

## Juridical Analysis of Unauthorized Cards in Special Sea Transport Activities

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### Abstract

*The legal regulations for transportation in Indonesian shipping have not been implemented properly. This is due to the lack of effective and relevant implementation of sea transportation regulations, it has been proven that goods are still being loaded without government permission. The type of research used in this research is the normative juridical method. with a statutory regulation approach and a case approach. The results of this research are that maritime transportation regulations in Indonesia are regulated in the Civil Law, Commercial Law and Law Number 17 of 2008 concerning Shipping. The judge's legal consideration in handing down a decision in case Number 326/Pid.Sus/2016/PT.PBR is that the judge decides the case based on the facts revealed in court by examining several pieces of evidence, so that the judge believes that the elements contained in Article 285 Law No.17 of 2008 concerning Shipping Jo. Article 55 paragraph (1) 1 of the Criminal Code which is the basis for the public prosecutor's demands is fully fulfilled.*

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## I. Introduction

The Unitary State of the Republic of Indonesia is an archipelagic country consisting of thousands of islands along the equator, located between 2 (two) continents and 2 (two) oceans so that it has a strategic role and position in relations between nations and countries. The strategic position of the Republic of Indonesia must be utilized optimally as basic capital for national development based on Pancasila and the 1945 Constitution to realize national ideals.

Transportation in Indonesia has an important role in facilitating and advancing domestic and foreign trade, with transportation it can facilitate the

flow of goods from production areas to consumers so that consumer needs can be met. This can be seen in the development of transportation services in Indonesia which is starting to show progress, as evidenced by the number of industrial companies that believe in using transportation services. The management of transportation issues in Indonesia is regulated, among other things, in the Commercial Code (KUHD) and other laws and regulations.

According to Purwosutjipto, transportation is a reciprocal agreement between the carrier and the sender, where the carrier binds itself to carry out the transportation of people and/or goods from one place to a certain destination safely, while the sender binds itself to pay the transportation money.<sup>1</sup>

Sea transportation has a very large role in transportation for Indonesia. Sea transportation is the most widely used because it can provide the following benefits :

1. Transportation costs are cheaper compared to other means of transportation.
2. Capable of carrying passengers as well as transporting goods weighing hundreds or even thousands of tons.<sup>2</sup>

In Article 1 of Law Number 7 of 2008 concerning Shipping, it states that:

" *Sea transportation , where the term water transportation is used, is the activity of transporting and/or moving passengers and/or goods by ship .* "

In Indonesia as a maritime country, the role of sea transportation in the form of shipping business has an important role in the socio-economic life of its population and also has an important meaning in the development of the nation and state in order to achieve the nation's ideals. Shipping in Indonesia is organized and controlled by the state and fostered by the government in the form of control, regulation and supervision aspects. This regulatory aspect is the legal basis for shipping.

The shipping industry in Indonesia has experienced quite rapid development as a result of the issuance of Presidential Instruction No. 5 of 2005 which mandates the cabotage principle. Cabotage is a principle/principle in the form of granting rights to a country to carry out transportation activities between islands and/or ports within a country using ships bearing the flag and nationality of that country.<sup>3</sup>

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<sup>1</sup>Purwosutjipto, *Basic Understanding of Indonesian Commercial Law 3, Transport Law* , Jakarta, Djangkat, 1991, p. 2

<sup>2</sup>R. Soekardono, *Indonesian Shipping Law* , Jakarta. Dian Rakyat, 1969, p. 12

<sup>3</sup>Rahayu, T. (2019). The Influence of the Application of Cabotage Principles in the Offshore Sector at PT. Orela Bahari. *VENUS JOURNAL*, 7(14), p. 2.

Activities in the shipping sector are very broad, one of which concerns the commercial sector or is often referred to as *commercial*, commercial shipping is sea cargo transport or *marine cargo transport* which is a business that provides sea transportation services. Commercial shipping activities are the business of transporting passengers and/or goods, especially merchandise by sea, whether carried out between ports within the territory of a country or across countries. However, there are often individuals who commit acts that violate the laws and regulations regarding shipping, one of which is taking part in transporting cargo without government permission.

