



Legal Protection and Liability for Multimodal Transport Operators in The Transport of Dangerous and Toxic Goods

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Abstract

Legal protection protects human rights that harm other people, and every human being is provided with this protection in order they can savor all of their legal right. In other words, legal protection is various legal remedies that must be provided by law enforcement officials to provide a sense of security, both physically and mentally as well as interference from various threats originating from any party. In contrast, transportation law can be interpreted as the overall legal norms and principles governing relationships and consequences of transportation law. This research shows that a form of legal protection for transportation service users can be provided in the form of preventive and repressive legal protection. The responsibility given to service users is in the form of compensation or compensation in the event of damage or loss of goods in the transportation process. There are two approaches used by researchers in this thesis, namely the Legislative Approach and the Conceptual Approach. In this legislative approach, the approach in legal research that provides an analytical point of view of problem-solving legal research is seen from the aspects of the legal concepts that lie behind it or even can be seen from the values contained in the normalization of regulation with the concepts used. Most of these approaches are used to understand the concepts related to normalization in legislation, whether they are in accordance with the spirit contained in the underlying legal concepts.



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A. Introduction

Legal protection protects human rights that harm other people. Every human being is provided with this protection in order they can savor all of their legal right. In another way, we can define legal protection as a series of legal remedies provided by law enforcement officials with the aim of providing a sense of security, not only mentally, but also physically from interference and various threats originating from any party. The law of transportation is a mutual contract between the carrier and the sender, where the carrier binds its parties to safely transport goods or persons to the agreed place of destination. Based on that, the sender agrees to pay the freight.¹ That the law of transportation can be governing the relationship and legal consequences of transportation. What is meant by transportation here is the transfer of goods or passengers from the place of departure to the place of destination using specific means of transportation operators of sea transportation services have a great responsibility in carrying out transportation². This is because, as a carrier, service providers are obliged to transport goods to their destination safely. In the transportation of goods by sea, it is known that there is a principle that the carrier is always responsible (presumption of liability principle) where all losses incurred during the process of carriage are always the responsibility of the carrier, but if it can be proven that the losses suffered are not due to the fault or negligence of the carrier, then the carrier may be released from part or all of its liability. In this case, the transportation service provider is protected by law regarding responsibility, liability, administration, and crime. Second, settlement of disputes regarding the transportation of goods by sea can be pursued in two ways: settlement of disputes through a court and outside the court and settlement of disputes through compensation³. The agreement is made to explain the steps or pro-

cedures for sending the goods from the hands of the consignor to the consignee. In addition to explaining the delivery procedure, the agreement was also made to anticipate that there would be a default done by one party. In addition, the agreement for the carriage of goods is also made to explain each party's position if unexpected things cause a problem. In principle, transportation is an unwritten agreement. The parties can determine the obligations and rights that must be met in transportation. The law only applies if the parties do not specify otherwise in their agreement and as long as it does not harm the public interest.

The carrier, in this case, the provider of transportation services, has an essential role in transporting goods safely, quickly and intact. This is based on Article 468 of the Commercial Code, which states: "The agreement for transportation obliges the carrier to maintain the safety of the goods that must be lifted, from the time he is received until the time the goods are handed over." Following the contents of the article, losses incurred in carrying out the transportation of goods are the responsibility of the forwarder. Interpreted as a whole of legal norms and principles.

B. Method

The writing of this research uses a normative juridical approach which focuses research on conceptual approaches, statutory regulations. The research specifications used are analytical descriptive, namely providing a complete and accurate picture of data related to the object of the problem as a result of literature studies of various literature and statutory regulations used to research, explore and examine the implementation of protection and accountability owner of multimodal transportation in the transportation of dangerous goods and. poisonous. Next, the data obtained will be checked for validity, so that the data collected can be analyzed, interpreted, considered, and conclusions drawn to be expressed in sentences.

