



Maritime Tribunal as Quasi-Judicial Body in Indonesia

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Abstract

Maritime Tribunal as Quasi-Judicial Body in Indonesia; Supreme Court is a judicative body under Article 24 of the 1945 Constitution 1945. The development of the legal system in Indonesia has established new institutions with judicative power to settle disputes which are attributed from the special legislation. In the field of maritime law in Indonesia, the Maritime Tribunal has the authority to conduct further examination of a shipwreck in accordance with the Shipping Law. This article uses the normative legal research method with the statutory approach. This matter requires further analysis towards the legality of the Maritime Tribunal's authority in Indonesia, that the tribunal is part of the echelon II organ of the Ministry of Transportation. Based on the criteria and characteristics of a quasi-judicial body, Maritime Tribunal is a quasi-judicial body that possessed mixed authority of executive function in implementing rules and regulation and administration in the maritime sector, as well as judicative function to conduct legal process concerning shipwrecks, that the result of the examination becomes the consideration of the judge in general courts to issue the judgment. The judge in civil or criminal disputes that arise from shipwrecks, in making consideration of the judgment, oblige the disputing parties to settle further examination of a shipwreck in Maritime Tribunal.

Keywords: Further Examination of Shipwreck, Maritime Tribunal, Quasi-Judicial Body

1. Introduction

According to Article 24 of the 1945 Constitution, the scope of the judiciary system in Indonesia divides judiciary authority into Constitutional Court and Supreme Court, along with each of their subordinate courts. The Supreme court consists of the general court, religious court, administrative court, and military court. Constitutional Court consists of constitutional judicature, in which the court has authority to make a final decision and adjudicate in the first and final level of matters related to judicial review between legislation and Constitution 1945, State's institutional dispute concerning authority attributed from legislation, dissolution of a political party, and general election dispute. As provided in the 1945 Constitution, the Supreme Court acts on the highest level of remedy in the cases where parties are not satisfied with the decision issued by lower courts.

In addition, the Constitution states that the Supreme Court has jurisdiction over special courts such as child court, commercial court, human rights court, corruption court, industrial relation court, and fishery court, and in the field of the administrative court including tax court. The aforementioned courts were established by the attribution arising from legislation, in which each of the mentioned courts has its own underlying legislation. This is in accordance with Article 24 Paragraph 3 of the 1945 Constitution, stating that judicial authority includes other institutions with functions related to the judicial authority which are regulated under the legislation. Currently, in addition to the special courts mentioned, there exists the Maritime Tribunal, Aceh Sharia Tribunal, Papua Customary Court, and Traffic Ticket Court which are established from their respective legislations (Komisi Yudisial Republik Indonesia, 2013).

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During the development of the judicial system in Indonesia, there are other new institutions with characteristics to adjudicate and issue a final and binding decision like the court in general but not explicitly stated as judicial court, in which the establishments are derived from the legislations (Komisi Yudisial, 2013). Such establishments are intended in order to encourage justice for disputing parties, provide speedy legal due process, and enforce the supervising duty of government. Moreover, such institutions which serves as special adjudicatory bodies by the legislation consists of a panel of judges who are competent in therelevant field.

Article 250 of Shipping Law stipulates that the establishment of the Maritime Tribunal is under the Ministry of Transportation of Republic Indonesia. Maritime Tribunal has the duty to conduct an examination of shipwreck that is caused by seafarers and/or ship operator that will be charged with administrative sanction if proven guilty. The tribunal's judges will then issue a Maritime Tribunal Decision as stated under Article 34 of Government Regulation on Shipwreck Examination.

As written in (Aditama et al., 2014), from 2009 to 2013, there had been 776 cases of shipwreck accidents that occurred in Indonesia, but only 185 cases brought to the tribunal. The tribunal eventually settles only 140 cases. Based on this fact, it can be considered that the Maritime Tribunal in Indonesia has not performed effectively. This ineffectiveness may be caused by the legality and authority of the Maritime Tribunal in terms of examination of shipwreck according to the prevailing rules and regulations in Indonesia.

Although it is named as Maritime Tribunal, the form taken by the Indonesian Maritime Tribunal is different when compared to Admiralty Court or Maritime Tribunals in other jurisdictions. The jurisdiction and competence of the Maritime Tribunal in Indonesia are not similar in terms of authority and duty with admiralty court or maritime tribunal in other countries. To compare, in the United States, admiralty courts have jurisdiction over all maritime contracts, torts, injuries, and offenses, and the federal district courts have jurisdiction over all admiralty and maritime actions. While in the United Kingdom, contrary to the majority of other courts that are governed by common law, the admiralty courts are governed by civil law as this based on the Law of the Sea (Agoes, 2005).