In Article 13 paragraph 4 of Law Number 17 of 2008 concerning Shipping it is stated that:<sup>4</sup>

" Special sea transportation activities as intended in paragraph (1) are prohibited from transporting cargo or goods belonging to other parties and/or transporting general cargo and goods except in certain circumstances based on government permission ."

Participating in transporting cargo without government permission as the author will examine when writing this thesis proposal regarding decision Number 326/PID.SUS/2016/PT.PBR. Where the defendant has the initials RL as Master KM. Kawal Bahari-I either acting alone or together with HJ on Sunday 20 March 2016 at around 02.45 WIT, located at Kawal Waters or at least at a place within the jurisdiction of the Tanjung Pinang District Court, has the authority to examine and try cases, they carry out, order to carry out and participate in carrying out actions that serve special sea transportation activities that transport cargo or goods belonging to other parties and/or transport cargo or goods without government permission as intended in Article 13 paragraph 4 in Law Number 17 of 2008 concerning Cruise.<sup>5</sup>

KM ship. Bahari-I When returning to Kawal waters or in position 00 ° 59'600" N-104 ° 39'344 E from Jurong Fish Harbor, Singapore after loading 1936 cartons of canned beverages with the Tiger brand, 825 cartons of the ABC brand and 1886 cartons of Heineken brand for a total of 4647, on Sunday 20 March 2016 at around 02.45 WIB the Kawal Bahari-I ship was stopped by the Kawal Subposmat patrol speed boat. Based on the results of examination of ship documents and ship cargo (contents) by witnesses Ardian Satria and Witness Yuni Prasetyawan. And after checking, it was found that the ship's documents did not match the KM ship's cargo. Kawal bahari-I where the written manifest is Nylon rope @ 50 Kgs and fish landing net @ 58 Kgs while the ship's toll contains 1936 cartons of canned drinks of the Tiger brand, 825 cartons of the ABC brand and 1886 cartons of the Heineken brand for a total of 4647 cartons.

<sup>4</sup>See Law Number 17 of 2008 concerning Shipping, Article 13 paragraph 4

<sup>5</sup> See Decision Number 326/PID.SUS/2016/PT.PBR, page 2

there is a loading document.<sup>6</sup>

The actions carried out by the defendant with the initials RL violated Article 285 of the Law of the Republic of Indonesia Number 17 of 2008 concerning Jo shipping. Article 55 paragraph (1) 1st of the Criminal Code. where Article 285 states that:<sup>7</sup>

*" Every person who serves special sea transportation activities that transport cargo belonging to other parties and/or transports general cargo or goods without a permit as intended in Article 13 paragraph (4) shall be punished with imprisonment for a maximum of 1 (one) year or a fine of a maximum Rp. 200,000,000.00 (two hundred million rupiah) ."*

Any action that violates criminal provisions, whether carried out by permit holders, the public or government officials, if it meets the classification of criminal provisions must of course be prosecuted. Preventing violations and crimes in the licensing sector will continue to be carried out systematically with the hope that the system will be created to prevent crimes or violations from occurring. At this stage the role of law, especially criminal law, is needed to control and prevent actions that could disrupt the world of shipping, especially the transportation of goods .

## **2. Research Method**

The type of research used in this research is the normative juridical method. In legal research there are several approaches, with this approach the researcher will obtain information from various aspects regarding the issue that is being tried to find an answer. The approach methods in this research are the statutory regulations approach and the case approach. <sup>8</sup>The types and sources of data that will be used as a basis to support this research are: Primary Legal Material, namely material that has binding power as the main basis used in the framework of this research, namely Decision Number 326/PID.SUS/2016/PT.PBR, Law Number 17 of 2008 concerning Shipping, the Criminal Code and the Criminal Procedure Code. Secondary Legal Materials, namely materials that are closely related to primary legal materials and can help analyze and understand primary legal materials, such as research results, work from legal firms, and other documents.

