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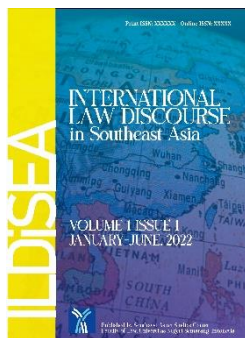
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General Review of Legal Relations and Responsibility Carriers in Sea Transportation

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ABSTRACT: The issues raised in this journal are about how the responsibility of the carrier in the implementation of the transport of goods through water transport, especially sea transportation. This is intended to determine the role that must be done by the carrier in the transportation process in order to achieve the maximum goal. This study also describes how the legal relationship between the carrier and the user of the freight service so that both parties can bind each other in the process of transportation so that there is no loss or other undesirable things. It can be deduced that in a transport of goods carried by the carrier through water transport is the responsibility of the carrier if someday there is a loss or bad things during the transportation process. Therefore, it is necessary full sense of responsibility from the carrier and also the legal relationship between the carrier and the user of the transport service to ensure the safety of the goods he was transporting until the goods arrived at the destination. There should also be a loss if an accident is found on the goods being transported.

KEYWORDS: Legal Liability, Transportation of Goods, Transportation

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I. INTRODUCTION

Transportation in Indonesia has an important role in promoting and accelerating domestic and foreign trade because of the transportation can accelerate the flow of goods from the production area to the consumer so that consumer needs can be met. This can be seen in the current development of transportation services in Indonesia began to show progress, as evidenced by the marking of many industrial companies who believe to use transportation services.

Transport by Purwosutjipto is a reciprocal agreement between the carrier and the sender, whereby the carrier binds to carry out the transport of goods and /or persons from a certain place to the destination safely, while the sender binds himself to pay for the transportation. The purpose of transport is to move goods from the place of origin to the destination to achieve and enhance the benefits and efficiency. Broadly speaking the mode of transportation may be classified as follows: land transport, sea transport, and air freight. Of the three types of transport modes mentioned above, sea transport has a very big role in transportation for Indonesia.¹

¹ Siti Fatimah, *Pengantar Transportasi*. (Ponorogo: Myria Publisher, 2019); Bambang Susantono, *Revolusi Transportasi*. (Jakarta: Gramedia Pustaka Utama, 2014).

Considering the vital importance of transportation for the economy, sea transportation must be developed properly and correctly to support economic growth. The challenges of transportation development are very complex, including sea transportation as a result of global economic developments in recent years. Therefore, the development of sea transportation should not only be oriented on a national scale, but must also be oriented on a regional and international scale.²

In addition, in a more distant context, to overcome poverty one of the efforts is to optimize the utilization of available natural resources, and the distribution of the results needs to be supported by adequate infrastructure. One of the infrastructures that can support poverty alleviation is sea transportation facilities and infrastructure. The provision of sea transportation is very necessary to connect an underdeveloped/poor area with a more developed area. With the connection between developed areas and poor/isolated areas, it is hoped that people's living standards can increase and poverty can be reduced.

II. METHODS

In a study required the existence of several methods of primary data collection methods and secondary data collection. Primary Data

² M. Yamin Jinca, *Transportasi Laut Indonesia: Analisis Sistem & Studi Kasus*. (Jakarta: Firstbox Media, 2019). See also Muh Kadarisman, Yuliantini Yuliantini, and Suharto Abdul Majid. "Formulasi kebijakan sistem transportasi laut." *Jurnal Manajemen Transportasi & Logistik* 3, No. 2 (2016): 161-183; Ratna Rahayu Pujiastuti, and PM Ananda Samekto. "Pemanfaatan Transportasi Laut Untuk Meningkatkan Pertumbuhan Sektor Pariwisata." *Jurnal Sains dan Teknologi Maritim* 19, No. 2 (2019): 151-164; Awing Asmawi, "Kesejahteraan Rakyat dan Implementasi Kebijakan Transportasi Laut di Jawa Barat." *TEMALI: Jurnal Pembangunan Sosial* 1, No. 1 (2018): 85-99.