Essentially, the law in general, has 3 (three) main objectives, which are to serve justice, providing certainty, as well as utility. The purpose of legal justice is to give equality, equity, and proportionality to the people. The purpose of legal certainty is to guarantee legal order, and the purpose of the utility is to guarantee that the value of such objectives will achieve peace among the people. Focusing on the objective of legal certainty, it requires an analysis of the jurisdiction of the Maritime Tribunal in order to acknowledge its function and authority in the field of maritime law in Indonesia. (Asshiddiqie, 2006).

Considering that the Maritime Tribunal is under the the Minister of Transportation, the extent of the Maritime Tribunal's authority has to be examined with regard to its position and competence as the institution that implements further examination of a shipwreck in accordance with prevailing rules and regulation in Indonesia. Due to such reason, this tribunal is not within the scope of Supreme Court institutions. Additionally, an analysis should also be conducted to see whether or not an executive institution like Maritime Tribunal could have a judicative function over particular cases.

2. Methods

In writing this article, the Author uses the normative legal research method with the statutory approach. As explained in (Soekanto, 1982) the purpose of using a legal research method, although not too different from other social sciences research, is to see the systematics of legal principles that are contained in the codified rules and regulations, and to find out the effectiveness of written law. The statute approach is used in this article because the research deals with an analysis of the existing laws and regulations. The existing laws and regulations includes the following:

- a. Republic of Indonesia 1945 Constitution (hereinafter referred to as the "Constitution 1945");
- b. Civil Code of Indonesia;
- c. Commercial Code of Indonesia;
- d. Criminal Procedural Code of Indonesia
- e. Law Number 32 of 2002 concerning Broadcasting (hereinafter referred to as the "Broadcasting Law")
- f. Law Number 17 of 2008 Concerning Shipping (hereinafter referred to as the "Shipping Law");
- g. Government Regulation Number 9 of 2019 concerning Shipwreck Examination (hereinafter referred to as the "Government Regulation on Shipwreck Examination");
- h. Law Number 3 of 2009 concerning Supreme Court (hereinafter referred to as the "Supreme Court Law");
- i. Law Number 48 of 2009 Judicial Authority (hereinafter referred to as the "Judicial Authority Law");
- j. President Regulation Number 68 of 2019 Concerning Organization of States Ministry (hereinafter referred to as the "President Regulation on Organization of States Ministry");
- k. Ministry of Transportation Regulation Number 76 of 2017 concerning Organization and Mechanism of Maritime Tribunal (hereinafter referred to as the "MoTR on Maritime Tribunal Organization");

- l. Ministry of Transportation Regulation Number 6 of 2020 concerning Shipwreck Examination Procedure (hereinafter referred to as the "MoTR on Shipwreck Examination Procedure"); and
- m. Ministry of Transportation Regulation Number 23 of 2020 concerning Mechanism of Appointment and Dismissal of Maritime Tribunal Expert Panel Member from Non-Civil Servant Background (hereinafter referred to as the "MoTR on Appointment and Dismissal of Non-Civil Servant Maritime Tribunal Expert")

No empirical research is done in writing this article since all of the research is conducted towards the prevailing rules and regulations without any firsthand data collection.

3. Analysis and Discussion

The result and discussion for this research article will be further divided into three parts. The first part will explain the characteristics and function of a quasi-judicial body in order to further analyzed whether a maritime tribunal can be categorized as a quasi-judicial body. The second part will explain the currently prevailing system of the maritime tribunal in Indonesia, which consists of the duties and authority, stance under the Ministry of Transportation, legal proceedings, and authority in giving administrative sanction. Last but not least, an analysis will be provided as to whether the Maritime tribunal can be concluded as a quasi-judicial body in relation to the requirements and regime provided in the preceding parts.

Characteristic and Function of Quasi-Judicial Body

According to Jimly Asshiddiqie, a quasi-judicial body is any State institution or body that has an adjudicative characteristic but not stated as a court. On the other hand, such an institution or body also has mixed functions in regulatory or administrative fields. The trias-politica doctrine by Montesquieu states that regulatory function can be related to legislative function, while the administrative function is within the executive function. Therefore, such an institution or body has mixed functions (Yulistiyowati et al., 2016).