## **3. Results and Discussion**

### **Legal Basis for Regulation of Carriage of Cargo in Shipping**

Transport by sea is one mode of transport among other modes of transport ,

<sup>6</sup>See Decision Number 326/PID.SUS/2016/PT.PBR, pp. 2-3

<sup>7</sup>See Law Number 17 of 2008 concerning Shipping, Article 285

<sup>8</sup>Peter Mahmud Marzuki, *Legal Research* . Cet-2, Jakarta, Kencana, 2008 p. 29

namely land transport and air transport. Transport itself, according to Abdul Kadir Muhamad, means "the process of loading goods or passengers into a transport vehicle, carrying goods or passengers . from the loading place to the destination, and unloading goods or passengers from the means of transportation to the specified place .<sup>9</sup>

The use of ships as a means of transportation has been known since the time of Indonesia's ancestors. This is due to the existence of the Pinisi Ship whose name is famous throughout the world. In Article 1 number 36 of Law no. 17 of 2008 provides a definition of a ship, namely:<sup>10</sup>

"A ship is a water vehicle of a certain shape and type, which is propelled by wind power, mechanical power, other energy, towed or towed, including conditions with dynamic carrying capacity, vehicles under the water surface, as well as floating equipment and floating structures that do not move. move".

Sea transportation which has national transportation characteristics and reaches all water areas needs to develop its potential as a link between regions, both national and international including cross-border, because it is used as a means to encourage, mobilize and support national development in an effort to improve people's welfare and become the glue of the country. Unity of the Republic of Indonesia. <sup>11</sup>Considering the importance of sea transportation, laws are needed to regulate the sea transportation system. Currently, sea transportation is regulated in Law Number 17 of 2008 concerning Shipping.

There are four types of sea transportation operations, both according to UUP Number 7 of 2008 and according to Government Regulation Number 17 of 1988 concerning the Implementation and Business of Sea Transportation, namely:

1. Domestic shipping is a sea transportation activity between ports in Indonesia which is carried out regularly and/or with irregular and irregular shipping using all types of ships. The operation of domestic sea transportation is carried out using Indonesian-flagged vessels and foreign-flagged vessels operated by Indonesian legal entities under certain circumstances and meeting the requirements set by the government.
2. People's shipping is a special sea transportation activity for goods or animals between Indonesian ports using motorized sailing vessels in accordance with the following requirements :

<sup>9</sup>Adinugroho, SR, & Tjahja, AA (2019). The Master's Responsibility for the Safety of the Cargo from a Shipping Law Perspective. *Scientific Journal of the World of Law* , 3 (1), p. 50

<sup>10</sup>See Law Number 17 of 2008 concerning Shipping, Article 1 number 36

<sup>11</sup>Rediks Purba, *Sea Freight Transport* , Jakarta, Bharata Karya Aksara, 1990 p. 14

- a. Carried out by companies within one of the business entities, including cooperatives;
  - b. Own a sailboat or motorboat with a size of up to 850 m<sup>3</sup> gross contents or a motorboat with a size of up to 100 m<sup>3</sup>.
3. Pioneer shipping is shipping on waterways on routes determined by the government to serve regions or areas that have not been or are not served by water transportation because they do not yet provide commercial benefits.
4. Overseas shipping is ocean shipping as a sea transportation activity to or from a country that is carried out regularly and regularly or by non-permanent shipping and not using all types of ships.<sup>12</sup>

Transportation by sea vessels requires a ship whose organizational structure consists of a Master as the general leader on board and the Ship's Crew (ABK) consisting of ship officers and non-officers/subordinates ( subordinate crew ) .

Sea Transportation Law is a norm that regulates human behavior in carrying out its duties to prepare, carry out and launch a "voyage" at sea. Therefore, the Law of Carriage at sea is also called "Sailing Law".

Soekardono then divided the Law of the Sea into 2 (two) Civil Sea Law and Public Sea Law. <sup>13</sup>Maritime law is civil or private, because maritime law regulates relationships between individuals. In other words, people are legal subjects. The basic nature of a transportation agreement is a mixed transportation agreement (services and contracting), reciprocal (the parties fulfill an obligation to perform and have the right to obtain performance) and consensual (the transportation agreement is a valid agreement).