C. Results and Discussion

The Liability of Multimodal Transport and The Basis of Liability and Burden

1 Sidarta, *Hukum Perlindungan Konsumen* (Jakarta: Grasindo, 2000), 25.

2 Wiwoho Soedjiono, *Sarana-Sarana Penunjang Pengangkutan Laut, Aid to Navigation*, (Jakarta: Bina Aksara, 1983), 1.

3 Soekardono, *Hukum Dagang Indonesia, 2 edisi*, (Jakarta: Rajawali Press, 1994), 18.

of proof under Hamburg Rules

The importance of transportation can be more clearly felt by the community in matters relating to daily life, for example, in the procurement and supply of essential commodities, fuel oil, and others, where if the transportation jams, then immediately the community will feel it because transportation it is a bridge between producers and consumers. Among the various types of transportation is transportation by sea, where the ship is a means of transportation. Indonesia is a maritime country, meaning that Indonesia's territory consists of a series of islands separated by seas and straits. In order to maintain the continuity or existence of a shipping company by sea using a ship as a means of transportation, the carrier is burdened with particular responsibilities for the goods received from the sender to the cargo. Liability consists essentially of 2 aspects: responsibility, which is an obligation that must be carried out as well as possible (responsibility), and responsibility for compensation (Liability), namely the obligation to provide compensation to the aggrieved party. In the act of breach of contract, within the framework of an agreement at issue, in what terms can the carrier be held accountable, and in what cases can he not be held accountable so that the issue of Liability in sea transportation focuses on the issue of Liability of the carrier.⁴ Article 468 paragraph 2 of the Criminal Code states that the carrier is obliged to compensate for all losses caused by goods that should have been delivered or part of them could not be delivered, or due to damage to the goods unless it can be proved that the goods were not delivered or the damage was caused by an unpreventable or avoidable disaster or defects in the goods or due to the fault of the person who sent them. This provision is the basis for Liability for compensation, where the carrier must provide compensation to the injured party. The basis for Liability for damages is also contained in article 5 of the Hamburg Rules, which states that The Carrier has responsibility for losses incurred due

4 Robert Hallawell, 'Allocation of Risk Between Cargo Owner and Carrier', *the American Journal of Comparative Law* 27, no. 3 (1979).

to damage or loss of goods in the event of damage, delay or loss that occurs while the goods are in possession. Basis of Liability and Burden of proof under Hamburg Rules the probe into the International Convention on the Carriage of Goods by Sea (1978) (Hamburg rules) about the basis of the carrier liability and its concomitant burden of proof begins with art- 5(1) which states:

The carrier is responsible for any losses caused by loss of or damage to the goods, as well as from delay in delivery, if the occurrence which caused the damage, delay, or loss took place while the goods were in his charge as defined in art four unless the carrier proves that he, his servants or agents took all measures that could reasonably be required to avoid the occurrence and consequence.⁵ In order to establish the required standard of care of the carrier and its agents, the convention uses all measures that may be reasonably necessary to avoid damage, delay or loss. These measures include the carrier's essential obligations regarding the seaworthiness of the ship and the maintenance of the goods.⁶ Caution prescribed under this provision would reasonably leave much room for the lawyers to argue for the courts to decide particular cases. The carrier's duty remains personal because he is responsible for the act or omission of his employees and agents as similar with Hague-Visby rules. Therefore the carrier is liable unless he can prove otherwise, the basis of their liability is a presumed fault. This is not directly stipulated, but it is found in Understanding Adopted by the United Nations Conference on the Carriage of Goods by Sea. This annex added after the Hamburg rules, states:

It is the common Understanding that the carrier's liability under this convention is based on the principle of presumed fault or negligence. Accordingly, the burden of proof rests on the carrier, but concerning some instances, the convention's provision modi-

5 Rand R. Pixa, 'The Hamburg Rules Fault Concept and Common Carrier Liability under the US Law', *Virginia Journal of International Law* 19, (1979).

6 Joseph C.Sweenly, 'UNICTRAL and The Hamburg Rules: The Risk Allocation Problem in the Maritime Transport of Goods', *Journal Of Maritime Law and Commerce* 22, no. 3 (1999).

fies this rule.

