambon as the main port. Geographical challenges are a significant factor in the implementation of the duties of the Ambon Class I Port Authority Office (KSOP), because Maluku Province with its widespread archipelago characteristics makes access to supervision not easy. In the 2023 annual report of the Ambon Class I Port Authority Office (KSOP), it is stated that of the total 75 ports spread across the Maluku region, only 24 ports have permanent syahbandar officers, while the rest are only visited periodically. This creates potential violations in small ports with limited supervision, including the possibility of unseaworthy ship departures without adequate inspections.

The Ambon Class I Port Authority Office (KSOP) routinely carries out ship seaworthiness sampling tests to ensure shipping safety. On November 17, 2025, the Ambon Class I Port Authority Office (KSOP) began carrying out ship feasibility sampling tests and port service facility inspections as part of preparations for the 2025 Christmas and 2026 New Year homecoming flows. The Head of Traffic and Sea Transportation of the Ambon Class I Port Authority Office (KSOP), Iyan Ashari, stated that the focus of the inspection was to ensure that safety standards were met, starting from ship documents, safety equipment, engine condition, to crew competence. A total of 17 Ambon *homebase* ships took part in *ramp checks* with inspections covering technical aspects, radio communication, fire extinguishers, provision of *life jackets*, as well as ship size and feasibility certificates (ANTARA News, 2025a).

In addition to routine picking tests, the Ambon Class I Port Authority Office (KSOP) also collaborates with the Directorate General of Sea Transportation of the Ministry of Transportation in carrying out the feasibility picking test for *roll-on/roll-off* (roro) passenger ships. On July 28-30, 2025, a sampling test was carried out which included technical inspections of ship structures, engines, navigation equipment, electrical systems, and safety equipment such as lifeboats, life jackets, and light fire extinguishers (APAR). Head of the Office of the Municipal and Port Authority Office (KSOP) Class I Ambon Capt. Mochamad Abduh, M.Mtr emphasized that "if the ship does not meet the recommendations of the inspection results from the *Marine Inspector*, then the departure of the ship can be postponed by Syahbandar". This firmness shows the commitment of the Ambon Class I Port Authority Office (KSOP) in enforcing safety standards.

Although surveillance efforts have been made, cases of unseaworthy ship accidents in the Maluku region continue to occur. This indicates a weakness in the accountability system, especially in ensnaring shipping corporations as the party that benefits the most from ship operations. In the Hukumonline article dated June 26, 2024 about "Criminal Liability by

Corporate Administrators Associated with the Principle of *Geen Straf Zonder Schuld*", it is explained that the corporate accountability system used in Supreme Court Regulation Number 13 of 2016 is the concept of *strict liability* accountability, so the theory used should be an identification theory where the act of corporate crime is the act of the management who is the *directing mind* (Hukumonline, 2024). But in practice, law enforcement officials tend to be more prone to ensnare skippers or individual operators than to build legal constructions to ensnare corporations.

According to Kristiawati, the complexity of proof and the lack of familiarity of the apparatus with the concept of corporate criminal liability are the main obstacles in law enforcement (Kristiawati, 2016). In fact, if you dig deeper, the decision to operate unseaworthy vessels almost always comes from corporate management policies that prioritize cost efficiency and maximizing profits over safety. The captain and crew are just executors in the field who often do not have the bargaining power to refuse the order to sail even though they know the ship is not suitable.

The principle of *strict liability* offers a solution to the difficulty of proving error (*mens rea*) in corporate cases. With this principle, a corporation can be held liable only by proving that there has been a violation of the legal obligations imposed on it, without the need to prove the existence of malicious intent or negligence. In the context of shipping, the obligation to operate a seaworthy vessel is an absolute obligation imposed on the ship's owner or operator corporation. When the ship operated turns out to be unseaworthy and causes an accident, the corporation should be held directly liable based on the principle of *strict liability* (Sjahdeini, 2006).

The application of the principle of *strict liability* to shipping corporations in the work area of the Ambon Class I Port Authority Office (KSOP) is very relevant considering the high frequency of accidents of unseaworthy vessels in the region. Accident data for 2024-2025 shows a pattern of repeated violations, namely overloading, absence of safety equipment, and neglect of other safety procedures. This indicates that there are systemic problems in the shipping industry in Maluku that require a more effective law enforcement approach. Corporate accountability with the principle of *strict liability* is expected to create a deterrent effect and encourage corporations to be more serious in meeting seaworthiness standards.