The sea transportation agreement is divided into several parts, including:<sup>14</sup>

1. Cartel Agreement according to time ( *Time Chartel* ) Article 453 (2) KUHD, *the Verorachter* (chartering party) binds himself to the *Bevrachter* (chartering party) to:
  - a. time ;
  - b. Providing a particular vessel;
  - c. His ship was for sea voyages for *Bevrachter* ;

<sup>12</sup>Zaeni Ashhadie, *Business Law Principles and Implementation in Indonesia*, Jakarta, PT. Raja Grafindo Persada, 10th Cet, 2017, pp. 166-168

<sup>13</sup>R. Soekardono, *Indonesian Commercial Law* , Jakarta, CV, Rajawali, 1981 p. 5

<sup>14</sup>Yanuar Syam Putra , *Reconstruction of Water Transportation Law on the Safety and Security of Passengers and Goods* , Journal of Legal Studies, Vol. 4 Number 2 of 2018, p. 696

- d. Payment of prices calculated based on time;

Carrier's obligations:

- a. Article 453 (2) KUHD; Providing a certain ship according to a certain time;
  - b. Article 470 *jo* 459 (4), 308 (3) KUHD;
  - c. Ship capability includes engines and equipment (maintained/complete) and crew (sufficient and capable );
  - d. Article 460 (1) of the Commercial Code states that the charterer's obligation is to maintain, equip and support.
2. Charter Agreement according to the voyage ( *Voyage Charter* ) Article 453 (3) KUHD, *Vervrachter* binds himself to *Bevrachter* For :
- a. Providing a particular vessel;
  - b. The whole or part of the ship;
  - c. Transportation of people/goods by sea;
  - d. Price payment is based on the number of trips.

Carrier Obligations:

- a. Providing certain ships or several rooms in said ships in Article 453 (2) of the Commercial Code;
  - b. Article 459 (4) KUHD; well maintained, equipped, fit for use;
  - c. Article 470 (1) KUHD; The carrier is not free to claim that he is not responsible or is responsible for no more than a limited amount for losses caused by inadequate efforts to maintain, equip or provide a crew for the transport equipment.
3. Piece goods carriage agreement
- a. Article 520 letter g KUHD; Carriage of goods based on agreements other than ship cartel agreements;
  - b. The ship does not need a specific charter agreement.

Carrier's obligations:

- a. Article 468 (1) KUHD; The carriage agreement promises the carrier to maintain the safety of the goods to be transported from the moment of receipt until the moment of handover;
- b. Article 470 (1) KHUUD; To ensure the ability of the ship to be used according to the agreement, it must be correct in treating the cargo and taking care of the goods being transported and the priority is the goods and/or

cargo/cargo as objects.

The legal basis for regulating sea transportation in Indonesia consists of 3 (three) parts, including the following:<sup>15</sup>

1. Code of Civil law

The Civil Code (hereinafter referred to as the Civil Code) is the legal basis because the Civil Code can be used as a basis for avoiding legal vacuums in the field of transportation law, namely if the Civil Code does not exist and/or has not been regulated, then we can find it in the statutory regulations. a general invitation, namely the Civil Code.

2. Commercial Law Book

Related to Articles 307 to Article 747 of the Commercial Code regarding sea transportation issues.

3. Law number 17 of 2008 concerning Shipping and other related laws :

Based on Article 1 number 10 of Law N0.17 of 2008 concerning shipping. Transportation is the transportation of goods from a place where the goods are received to a place determined for delivery of the goods in question. Meanwhile, sea transportation is the activity of moving goods or people from one place to another safely to their destination.

So, it can be seen that without a clear basis for regulating legal protection and strict legal regulations for transportation in Indonesian shipping waters, these regulations will not be effective and relevant, they can be implemented properly, let alone be obeyed by the public, if the regulations themselves still have many weaknesses. the law and what is even more worrying is the public's ignorance that the rules themselves already exist to regulate them. So there is often a lack of responsibility for the rules that are attached to it and there are often violations of professional ethics in maritime transportation, such as: loading goods without government permission. So, the regulations which are the basis for regulating maritime transport law should be able to support other regulations as a reference that these regulations already existed before.<sup>16</sup>

