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Review Article

Default in Sea Transportation Agreement

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Abstract: Transportation has a very important role in facilitating the mobilization of goods and or people at home and abroad, one of which is by sea. However, in its implementation for agreements to transport people (passengers) by sea, it often creates problems where passengers as consumers who use sea transportation services do not get their right to a seat even though they have bought a boat ticket according to the ticket price determined by the sea transportation company. The carrier action can be categorized as a default. Default (broken promise or negligence) is the failure to fulfill the performance of one of the parties as specified in the agreement. One form of default in the transportation agreement occurs when the carrier does not carry out his obligations to the passenger according to the evidence of the agreement in the form of a ticket that is sold to the passenger, which results in the passenger experiencing a loss by not feeling comfort and safety on the ship. Therefore, the carrier is fully responsible for losses suffered by passengers.

Keywords: Default; Agreement; Sea Transportation Agreement; Promise

Introduction

The agreement is interpreted as "*the legal relationship between two or more parties based on an agreement that causes legal consequences*". The parties agree to determine the rules or regulations or their respective rights and obligations. The meaning of agreement according to Article 1313 of the Civil Code (Civil Code) is an act by which one or more people commit themselves to one or more other people. Therefore, through an agreement, the parties agree to submit to and implement their respective rights and obligations in accordance with the contents of the agreement. Likewise, with the sea transportation agreement between the passenger as a consumer and the carrier as a business actor.

In Indonesia, transportation has a very important role to facilitate the transportation of goods and or people within and outside the country because transportation can facilitate the flow of

goods and or people from one area to another so that consumers' needs can be met.

According to Purwosutjipto, transportation is a reciprocal agreement between the carrier and the sender, whereby the carrier is bound to carry out the transportation of goods and /or people from a certain place to a destination safely, while the sender is bound to pay the transportation fee (Purwosutjipto, 1991; Sari, 2004). The same thing was stated by R. Subekti said what is meant by a transportation agreement is an agreement where one party undertakes to safely carry people / goods from one place to another, while the other party undertakes to pay the fee (Subekti, 1995; Prayogo, 2016; Moertiono, 2019).

Transportation can be classified as land transportation, air transportation and sea transportation. Whereas from the definition both from Purwosutjipto and R Subekti, transportation agreements can be classified as goods

transportation agreements and people transportation agreements.

However, in its implementation for agreements to transport people (passengers) by sea often creates problems. One of them is the passenger as a consumer who uses sea transportation services does not get his right to a seat even though he has bought a boat ticket according to the ticket price set by the sea transportation company.

As experienced by a passenger named Sherly and her son, who did not get a seat on KM Express Cantika 168 owned by PT Jasa Dharma Indah on the Tulehu route (Ambon Island) to Masohi (Seram Island). The passenger purchases an executive ticket of Rp. 117,000, - per person whose seat number has been listed (Satu Maluku, 2019). From the description of the sea transportation agreement that occurred to passengers on behalf of Sherly above, the carrier does not fulfill its obligations to take passengers and does not provide comfort and rights that should be given to passengers so that they can be categorized as breaches in the sea transportation agreement. Based on the description above, then the problem in this study is how the responsibility of the transport company due to default in the sea transportation agreement?

Result and Discussion

A. Sea Freight Management in Indonesia

According to the meaning of the word transportation comes from the basic word "*transport*" which means lift and carry, load and carry or send. Transport means to lift and carry, load and carry or send. Transportation means the appointment and carrying of goods or persons, loading and shipping goods or persons, goods or persons transported. So, in the sense of transportation, a process of movement or movement from one place to another is concluded (Muhammad, 1991).

Specifically, regarding sea transportation, no definition is found in the Commercial Code (hereinafter as KUHD), which is the definition of transportation contained in Article 466 and Article 521 of the KUHD, namely:

Article 466 KUHD:

Transportation is anyone who is good in the charter agreement according to travel, either with other

agreements, commit themselves to carry out transportation in whole or in part by sea.

Article 521 KUHD:

Transportation in the sense of this chapter is anyone who is good with charter according to time or charter according to travel, either with other agreements, commit themselves to carry out transportation of people (passengers) transport, in whole or in part by sea.

Whereas according to Article 1 point 3 of Law Number 17 of 2008 concerning Sailing (hereinafter referred to as the Shipping Law) it states that Transportation in Waters is the activity of transporting and / or moving passengers and / or goods using ships.

The transportation of passengers at sea is preceded by an agreement between passengers as users of sea transportation services and transport companies. The agreement is contained in the form of a transportation agreement that will give rise to the rights and obligations and responsibilities of the parties. The transportation agreement between the passenger and the transport company is stated in the ticket for the ship.