Based on the background that has been explained, the problems that will be studied in this study are: first, how to apply the concept of strict liability to shipping corporations that operate ships that are not seaworthy? Second, what is the criminal liability of shipping corporations based on Indonesia's positive law in the work area of the Ambon Class I Port Authority and Municipal Office (KSOP)? The purpose of this study is to analyze and examine the application of the concept of strict liability to shipping corporations that operate ships that are not seaworthy, as well as to examine and analyze the criminal liability of shipping corporations based on positive Indonesian laws in the work area of the Ambon Class I Port Authority and Authority Office (KSOP).

This research is expected to provide benefits both theoretically and practically. Theoretically, this research contributes to the development of legal science, especially criminal law and maritime law, by examining the application of the principle of strict liability to shipping corporations. This study also expands the understanding of the theory of corporate criminal liability that has developed in the contemporary legal literature. Practically, the results

of this study are expected to be used as evaluation material for the Syahbandar Office and the Ambon Class I Port Authority in tightening the supervision of ship worthiness, as well as providing recommendations for policymakers in formulating more effective regulations. In addition, this study provides a legal basis for law enforcement officials to take action against shipping corporations that neglect to fulfill legal obligations.

METHOD

Research Type

This research is normative legal research. The focus of this research is on literature studies that examine positive legal norms, legal principles, and vertical and horizontal synchronization between shipping regulations and the doctrine of corporate responsibility. The use of this method aims to find a legal prescription regarding the extent to which the principle of *strict liability* can be applied to corporations that operate ships that are not seaworthy in the area of the Ambon Class I Port Authority Office (KSOP) (Marzuki, 2017).

Research Approach

In normative legal research, the approach serves as an "analytical knife" to dissect legal issues. To obtain comprehensive results related to the implementation of strict liability in shipping corporations at the Ambon Class I Port Authority Office (KSOP), the following four approaches were used:

a. Statute Approach:

This approach is carried out by examining all laws and regulations related to the legal issues being handled. This research does not only look at one rule, but the relationship (consistency) between regulations (Marzuki, 2017).

b. Conceptual Approach:

Starting from the views of scholars and legal doctrine to build a legal argument regarding the relationship between unseaworthy ships and strict *liability*. The conceptual approach is carried out by examining relevant legal theories and doctrines. Johnny Ibrahim's opinion is that this approach is useful when the laws and regulations are not clear enough or create a legal vacuum (Ibrahim, 2006). In this study, two main theories were used, namely:

1. Criminal *Liability Theory*

- a. the basic concept of criminal liability;
- b. Corporate Criminal Liability Models;
- c. Elements of Criminal Liability.
 - 1) The Principle of *Strict Liability*
 - a) Definition and Characteristics of *Strict Liability*;
 - b) Basis for the Implementation of *Strict Liability* in Shipping Law.
 - 2) *Strict Liability* in the Context of Unseaworthy Ships.

Criminal *liability* is the core of criminal law that determines whether a person or corporation can be sentenced for a criminal act committed.

c. Case Approach:

The case approach in normative research aims to study norms or rules carried out in legal practice. As well as analyzing the patterns of violations or ship accidents in the work area of the Ambon Class I Port Authority Office (KSOP) as a factual basis to test the effectiveness of the norms (Ibrahim, 2006).

d. Analytical Approach:

This approach is carried out to find out the meaning contained by the terms used in laws and regulations conceptually, as well as to know their implementation in practice (Ibrahim, 2006).