Collection is a source of research data obtained directly from the original source in the form of interviews, polls from individuals or groups (people) as well as observations of an object, event or test result (object). In other words, researchers need data collection by answering research questions (survey method) or object research (observation method). Secondary data is the source of research data obtained through intermediate media or indirectly in the form of books, records, existing evidence, or archives both published and unpublished in general. In other words, researchers need data collection by visiting libraries, study centers, archival centers or reading many books related to their research. It can be concluded that the explanation in this journal using secondary data collection method. In writing this journal the authors seek information and data from various sources of existing libraries. The author also obtained various sources from previous official journals which were then linked to the journal theme taken by doing many considerations and adjustments. The data obtained from the research results are grouped and selected then connected problems that will be examined according to quality and correctness and in accordance with the rules of law so that will be able to answer the existing problems.

III. LEGAL ASPECTS IN SEA TRANSPORTATION

As a service activity in moving goods or passengers from one place to another, transportation plays a role in realizing the creation of a dynamic pattern of national distribution. The practice of carrying out a transport should be able to provide the maximum value for use in the world of commerce. And in the implementation should be done fairly and equally to all levels of society and more prioritize the interests of public services for the community.

According to R. Soekardono, it is absolutely necessary to achieve and raise the benefits and efficiently. The process of transportation is a movement from the place of origin from which the transport activity begins to the destination where the transport is terminated.³

Based on Article 7 of Law No. 17 of 2008 on Shipping, the type of sea transport consists of: Domestic Marine Transportation, Foreign Sea Transportation, Special Sea Transportation, and Sea Transport of Sea Transportation.

1. Domestic Sea Transport

It is a sea transport activity carried out in the territorial waters of Indonesia organized by a national sea transport company or in the sense of being carried out using the limits of sovereignty within the state. Domestic shipping which includes:

- a. Shipping Nusantara, namely the voyage to carry out the transportation business between ports of Indonesia regardless of the department pursued one and other in accordance with applicable provisions. The sail radius is > 200 nautical miles.
- b. Local voyage, which is a voyage to carry out an inter-port transportation business of Indonesia aimed at supporting the shipping activities of the archipelago and overseas shipping by using ships measuring 500 m³ of gross content downward or equal to 175 BRT downwards. The voyage radius is <200 nautical miles or equal to 200 nautical miles.
- c. People's voyage, i.e., cruise Nusantara by using sailboats.

2. Foreign Sea Transport

It is sea transport activities from ports or special terminals open to foreign trade to foreign ports or from foreign ports to Indonesian

³ R. Soekardono, *Hukum Dagang Indonesia*. (Jakarta: CV. Rajawali, 1981).

ports or special terminals open to foreign trade organized by sea transport companies or in the sense of being carried out by sea freight free that connects one country to another. Overseas shipping, which includes:

- a. Ocean Cruise Close, ie a voyage to the port of a neighboring country that does not exceed 3,000 nautical miles from Indonesia's outer harbor, regardless of department;
- b. Ocean voyage, the voyage to and from abroad that is not an ocean voyage.

3. Special Sea Transport

Is a transport activity to serve the interests of its own business in supporting its main business.

4. Sea-Cruise Sea Transportation

Is a traditional effort of people and has its own characteristics to carry out transport in the waters by using sailboats, motorized sailboat, and / or a simple flagship motor flag Indonesia with a certain size.⁴

Transportation serves to move goods or people from one place to another in order to increase the usability and value. The process of moving goods is done by land, sea, air and land or river waters by using various types of transportation in accordance with their needs.

In Article 1 of Law No. 17 of 2008 on Shipping (hereinafter referred to as the Shipping Law) states that sea transportation used a term transportation in waters is the activity of transporting and / or transporting passengers and / or goods by ship. In addition to the understanding of the transportation in the waters there are also important terms in the sea transport are:

⁴ M. Syamsudin, "Perlindungan Hukum Konsumen Penumpang Kapal Laut (Studi di Pelabuhan Tanjung Perak Surabaya." *Jurnal Hukum* 2, No. 2 (2008).

1. Sea Transport is a transport activity which according to its activities serves sea transport activities.
2. River and Lake Transport is a transport activity that includes reservoirs, swamps, anjir, canals.
3. Ferry Transportation is a transport that serves as a moving bridge that connects the road network and / or rail network that is disconnected because of the water.

