

# PROVISIONS OF MARITIME PILOTAGE ACCORDING TO SAUDI MARITIME LOW, A COMPARATIVE ANALYTICAL STUDY

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## ABSTRACT

*Maritime Pilotage is important for safe navigation of ships in ports. Hence, Saudi maritime ship operator locates the different parties in legal positions that restrict their freedoms and determines their liabilities, should he deem it necessary.*

*This study attempts to analyze the regulations related to maritime pilotage, which are mentioned in the commercial maritime low issued by the Royal Decree No. (33/m) in 5/4/1440 H. The study also employs the legislative and legal public regulations to clarify maritime pilotage's concept, pillars, characteristics, and legal nature. Then it explains maritime effects by liabilities and responsibilities arising from it. That is to comprehensively examine the maritime pilotage provisions, and compare them with the Islamic jurisprudence provisions as possible. Accordingly, the study presents an introduction and two major parts.*

**Keywords:** Maritime Pilotage, Maritime Pilotage Contract, Nature of Maritime Pilotage, (Maritime) Pilot's Liability, Piloted Ship, Pilotage (Guidance) Ship, Pilotage (Guidance) Wage.

## INTRODUCTION

Navigation inside sea ports is a special case, which requires safely following the routes that ensure easy and safe entering or exiting harbor; and not colliding the rocks, coral reef, installations and sunken ships, that will fulfill the safety of ports and safety and regularity for navigation. To that end, the ship entering or exiting from the port has to use a person working in the port, with experience and expertise of the port's routes, and is licensed, to guide the ship for the safe routes inside the port, and he is called the "*pilotage*"; and this process is called "*maritime pilotage*".

Marine system obligated the comparison between maritime pilotages in ports for navigation safety and utilization of economic resources. In the Kingdom of Saudi Arabia, the Saudi Commercial Maritime Regulation was released pursuant to Royal Decree No. (M33) of 04/05/1440, which covers regulatory articles related to maritime pilotage in "*Part Nine: safety of navigation in ports and regional waters, Chapter Two: maritime pilotage*". To clarify the maritime pilotage provisions in such Regulation, it is better to analyze them in template and elements to observe the logical order of its issues, and compare them rightfully, which helps the concerned bodies, such as judges, tradesmen, dealers, learners and researchers, to read such provisions.

## Prelude: What is Maritime Pilotage?

Definition of maritime pilotage, its, pillars and characteristics are presented as follows:

### The First Topic: Definition of Maritime Pilotage (Guidance)

Linguistic Meaning of pilotage: the word “*irshad*” (pilotage) or “*morshid*” (pilot) were not mentioned in advanced language books although maritime pilotage has been known since long time ago; its importance has increased in modern times in ports. However, it was possibly not known as an occupation or profession until the modern times; that is why it was not included in the books of the earlier jurists.

The nearest words to this expression are: *alroshd* which means *alehtida’a* (guidance) and seek the right way, e.g.: *Orshodni* means guide me to something. This meaning is appropriate for maritime pilotage as it is showing the way to the safe routes in ports.

Figuratively, comparative marine systems regulations did not define maritime pilotage, leaving that for jurisprudence and judiciary. While most scholars of marine systems never cared about defining maritime pilotage as they did for defining pilotage, which the current study defined it as: “*An agreement between master of ship and a qualified person who works in port called pilot; the latter is obliged thereunder to guide the former for the itinerary to be followed when entering or moving in or exiting port, for a wage according to statutes*”.

1. To say (agreement): indicates that maritime pilotage is a contract because both parties have agreed upon making an effect (Ahmed, 1999).
2. To say (master of ship): indicates one of the two contract parties, who is the guided master of ship as agent for ship operator under his statutory powers.
3. To say (pilot): refers to second party of the contract.
4. To say (to guide the former on route): refers to the subject of the contract the contracted, and the pilot's liability.
5. To say (when entering, moving in, or exiting port): refers to the spatial range for guidance.
6. To say (for a wage): refers to liability of ship operator of the piloted ship; because master enters into a contract as a servant of ship owner (provider), within the limitation of his powers (Commercial Maritime System by Royal Decree No. M33 1440).
7. To say (according to statutes): refers to ship operator intervention in setting out binding rules for the contract parties.

### The Second Topic: Pillars and Characteristics of Maritime Pilotage Contract

In view of the definition, we can describe the pillars of maritime tug contract, its characteristics and description in two subjects of focus, as follows:

#### The First Subject of Focus: Pillars of Maritime Pilotage Contract

According to the general jurist rules, maritime tug contract has three pillars: the wording, the two parties of contract, and the subject of the contract (Oldenburg et al., 2020).

The first pillar: The Wording, which is the agreement of the two parties of contract, which indicates their acceptance for establishing and signing the contract which states all aspects of wording, or writing, or signaling, etc. (Bensoussan, 1997).