Although *the ius constituendum* will need to be supported by a legal reform to implement changes to every rule related to the legal basis for maritime transportation, according to Mochtar Kusumaatmadja, the function and role of law in national development, later known as the Theory of Development Law, is laid down. above the premises which are the core teachings or principles for the

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<sup>15</sup> *Ibid* ., 697

<sup>16</sup> *Ibid* ., p. 699

rule of law itself in society.<sup>17</sup>

It is hoped that the basic regulation of maritime transport law in Indonesian shipping can give birth to the principle of social justice, namely providing a way to provide rights and obligations in basic community institutions as well as determining the appropriate distribution of profits and burdens of social cooperation for each transport company and passengers. and goods shipped.<sup>18</sup>Therefore, the creation of a legal basis for maritime transport regulations in shipping is necessary, in order to provide legal certainty so as to realize the value of justice in a rule of law state in the future.

### **Analysis of Decision Number 326/PID.SUS/2016/PT.PBR**

It is very important for law enforcement throughout Indonesia to be carried out consistently and sustainably to maintain security in Indonesia, especially in maritime areas in Indonesia to protect against criminal acts. <sup>19</sup>In terms of criminal liability in criminal law, the principle of no crime without fault (*geen straf zonder schuld*) is adhered to, although it is not formulated in law, but is adhered to in practice. It cannot be separated between error and responsibility for actions. Only people who commit mistakes can be burdened with responsibility for the criminal acts they commit<sup>20</sup>

The Judge accepts that the request for appeal from the Public Prosecutor (hereinafter abbreviated as JPU) and the Defendant's Legal Advisor has been submitted within the time limit and according to the time and procedures and conditions determined by the Law, the appeal request is accepted.

According to JCT Simorangkir, an appeal is a legal tool ( *rechtsniddel* ) which is the right of the defendant and public prosecutor to request that the district court be re-examined by the high court. The purpose of this right is to correct possible errors in the first decision. The high court can confirm, change or cancel the district court's decision.<sup>21</sup>

The authority to adjudicate the High Court is regulated in the provisions of Article 87 of the Criminal Procedure Code that:

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<sup>17</sup> Romli Atmasasmita, *Integrative Legal Theory* , Cet-1, Yogyakarta, Genta Publishing, 2012 , pp. 65-66

<sup>18</sup>John Rawls, *Theory of Justice* , Cet-1, Yogyakarta, Student Library, 2006, p. 5

<sup>19</sup>Nur, M., Nurjanah, S., Kadir, AA, & Kelibay, I. (2019). Implementation of Supervision in Sea Transport Licensing at the Sorong City Ministry of Sea Transportation Service. *Journal of Factions: Phases of Social and Political Progress* , 4 (3), p. 53.

<sup>20</sup>Foek, A.C. (2019). Illegal Fuel Sales on Ships in View from Law Number 20 of 2001. *Law and Justice* , 4 (2), p. 96.

<sup>21</sup>Andi Sofyan, *Criminal Procedure Law An Introduction* . Yogyakarta, Rangkang Education, 2012, pp. 289-290

" *The High Court has the authority to hear cases decided by the District Court in its jurisdiction where an appeal is requested .*"

Referring to the provisions above, it can be concluded that the High Court has the authority to try:<sup>22</sup>

1. Every case decided by the District Court within the jurisdiction of the relevant High Court; And
2. The High Court only has the authority to adjudicate if the District Court's decision is appealed by either the defendant or the public prosecutor.

Decision making is very necessary for the judge in determining the verdict that will be handed down to the defendant. Because the decision that will be handed down to the defendant must be based on a judge's sense of responsibility, justice, professionalism and wisdom.