Based on developments in the practice of import-export trade shows that the use of sea transport is still dominant, reaching 95%, but compared with the means of land and air transport. It is therefore thought to use integrated transport, combined transport (combined transport) or by various modes of transport (Multimodal transport).

Multimodal transport (intermodal transport) is the transport of goods by vehicle from one destination to the destination using a single transport document, called Multimodal Transportation Document, Multimodal Transport Bill of Lading, Combined Transportation B / L. Thus, multimodal transport is the delivery and receipt of goods (export-import) in one package, or in other words, provide service by door to door or One Stop Service from the place of origin to the destination goods. The multimodal implementer is called the Multimodal Transport Operator.

The carriage of goods by sea shall be accompanied by a letter of transport called a "Bill of Lading", is a letter or dated document, in which the carrier declares that he has received certain items for transport to a designated destination together with clauses, clause on the submission (Article 506 Indonesian Commercial Code or *KUHD*). Based on this understanding, the conosemen has three main functions, namely: *first*, receipt; *second*, proof of contract; and *third*, proof of rights. In addition to the concessions there is a necessary and

generally used document in the so-called Letter of Credit [Documentary Credit]) as set forth in (Uniform Custom and Partice for Documentary Credit, Publication) No. 500 (UCP 500).

In the carriage of goods, it is possible that an event that may cause harm to the owner or shippers of goods, the loss can be a reduction in the amount of goods, damage to it can be filed demands compensation to the carrier. The legal relationship between the carrier and the user of this transportation service has been regulated and guaranteed its legal certainty in the legislation and its implementation is done through the agreement.⁵

According to Siti Utari, the general understanding of the transport agreement is as a reciprocal agreement, in which the carrier binds itself to carrying the transport of goods and / or persons to a certain destination, while the other party (sender-receiver, sender or receiver, passenger) is obligated to perform payment of a certain fee. In the sea freight agreement itself the legal relationship between the carrier and the user of the transport service is of equal or equal status and mutual coordination. Unlike the case with labor agreements in which the parties are subordinated.⁶

According to the Indonesian legal system, the transport agreement is not required to be written, simply by verbal, provided there is a consensus conformity. From the above understanding can be interpreted that for the existence of a transport agreement is enough with the consensus between the parties, this is as regulated in the provisions of Article 90 KUHD which states:⁷

⁵ Peter Mahmud Marzuki, *Pengantar Ilmu Hukum*. (Jakarta: Kencana, 2009).

⁶ Siti Utari, *Pengangkutan Laut*. (Jakarta: Balai Pustaka, 1994).

⁷ Republic of Indonesia. *Kitab Undang-Undang Hukum Dagang*

A transport letter is an agreement between the sender or the forwarder on the one party and the carrier or skipper of the boat to the other party and the letter contains in addition to what would have been agreed upon by both parties, such as the time in which the carriage has to be completed and on compensation in case of slowness, it also contains:

1. The name and weight or size of the goods being transported, as well as the brands and the numbers;
2. The name of the person to whom the goods were sent;
3. The name and place of the carrier or skipper of the boat;
4. Number of wages of carrier;
5. Date;
6. The signature of the sender or the expeditor.

Article 90 of the KUHD specifies that the document / letter of transport is an agreement between the sender or the expeditor and the carrier or the captain. In fact, without documents or transport letters, if an agreement is reached between the two parties, the agreement already exists, so that the documents / letters of transport are mere proof of the transportation agreement. The document or letter of transport shall be declared binding not only when the document or letter of transport has been signed by the sender or the expeditor, but also when the carrier or skipper has received the carriage along with the document or letter of transport.⁸

Concerning the legal nature of the transport agreement there are several opinions, namely:

⁸ Rani Rani, "Tinjauan Yuridis Fungsi Konosemen dalam Perjanjian Pengangkutan Barang di Laut, *Thesis* (Manado: Tadulako University, 2017).