In implementing its function, the quasi-judicial body has particular authority in implementing its function, for example, Business Competition Supervisory Commission (Komisi Pengawasan Persaingan Usaha or commonly known as "KPPU") has mixed authority between administrative or executive function, regulatory or legislative function, and adjudicative or judicative function in the field of Business Competition Supervisory in Indonesia, that such function is provided by legislation (Komisi Yudisial, 2013). Another example is the Indonesian Broadcasting Commission (Komisi Penyiaran Indonesia or "KPI") that has the authority to make regulations and guidance, enforce ethics, impose sanctions, and as an institution to file a complaint concerning Indonesia Broadcasting Standard. The Indonesian Broadcasting Commission is an independent regulatory body, and also an administrator that has the authority to give sanctions towards the violation of Indonesia Broadcasting Standard (Komisi Yudisial, 2013). To explain the nature of a quasi-judicial body, the following are six types of authorities of the quasi-judicial body:

- a. the power to exercise judgment and discretion;
- b. the power to hear and determine or to ascertain facts and decide;
- c. the power to make binding orders and judgments;
- d. the power to affect the personal or property rights of private persons;
- e. the power to examine witnesses, to compel the attendance of witnesses, and to hear the litigation of issues on a hearing;
- f. the power to enforce decisions or impose penalties. (Komisi Yudisial, 2013).

According to the description above, it can be concluded that a quasi-judicial body which exercised judicative function cannot completely be regarded as a judicial body or court under the authority of the Supreme Court. The quasi-judicial body may be stated as any institution or body under the executive branch of power which performs mixed functions of authority whether it is judicative function and/or legislative function that such function is attributed from special legislation along with its derivative regulations. A quasi-judicial body is a forum with a judicative function to settle a certain dispute out of court. Other than the characteristics stipulated above, any institution can be stated as a court or judicative body if it fulfills the following requirements as provided by (Muchasan, 2014) namely that rules and regulation are binding and enforceable; there is a concrete legal dispute; the dispute consists at least two parties; and that there is a panel that authorized to settle the dispute. To see whether the Maritime Tribunal qualifies to be placed under the category of the quasi-judicial body in Indonesia, the current legal regime of the maritime tribunal in Indonesia needs to be elaborated.

Current Legal Regime of Maritime Tribunal in Indonesia

Historically, Maritime Tribunal in Indonesia has existed since the governance era of the Dutch East Indies, which was established on April 1st 1938 based on *Ordonnantie op den Raad voor de Scheepvaart* (Staatsblad 1934 No. 215). The position of the tribunal was under *Departemen van Marine* (Agoes, 2005) The duty of the maritime tribunal at that time was to conduct an examination of a shipwreck and to give disciplinary sanction to ship captain or ship officer in the event where the shipwreck was caused by him or to revoke ship license to sail for a certain time (Staatsblad Number 1934 No. 215).

However, seeing the development of the Maritime Tribunal in Indonesia, there have been new prevailing rules and regulations that configure the organization, function, and authority of such tribunal, which replaced older laws. The rules and regulations consist of the following according to table 1.

Table 1. Rules and Regulation Related to Authority, Duty, Function, and Organization of Maritime Tribunal

No.	Regulation	Description
1.	Law Number 17 of 2008 concerning Shipping (Shipping Law)	Article 250 – 255 stipulates the establishment of the Maritime Tribunal under the Ministry of Transportation, along with its authority and function.
2.	Government Regulation Number 9 of 2019 concerning Shipwreck Examination (Government Regulation on Shipwreck Examination)	As the implementing regulation which is attributed from Article 255 of Law Number 17 of 2008. This regulation configures the mechanism of the shipwreck examination from the preliminary, further examination (proceeding level), and final decision of maritime tribunal judges.
3.	Ministry of Transportation Regulation Number 76 of 2017 concerning Organization and Mechanism of Maritime Tribunal (MoTR on Maritime Tribunal Organization)	This regulation is attributed from Article 255 of Law Number 17 of 2008. Such regulation configures function, organization structure, mechanism, and echelon of Maritime Tribunal.
4.	Ministry of Transportation Regulation Number 6 of 2020 concerning Shipwreck Examination Procedures (MoTR on Shipwreck Examination Procedure)	It is attributed from Article 36 of Government Regulation Number 9 of 2019, which regulates technical procedural in the examination of a shipwreck.
5.	Ministry of Transportation Regulation Number 23 of 2020 concerning Mechanism of Appointment and Dismissal of Maritime Tribunal Expert Panel Member from Non-Civil Servant Background (MoTR on Appointment and Dismissal of Non-Civil Servant Maritime Tribunal Expert)	This regulation is attributed from Article 53 of Government Regulation Number 9 of 2019. Maritime Tribunal Expert Panel Members is the member who conducts further shipwreck examination in Maritime Tribunal. This regulation configures requirements and mechanisms in the appointment and dismissal of such panel members by the Minister of Transportation.