Usually, what constitutes fault under this common Understanding should be determined by the duty imposed under art-5(1) of the convention, carrier's failure to take all 'measures that could reasonably be required to avoid the occurrences and its consequences.' The burden of establishing that the carrier has exercised "measures that could reasonably be required" is on the carrier. This establishes a similar burden under art-IV (2) of the Hague rules.

Since it will be covered under the allocation of the burden of proof later, successfully maintaining responsibility needs the carrier to show that has fulfil performed the required level of care from them and the true cause of the loss or damage. When the real cause occurs in an event where the convention exempts the carrier, it could be invoked as a defense. In the next section, the author will discuss if there have been substantial changes to the carrier's duties with the advent of this new convention. As stated elsewhere, this convention has made a new structure of the basis carrier liability. The allocation of the burden of the proof follows this new structure. The central rule of carrier liability is provided under Article 17 of the Rotterdam rules which lengthy and complicated compared to the corresponding provisions of other maritime conventions⁷. Nevertheless, it indicates that the carrier's liability is based from "fault". The main rule of the first two sub-articles provides that liability is based on fault caused by the carrier or by a person for whom he is liable according to art-18, but in this case the burden of proof is reversed.

Art-17 provides: 1. The carrier is liable for loss of or damage to the goods, appropriately for delay in delivery if the claimant proves that the damage, delay, or loss whether the event or circumstance that caused or contributed to it took place during the period of the carrier responsibility as defined in chapter 4; 2. The carrier is relieved of all or part of its liability according to paragraph 1 of this article if it proves that the cause or one of the causes of the damage, delay, or loss is

not attributable to its fault or the fault of any person referred to in Article 18; 3. The carrier is also relieved of all or part of its liability according to paragraph 2 of this article if, otherwise, to attesting the lack of fault as stated in paragraph 2 of this Reading through the lines of these rules, one can quickly discover that Rotterdam rules have maintained a system of accountability in the form of "presumed fault-based" as the basis of the principle of carrier liability. In this respect, the approach to the Hamburg and Hague-Visby rules has no significant change. Nevertheless, the text is significantly different in structure and wording.¹⁵⁵ The Rotterdam rules have incorporated the carrier's liability to include losses resulting from delays.¹⁵⁶ Still, the rules derivate relevant rules in the previous conventions and are indeed based on them. One manifestation of such dependence is that it has preserved the liability of a carrier for faults of servants and agents of the carrier under art-18.¹⁵⁷It attempts to remove the drawbacks of the Hamburg and Hague-Visby rules. At the same time, it reflects elements of both instruments.⁸

The allocation of evidentiary burden begins after it is determined that there is "damage, delay, or loss" by the claimant in the delivery of goods (prima facie case). The burden of proof in maritime cargo cases alternate constantly between the carrier and the claimant until the disputes reaches a conclusion. As a result, it involves a series of rounds of evidentiary burden. If the relevant problem is successfully proven in each round, the conclusion is that "the carrier is liable" (clauses 17.1, 17.4 and 17.5) or that the carrier is relieved from all or part of its liability (clauses 17.2 and 17.3). The burden of proof under the Hague-Visby rules is based on the interrelationships of the duty of the carrier, the specific duty breached by the carrier of his agents, and the exoneration invoked. (article III and IV of the Hague-Visby rules).⁹ There-

⁸ Zamora, 'International carrier Liability', *The American Journal of Comparative Law* 23, (1975)

⁹ Samuel Robert Mandelbaum, 'Creating Uniform Worldwide Liability Standards For Sea Carriage of Goods Under the Hague, COGSA, Visby And Hamburg Conventions', *Transport Law Journal* 23, 1996

fore, the clear-cut formula hence cannot be expressed as an allocation of evidentiary burden. Normally, the responsibility to proving start after the cargo interest establishes his prima facie case by showing the damage or loss that occurred while the cargo was in the carrier transport. The system adopted under The Hague-Visby rules is the alleged fault liability system. Hence once the prima facie case has been established, the burden of destroying the presumption shifts to the carrier.¹⁰ The carrier tries to return of the cargo interest by showing he has exercised the due diligence to keep the ship seaworthy (if there is an alleged unseaworthiness) and show the real cause of damage or loss. In addition, he has to show it was impossible to avoid damage or loss by due diligence or the cause of failure according to art-4(2) (q) of the Hague-Visby rules. Alternatively, the carrier should prove that the cause of damage or loss is one of the 'perils of the sea' exempted under article IV (2) (a)-(p) of the Hague-Visby rules. There are a group of exceptions where the carrier is exempt from liability despite fault. The carrier may use any of the exceptions, and what he proves follows from his choice of exemptions/s