1. Periodic service means that the employment relationship between the sender and the carrier is not fixed, only occasionally when the sender needs transport (not continuously), based on the provisions of article 1601 Civil Code.
2. Chartering of the legal nature of the transport agreement is not a periodical service but the exemption referred to in article 1601 b of the Civil Code. This opinion is based on the provisions of Article 1617 Civil Code (Closing Article of Chapter VII A on the work of charter).
3. Mixture of transport agreements is a mixed agreement that is the agreement to do the work (periodical service) and storage agreement (bewaargeving). Regular service element (Article 1601 b Civil Code) and storage element (Article 468 (1) KUHD)⁹.

In addition, the terms of the validity of the transport agreement on the transport of goods and persons between the carrier and the user of the transportation service are similar to the terms of the validity of the agreement as set forth in the provisions of Article 1320 of the Civil Code, namely:

1. The existence of agreement between the parties.
2. The ability to make an agreement.
3. A certain thing.
4. A lawful cause.¹⁰

IV. CARRIER RESPONSIBILITY IN SEA CATCHING

⁹ Khairunnisa Khairunnisa, *Kedudukan, Peran dan Tanggung Jawab Hukum Direksi*. (Medan: Pasca Sarjana, 2008).

¹⁰ Tjakranegara Soegijatna, *Hukum Pengangkutan Barang dan Penumpang*. (Jakarta: Renika Cipta, 1995).

Responsibility according to Big Indonesian Dictionary is the state must bear all things. Obligation to bear, to assume responsibility, to bear everything, or to answer and bear the consequences.¹¹ While the carrier is the party that bind themselves to carry out the transportation of goods and / or passengers in the form of business entity. So the definition of responsibility of the carrier is the obligation of the company that organizes the transport of goods and / or passengers to compensate for losses suffered by passengers and / or shippers and third parties.¹²

According to Article 1367 of the Civil Code, hereinafter abbreviated as the Civil Code, the legal responsibility to the person suffering loss is not only limited to his own actions but also the actions, employees, officers, agents, representatives when causing harm to others, so long as the person acting in accordance with the duties and duties imposed on that person.

In accordance with article 40 of Law No. 17 of 2008 concerning Shipping (Law 17/2008), basically the carrier shall be liable for the destruction, loss or damage of the goods transported since the goods are received by the carrier of the sender / owner of the goods, is a consequence of the transport agreement that has been held between carrier by passenger or owner of goods or shippers, the responsibility

¹¹ Anggita Neviana Dewi, Hendro Saptono, and Rinitami Njatrijani. "Pertanggungjawaban ekspedisi muatan kapal laut (EMKL) dalam hal ganti kerugian atas kerusakan atau kehilangan barang kiriman melalui laut (di PT Danatrans Service Logistics Semarang)." *Diponegoro Law Journal* 6, No. 2 (2017): 1-13.

¹² Adam Setiawan, "Tanggung Jawab Hukum Perusahaan Perkapalan Terhadap Pengguna Jasa Angkutan Perairan Pedalaman", *Thesis* (Yogyakarta: Universitas Atma Jaya Yogyakarta, 2017).

contained in article 40 of Law 17/2008, the clarified in article 41 of Law 17/2008.

Based on the provisions of article 41 paragraph (3) it can be obtained that the responsibility as referred to in Article 41 (1) of Law 17/2008, is resulting from the operation of the vessel, the carrier is also required to insure such responsibilities. If the transport company does not implement the provisions of article 41 paragraph (3) above, may be subject to appropriate sanctions with Article 292 of Law 17/2008.

Goods or merchandise of merchants / entrepreneurs submitted to shipping companies to be transported by ship; usually between the shipper / shipper and the consignee are not familiar with each other and additionally they often do not know the employee of the shipping company from either the shipping company or the port of loading port discharge. Delivery of goods to shipping companies to be transported is based on trust alone.