The legal basis of the Maritime Tribunal in Indonesia is stipulated under the Shipping Law along with its derivative regulations. According to Article 31 of Government Regulation on Shipwreck Examination, The tribunal has the main authority to conduct further examination towards the cause and effect of commercial shipwreck within Indonesia jurisdiction, that such tribunal consists of judge panels that issue an administrative decision based on the result of shipwreck examination. The jurisdiction of shipwreck examination is to ship under Indonesian flag or foreign ship which wrecked within Indonesia sea territory, and ship under Indonesian flag that wrecked outside Indonesia sea territory. In accordance with Article 2 in conjunction with Article 3 of the MoTR on Shipwreck Examination Procedure, the stated shipwreck covers:

a. Ship sinking

The condition where a ship lost the ability to float that caused the hull to be partly or wholly drowned.

b. Burnt ship

The occurrence of any object on a ship is charred that defects the condition and/or operational of the ship by fire.

c. Ship collision

Collision or contact between two or more ships or collision between ships with moving objects or another immovable object.

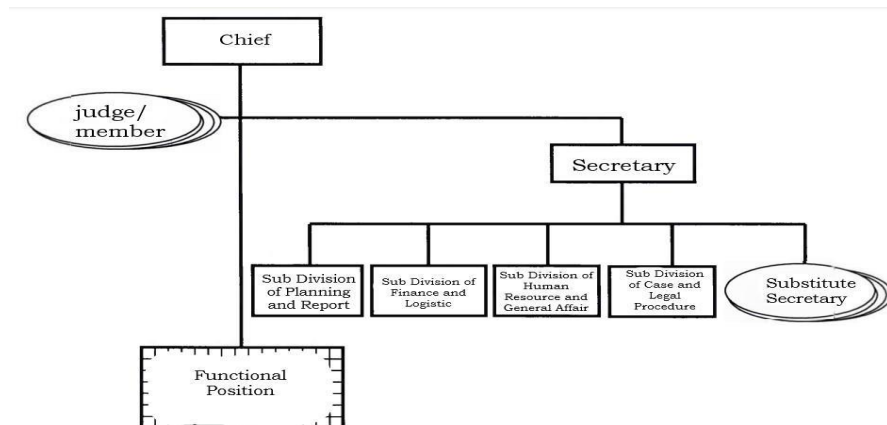
d. Aground ship.

The shipwreck where the bottom of the ship osculates sea-bottom, however, the ship still has the ability to float with condition that its propulsion is damaged, except if it was caused by tides.

Based on Article 3, further examination of the shipwreck is conducted after the preliminary shipwreck examination has been conducted by the harbormaster and/or state's official of the Directorate General of Sea Transportation which is appointed by the Minister of Transportation. Further examination is to determine whether or not the shipwreck is caused by the mistake and/or negligence of the ship captain and/or ship crew according to the standard profession of seafarers, in which if he was proven guilty, the administrative sanction will be imposed by the tribunal. This is stated in Article 3 of MoTR on Maritime Tribunal Organization.

The stance of the Maritime Tribunal as an Echelon II Organization of the Ministry of Transportation is also necessary to be explained. As stated in Article 250 of the Shipping Law in conjunction with Article 39 Paragraph 2 of Government Regulation on Shipwreck Examination, Maritime Tribunal organization and mechanism are stipulated under Ministry of Transportation Regulation upon the approval for the establishment by the Ministry of Administrative and Bureaucratic Reform). In accordance with Article 91(b) of President Regulation on Organization of States Ministry, the arrangement and establishment of state's ministries organization with the level of echelon II and below must have approval from the Ministry of Administrative and Bureaucratic Reform. As provided under MoTR on Maritime Tribunal Organization, the Tribunal as the organization under Ministry of Transportation consists and has structural organization as follow:

- Chief of Maritime Tribunal with the structural title of echelon II.a;
- Secretary of Maritime Tribunal with the structural title of echelon III.a;
- Head of Subdivision with the structural title of echelon IV.a;
- Judge/members which are responsible administratively to Chief of Maritime Tribunal;
- Functional Position which consists of Civil Servant with special functions under Ministry of Transportation who assist the Maritime Tribunal in further examination of shipwreck



Graph 1. Diagram of Maritime Tribunal's Organizational Structure

Article 17 Government Regulation on Shipwreck Examination states that the Maritime Tribunal is to conduct further examination of shipwreck after the preliminary examination of the shipwreck has been conducted by harbormaster or government officials appointed by the Minister of Transportation. Article 24 paragraph 3 of MoTR on Shipwreck Examination Procedure states that further examination can be conducted if in the preliminary examination information or preliminary evidence of the mistake and/or negligence suspicion was discovered which causes shipwreck caused by the ship captain and/or seafarer in implementing standard profession of seafarers.

Based on Article 20, Article 25, and Article 28 of Government Regulation on Shipwreck Examination, in conducting such examination, the Chief of Maritime Tribunal will create an Expert Panel Team which consists of 5 (five) members or at least 3 (members) in a certain case, with respective expertise in the field of nautical science, shipping engineering, and law. In the hearing session as part of the proceeding of the further examination, Maritime

Tribunal will summon the suspect, witness, and expert for their testimonies to be heard. In accordance with Article 28 of Government Regulation on Shipwreck Examination, during the hearing session, the panel will examine evidence of the case, which consist of documents, suspect's testimony, witness' testimony, expert's testimony, parties' testimony, guidance, or picture, and/or electronic information.