Ship operator requires each ship, which is subject to guiding rules, to flag on its mast the signal for requesting a pilot before entering, moving in, or exiting pilotage area (Commercial Maritime System by Royal Decree No. M33, 1440). This is positive from the ship; and the acceptance received from the pilot is his response to such a sign and heading for the ship in the pilotage area and boarding it to guide the ship's master to the safe routes in port (Bitan, 1996); in jurisprudence adaptation, is the conclusion of the contract by sign or by action given and legal writers observe the truth of the conclusion of the contract by both of them (Uğurlu et al., 2017).

The wording selected by ship owner will provide the flexibility and the required speed in the guidance process, especially it is a usual and obligatory process in ports; however, by virtue of the general rules, that should not stop to take place the wording verbally, in case of telecommunication between the master of the ship and the pilot; or by writing in case sufficient time permits. That leads to stating that the ship owner gives a particular form through which the maritime pilotage contract is held; and that does not prevent holding the contract in other forms, and must boost the pilotage signal in all cases (Parikka, 2007).

The second pillar: The two contract parties: A contractor (contract party) is one who commences the contract and gives a positive response or acceptance. To commence the contract, he must show the capacity for contracting on his own behalf or provides legal jurisdiction for contracting on behalf of another person. The contractor (contract party) may be an independent or an agent, or he may be an individual or a group, or he may be a real person or a legal personality. Islamic jurisprudence has worked on these details and Islamic scholars have elaborated on provisions of contractor in terms of eligibility, jurisdiction and multi-contractors (De-Lamberterie, 1977). The two contract parties in maritime pilotage contract are the master and the pilot. They must meet the conditions and terms, because they commence their tasks only according to specific legal conditions.

Pilot is that one who the master request to help in piloting the ship when the ship enters, or move in, or exits the port (Diyab, 1981), and he may work in port by his own, or as an employee in a pilotage agency; all that is subject to licenses issued from the appropriate authority in accordance with its prescribed rules for pilotage.

Master of ship means the master of each ship which enters, or moves in, or exits ports of the Kingdom of Saudi Arabia, because pilotage is necessary for ships in the kingdom's ports. The ships that are excluded are: warships, ships of Saudi government used for public services and for non-commercial purposes, fishing vessels and the ships that have net tonnage less than 150 tons, maritime units which belong to ports, and yachting vessels (Commercial Maritime System by Royal Decree No. M33, 1440). Ship operator may exempt them because their existence in port is almost permanent which makes their masters familiar with port's routes. Such ships would have no safety justification, to make the cost economical, and to support some types of these ships.

The master enters into the contract as an agent for ship owner under his statutory authorities therefore; the responsible for maritime pilotage contract is the ship owner of piloted ship. In consideration of speed and flexibility, the master executes the contract required for pilotage; especially it is one of the normal and compulsory works in ports.

The third pillar: The subject of the contract: it is the contracted services which have the effect and provisions. Islamic scholars require its existence, capacity and legitimacy (Salma, 2010). In civil law, the corresponding concept is domestic law, which means the subject of the

contract, such as objects, or benefits or service. Some other scholars think that the subject of the contract is a pillar in liability rather in the contract. Accordingly, the subjects of the contract in maritime pilotage contract are the benefit and the wage.

The benefit is the subject of the contract which is the pilot's responsibility, which is originally intended from maritime pilotage contract. It is represented in: (i) guiding the master on safe routes in port; (ii) its jurisprudence conditions are in being public, permitted and estimated benefit, and legitimately and lawfully possible (Elahwani, 1989); it is a clear and presumed issue on the basis of regulating and monitoring intervention on maritime pilotage in ports. While wage is a payment the ship owner pays for pilotage service. It is determined by the competent authority, and it legally takes the description of fees (Al-Hyari, 2020). That does not mean it cannot describe the wage in terms of jurisprudence. But determining the wage by ship operator fulfilled its conditions in terms of jurisprudence, that it must be valuable property, affordable for handing over, sufficiently known with due diligence which lead to conflict (Fourment, 1997).

## The Second Subject of Focus: Characteristics of Maritime Pilotage Contract

Maritime pilotage contract has characteristics that can be presented as follows:

1. Consensual Contract: the mutual consent of the two parties of contract sufficient for entering the contract, i.e. confluence of offer and acceptance. The agreement alone constitutes the contract without having an official act or a private act. Thus it can be demonstrable by all procedures for offering proof. This is appropriate for the nature of maritime pilotage which requires speed and flexibility; and that the pilot showed a certain form by which the maritime pilotage contract is convened, and its convening is not prevented by other forms, and flagging is necessary for requesting pilotage in all cases. And its description as consensual is not affected by forcing it on the operator in ports (The Commercial Maritime System by Royal Decree No. M33, 1440) and does not involve him in setting forth rules binding on its parties. That is common and usual in important contracts, and does not cancel consensual idea.
2. A netting contract: each party shall provide in exchange for getting what he wanted from the contract. The pilot provides his benefit represented by piloting the master of vessel on the safe routes in port, and the master provides the wage for that.
3. A binding contract for both parties: it gives rise to reciprocal obligations; because it has the meaning of netting (Ghestin, 1992).
4. Commercial contract: pursuant to the second article of commercial court system, and as a jurisprudence effect for that, it is subject to special statutory provisions mentioned in maritime trade system, and provisions of Islamic Sharia (law) as the public order in the Kingdom of Saudi Arabia.
5. Instant contract: Period is not a main factor in this contract because it is convened for a specific purpose; it is of temporary nature (**Al-Faqi, 2011**). Some scholars state that it is a contract of a short-term service (Kasem, 2005).
6. A complementary navigational maritime contract: Because it is not originally intended in maritime navigation, it focuses on fulfilling its main purpose. Hence, it is described as a servant, or complementary, or supportive contract. The pilot is one of the complementary navigation crew.

This study has presented some basic issues on maritime pilotage, such as its definition, pillars and characteristics. The legal nature of maritime pilotage and its effects are discussed in two parts.

## **The First Part: The Legal Nature of Maritime Pilotage**

Legal scholars have argued on the legal nature of pilotage. There were two main trends, the first opines that the maritime pilotage is not a contract; while the other trend opines it as a contract; of those who think that it is a contract deem it a contractual agreement, others see it an employment agreement. To illustrate that in details, the research presents two parts:

### **The First Topic: The Nature of Relation between Maritime Pilotage Parties**

It is the relation between ship owner and master on one hand (Main & Chambers, 2015), and pilot. Some think that it is binding; while others do think it is not binding. It should be noticed that the compulsory pilotage in ports has been disputed, which was aroused by the regulatory power of maritime pilotage, which obliged it and intervened in the contractors' will, limits its effects and determined its obligations.

The first trend: it believes that the maritime pilotage is not a contract but a relation with a regulatory nature, governed by the regime. The basis of relations is the regulatory provision rather than the contract. This trend considers the following:

1. Absence of all elements of contract; the two parties just perform a conditional task whose details are drawn by the regime.
2. Pilotage is compulsory and the master must use it.
3. The master cannot select a specific pilot.
4. The pilot cannot select a specific ship, but he performs his task according to his role in the service.
5. The wage is determined by regulations; it cannot be negotiated but paid in advance to the concerned authority in port.
6. The pilot's has a job or monitoring relation with the port authority means that he only performs a public service in light of the regulations that regulate the maritime pilotage.

The second trend: It believes that the maritime pilotage is a contract, and the association is basically binding. This trend considers the following:

1. That all the mentioned evidences do not cancel the idea of contracting in maritime pilotage; in general, the state's intervention in any matter, and its assigning of the contractors in legal positions which limit their freedom and defines their obligations is customary in service works as in the case of services of electricity, communication and transportation.
2. Pilot performs his task for the ship of the ship owner, and he follows the ship owner during piloting operation even if he originally follows another authority, be it private or governmental.
3. Operational realities in ports is that the piloting operations should be outsourced to private sector companies, and the role of the state in such operations is to be limited, support the idea of contractual relation between the two parties of maritime pilotage.
4. Provisions of ship operator, especially those which show the pilot's obligations, and the conditions of his responsibility, signify the legal contractual relation.
5. Originally, maritime pilotage is optional, and it can take place in high seas, making it compulsory, regulating it by obligatory provisions in ports are exceptions, and exceptions cannot benefit the original by changing, so maritime pilotage remains in its original contractual nature.

The second trend considers many maritime jurisprudents and judiciaries (Kasm et al., 2021). The research indicates that it is the right trend due to validity of its evidences.

## **The Second Topic: The Nature of Maritime Pilotage Contract**

As stated in the first topic, the nature of relation between the two parties of maritime pilotage is contractual. Two trends emerged to determine the nature of contract. The first trend sees it as a contractual agreement. While the second trend see it as a labor contract (Viney, 1993).

The first trend: believes that it is a contractual agreement. Its argument is that the pilot is independent and decides what to do to guide ships. In his operations, he is not subject to monitoring by master and he is not the master's authority and command. Hence, the legal description of contractual agreement is applied to maritime pilotage contract.

The second trend: believes that it is an employment agreement because pilot's obligation is restricted to directing and guiding ships on the route, as a technical consultant for master. Master is not obligated to follow pilot's opinion, so pilot remains a servant to master, and his guidance operations are under the control of master. This has been confirmed by many jurisprudents and judiciaries (Zez & Pansier, 2000).