Such responsibility is also known in the common law system, if the passenger as the consumer wishes to obtain compensation for the loss suffered, the passenger shall prove the mistake of the carrier as the business actor. This provision is in line with Article 143 of Law 17/2008, which states that the carrier is not liable for damages due to lost or damaged baggage of the cabin, unless the passenger can prove that the loss is caused by the act of the carrier or the person he hired. Thus, it can be seen that against the baggage loss of the cabin, to file a claim, the passenger must prove that the loss was due to the mistake of the carrier or the person he employed. Responsibility on the basis

of errors must meet the following elements: (1) There is an oversight; (2) Loss, and (3) The disadvantage exists with an oversight.¹³

In the carriage of goods, it is possible that an event that may cause harm to the owner or shippers of goods, the loss can be a reduction in the amount of goods, damage to it can be filed demands compensation to the carrier. Against these demands there are limits of responsibility of the carrier. Provisions on such responsibilities can be found in the KUHD, The Hague Rules, The Hamburg Rules and according to practice. The period of responsibility of the carrier under the Criminal Code begins at the time the goods are received until the moment of submission (Article 468 KUHD). In The Hague Rules since the goods are loaded on board until unloaded from the ship.¹⁴

According to The Hamburg Rules from the moment the goods are occupied at the port of loading (Lading), during transport and at the port of demolition whereas in practice it is usually adjusted to the ports and international regulations selected in B/L.¹⁵

The responsibility of the carrier in sea transport to passengers shall commence upon the transportation of passengers to the agreed destination. Likewise, the responsibility for the goods owner (sender) begins since the goods are accepted to be transported until the goods are delivered to the sender or receiver. Which is where the

¹³ Elfrida R. Gultom, "Merefungsi Pengangkutan Laut Indonesia melalui Tol Laut untuk Pembangunan Ekonomi Indonesia Timur." *Develop* 1, No. 2 (2017).

¹⁴ Purwosutjipto Purwosutjipto, *Pengertian Pokok Hukum Dagang Indonesia 3: Hukum Pengangkutan* (Jakarta: Djambatan, 1991).

¹⁵ Ni Made Trevi Radha Rani Devi, and I. Wayan Parsa. "Tanggung Jawab Perusahaan Angkutan Terhadap Kerusakan Barang Yang Diangkut dalam Transportasi Laut." *Kertha Semaya: Journal Ilmu Hukum* 5, No. 1 (2017).

responsibility is due to an accident. An accident is an undesirable and unexpected event that may cause human and / or property loss.¹⁶

The extent of the responsibility of the carrier in the transport of goods and the passenger of the sea transport of commerce in practice / custom there are 2 (two) kinds.

1. From tackle to tackle

This means that the responsibility for transport begins once the cargo or passenger is removed in the hull of the loading and ending vessel to the destination port.

2. From warehouse to warehouse

This means that the responsibility of the carrier begins since the goods entered the shipping company's warehouse loading ports ends up to the warehouse shipping company at the port of destination until the goods are delivered by the sender or owner.

Therefore, according to the provision of Article 469 KUHD which reads for stolen or loss of valueable goods and goods that are easily damaged or get damaged is the responsibility, that is why he receives transportation services in return for his achievement. Except it is not the carrier is fully responsible but when the nature and the goods are not properly informed by the carrier. 8 Soegijatna Tjakranegara, Law of Freight and Passenger Transportation, Publisher Rineka Cipta, Jakarta, 1995, p. 165 6 With regard to the exemption of the responsibility of the carrier is also affirmed in Article 470 of the Criminal Code stipulating that the carrier is authorized to require that he shall not be liable of a certain amount of any goods transported

¹⁶ Hanna Nurhayati Candra Dewi, and Ambar Budhisulistiyawati. "Tanggung Jawab Perusahaan Pengangkutan Java Motor Transport Semarang Terhadap Pemilik Barang Apabila Terjadi Keterlambatan dan Kerusakan Barang Angkutan." *Jurnal Privat Law* 6, No. 1 (2018): 60-69.

unless he is informed of the nature and value of his goods before or at the time of receipt.¹⁷

In the transport law, there are five principles of responsibility of the carrier:

1. Responsibility for Presumption of Liability

According to this principle, it is emphasized that it is always responsible for any loss incurred on the transport it carries, but if the carrier can prove that he is innocent, then he is exempt from responsibility for paying the damages. This burden of proof is given to the injured party and not to the carrier. This is stipulated in article 1365 of the Civil Code of illegal act as a general rule and the rules are specially regulated in the laws concerning each carriage.

In the KUHD also embraces the principle of responsibility because of the presumption of guilt. In the provision of Article 468 paragraph (2) KUHD namely:

"If the goods are not delivered in whole or in part or damaged, the carrier shall be liable to indemnify the sender, unless he can prove that it is delivered in whole or in part or in damaged goods due to unavoidable or unavoidable events."