The International Convention on the Carriage of Goods by Sea (1978) (the Hamburg rules), used to replace The Hague-Visby rules, maintaining a fault-based carrier liability system. Hamburg rules do not impose express seaworthiness obligations on carriers.¹¹

Nonetheless, it has retained the fundamental obligation of the carrier to look after the cargo for a long time (port-to-port). The standard of care is not prescribed. It is based on the interpretation of the phrase 'measures that could reasonably be required to avoid damage, delay, or loss' of art-5(1). Furthermore, The Hague-Visby rules for listing the carrier's catalog of immunizations are not followed by the Hamburg regulations. It explicitly abolishes the traditional exemption of navigational error and error in the management of the vessel¹². Additionally, it alte-

red how the ability to invoke fire immunity could be done. This new rule of law adopts a 'complete or unified fault' liability system.

The Form and The Scope of Legal Protection for Multimodal Transportation Operators

Legal protection protects human rights that other people harm, and this protection is provided to people so that they can enjoy all rights guaranteed by law. In other words, legal protection is various legal remedies that must be provided by law enforcement officials to provide a sense of security, both physically and mentally as well as interference from various threats originating from any party. The law of transportation is a reciprocal agreement between the carrier and the sender, in which the carrier binds himself to carry out the safe transportation of goods and people from a place to a particular destination. In contrast, the sender binds himself to pay the freight.¹³ That the law of transportation can be interpreted as a whole of legal norms and principles governing the relationship and legal consequences of transportation. What is meant by transportation here is the transfer of goods or passengers from the place of departure to the place of destination using specific means of transportation. The meaning of commercial carrier is public transportation by charging fees. What is meant by a freight agreement is an agreement between the carrier and the sender or passenger in which the contents are.¹⁴ The carrier promises to carry out the transportation of goods or passengers, while the sender or passengers promise to pay freight or transportation costs.¹⁵

Legal protection is the protection of dignity and recognition of human rights owned by legal subjects based on legal provisions from arbitrariness or as a collection

of Limitation in Maritime Conventions: Past, Present and Future of Limitation of Liability' in Peter Ehlers and Rainer Lagoni *Responsibility and Liability in the Maritime Context* (2009).

13 Soegijatna Tjakra Negara, *Hukum Pengangkutan Barang dan Penumpang* (Jakarta: Rineka Cipta, 1995), 75.

14 Rahayu, *Hukum Pengangkutan di Indonesia*, [Citra Mentari 2016], 22.

15 Martono, *Pengantar Hukum Udara Nasional dan Internasional*, [Jakarta: RajaGrafindo Persada, 2007], 48.

10 Rand R. Pixa, *Loc.cit.*

11 Dewey R. Villarreal Jr. 'Carrier's Responsibility to Cargo and cargo to carrier', *Tulane Journal XLV*, (1971).

12 Verena Lahmer, 'Limitation of Liability and Denial

of rules or rules that can protect against something. Concerning consumers, it means that the law protects customers' rights from something that results in the non-fulfilment of these rights. Legal protection can be divided into 2 (two), namely:

Preventive Legal Protection. The government protects to prevent violations before they occur. This step is a form of prevention of violations that may occur and as a limitation in the implementation of obligations contained in laws and regulations