The judge's considerations in imposing criminal sanctions against the perpetrator in this case were properly based on the law regulated in Article 184 paragraph (1) of the Criminal Procedure Code, namely as follows:<sup>23</sup>

1. statements ;
2. testimony ;
3. Letter;
4. Instruction;
5. statement ;

The problem started on Friday 18 March 2016 at around 14.30 WIB, the ship KM. Kawal Bahari-I departed from Kawal waters with a crew of 10 people including the captain with a load of 5 (five) boxes of fiber fish. Then the ship KM. Escort Bahari-I to Kijang to increase the fish load by 26 (twenty six) boxes of fish fiber up to KM. Kawal Bahari carried 31 (thirty one) boxes of fish fiber to Singapore and arrived at Jurong Fish Harbor, Singapore on March 19 2016 at around 01.20 WIB. After finishing unloading the fish for 2 (two) hours, witness Endi received orders from witness Herjonh to load 1936 cartons of canned drinks branded Tiger, and 4647 cartons of ABC brand. After loading the canned drinks, the KM ship was hit at around 18.00 WIB. Kawal Bahari-I departed again for Kawal Waters and on Sunday 20 March 2016 at around 02.45 WIT. When on the way home, the ship was in Kawal Waters or in position 00 ° 59'600" N-104 ° 39'344" E of the ship KM. Kawal Bahari-I was stopped by the Kawal Subposmat patrol speed boat. Then, after examining the ship's documents and the ship's cargo (contents) by witness Ardian and witness Yuni Prasetyawan, it was found that

<sup>22</sup>Aristo, Pangaribuan, et al. *Introduction to Criminal Procedure Law in Indonesia* , Ed-1, Cet-2, Depok, Rajawali Pers, 2018, p. 192

<sup>23</sup>See the Criminal Procedure Code, Article 184 paragraph (1)

the ship's documents did not match the ship's cargo, where in the manifest it was written that Nylon @ 50 Kgs and fish landing net @ 58 Kgs, while the ship's cargo contained canned drinks. 1936 cartons of the Tiger brand, 825 cartons of the ABC brand and 1886 cartons of the Heineken brand for a total of 4647 cartons.

Shipping is one of the national transportation systems which has important and strategic significance as a link and outreach to all sovereign territories of the Indonesian state whose potential and role are beneficial to society, both nationally and internationally. As an archipelagic country with a very wide territorial waters, Indonesia has laws that regulate sea transportation, namely Law no. 21 of 1992 concerning Shipping which has been replaced by Law no. 17 of 2008. This law is used to control and supervise all types of activities in Indonesian waters. Shipping activities in general are transporting goods or passengers from one location to another or from one port to another port, shipping safety and protecting the maritime environment from pollution from polluting materials originating from ships. In the science of criminal law, the "theory of retaliation" and the "theory of purpose" in terms of punishing a perpetrator have long been abandoned, with the existence of a combined theory (*vereenigings Theorie*) such as the opinion expressed by Jeremi Bertham who said that: "crimes should not be *groundless* (without basic), *needless* (not profitable), and *unprofitable* (not useful) or *ineffective*, but must use an approach that can provide utility (in terms of usefulness) by looking at the great happiness of the great number (the greatest happiness for many people)".<sup>24</sup>

Article 13 paragraph (4) Special sea transportation activities as intended in paragraph (1) it is prohibited to transport cargo or goods belonging to another party and/or transporting cargo or general goods except in certain circumstances based on Government permission.

Article 285 Every person who serves special sea transportation activities which transports cargo belonging to another party and/or transports cargo or goods belonging to another party and/or transports general cargo or goods without a permit as intended in Article 13 paragraph (4) shall be punished with a maximum imprisonment of 1 (one) year or a maximum fine of IDR 200,000,000.00 (two hundred million rupiah)

The defendant was accused of this act by the Public Prosecutor with a single charge. The Public Prosecutor gave the indictment as the defendant's act as regulated and punishable by crime in Article 285 of the Law of the Republic of

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<sup>24</sup>Pujiati, P. (2016). Corporate Criminal Liability in Shipping Crimes. *IUS Journal of Law and Justice Studies*, 4 (1). p. 25.

Indonesia Number 17 of 2008 concerning Shipping Jo. Article 55 paragraph (1) 1st of the Criminal Code.

The judge when handing down the decision in case no. 326/Pid.Sus/2016/PT.PBR which in its indictment agrees with the consideration of the Judge of the First Instance in its decision that the defendant was legally and convincingly proven guilty of committing the criminal act as charged against him and the consideration of the judge of the first instance was taken over and used as the consideration of the Court The High Court itself decided this case at the appeal level.