Source of Legal Materials

In normative legal research, the source of legal material is the main basis for studying, analyzing, and building legal arguments. Peter Mahmud Marzuki said that legal materials are everything that can be used to solve legal problems. Thus, the source of legal material in this study, namely:

a. Primary Legal Material:

Primary legal material is a binding source of law, in the form of written legal rules and court decisions that have permanent legal force. Soerjono Soekanto and Sri Mamudji stated that primary legal materials include laws and regulations, treaties, and jurisprudence (Soekanto & Mamudji, 2009). In this study, primary legal materials include:

- 1) the Constitution of the Republic of Indonesia in 1945;
- 2) Law Number 17 of 2008 concerning Shipping, especially Article 40 and Article 41 which regulate the responsibility of carriers;
- 3) Law Number 32 of 2009 concerning Environmental Protection and Management;
- 4) Law Number 1 of 2023 concerning the Criminal Code (KUHP).
- 5) the Civil Code (KUHPerdata), especially Article 1365 concerning unlawful acts;
- 6) the Commercial Law Code (KUHD), especially Article 536 concerning fault-based liability in ship collisions;
- 7) Government Regulation No. 51 of 2002 concerning Shipping;
- 8) Government Regulation Number 31 of 2021 concerning the Implementation of the Shipping Sector;
- 9) Regulation of the Minister of Transportation Number 71 of 2013 concerning Salvage and/or Underwater Work (as last amended by Regulation of the Minister of Transportation Number 33 of 2016);
- 10) Regulation of the Minister of Transportation Number 82 of 2022 concerning Procedures for the Issuance of Sailing Approval Letters (SPB);
- 11) Regulation of the Minister of Transportation Number 110 of 2017 concerning Procedures for Inspecting Ship Accidents;
- 12) Regulation of the Minister of Transportation Number 57 of 2021 concerning Procedures for Inspection, Testing, and Certification of Ship Safety;
- 13) Regulation of the Minister of Transportation Number 4 of 2025 concerning the Organization and Work Procedures of the Ministry of Transportation related to the inspection of ship seaworthiness and law enforcement procedures at the Port;
- 14) the United Nations Convention on the Law of the Sea 1982 (UNCLOS 1982), particularly related to port state jurisdiction;
- 15) the International Convention on Civil Liability for Oil Pollution Damage 1969 (CLC 1969) and its 1992 amended protocol, which is the basis for the implementation of strict liability at the global level;
- 16) International Convention for the Safety of Life at Sea (SOLAS 1974) and its amendments, which become the standard for seaworthiness of ships;

17) International Maritime Organization (IMO) Instruments Implementation Code (III Code) which requires member countries to audit and enforce safety standards.

b. Secondary Legal Materials:

Legal materials obtained from writings or reviews by experts are found in various legal textbooks, scientific journals, academic articles, and papers related to corporate criminal liability and shipping safety. Secondary legal material provides an explanation or criticism of primary legal material. This material is crucial to build a theoretical argument about why strict liability is needed in a high-risk shipping industry (Soekanto & Mamudji, 2015).

c. Tertiary Legal Materials:

Tertiary legal materials function to provide instructions and explanations for primary and secondary legal materials. This material assists researchers in understanding technical terminology in the field of shipping and law. Marzuki argues that tertiary legal materials function as a tool to clarify terms, concepts, and supporting data (Marzuki, 2017).

Collection of Legal Materials

The collection of legal materials is a method or procedure used by legal researchers to obtain data in the form of legal norms, doctrines, decisions, and literature that are relevant to research problems. Because this research is normative, data collection is carried out by *library research* and analysis of legal documents. Peter Mahmud Marzuki argues that normative legal research does not use field data like social research, but focuses on written legal materials as the main source of analysis (Amiruddin & Asikin, 2012).

Legal Materials Analysis Techniques

The technique of analysis of legal materials is carried out in a qualitative descriptive manner. All legal materials that have been collected are compiled systematically, then analyzed using a deductive method, which is to draw conclusions from general statements (*strict liability theory* and national shipping regulations) to specific statements (its application to shipping corporations at the Ambon Class I Port Authority Office (KSOP). This analysis aims to produce logical and consistent legal arguments to solve the legal issues in this thesis (Waluyo, 2002).

RESULTS AND DISCUSSION

Research Results

This study identified several cases of ship accidents that occurred in the Maluku and North Maluku regions in the last 5 years (2022-2026) caused by violations of seaworthiness requirements. These cases provide an overview of the high frequency of marine accidents in the archipelago and how Indonesia's judicial system, especially the Shipping Court, responds to violations related to the operation of unseaworthy vessels. In a VOA Indonesia article dated July 19, 2022, it was mentioned that ferry and ship tragedies are frequent in Indonesia, an archipelagic country with more than 17,000 islands, where ferries are often used as a means of transportation and safety regulations are frequently violated. This condition is very relevant to the Maluku region which has the geographical characteristics of the archipelago with a high dependence on sea transportation.