Under Article 47 paragraph 2 of MoTR on Shipwreck Examination Procedure, the proceeding during the further examination of the shipwreck is open for the public. The result of the hearing session which is conducted by the panel in the further examination of the shipwreck is the decision of the Maritime Tribunal, consisting of:

- a. summary of the event of shipwreck;
- b. result of authentication from the hearing session;
- c. opinion of Maritime Tribunal;
- d. content of decision which consists of legal bases of the decision, the conclusion of the cause of shipwreck, and verdict which states acquittal if the accused was not guilty or administrative sanction for the accuse if he/she was guilty;
- e. closing.

The following decision would be recommended by the Chief of Maritime Tribunal to the Minister of Transportation to be set forth and the decision is final as stipulated under Article 49 paragraph 5 of MoTR on Shipwreck Examination Procedure. According to the stipulated proceedings of the Maritime Tribunal, the proceeding has an almost similar mechanism of proceedings of general court, one of them being the issuance of the decision in the proceeding is open for the public.

Based on Article 48 of MoTR on Shipwreck Examination Procedure, an administrative sanction which imposed to ship captain and/or ship officer in terms of violation to the standard profession of seafarers, are as follows: (a) in case there was no casualties or financial loss, it would be a written warning three times in which each warning was given for every 30 (thirty) calendar days; or (b) temporary revocation of maritime certificate for a maximum of 2 (two) years, if the shipwreck were causes loss as follows:

- a. casualty without any financial loss or cause financial loss with no casualty, such temporary revocation would be given for a month up to 6 (six) months;
- b. casualty and financial loss, the revocation would be between 7 (seven) months up to 12 (twelve) months;
- c. casualty, sinking of the ship, and other factors, the revocation would be between 13 (thirteen) months up to 24 (twenty-four) months.

Article 50 of MoTR on Shipwreck Examination Procedure stated that with certain consideration, Maritime Tribunal could recommend to the Minister of Transportation to impose other sanctions. Shipowner or ship operator who is not cooperating to assist the tribunal to present the accuse and/or witness in the legal proceeding could be imposed by administrative sanction in form of written warning three times for 3 (three) months, suspension of business license in terms of the shipowner or ship operator has not fulfilled the obligation after the time of last written warning has elapsed, and revocation of business license in case of the shipowner or ship operator still not fulfill his obligation after the suspension of license time has elapsed.

The example of shipwreck cases that had been examined by The Tribunal areas follows:

Maritime Tribunal Decision Number HK.212/08/VII/MP.2019 concerning Shipwreck of TK. Marine Power 2511 Tugged by KT. Pasifik 188 in Tanjung Lumpur Beach, West Kalimantan, issued on July 3th 2019

The tribunal in this case conducted further examination of shipwreck based on delegation from Director General of Sea Transportation, in which it has been initially examined by Harbor Master and Authority of Sukamara Class V Harbor. In this case (1) TK Marine Power 2511 hauling 5.150 tons of fertilizer is tugged by KT. Pasifik 188 from Gresik Harbor to Pontianak Harbor, due to bad weather KT. Pasifik 188 was changing direction and caused some cargo to fall into the sea. The Tribunal provides consideration based on evidences and witnesses of the case as stipulated below:

- a. KT. Pasifik 188 fulfilled sea certificates, however the port clearance has exceeded the prevailing time due to the delay of sailing caused by bad weather. And TK. Marine Power 2511 fulfills all sea certificates in accordance with laws and regulation.
- b. Based on Meteorology, Climatology, and Geophysical Agency reports and witness and perpetrator testimony, the tribunal stated that the weather is still fine.
- c. The cargo condition and stability of the barge before sloping is acceptable, and after the sloping and falling is unable to be considered.

- d. The way of navigation and motion before the barge is sloping is acceptable and the way of navigation and changing of direction to save the barge is acceptable.
- e. The cause of shipwreck of TK. Marine Power 2511 is that it was grounded intentionally to save the barge and its cargo. And the sloping of the barge caused by the cargo is moved to the side of the wall, and it is unable to hold the sloping cargo, in which the barge wall collapsed and cargo falls to the sea, therefore the deck of the barge became hollowed, allowing water to enter.
- f. The effort of KT. Pasifik 188's ship captain to rescue is acceptable.
- g. According to Article 249 of Law Number 17 of 2008, therefore the cause of shipwreck is that the accused ship captain in his navigation and piloting are in line with the principle of good seamanship, and also considered fulfilled his obligation based on Article 342 of Commercial Code.
- h. The tribunal considers several leniency, such as that the accused ship captain has never been sentenced for his negligence, he is cooperative in providing testimony and cooperative, he is the source of income in his family, and he doesn't have any expertise aside from becoming a seaman.