The current research affirms the views of the second trend for the reasons below:

1. Its conformity with operational reality - The pilot, though technically he is independent in his decision, he remains a servant to master because command of the ship remains for the master, while the pilot onboard is like navigators. So all elements of employment agreement are indicated in maritime pilotage contract: the work, the wage and the act of serving.
2. Its conformity with statutory reality: on one hand, ship operator provides that the commanding of ship remains for the master during pilot's performance of his task onboard. On the other hand, the responsibility for piloting operation is for ship owner. All this indicates that the pilot is servant to master (The Commercial Maritime System by Royal Decree No. M33) 1440).
3. Its conformity with the jurisprudential adaptation of maritime pilotage, that it is a contract with a special employee; because, in the agreement, the pilot is assigned for the task for a specific period in which the master has benefits during that period and such benefits are must not be shared by any other ship.
4. Stating that the maritime pilotage contract is contractual agreement will make the pilot as joint employee in terms of jurisprudence; meaning that his benefits are shared in one time for a number of ships, and that is excluded in reality.

## **The Second Part: The Effects of Maritime Pilotage Contract**

It was decided from the above that maritime pilotage is a labor contract, and that the contract has effects represented by obligations and responsibilities of its parties about the damage that may arise. That can be explained in two topics.

### **The First Topic: Obligations Arising from Maritime Pilotage Contract**

Based on maritime pilotage contract, there are obligations on each of the two parties, as detailed in two subjects of focus as follows: The first subject of focus: Obligations of maritime pilot: Pilot is obliged to:

1. Respond immediately to the request of the ship for guidance when seeing the request signal for guidance, or during wireless communication with the ship. The priority of each request should be considered, except if a ship is in grave danger. Then pilot should provide guidance to this ship first, even if he was not requested to do so (The Commercial Maritime System by Royal Decree No. M33, 1440). But he should arrange for that with related authority if possible. It is noticed that the Saudi ship operator is reluctant to pilot's reward, in this case, to reward for salvage of vessel. This is why we admit that the pilot does not

deserve the saving award at all, due to lack of legal authority for that, and because his intervention is a duty imposed upon him by the system and to prevent the pilot's intention to make ships in danger, so he get reward for the salvage of vessel. This trend is supported by many comparative marine systems. Others support determining a special award that differs from the salvage reward. Still others said that the right to a reward for salvage under appropriate conditions.

2. Guide the master of the piloted ship on the safest routes and itineraries in port.
3. Provide the ship master with the necessary information on the itinerary to be followed when the ship enters, or exits, or move in port.
4. Not to command ship, directly and indirectly, but to introduce his expertise and familiarity of the port itinerary as consultancy service for master.
5. Fulfill obligation on contract, and consider the due diligence to accurately implement it, because, jurisprudentially, he is a special employee. Allah the almighty said "*O you who believe! Fulfill (your) obligations.*"

### **The Second Subject of Focus: Obligations of Master of Piloted Ship: Master is Obligated to:**

1. Request for guidance in port when the ship enters, or moves in, or exit the port by following the known technical ways.
2. Raise on bridge the signal of requesting a pilot before the ship enters, or moves in, or exits port (The Commercial Maritime System by Royal Decree No. M33, 1440).
3. Request assistance from pilot who comes to ship, because pilots are moving according to their roles, and no pilot performs a task by his choice.
4. Consider the pilot's safety, the pilotage boat, by following the technical principles that ensure approaching the pilot's boat safely, and facilitating his boarding the vessel safely.
5. Facilitate the task of pilot in technical aspect, i.e. to give information related to the ship draught, its length, breadth, and capacity in maneuvering in the conditions of the draught and the different speeds, making sure that such information are in plain sight in the wheelhouse (The Commercial Maritime System by Royal Decree No. M33, 1440).
6. Command the ship when pilot performs his task, and monitor the pilot's operations (The Commercial Maritime System by Royal Decree No. M33, 1440).
7. If the pilot has to travel with ship, due to weather bad conditions, or according to master's request, ship owner pays for food and residence of pilot, and takes him back to port from which he boarded, and for the compensation as appropriate (The Commercial Maritime System by Royal Decree No. M33, 1440).
8. Pay the original wage for pilotage, and any additional charges, as determined by the concerned authority (27012021.pdf (mawani.gov.sa)). It takes the description of charges by law, and they are collected by the concerned authority which is monitoring the port. Then the pilot's share is paid to him from that collected amount. In ports covered by such collections, charges are paid to the company operating the port, and, formally, the ship owner is obliged to pay the charge, has been clarified earlier.

The wage for guiding is included in maritime lien, and it is deemed a maritime debt which the preventive arrest of ship in fulfillment of that (until the wage is paid) Commercial Maritime System by Royal Decree No. M33, 1440).

### **The Second Topic: Liability Arising from Maritime Pilotage Contract**

Liability is: "*The obligation to pay financial compensation for damage of another person*" (or the obligation to pay compensation for another person for financial damage or loss of benefits, or for partial or ultimate damage that occurs to a human being. It is also the liability arising from maritime pilotage contract whose provisions are mentioned in the Saudi marine

systems, which is a civil liability (Ahmed, 1999), and it has three pillars, as follows:

The first pillar: the fault, which means exceeding the limit at which one must stop or failure to fulfill the limit that may consist of illegal action or inaction, and it includes positive action and negative action.