The charges that have been given to the defendant are supplemented with evidence which includes statements from witnesses who have been presented at the trial as well as other evidence, based on this the judge stated that the actions carried out by the defendant were in accordance with and fulfilled the elements of Article 285 of Law No. 17 of 2008 concerning Shipping Jo. Article 55 paragraph 1 of the Criminal Code, so that the defendant is declared proven guilty of the crime for which he was charged, the judge imposes a criminal sentence on the defendant to prison for 5 (months).

The charges in this case are that the defendant allegedly violated Article 285 of Law No. 17 of 2008 concerning Shipping Jo. Article 55 paragraph 1 of the Criminal Code states that in the memorandum of appeal the Public Prosecutor in his memorandum of appeal basically stated that the Panel of Judges at the Tanjung Pinang District Court sentenced the Defendant in the form of imprisonment for 5 (five) months with a probation period of 10 (ten) months, not yet fulfill a sense of justice on the grounds that the defendant brought cargo without permission into Indonesia, reducing state revenues and not supporting the government's efforts to eradicate the smuggling of goods from abroad into Indonesia.

Based on the appeal memory of the Public Prosecutor, the Panel of Judges at the appellate level will consider as below ;

*Considering* , that the Riau Archipelago (Kepri) region consists of many islands and small ports so that there is a lot of smuggling of goods through these small ports and the government is active in eradicating the entry of goods into the upper income (tax) area of the State ;

*Considering*, that after the High Court carefully studied the case files and the official derivative of the decision of the Tanjung Pinang Court dated 04 October 2016 Number 213/Pid.Sus/2016/PN.Tpg as well as the appeal memo of the public prosecutor the High Court agreed with the consideration of the Judge of First Instance in his decision that The defendant has been legally and

convincingly proven guilty of committing the crime as charged against him and the consideration of the Judge of First Instance is taken over and used as consideration by the High Court in deciding this case at the appeal level, except that the sentence imposed by the Judge of First Instance is in the form of a suspended sentence according to the High Court. it would be too light and fair if the defendant was sentenced to a crime as stated below;

*Considering* that the punishment imposed on a defendant not only educates the defendant himself, but also serves as an example for other people in society so that they do not act in the same way as the defendant;

Decision Number 326/Pid.Sus/2016/PT.PBR in the consideration of the Pekanbaru High Court judge is in accordance with Article 241 of the Criminal Procedure Code (KUHP) regarding the High Court deciding, strengthening or changing or in the case of canceling the decision of the district court, This is in accordance with Article 242 of the Criminal Code regarding High Court decisions ordering defendants to be detained or released, by stating the reasons and articles of the statutory regulations that are the basis of the decision.

The Panel of Judges has carefully considered the elements in Article 285 of Law no. 17 of 2008 concerning Jo Sailing. Article 55 paragraph (1) 1 of the Criminal Code and has also considered valid evidence from witness statements, documents and defendant statements which are in accordance with the judge's beliefs as specified in Article 183 of the Criminal Procedure Code. This is in accordance with the minimum limit of valid evidence and the judge's confidence that must be met by evidence. The Panel of Judges at the Pekanbaru High Court has also been careful in deciding the case, even though it has been proven that the defendant's actions caused losses to the economy and income (taxes) to the state treasury.

#### **4. Conclusion**

The legal regulations for transportation in Indonesian shipping have not been implemented properly. This is due to the lack of effective and relevant implementation of sea transportation regulations, it has been proven that goods are still being loaded without government permission. The legal basis for regulating sea transportation in Indonesia is regulated in the Civil Law Law, the Commercial Law Book and Law Number 17 of 2008 concerning Shipping. The judge's legal consideration in handing down a decision in case Number 326/Pid.Sus/2016/PT.PBR is that the judge decides the case based on the facts revealed in court by examining several pieces of evidence, so that

the judge believes that the elements contained in Article 285 Law No.17 of 2008 concerning Shipping Jo. Article 55 paragraph (1) 1 of the Criminal Code which is the basis for the public prosecutor's demands is fully fulfilled.

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