The first significant case that has been legally processed is the sinking accident of the LCT Bahana Putra on June 17, 2023 in the Maluku Sea, north of Mayau Island. Based on the Shipping Court Decision read out on February 16, 2024, this ship suffered an accident due to an overload of load (*draft*) and the height of the load exceeded the maximum limit which refers

to the *stability booklet*. The LCT Bahana Putra ship when departing from Manokwari Port to Bitung Port, loaded heavy equipment and 5 container units with a height of 2.6 meters, even though the *stability booklet* set the maximum deck load height at 2 meters. This condition causes the ship to experience stability *failure and* lose the enforcement moment so that the ship capsizes when there is a change in weather. This case shows a serious violation of seaworthiness provisions related to the loading and stability of the ship.

In the case of LCT Bahana Putra, the Shipping Court ruled that the load of error was caused by an overload (*draft*) and the height of the load exceeded the maximum limit. The Shipping Court stated that regulating and supervising the cargo was the responsibility of Mualim I, and overloading was a violation of the seaworthiness and safety of the ship, so that there was a professional error committed by Mualim I Sdr. Yasiful Anam. The Shipping Court also emphasized that the accident of the LCT Bahana Putra ship was the responsibility of the Captain, but in the accident the Captain Sdr. Buchari Sahafin died so that he could not be burdened with responsibility for mistakes and negligence. Finally, the Shipping Court imposed an administrative sanction in the form of a temporary revocation of the Mualim I Seafarer's Certificate of Expertise for 4 months (Mahkamah Pelayaran Kementerian Perhubungan, 2024).

This case is important because it shows that law enforcement for seaworthiness violations in the Maluku region focuses more on administrative sanctions against individual seafarers, rather than on the corporate liability of ship owners. LCT Bahana Putra is operated by a shipping company, but in the Shipping Court decision there is no mention of corporate liability. This is in line with the findings of Deddy Theohery's research in his thesis at Satya Wacana Christian University which revealed that in judicial practice, judges decide cases of shipping crimes by punishing individual defendants, while corporate criminal liability is rarely applied (Theohery, 2023).

The second case is the sinking of KM Rajawali Perkasa 103 in the waters of Suanggi Island, Banda Islands District, Central Maluku Regency on February 3, 2025. The motorboat used to look for fish departed from Ambon City to Larat, Tanimbar Islands Regency. The head of Basarnas Ambon, Muhamad Arafah, explained that the ship was hit by high waves and sank, but the 11 crew members managed to save themselves by swimming to Suanggi Island and survived for several hours before being evacuated. This case shows that although there are no casualties, ship accidents due to bad weather still occur regularly in Maluku waters (Tribunnews.com, 2025).

The third case is the sinking of the Widya 03 longboat in the waters of Waefusi Village, Namrole District, South Buru Regency, Maluku Province on March 22, 2025. The boat carrying 32 people sank after a 30-minute journey from Labuang Village to Walbele Village when the weather suddenly changed with strong winds and high waves. The ship's captain, Abdulrahman Palia, explained that the ship hit large waves and capsized. The passengers swam 50 meters to reach the mouth of the Waetina river, and 31 people survived while one person, Oki Aryanti (50), was missing. The ship also transported cargo in the form of 21 sacks of rice, 2 sacks of sugar (50 kg each), 1 unit of Yamaha MX King motorcycle, 1 unit of jiangdong crank engine, 400 liters of kerosene, and basic necessities, indicating indications of overloading.

The fourth case is the sinking of a longboat in Watmasa Waters, Tanimbar Islands Regency on February 10, 2026. The ship carrying 10 people on its way from Larat Port to Karatat Village sank after being hit by large waves and strong winds. The head of Basarnas

Ambon, Muhamad Arafah, stated that 3 people were killed, 6 people survived, and 1 person is still missing. The search and rescue operation that was immediately carried out was hampered by bad weather conditions. This case shows a pattern of repeated accidents in the Maluku region: small boats with limited passengers, sailing in bad weather conditions, lack of safety equipment, and leading to fatalities.