Regarding the definition of transportation agreement, no definition is given in Book II of the Indonesian Criminal Code. The transportation agreement itself is consensual, so to create a transportation agreement there is no need for written conditions.

In Article 1320 of the Civil Code the provisions of the agreement are valid:

- 1) Agree that they bind the basis;
- 2) The ability to make an engagement;
- 3) A certain thing; and
- 4) A halal cause.

If the four conditions are not fulfilled or violated, the violating party has failed (broken promise). In the sea transportation agreement between the passenger and the transport company, both parties have agreed when the passenger of the ship buys the ship ticket and the transportation company is obliged to deliver the passenger to the destination by providing a sense of security and comfort for the passenger.

B. Responsibilities of the Carrier as a Result of Default in the Carriage Agreement.

According to Article 1367 of the Civil Code, legal liability to people who suffer losses is not only limited to their own actions, but also the

actions, employees, employees, agents, representatives if causing harm to others, as long as the person acts in accordance with the duties and obligations imposed to the person.

The responsibility of the freight company in sea transportation for passengers begins from the time passengers are transported to the agreed destination. Likewise, the responsibility for the owner of the goods (the sender) starts from the time the item is received for transport until it is delivered to the sender or recipient. Which is the responsibility caused by an accident. An accident is an undesirable and unexpected event that can cause human casualties and / or property.

The responsibility of the freight company in sea transportation for passengers begins from the time passengers are transported to the agreed destination. There are several principles of carrier responsibility in sea transportation, namely:

- 1) The Presumption of Liability;
- 2) Liability Based on Fault or Negligence;
- 3) Absolute Carrier Responsibility;
- 4) Limitation of Liability (Limitation of Liability);
- 5) The Presumption of Non-Liability;

The birth of a legal responsibility begins with an engagement that gives birth to rights and obligations. According to the provisions of Article 1233 of the Civil Code the rights and obligations (engagement) are sourced from agreements and laws. Agreements originating from the law are subdivided into acts according to the law and acts against the law, while the emergence of an agreement that is born because of the agreement imposes on the parties to the agreement to carry out the rights and obligations or known as "achievement", if one party does not carrying out achievements can be said to have defaulted.

The scope of defaults in the context of sea transportation is set out in Article 40 paragraph (1) of the Shipping Law which states that; "*Water transport companies are responsible for the safety and security of passengers and / or the goods they carry.*" then in Article 41 paragraph (1) the Shipping Law states; The water transportation company is responsible for the consequences caused by the operation of the ship in the form of:

- a. death or injury of the passenger carried;
- b. destroyed, lost or damaged goods transported;
- c. Delay in transporting passengers and / or the goods transported; or
- d. third party loss.

According to PNH Simanjuntak default is a condition in which a debtor (the debtor) does not

fulfill or carry out the performance as it should as stipulated in an agreement. Default (negligent / negligent) can arise due to the deliberate or negligence of the debtor itself and because of the existence of a state of force (*overmacht / force majeure*). The criteria for a debtor are said to have defaulted if:

- a. Debtor does not fulfill the achievement at all;
- b. The debtor fulfills the performance, but not as it should;
- c. The debtor fulfills the achievement, but is not timely; and
- d. The debtor fulfills the performance, but is not required in the agreement.

In general, a default will occur if one party is declared negligent in fulfilling an achievement or in other words there is a default if one party cannot prove that he has done the default beyond his mistakes or due to forced circumstances. Default carried out by one party of course can cause harm to the other party.

In the sea transportation agreement that occurs in accordance with the case described above, the sea transportation company as a carrier, in this case KM Express Cantika 168 owned by PT Jasa Dharma Indah has defaulted because selling boat tickets exceeds the seating capacity resulting in passengers who have purchased ticket does not get a seat. Even though the ticket purchased by the passenger is clearly stated on the seat number. This of course caused losses to passengers as users of ship transportation services. Passengers as sea transportation service users do not get their rights properly, while the carrier in this case KM Express Cantika 168 owned by PT Jasa Dharma Indah does not fulfill its obligation to provide a sense of security, comfort for passengers. Therefore,

Conclusion

Default (broken promise) is the non-fulfillment of the performance by one of the parties as specified in the agreement. One form of default in the transportation agreement occurs when the carrier does not carry out his obligations to the passenger in accordance with the evidence of the agreement in the form of a ticket (ticket) that is sold to the passenger, which results in the passenger experiencing a loss by not feeling comfort and safety on the ship. Therefore, the carrier is fully responsible for losses suffered by passengers.

Declaration of Conflicting Interests

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