Repressive Legal Protection. Repressive legal protection is the last protection in the form of sanctions such as fines, imprisonment and additional punishment when a dispute occurs, or an offence has been committed. In Law Number 8 of 1999 concerning Consumer Protection article 6, it is stated the rights of business actors, where these rights consist of the right to receive payments following an agreement regarding the conditions and exchange rates of traded goods or services, the right to obtain legal protection from bad faith from consumers, the right to defend oneself properly in legal settlements of consumer disputes, the right to rehabilitate one's good name if it is legally proven that the loss suffered by the consumer is not from the goods or services being traded, and the rights regulated in terms of other laws and regulations. Business actors are often interpreted as entrepreneurs of goods and services, including manufacturers, wholesalers, and retailers. Article 1, paragraph (3) UUPK, provides the following understanding of business actors: "Business actors are any individual or business entity, whether in the form of a legal entity or not, established and domiciled or carrying out activities within the jurisdiction of the Republic of Indonesia, either alone or jointly. Through agreements on the conduct of business activities in various economic fields."¹⁶

In the elucidation of the Consumer Protection Act, business actors include companies, corporations, BUMN, cooperatives, importers, traders, distributors, and others. So, the meaning of business actors in the Consumer Protection Act is comprehensive

¹⁶ Sidarta, *Loc.cit.* 25.

because their meaning is not limited.

Article 6 of Law Number 8 of 1999 concerning Consumer Protection explains the rights of business actors, namely the right to receive payments following an agreement regarding the conditions and exchange rates of traded goods and services, the right to obtain legal protection from consumer actions those with bad intentions, the right to defend oneself properly in resolving consumer disputes, the right to rehabilitate one's good name if it is legally proven that the consumer's loss was not caused by the goods or services being traded, and rights regulated in other laws and regulations are. Based on the substance of Article 19, it is known that the responsibilities of business actors include: Article 19 says Business actors are responsible for indemnifying losses, pollution or losses to consumers due to consumer goods or services produced or traded. Compensation, as referred to in paragraph 1, can be a refund or return of goods or services, providing compensation according to the provisions of laws and regulations. Compensation is made within 7 (seven) days after the transaction date¹⁷. The provision of compensation, mentioned in paragraphs 1 and 2, does not eliminate the possibility of criminal prosecution based on further evidence regarding the existence of an element of guilt the provisions in paragraphs 1 and 2 do not apply if the business actor can prove that the error is the consumer's fault.¹⁸

According to R. La Porta in the Journal of Financial Economics, the form of legal protection a country provides has two characteristics: preventive and punitive. Law enforcement institutions such as courts, prosecutors, police and dispute resolution institutions outside the court (non-litigation) are the most significant forms of protection. This is in line with the definition of law according to Soedjono Dirdjosisworo, who stated that law has various meanings in society, and one of the most apparent understandings of law is the existence of law enforcement institutions.¹⁹

¹⁷ Djoko Prakoso, *Hukum Asuransi Indonesia*, [Jakarta: Rineka Cipta, 2004], 122.

¹⁸ Sutarman Yodo, *Hukum Perlindungan Konsumen*, [Jakarta: Rajawali Press, 2010], 16.

¹⁹ Rafael La Porta, 'Investor Protection and Corporate

Legal protection always has a close relationship with aspects of justice. In essence, the purpose of the law is to achieve justice. Subjects in civil law are two legal subjects, namely, individual legal subjects and legal entities in the form of legal entities. The legal subject of a person or *natuurlijkepersoon* is a person or human being who has been deemed competent according to the law. A person as a legal subject is a supporter or bearer of rights from the time he is born until he dies, although there is an exception that a baby who is still in his mother's womb is considered to have become a legal subject as long as his interests support it.²⁰

Furthermore, the legal subject in civil law is a legal entity or *rechtspersoon*. A legal entity is a collection of individuals or can also be a collection of legal entities. The law protects a person's interests by allocating power to act in the framework of measurable interests. Interests are the target of rights because they contain elements of protection and recognition.