Of the four cases identified, only one case has been legally processed by the Shipping Court, namely the 2023 LCT Bahana Putra case. In other cases, no information was found regarding the follow-up legal process, either through the Shipping Court or through criminal proceedings in court. This shows the weak enforcement of the law against violations of seaworthiness in the Maluku and North Maluku regions. As revealed in a VOA Indonesia article, safety regulations are often violated in Indonesia, but law enforcement is still far from optimal.

In the case of LCT Bahana Putra which was processed by the Shipping Court, the sanction imposed was administrative in the form of temporary revocation of the seafarer's certificate of expertise. The Shipping Court ruled based on the Regulation of the Minister of Transportation of the Republic of Indonesia Number 39 of 2016 concerning Ship Loading and Loading Lines, especially the provision that the loading process on the ship must be able to protect the ship, cargo and crew and pay attention to the requirements of *good seamanship*, and loading must not exceed the predetermined loading line mark limit. Nevertheless, no sanctions were imposed on the shipping company of the ship owner.

The absence of sanctions on corporations in cases in Maluku is in line with the findings of Deddy Theohery's research that in judicial practice, judges decide cases of shipping and fisheries crimes by punishing individual defendants on behalf of corporations, and criminal liability is imposed on the corporation management, not on the corporation as an entity. This shows that although Law Number 17 of 2008 concerning Shipping recognizes corporations as subjects that can be held accountable, its implementation in the field is still very weak, especially in the Maluku region.

Article 117 paragraph (1) of Law Number 17 of 2008 concerning Shipping expressly states that "Every ship sailing in Indonesian waters is obliged to meet the requirements of ship worthiness." Article 170 also regulates the obligation of transportation companies in the waters to operate their ships in accordance with seaworthiness requirements. However, in the cases in Maluku, this provision is not implemented in law enforcement against corporations. Repeated patterns of violations, such as overloading, lack of safety equipment, and loading that is not in accordance with *the stability booklet*, indicate a systemic problem in the shipping industry in Maluku that requires a more effective law enforcement approach.

Geographical factors also contribute to the difficulty of law enforcement in the Maluku region. With thousands of islands and small ports scattered around, surveillance of ships in operation has become very limited. In the 2023 Annual Report of the Ambon Class I Port Authority Office (KSOP), it is stated that of the total 75 ports spread across the Maluku region, only 24 ports have permanent syahbandar officers, while the rest are only visited periodically. This creates potential violations in small ports with limited supervision, including the departure of ships that are not seaworthy without adequate inspections.

From the perspective of victims, accident cases in Maluku show significant losses in both life and material. In the case of KM Cahaya Arafah, 13 people were missing and never found

(Kompas.com, 2022). In the case of the ship on Mangoli Island, 4 people died including a 7-year-old child (MetroTV, 2022). In the case in Tanimbar in 2026, 3 people were killed and one missing (RRI.co.id, 2026). The total death toll from the identified cases reached at least 11 people dead and 15 missing, not including victims of psychological injuries and trauma. Material losses were also not small, including sunken ships and lost cargo.

Data from the National SAR Agency (Basarnas) reflected in various news reports shows that almost all accidents are associated with bad weather factors. However, if you look deeper, the weather factor should not be the cause of the accident if the ship meets the seaworthiness requirements, including adequate stability, complete safety equipment, and the skipper's decision not to force themselves to sail in bad weather. In the case of the Bahana Putra LCT, for example, despite the weather change, the main cause of the accident was an overload that caused stability failure. This shows that bad weather is only a triggering factor, while the root of the problem is a violation of seaworthiness provisions.

From all the results of the study described, it can be concluded that cases of seaworthiness violations in the Maluku and North Maluku regions show a consistent pattern, accidents occur due to:

1. overload;
2. loading does not comply with the conditions;
3. lack of safety equipment; and
4. decision to sail in bad weather conditions.

However, law enforcement only touches the administrative aspect of individual seafarers (skippers or mualims), while ship ownership corporations that make strategic decisions to operate ships in unseaworthy conditions escape liability. This condition shows the urgency of applying the principle of *strict liability* to shipping corporations in the working area of the Ambon Class I Port Authority Office (KSOP).