The second pillar: the damage, which is to inflict harm for others, and by principle, the burden of proof lies on the creditor, and must be proved beyond doubt because it is viewed as a material fact.

The third pillar: and the causal link between both of them, this means that the debtor's error must be the reason for damage to the creditor.

Civil liability provisions are known in Islamic jurisprudence under the theory of guarantee for contract, for possession of hand, or for wrongful act. The Islamic law decides inclusion as a mean for keeping and maintenance of people's money, keeping their rights, reparation for them. One of its major principles is "*to do no harm*", and pillars of guarantee are close, in meaning, to the pillars of civil liability.

It is important to determine the time implementation period of maritime pilotage contract, to decide the aroused liability. Such a period starts at the time of pilotage tugboat's entering in the range where it works under the effect of piloted ship. It extends to cover the maneuvers of pilotage tugboat to approach the ship and the pilot's boarding to it, and the time he spends onboard to perform his task, and it ends in performing the required task and the pilot's leaving of the ship, or pilotage tugboat gets away from the range of its effect (Ahmed, 1999).

As a result of implementing maritime pilotage contract, there would be errors which lead to damage and thus cause responsibility. This damage may harm the piloted ship, or others, or the pilotage ship, or the pilot or one of the sailors of pilotage ship. The ship operator has made efforts to report the liability provisions in these four cases, and this poses the question on the extent on the responsibility of maritime pilot and the ship owner (Commercial Maritime System by Royal Decree No. M33, 1440)-as he is the servant of the master, in these four cases, the first case is associated with piloted ship and the other cases are associated with others. That will be explained in two subjects of focus.

### **The First Subject of Focus: Liability for Damage to Piloted Ship**

During performing maritime pilotage operation, pilot may make errors; for example, he provides wrong information on the route or water passage depths or the location of sunken ships, or any other error that may occur because or on the occasion of his implementing of maritime pilotage contract, which may lead to a damage to piloted ship, and the ship operator has decided that he is not responsible for that (Commercial Maritime System by Royal Decree No. M33, 1440). Therefore, it can be said that the ship operator exempted the pilot from the responsibility arising from his errors when damage occurs to piloted ship, and some other issues such as: Exempting the pilot from the responsibility arising from his errors when damage occurs to piloted ship, which would be a deviation from the general regulations that require the one who makes the error to bear the responsibility? If such general regulations are applied, the pilot will bear the responsibility when ship owner proves the pilot's error, but this deviation from such regulations is based on the following:



1. The pilot is a servant to a ship master, because the former is associated with the latter in a work contract – as mentioned earlier- and he is just a consultant, he does not have any authority to the ship or to the master (Ibid; Commercial Maritime System by Royal Decree No. M33, 1440). The master is not obliged to give his opinion. Thus the presumed error is the master's because he has the command.
2. Providing protection for the pilot and the maritime pilotage because: pilotage is associated with high costly ships, and the error is possibly by the pilot, and if he is responsible for his errors towards piloted ship, he would refrain from performing their tasks, and maritime pilotage industry would be affected. That has a great damage to ports and ships, so such a protection an encouragement for maritime pilotage.

Lack of pilot's responsibility entails lack of the authority he belongs to, because if the responsibility of the servant extinguishes, the responsibility of the master extinguishes too. On the other hand, when the pilot starts performing his guidance work, he dissociates himself from the authority he originally belonged to, and he becomes belonging to master.

Here, the Saudi ship operator introduces the principles of exemption from civil liability, contrary to other marine systems which introduced the principle of pilot's liability for serious error, and to other systems that introduced the principles of a higher limitation of pilot's liability (Ahmed, 1999).

The ship operator exempts the pilot from the responsibility is in compliance with the provisions of the international treaty related to collision, which provides in its Fifth Article that: *"The responsibility for the piloted ship remains in case of collision occurs because of an error by the pilot even if pilotage is compulsory"*.

The ship operator's provision on exempting pilot from his error that causes serious damage to piloted ship is absolute, whether it is a major misconduct or a minor misconduct, and whether it occurs as a result of infringement or omission or not. The research opines that the ship operator intended this absoluteness; because he did not mention the pilot's error in this position (Commercial Maritime System by Royal Decree No. M33, 1440). Though he mentioned it in other positions, his reluctance here is an indication for his willing of absoluteness in practice. Hence, that restricts the provision of the general regulations that require pilot's responsibility when he makes a serious damage or infringement or omission.

Because pilot is a special employee in terms of jurisprudence, and, as decided by Islamic scholars, special employee ensures only by infringement and omission. Exempting him from civil liability to piloted ship if he did not infringe or omit, is in compliance with legal rules of guarantee, but exempting him in case of infringement and omission is in breach of these regulations.