The principle of legal protection against government actions rests on and originates from the concept of recognition and protection of human rights because, according to history from the West, the birth of concepts regarding the recognition and protection of human rights is directed at restrictions and placing community obligations. And government. The dominant aspect of the western concept of human rights and their status as individuals is that these rights are absolute and inviolable. Because of this concept, it is often criticized that the Western concept of human rights is an individualistic concept. Then with the inclusion of human and economic rights and cultural rights, there is a tendency for the individualistic nature of the Western concept to begin to fade in formulating the principles of legal protection in Indonesia. The principle of legal protection against government actions originates from the recognition and protection of human rights because, according to history from the West, the concept of

recognition and protection of human rights was born from the restriction and placement of people's obligations. And government. The dominant aspect of the western concept of human rights and their status as individuals is that these rights are absolute and cannot be contested. Because of this concept, it is often criticized that the Western concept of human rights is individualistic. Then with the inclusion of human and economic rights and cultural rights, there is a tendency for the individualistic nature of the Western concept to begin to fade in formulating the principles of legal protection in Indonesia.

In terms of legal protection for multimodal transport operators in delivering dangerous and toxic goods, there must be legal protection because this is very sensitive, considering the goods carried are dangerous and toxic. A dangerous item is a substance that can be harmful, either in a natural way, to safety, health or property if transported by plane. The danger posed can also result in safety.

Dangerous goods are goods or elements of hazardous substances that are sensitive to pressure, air temperature, to vibration and can harm the health of living things. Dangerous goods can interfere with and endanger safety during flight and can damage transport equipment. Various dangerous goods can be transported by airplane as long as they comply with the applicable requirements and regulations. Likewise, the rules regarding packaging, labeling, storage, and loading. This can be a guide for those working in the field that handles dangerous goods sent or received. This ensures security and safety are maintained against an accident during flight. Maybe because it was caused by the negligence of the authorized officer or lack of strict supervision of the goods, this could also be the fault of the sender of the goods. Namely, the sender of the goods did not specify what form of dangerous goods they were sending. There may also have been an error in giving information from the sender of goods to the delivery operator. If the officer deviates from the rules, then it is feared that something will happen that can harm humans so that it can harm or damage the facility. Because of this,

Governance', *Journal of Financial Economics* 58, no. 1-2 (1999): 9.

20 H.R Sardjono dan Frieda Husni Hasbullah, *Perbandingan Hukum Perdata*, (Jakarta: Ind-Hill-Co, 1991), 29.

proper and responsible handling of dangerous goods is urgently needed. Even though, in this case, the forwarder has met the requirements to organize the transportation of dangerous goods. As stated in Article 1 point 1 of this Regulation of the Minister of Transportation (Permenhub), dangerous goods are substances, materials, or objects that can potentially endanger health, safety, property, and the environment, as listed in the International Maritime Dangerous Goods Code and its changes. Forms of dangerous goods, namely: Liquid ingredients; solid material; and gaseous material which can be dangerous goods in packaging and other than in packaging.

Port Business Entities and Port Operations Units are required to provide a place for stacking or storing Dangerous Goods to ensure the safety and smooth flow of goods traffic at the Port and are responsible for preparing systems and procedures for handling Dangerous Goods at the Port. 13 paragraph (2), for each packaging of dangerous goods must be given a particular sign and label which must comply with the following conditions: Easily visible and legible; Can be read if the package has been submerged in seawater for a minimum of three months; Placed on a contrasting/popular colored background; Not obstructed/overlapping by other signs; Placed on both sides of the face and back; and Forms of sure signs and labels according to the classification in the provisions of the IMDG Code and its changes.

In addition, ship owners, operators, or agents of national sea transportation companies transporting dangerous goods must submit notifications to the harbor master before the ship carrying dangerous goods arrives at the Port. It is hoped that this regulation will be appropriately considered by the public and can become a guide in handling and transporting dangerous goods at ports.

D. Conclusion

In terms of legal protection in transportation, there must be legal protection for consumers in the use of transportation services. This includes two types. The first is preventive legal protection, namely legal protection before a dispute occurs between the

consumer of the freight forwarder and the freight forwarder. Second, repressive legal protection means resolving disputes between consumers who use transport and transportation services. Based on Consumer Protection Law No. 8 of 1999, which regulates Consumer Protection, a law that protects the owner of goods that uses a transportation company can be found in the application of Articles 4, 6 and 7 of Law no. 8 of 1999 concerning Consumer Protection regulates many rights for consumers.

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