Therefore the tribunal stated in the judgement that the shipwreck occurred due to the reason that the accused ship captain is salvaging the barge and its cargo, and the accused ship captain of KT. Pasifik 188 is not liable for the shipwreck of TK. Marine Power 2511. Reemphasizing The Status of Maritime Tribunal as a Quasi-Judicial Body in Indonesia

Although Maritime Tribunal has been established in 1938 under Dutch East Indies governance era, the authority of the Maritime Tribunal until now has not developed, its authority still limited to conduct further examination after the delegation from the Minister of Transportation. However other maritime issues such as environmental liability, shipping matters, and ship passenger's rights are not covered yet (Paramita, 2018). Due to the fact that Indonesia is an archipelagic state, more focus is needed in configuring and supervising maritime activities within its territory.

Maritime Tribunal as echelon II organization of Ministry of Transportation does not have any judicial relationship with judicative institution whether under a Supreme court or constitutional court (Paramita, 2018). Referring to Article 258 of Shipping Law which provides the legal standing of the Maritime Tribunal, the tribunal is not a judicial body, and the position is not within the scope of the general court under the supreme court.

Maritime Tribunal can organize a proceeding in case of shipwreck within the jurisdiction of Indonesia, which results in a decision that is *beschikking* in nature, where such decision is to be reported to Minister of Transportation. The decision is not classified as jurisprudence, it is an administrative decision issued by the Minister of Transportation as an executive body. In making such a decision, the tribunal must take into account rules and regulations concerning shipwreck in Indonesia. (Sadjijono, 2008)

Since the Maritime Tribunal is under the Ministry of Transportation, the tribunal authority is limited to only issue administrative sanctions towards seafarers in terms of violation of standard profession of seafarers, and/or ship employer who causes shipwreck. However, the decision is not equal to the Supreme Court and Constitutional Court which result in absolute legal power (Supreme Court Law, 2009). The Maritime Tribunal's decision is explicitly an administrative decision or *beschikking* issued by executive legal power with the characteristic of individual and concrete, and contains administrative stipulation (Bawono, 2012). Therefore, if the accused or a party is not satisfied with the decision, the party can pursue legal measures by filing a claim to the Administrative Court (Repi, 2016).

Furthermore, it is also important to see whether the Maritime Tribunal decision is recognized by the Supreme Court. The tribunal does not have any jurisdiction to issue any decision related to civil aspects, such as liability of the accused in providing economical compensation or in the criminal aspect which arises from the shipwreck, due to the reason that such aspects are within the jurisdiction of the general court under the Supreme Court. In this case, if the shipwreck occurred and caused casualties on properties, the case will be further referred to the police to determine whether criminal actions have been conducted by the seafarer. The result of the investigation will be delivered to the prosecutor to be prosecuted before the general court in accordance with criminal procedural law in Indonesia.

On the other hand, the Maritime Tribunal's decision which consists of technical maritime aspects has advantages for the adjudication in the general court, because such a decision contains expert testimony concerning the cause of shipwreck, it becomes legal consideration of judges in a criminal case concerning shipwreck. This becomes the basis for the disputing party to file for compensation assertion by the party at loss in a civil case and provides a benchmark of seafarer's obedience towards its code of ethics and professionalism (Agoes, 2005). Moreover, under Article 184 Criminal Procedural Code of Indonesia, the Maritime Tribunal's decision can be recognized as valid legal evidence and has legal power before the court.

In several decisions, Maritime Tribunal's decision becomes the consideration for judges to issue the court's decision in order to determine liability for the party who suffered losses from the event of a shipwreck. Such precedents may become the references for the judges in making consideration of a case arising from a shipwreck.

The first decision that referred to a Maritime Tribunal decision is the Supreme Court Decision Number 1266 K/Pdt/2020. The judges of this case, refer to Maritime Tribunal Decision Number HK.210/02/I/MP.16 which stipulates the sinking of the ship is caused by the fault and negligence of the ship captain for sailing beyond the sea route and such route are unfamiliar with the dangerous navigation condition resulting in ship collision. . The judges decided that the shipowner (defendant) is responsible to cover losses suffered by the injured party (plaintiff) in accordance with Article 1367 of the Civil Code of Indonesia in conjunction with Article 40 of Shipping Law.