As the saying goes: Can it be inferred that the legality of exempting pilot from civil liability to piloted ship is absolute in two issues:

1. That the two contracting parties entered into the agreement, while knowing its mandatory provisions, one of which is that the pilot is not liable to the damage of piloted ship - and this benefited their satisfaction in such a regulation, which is a proof for exemption from liability.
2. Approval evidence a point was made, to retract the original judgment (stating that the pilot has a responsibility) to another judgment, which stipulates personal disclaimer to claim a greater lawful interest represented by protecting ports and ships which would be threatened if pilots refrain from doing their tasks for fear of responsibility.

The research opines that this issue needs more study, reflection and deliberation in jurisprudential institutions in order to work out judicial discretion.

### **The Second Subject of Focus: Liability for Damage to a Ship Other Than Piloted Ship**

It includes the liability for a damage occurring to other, the liability for a damage occurring to piloting ship, liability occurring to pilot or one of the pilotage ship navigators. In this context, there are three issues, as follows:

The first issue: Liability for damage to others: Pilot may make errors when performing pilotage operations, which lead to a damage to a third party who is not associated with pilotage contract. Tortious liability to compensate that aggrieved party. The ship operator has decided that it is the ship owner's responsibility for damages that others allegedly suffered due to errors from pilot, arising from pilotage operation (Commercial Maritime System by Royal Decree No. M33, 1440). Some issues are raised as follows: The provision of ship operator indicates that the ship owner is absolutely responsible, be the pilot's error minor or serious, and if he infringes intends, or neglects. Liability of ship owner for absolute personal errors from pilot involves some bases, as follows:

1. Pilot is servant of ship owner; because he works for ship owner, dissociating himself from any governmental or private authority, but during pilotage operation, he works under the master's authority and monitoring as anyone of the other ship navigators. His role is limited to guiding and consulting, and ship command remains for master of ship; so the presumed error is the master's; and it is known that the master is a servant of ship owner. Thus, ship owner alone is the one who is responsible for pilot's error, as it is a responsibility of the master's for his servant's error.
2. Protection for pilot and maritime pilotage to achieve a greater interest, especially which the pilot is not affordable enough to pay compensations, and he is unable to insure for his job due to high cost of insurance (Ahmed, 1999).

Many scholars think that the ship owner has the right to claim pilot for his fine, according to general regulations. The research opines that the statutory provision is not benefit this saying due to its directness in holding ship owner alone liable for pilot's errors; it is under the special provision, and such general provisions are under the general provision, and the special is prior to the general. Additionally, claiming pilot is ineffective as he lacks financial solvency which is able to pay huge amounts of money related to ships. Because pilot is a special employee in terms of jurisprudence – as mentioned earlier – and the special employee, as stated by Islamic scholars, does not ensure except by infringement and omission; the responsibility of the ship owner for the damages to others due to the errors from pilot as a result of pilotage operation when they occur without infringement and omission; are in compliance with Islamic jurisprudence provisions. But if they occur because of the infringement and omission from pilot, holding ship owner liable for it is against Islamic jurisprudence provisions in guarantee matters.

The second issue: Liability for damage to pilotage ship: There are high risks in the maritime pilotage operations provided, where a pilotage ship (a boat or a tugboat), in its small size, often approaches a huge ship with strong engines, under different conditions of navigation, which causes marine systems to oblige master of piloted ship to follow the technical assets in safe approaching the pilotage boat and to decrease ship's speed to the maximum extent possible (Commercial Maritime System by Royal Decree No. M33, 1440). Pilot's error in such difficult

conditions is possible and unforgiveable unless it is not serious. This has entailed the assumption that the reason of any damage to pilotage ship is caused by the piloted ship. Thus, ship owner is liable to damages of pilotage ship, unless he proves that the error from the pilot was serious. Saudi ship operator introduced this principle; and he decided that the ship owner is to be claimed about damages that occur to pilotage ship during pilotage operation, or during maneuvers related to pilot's boarding the vessel or disembarking from it, unless he proves that the damage was caused by a serious error from pilot (Commercial Maritime System by Royal Decree No. M33, 1440). There are some relevant issues, as; this provision derogates from general rules of the responsibility which requires that the ship owner is not to be claimed for such damage unless he proves that it occurs due to the error of the piloted ship master, the burden of proof of error by general rules falls on pilot. Scholars of marine systems find that the comparison is the basis for this derogation from the rules, as follow:

1. The obligation of master of piloted ship for the safety of pilotage ship or boat is to achieve a result.
2. The responsibility here is based on the presumed error to pilotage ship (boat or tugboat).
3. Pilotage Authority requires insuring its employees, reducing their responsibilities, and overcoming the pilots' errors which are not serious and are expected under the risks exposed to pilotage ships.
4. Ship owner pays for damage if proved that it is arising from a serious error from pilot. By special regulations for responsibility arising from maritime pilotage contract, the proof is required from ship owner. He must prove that it is a serious error; because pilot's minor error is forgivable.
5. The attitudes of Islamic jurisprudence on this issue are detailed as follows:

In thematic terms: In terms of Islamic law, a person guarantees only the damage arising from his error, and he does not ensure another person's error except in specific conditions, one of which is the error of his servant. Regarding the fine, acquaintance is the rule; due to sanctity of his money. In this issue, there is no way to enforce the provisions for the responsibility of the servant because there is no third party, and to enforce provisions for insuring special employee as he is insured; because the damage here occurs to him rather than from him. The ship owner's hiring a pilot is not a legal cause to guarantee him. According to Islamic scholars' views, anyone who hires workers to drill a borehole or metal, and they make an error, he should not guarantee that any wastage is not guaranteed. In light of documenting its roots in the Shari'a, the assumptions are presented below:

1. If damage to pilotage ship is arising from an error by piloted ship master, the responsibility is incumbent upon the ship owner. In this assumption, the system is appropriate under legal rules of guarantee.
2. If the damage to the pilotage ship occurs arising from a serious error from the pilot, the responsibility is not incumbent upon the ship owner; due to lack of legal reason which makes him responsible for pilot's serious error, and in this assumption, the system is appropriate under legal rules of guarantee.
3. If the damage to the pilotage ship occurs arising from a no serious error from the pilot, the responsibility is not incumbent upon by ship owner; due to lack of legal reason which makes him responsible for pilot's minor error, and in this assumption, the system is inappropriate under legal rules of guarantee.

In procedural terms: Because the responsibility is a fine caused by a damaging error; and acquaintance is the rule, and the original is nothingness. The one who claims for error is, in fact, the pilot, as he is the plaintiff and the ship owner is the defendant, and the burden of proof rested with the plaintiff, so he is legally claimed to prove the ship owner's error.

In light of documenting its roots according to Sharia law, to assign responsibility for owner of the piloted ship, and to make the burden of proof to pilot's major error falls upon him, is inconsistent with the general legal rules of Islamic jurisprudence.

### **The Third Issue: Liability for Damage to Pilot or One of Pilotage Ship Navigators**

The Saudi maritime ship operator decided that the piloted ship owner is claimed about the damage which occurs to the pilot or the navigators of pilotage ship during pilotage operation, unless he proves that the damage aroused from an error made by the pilot or the navigators of pilotage ship (Commercial Maritime System by Royal Decree No. M33, 1440).

Discussing this issue is like that of the previous issue, noting that the ship owner can prevent the responsibility on him by proving the pilot's error, even though it is minor. It is not required that it is serious, as in the case of the previous issue. Accordingly, if the damage to pilot or one of the navigators of pilotage ship aroused from a serious or minor error by pilot or by navigators of pilotage ship, the responsibility is not incumbent upon the ship owner. If the error aroused from master of piloted ship, the responsibility is incumbent upon the ship owner. In the two assumptions, the system is appropriate under legal thematic rules of guarantee.

For the points where the system violates Sharia rules, the piloted ship owner is originally charged with the responsibility, and he is required to prove the pilot's error, though he is the defendant in legal fact, as mentioned earlier (Ibid).

It is worth noting that each responsibility arising from maritime pilotage operation is not heard after a period of two years from the date of operation expiry.

To conclude, the research has revealed some findings and recommendations, as follows: The goal of maritime pilotage is the safety of ports and regularity of navigation in them, so it is compulsory except the ships excluded from the system. Maritime pilotage: is the agreement between the master of ship and a qualified person working in a port called the pilot; the latter is obliged, thereunder, to guide the former to the itinerary that must be followed when entering, or moving, or leaving port for a charge, according to statutes. The pillars of pilotage contract are: the wording, the two parties of contract, and the subject of the contract. Ship operator shows a certain procedure by which maritime pilotage contract is convened, which is the ship flags for requesting a pilot before entering, moving, or leaving the pilotage area. This is positive from the ship. The acceptance received from pilot is his response to such signal and his heading out to the ship in pilotage area and boarding it to guide master to safe routes in port. This is a contract convened by signal or by action, and it is legally accepted, and it did not prevent ship operator to convene it in other forms and there must be pilotage flagging in all cases.

The two parties of contract in the pilotage contract are the master of ship who is an agent for ship owner under his statutory authorities, and the maritime pilot.

The subject of the contract in the pilotage contract is the benefit and the wage. The benefit is represented in the pilot's guidance for the master to the safe route in port. The wage is the compensation paid by the ship owner for the guidance service, and it is determined by the competent authority, and it takes the description of fees legally. Maritime pilotage is consensual, and a contract contains netting agreement compensation, obligatory for the two parties, commercial, immediate, and is of complementary maritime navigation contracts. There have been differences between maritime law scholars on the legal nature of maritime pilotage. There

are two main trends: the first opines that the maritime pilotage is not a contract; the other trend opines it as a contract - some scholars think that it is a contractual agreement, others think it is a labor contract. Scholars who state that it is not a contract give reasons: it is a relation with a statutory nature, governed by the system, and the basis of relations in it is the statutory provision rather than the contract, and that all its elements of contract are precluded.