Discussion

Application of the *Strict Liability* Concept to Shipping Corporations Operating Unseaworthy Ships

The principle of strict liability or absolute responsibility in criminal law allows a person or corporation to be held accountable without the need to prove fault. This doctrine was born to ensnare criminals, especially in complex and high-risk corporate crimes. According to Sutan Remy Sjahdeini (2006), this principle develops from vicarious liability and gives birth to absolute liability where perpetrators without *mens rea* can still be liable.

Philosophically, the application of strict liability originates from the theory of utilitarianism which prioritizes the protection of the public interest. Jeremy Bentham argued that the goal of law is to achieve the greatest happiness for many people. Therefore, the application of this principle to shipping corporations is relevant to protect the safety of passengers. In the Indonesian legal system, this principle is already regulated in the Environmental Protection Law (Article 88 of Law No. 32/2009), and although it is not explicit in the Shipping Law, there is an indication of absolute responsibility, as in Articles 117 and 170.

This principle is also applied in international conventions, such as in the 1969 CLC on oil pollution. Indonesia ratified the convention, which states that ship owners are liable for

damages caused by oil spills without proof of fault. Similar applications can be applied to other shipping safety.

The case of ship accidents in Maluku, such as the LCT Bahana Putra and KM Cahaya Arafah, shows the importance of applying the principle of strict liability. In such cases, evidence of violations of ship worthiness is sufficient to demand liability without the need to prove malicious intent. With this principle, corporations will be more serious about meeting ship safety standards.

The application of strict liability is in line with the theory of utilitarian criminalization which aims to prevent further violations and create a deterrent effect for corporations. In this case, the application of strict liability can overcome difficulties in proving fault in ship accident cases in Maluku. Strict liability provides ease of proof, where it is enough to prove that the ship is operating in unseaworthy conditions without the need to prove malicious intent from the corporation.

Criminal Liability of Shipping Corporations in the Working Area of the Office of Municipal Affairs and Port Authority (KSOP) Class 1 Ambon

The criminal liability of shipping corporations in the work area of the Ambon Class I Port Authority Office (KSOP) faces serious challenges. The Shipping Law No. 17/2008 recognizes water transport companies as the subject of criminal law, but law enforcement on the ground is still weak, as seen in several ship accidents in Maluku. Deddy Theohery revealed that judges often punish individuals, not corporations. Although corporations are legally responsible, legal proceedings against ship owners are almost never carried out.

In an archipelago such as Maluku, geographical challenges add to the difficulty of supervision. Only 24 of the 75 ports in Maluku have permanent syahbandar officers, which increases the potential for violations, such as the operation of unseaworthy vessels. Many shipping corporations in Maluku have a simple management structure, where ship owners are often directly involved in decision-making, yet there is often no criminal liability for them.

The identification doctrine theory states that the actions of the directors of a corporation can be considered corporate actions. However, in practice, law enforcement focuses more on the skipper or mualim, rather than the owner of the corporation. Article 170 of the Shipping Law provides a legal basis for entrapment of corporations, but in practice, this provision is rarely applied in Maluku.

Another challenge is the limited resource capacity at KSOP Class I Ambon, with only 38 ship safety inspectors and 2 patrol boats. This causes the supervision of ships in small ports to be less effective. Therefore, there is a need to increase the capacity of human resources and add supervision facilities to improve law enforcement.

To improve this condition, it is necessary to revise the Shipping Law to explicitly include the principle of strict liability. This revision should also include an expansion of the subject of liability, including beneficial owners of the ship's operations. Increased coordination between KSOP, PPNS, and law enforcement officials is also urgently needed to close existing legal loopholes, as well as strengthen transparency and public participation in ship seaworthiness monitoring.

CONCLUSION

The application of the principle of strict liability to shipping corporations in archipelagic areas such as Maluku is a juridical necessity to ensure shipping safety. By applying this doctrine, criminal liability can be directly imposed on the corporation only by proving the objective facts of the violation of the legality, such as excess loading, without the need to prove the element of fault (*mens rea*) in certain individuals in a managerial structure that is often difficult to reach by law. This study also identified a large gap between *das Sollen* (legal norms) and *das Sein* (field reality) in the enforcement of corporate criminal law in the work area of KSOP Class I Ambon. Currently, law enforcement tends to be limited to administrative sanctions or punishing the skipper individually, while corporate entities that take economic advantage from due diligence violations are rarely touched by the criminal justice process.

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