The second decision that is going to be discussed in this part is Supreme Court Decision Number 786 K/Pdt/2017. The judges stated in consideration part of the decision that in accordance with Maritime Tribunal Decision Number HK.2010/26/VII/MP.12 dated August 10th, 2012, The Ship Captain of KM Pul Perkasa is found guilty in the collision with KM MV Anu Bhun that was docked in the Musi River, Palembang. Therefore the owner of KM Pul Perkasa is liable for the fault done by his ship captain in accordance with Article 1367 of Civil Code, and obliged to compensate losses to the owner of KM MV Anu Bhun. Next would be the Supreme Court Decision Number 245 PK/Pdt/2017, where under the consideration part, the judges stated that according to Maritime Tribunal's Decision, it stipulates that there is a fault by the ship captain (co-respondent of cassation) in taking the line of other ship traffic which causes a collision to the respondent of cassation's ship, and also appeal petitioner as the owner of the ship who is also liable for the action of his employee (co-respondent of cassation) in accordance with Article 536 of Commercial Code.

Further, in Supreme Court Decision Number 2539 K/PDT/2014, the Supreme Court has considered that the high court does not take into consideration Article 536 of Commercial Code with regard to the obligation of Ship Operator, and according to the Maritime Tribunal decision it's been stated that the Defendant 1 is proven guilty for taking other ship's line from the opposite direction, which the tribunal gives sanction to revoke the maritime certification of Defendant 1. Therefore, the high court decision is annulled by the supreme court decision and to grant approval for the appeal petitioner.

In addition to the decisions issued by the Supreme Court, the Maritime Tribunal decision has been included in the consideration for a District Court decision, such as through the District Court of Banjarmasin Decision Number 11/Pdt.G/2020/PN.Bjm. The Court has decided that the claim by the plaintiff is premature due to the reason that there has not been any procedure taken by the disputing parties of the case to go to Maritime Tribunal for the occurrence of shipwreck, in which in the event of a shipwreck, the parties must first report the shipwreck to the authorized harbormaster. After, the harbormaster will do a preliminary examination and forwarded the result of the examination to the maritime tribunal to conduct the further examination. The plaintiff did not provide any proof regarding further examination of shipwreck conducted by Maritime Tribunal, as a requirement or aspect of the unlawful act under 1365 of Civil Code. The absence of the Maritime Tribunal decision, in this case, could be conflicting with the state court decision, due to the reason that under Shipping Law in conjunction with Government Regulation on Shipwreck Examination, in the event of a shipwreck must be first examined and adjudicate by Maritime Tribunal.

From the aforementioned precedents , Maritime Tribunal has a crucial role in the legal proceeding of the Supreme Court for the case related to shipwreck. Maritime Tribunal's decision is recognized by the court as the reference or consideration to issue a decision because the tribunal decision contained technical matters related to the cause, administrative sanction, and conclusion of shipwreck. The Supreme Court refers to Article 251 of Shipping Law which stipulates regarding the examination of the shipwreck by the harbormaster and further examination by Maritime Tribunal, in order to fulfill provisions of the prevailing law and to prevent any conflicting issue with Maritime Tribunal which has a specific duty in terms of shipwreck. So that, even though it is not stipulated under civil procedural law, in the event of shipwreck, the disputing party who are going to settle before the court for the loss and/or damage suffered, must first obtain Maritime Tribunal's decision as to the evidence of legal proceeding and reference of the court judges in conducting a legal finding towards the technical issue of shipwreck. If the maritime tribunal decision was not yet issued, and/or the disputing party has not provided such decision to the legal proceeding of the supreme courts then the claim could be stated as premature.

The Shipping Law does not expressly state the Maritime Tribunal as a judicial body. The authority given from Article 253 of Shipping Law is to conduct further examination of shipwreck and give administrative sanction to a seafarer who breaches the code of conduct. The tribunal can be considered as a judicial body in as it has fulfilled the requirements provided by Muchasan which are: (i) rules and regulation that is binding, and enforceable that is obtained from the Shipping Law; (ii) there is a concrete legal dispute concerning a shipwreck in order to conduct further examination of any shipwreck within the jurisdiction of Indonesia; (iii) consist at least two parties, which are panel of tribunal, and seafarer who presumed liable for shipwreck occurrence, and last is (iv) there is a panel that authorized to settle the dispute, in this case, judges to issue a decision of the shipwreck cases. Therefore, Maritime Tribunal can be stated as an institution with executive and judicative function (mixed function).

Further, Maritime Tribunal has shown characteristics of a quasi-judicial body. The first is the power to exercise judgment and discretion. Maritime Tribunal Decision in the essence is to determine whether or not the seafarer has violated the seafarer's standard profession or fault by the shipowner by not implementing safety of the ship. In terms of the decision has issued and the seafarer's or the shipowner does not comply with it, by continuing the maritime

activities, then they can be imposed by penal sanction in accordance with prevailing rules and regulation of criminal law. These matters are stated under Article 287, Article 302, Article 303, Article 310, Article 312, Article 323, and Article 335 of Shipping Law.