Scholars who think it is a contract: they relation think that its basis of relation is contractual, and it is not cancelled by the ship operator's intervention in it, and placing the contractors in legal positions restricts their freedom and limits their obligations; this is a common matter in the significant maritime contracts. Most maritime jurisprudence and judicial scholars have suggested these points.

The nature of maritime pilotage: labor contract, because the pilot's obligation is limited to pilotage and guidance to the route, as a technical consultant for the master. The master is not obliged to take his opinion, so the pilot remains a servant to the master, and his entering is under the master's authority and monitoring. Most maritime jurisprudence and judicial scholars have suggested these points.

Maritime pilotage is jurisprudentially adapted as a contract with a special employee; because falls on him a given period in which the master deserves benefits without sharing any other ship.

Pilot is obliged to respond immediately to the ship's request for pilotage, and he is obliged to guide the master of piloted ship on the safest routes and passages at port. Master of piloted ship is obliged to request guidance in port, to request the help of the pilot who comes to that ship, to take into account the safety of the pilot and the pilotage boat, to technically facilitate the pilot's task, and to commands the ship when pilot performs his task. He is also obliged to pay the pilot's costs and taking him back to port if he had to travel, and he is obliged to pay the basic wage for pilotage, and any other charges for which he is entitled, as determined by the concerned authority.

Ship operator exempted the pilot from ten responsibility arising from his errors that cause damage to piloted ship, whether such error is serious or minor, and whether it is aroused from infringement and omission or not, out of general regulations; observing that the pilot is a servant to the master, and protecting the maritime pilotage; and exempting him if he did not infringe or omit in accordance with legal rules of guarantee. But exempting the pilot in case he is the one who infringed and omitted is inconsistent with such rules.

Ship operator decides that the ship owner alone is responsible for the damages occurring to others due to the errors made by pilot as a result of pilotage operation, whether the error is simple or serious as he is the servant to the master, and to protect maritime pilotage. The ship owner's responsibility is in accordance with Islamic jurisprudence provisions if there is no infringement or omission from the pilot. But if the infringement or omission is by pilot, deciding that it is the ship owner's responsibility is inconsistent with Islamic jurisprudence provisions in regard to guaranteeing because the pilot is jurisprudentially a special employee, he would ensure if he infringed or omitted.

Regarding the responsibility for damage to pilotage ship, if it aroused from an error by the master of piloted ship, the responsibility falls on ship owner. In this assumption, the system is in accordance with the legal rules of guarantee. But if the damage aroused from a serious error by the pilot, the responsibility does not fall on ship owner; because there is no legal reason that

makes him responsible for the pilot's serious error. In this assumption, the system is in accordance with the legal rules of guarantee. But it aroused from an error from pilot, which is not serious, the responsibility does not fall on ship owner; because there is no legal reason that makes him responsible for the pilot's minor error. In this assumption, the system is inappropriate with legal rules of guarantee. It is noted that the piloted ship owner is basically liable, and claiming him for the burden of proof to pilot's major error is inconsistent (inappropriate) with the general regulations in Islamic jurisprudence, because he is the defendant in legal fact.

## CONCLUSION

Saudi maritime ship operator decided that the ship owner requested about the damage to pilot or the navigators of pilotage ship during pilotage operation, unless he proves that the damage aroused from an error made by the pilot or navigators of pilotage ship. In legal terms, if damage aroused from a serious or minor error from the pilot, the responsibility does not fall the ship owner, but if the damage aroused from an error made by the master of the piloted ship, the responsibility falls on the ship owner. In the two assumptions, the system is in accordance with the general legal thematic rules of guarantee. However, it is noted that the piloted ship owner is basically liable, and claiming him for the burden of proof to pilot's major error is inconsistent (inappropriate) with the general regulations in Islamic jurisprudence, because he is the defendant in legal fact.

## RECOMMENDATION

There are some recommendations by this study, as follows: Issuing an executive bylaw regulation which includes detailed provisions for the maritime pilotage contract, in light of the provisions mentioned in the commercial maritime system.

Holding discussions on the legal provisions of guarantee arising from maritime pilotage contract through independent research, symposiums, conferences, and the significance of jurisprudential institutions response for that.

Legal reference for the articles related to responsibility arising from maritime pilotage contract, in light of provisions of guarantee in Islamic jurisprudence, and making necessary amendments.

Disseminating the judicial provisions in the proceedings arising from maritime pilotage; in order to facilitate the accessing them.

Giving attention to preparation of specialized cadres, and qualifying them in the field of maritime law so that they can be specialized judges, consultants, researchers, and lawyers. Opening judicial circuits specialized in commercial maritime issues, to meet the expected future needs with the economic and commercial maritime mobility in view of Saudi vision 2030.

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