Thus, it is clear that in Indonesian transport law, the principle of liability by mistake and because of the guilty presumption are both embraced. But the principle of liability by mistake is the principle, while the principle of responsibility by presumption is an exception, meaning the carrier is responsible for any loss incurred in the conduct of transport, but if the carrier succeeds in

¹⁷ Nober Marthen, "Tinjauan Yuridis Tanggung Jawab Nahkoda dalam Pengangkutan Barang di Laut", *Thesis*. (Manado: Tadulako University, 2015).

proving that he is innocent or negligent, then he is exempt from responsibility.

2. Responsibility on the basis of Error (Based on Fault or Negligence)

Understandably, in this principle it is clear that every carrier shall be liable for errors in the conduct of transport and shall indemnify and the aggrieved party shall prove the error of the carrier. This burden of proof is given to the injured party and not to the carrier. This is stipulated in article 1365 of the Civil Code of illegal act as a general rule and the rules are specially regulated in the laws concerning each carriage. In the KUHD, this principle is also adhered to in article 468 paragraph (2).¹⁸

3. Absolute Liability Responsibility

On this principle, the emphasis is on the cause rather than the fault. According to this principle, the carrier shall be liable for any losses arising in transport carried out without the necessity of proving the existence of a carrier error. This principle does not recognize the burden of proof, the element of error need not be questioned. The carrier may not be liable for any reason that causes the loss. This principle can be formulated with the sentence: the carrier is responsible for any losses incurred due to any event in the conduct of this carriage.

In the legislation concerning transportation, the principle of absolute responsibility is not regulated, perhaps for the reason that the carrier in the field of freight services does not need to be burdened with too much risk. However, it does not mean that parties should not use this principle in the transport agreement. The parties may promise the use of this principle for the practical

¹⁸ Ridwan Labatjo, "Analisis Yuridis Tentang Kedudukan Prinsip Tanggung Jawab Mutlak (Absolut of Liability) dalam Penyelenggaraan Pengangkutan Barang dengan Kapal Laut di Indonesia." *Jurnal Yustisiabel* 3, No. 1 (2019): 1-15.

use of settlement of responsibilities, on the basis of freedom of contract. If this principle is used then the transport agreement shall be expressly stated, for example in the transport document.

4. Limitation of Liability

If the amount of indemnity as stipulated by Article 468 of the Criminal Code is not restricted, then there is the possibility that the carrier will suffer loss and fall into bankruptcy. Avoiding this, the law provides restrictions on compensation. Thus, the limitation of indemnity may be made by the carrier himself by means of a clause in the charter party, and by the legislator.

5. Presumption of Non-Liability

In this principle, the carrier is deemed to have no responsibility. In this case, it does not mean that the carrier relieves itself of its responsibilities or is liable to be dependent on the object it carries, but there are exceptions in accounting for an event on the object in the transport.

The principles of responsibility of carrier companies governed by the Shipping Law contained in article 40 and 41 states that transport companies use the principle of responsibility of the absolute carrier and the principle of guilty presumption responsibility.¹⁹

IV. CONCLUSION

In the realm of transportation there must be a reciprocal relationship between certain parties namely the carrier and also those who use the transport services. In such reciprocity there is no denying there could be a dispute or accident in the case of transportation. Therefore, in

¹⁹ Sendy Anantyo, Herman Susetyo, and Budiharto Budiharto. "Tanggung Jawab Pengangkut Terhadap Barang Muatan Pada Pengangkutan Melalui Laut." *Diponegoro Law Journal* 1, No. 4 (2012).

order to avoid such matters, it is necessary to have a legal relationship binding and regulated in law between both parties or more so that the transport process can run well and guaranteed performance and quality. Not only a legal relationship between the carrier and the carrier, but also the full sense of responsibility of a carrier. A carrier shall be responsible for the mandate given by the user of the freight service on the goods or the other in the event of a damage occurring which results in a loss to the user of the carrier. A carrier must be responsible for what he hauls so that the goods transported can also get to the destination in good condition and in accordance with the wishes of the service user.

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COMPETING INTERESTS

The Authors declared that they have no competing interests.

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