The second is the power to hear and determine or to ascertain facts and decide. Under Article 24, Article 25, and Article 27 of Shipping Law, Maritime Tribunal organizes proceedings by presenting the accused, witness, and expert to be heard. Moreover, to examine facts, evidence, or other related documents that are subject of the Indonesian Shipping Law.

The Third is The power to make binding orders and judgments. The tribunal based on the result of further examination of shipwreck, issue a Maritime Tribunal Decision which contained consideration of shipwreck based on facts and evidence and administrative sanction toward the fault or negligence of seafarer's in implementing seafarer's standard profession as stipulated under Article 31 of Government Regulation on Shipwreck Examination. Referring to Article 48, and Article 50 of the MoTR on Shipwreck Examination Procedure, the administrative sanction consists of a warning or temporary revocation of maritime certificate for a maximum of 2 (two) years.

Followed by the third is the power to make binding orders and judgments. The tribunal based on the result of further examination of shipwreck, issue a Maritime Tribunal Decision which contained consideration of shipwreck based on facts and evidence and administrative sanction toward the fault or negligence of seafarer's in implementing seafarer's standard profession as stipulated under Article 31 of Government Regulation on Shipwreck Examination. Referring to Article 48, and Article 50 of the MoTR on Shipwreck Examination Procedure, the administrative sanction consists of a warning or temporary revocation of maritime certificate for a maximum of 2 (two) years.

The fourth is the power to affect the personal or property rights of private persons. According to Article 248 in conjunction with Article 251 of Shipping Law, the tribunal is only limited to impose an administrative sanction under its decision towards certain parties in the event of a shipwreck and has no authority in the settlement of loss or damage suffered by the disadvantaged party. But such a decision is classified as evidence under civil or criminal procedural law. In court, judges may request for Maritime Tribunal's Decision as to the proof that there has been a further examination of shipwreck carried out by the tribunal, and to consider such measurement has been fulfilled in the first place by disputing parties. As stated under the Shipping Law, the tribunal decision has an indirect effect on the property rights of a person, due to the reason that the court in conducting its legal finding will refer to Maritime Tribunal decision in order to issue a judgment regarding loss or damage disputed by the parties.

Fifth is the power to examine witnesses, to compel the attendance of witnesses, and to hear the legal proceeding of issues on a hearing. In the further examination of shipwreck proceeding, the tribunal presents witnesses, the defendant, and expert to be heard and requested for testimonies. These testimonies are classified as evidence of the proceeding. In the event where the shipowner or ship operator is not presenting its seafarer as the accused or witness in the tribunal's examination, the owner or the operator will be imposed by administrative sanction as stipulated under Article 25 in conjunction with Article 28 and Article 34 of Government Regulation on Shipwreck Examination.

The last characteristic is the power to enforce decisions or impose penalties. In accordance with article 253 of Shipping Law, Maritime Tribunal has the authority to issue administrative sanction under its decision, and such decision can be in form of a warning or temporary revocation of the Maritime Certificate.

According to the explanation provided above, Maritime Tribunal has the mixed function of power in the executive and judicative nature. Such powers are attributed from the Shipping Law along with its derivatives regulation that stipulates regarding authority, duty, function, and working mechanism of Maritime Tribunal. The executive powers are to implement duty and authority stipulated by law, supervise matters related to shipping by examining cause and impact of a shipwreck, to decide and determine administrative sanction in the form of administrative decision (*beschikking*). And the judicative powers are to organize legal proceeding in the further examination of shipwreck, to examine evidence regarding cause and impact of shipwreck, to enforce the issued decision, and the tribunal's decision is a requirement by the general court to party who seek justice before the law and as legal evidence (Tajudin, 2009) in a case related to shipwreck. In addition to that according to Jimly Asshiddiqie, Maritime Tribunal is recognized as the special court in Indonesia (Komisi Yudisial, 2013).

4. Conclusions and Recommendations

Based on the study that has been conducted, it can be assumed that According to Shipping Law, Maritime Tribunal is an executive organ of the Ministry of Transportation with the authority to implement further examination of shipwreck and to issue an administrative sanction for the violation of the standard profession of seafarers. This tribunal is not within the scope of the Supreme Court. And although this tribunal has no jurisdiction to settle the civil or criminal dispute in relation to compensation, liability, and loss or damage caused by shipwreck. Nevertheless, the tribunal has fulfilled the six characteristics of a quasi-judicial body. In practice, the Supreme Court along with its subsidiary general courts, in the case of a shipwreck, may oblige the disputing parties to resort to Maritime Tribunal for the examination of shipwreck as the preliminary legal measurement. To conclude,, Maritime Tribunal is a quasi-judicial body with mixed functions of power which are executive and judicative powers.

Declarations

Author contribution

All authors contributed equally as the main contributor of this paper. All authors read and approved the final paper.

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