

RESPONSIBILITIES OF LAND TRANSPORTATION COMPANIES FOR CARGO

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ABSTRACT

The purpose of this research is to analyze the legal responsibility of land transportation service companies for cargo. The type of research is empirical legal research. The results of this research are: the legal responsibility of transportation service companies is the achievement of philosophical values, namely justice, benefit, and legal certainty related to the legal obligations that must be fulfilled by the company in carrying out goods or passenger transportation services aimed at protecting the interests of service users, ensuring safety and security in transportation, and guaranteeing compliance with applicable laws.

Keywords: Responsibility; Service Company; Cargo

INTRODUCTION

Loading and unloading services are always closely related to land transport services, serving as a link between loading and unloading companies and service users. A business venture will not be possible without ignoring this aspect of transportation. In addition to that, it is about the transportation of the necessary items to specific locations, in a complete and intact condition, as well as compact and on time. It also involves the transportation of personnel who facilitate the implementation of the enterprise. For example, a business agent, a commission agent, may not be able to fulfil their performance at certain times without means of transport.^[1]

The transportation process is the movement from the point of origin, where the transportation activity begins, to the destination, where the transportation activity ends. Transportation is defined as the movement of goods and people from the point of origin to the point of destination. Furthermore, the transportation process is explained as the movement from the point of origin, where the transportation activity begins, to the destination, where the transportation activity ends.

In transporting goods by land, several types of documents must accompany them, one of the most important of which is the bill of lading (bill of lading) in Article 506 of the Commercial Code. Meanwhile, who is authorized to issue a bill of lading is stated in Article 504 of the Commercial Code, namely the carrier; in addition to that, the captain is also authorized to issue a bill of lading based on Article 505 of the Commercial Code. The increasing frequency of transportation at sea, especially in the transportation of goods from and to abroad, is also regulated in international conventions, in addition to the Commercial Code and government regulations in the field of land transportation.^[2]. Therefore, as land transportation develops, legal efforts are needed to protect the interests of the parties involved in land transportation through the development of strict legal norms or rules to reflect the balance in the weight of the responsibilities and rights arising from each party.

The better the available transportation facilities and equipment, the better the community's economy. This indicates that it is becoming increasingly easier for people to obtain existing sources of livelihood. Following the mandate of the General Guidelines of State Policy above, it shows that development in the land transportation sector is directed, among other things, at increasing trade activities between islands (inter-island), besides trade between countries (import-export). The increase in the flow of goods and services through land-based trade activities means that the existence of land transportation service companies and service companies that are related to land transportation activities, such as land freight forwarding companies and loading and unloading companies (PBM), plays a very large role.

Responsibility in the transportation of goods adheres to the principle of responsibility based on the presumption principle, which means that the carrier's responsibility can be avoided if the carrier can prove that he is not at fault. This is by Article 91 of the Commercial Code (hereinafter referred to as the KUHD), which states that the carrier is responsible for all losses that occur unless the carrier can prove that the loss is caused by a defect in the goods themselves, force majeure, or due to the error or negligence of the sender or forwarder.^[3]

The development of companies loading and unloading goods and services by land and in line with the development of land transportation activities, the government has attempted to regulate the activities of land transportation companies through the issuance of Presidential Instruction Number 4 of 1985 concerning the Policy for the Smooth Flow of Goods to Support Economic Activities which was later updated with Presidential Instruction Number 3 of 1991 concerning the Policy for the Smooth Flow of Goods to Support Economic Activities.^[4]

The presidential instruction stipulates, among other things, in order to reduce the costs of loading and unloading goods, which include Stevedoring, cargodoring, receiving and delivery, the loading and unloading of goods is carried out by companies established for this purpose, namely Stevedoring Companies (PBM). The definition of PBM is further regulated in the Decree of the Minister of Transportation, Article 1, paragraph (e), namely companies that specifically operate in the field of loading and unloading of goods from and to transport vehicles, both from and to Line I warehouse and directly to transportation equipment.^[5]

In Indonesia, transportation plays a crucial role in advancing and facilitating domestic and international trade. Transportation facilitates the flow of goods from production areas to consumers, thereby meeting consumer needs. This is evident in the recent progress of transportation services in Indonesia, as evidenced by the increasing number of industrial companies trusting transportation services.

Likewise, land transportation activities occur because of an agreement between two parties, namely the transportation service provider and the service user.^[1] With this agreement, the carrier is responsible for the safety and security of the transport vehicle (container truck) and its cargo, especially during shipping or during transportation, as stated in Article 468 of the Commercial Code.

It is important to understand that the business activities of a Loading and Unloading Operator (PBM) include the unloading and loading of goods from and to transport vehicles (container trucks). In principle, this Loading and Unloading Operator (PBM) activity is one link in the chain of land transportation activities. Where goods are to be transported to the transport vehicle (container truck) require unloading before being moved either from the Line I warehouse or directly from the transport vehicle.

Likewise, goods to be unloaded from a container truck also require unloading and transfer to the Line I warehouse or directly to the next means of transport. The loading and unloading business carried out by a loading and unloading company is a service activity that operates in the loading and unloading of goods from and to container trucks, which consists of the following activities: stevedoring, cargodoring and receiving/delivery.^[6]

Of all the series of loading and unloading activities of goods in this case, the one burdened with responsibility for the goods is the loading and unloading company, which has the status of a legal entity by the Decree of the Minister of Transportation Number KM 13 of 1989 dated February 22, 1989. The loading and unloading company running its business is required to have a business permit issued by the Minister or an appointed official. The business permit is issued by the Head of the Regional Office of the Ministry of Transportation on behalf of the Minister. The loading and unloading company is required to implement the provisions stipulated in the loading and unloading company business permits.

The role of loading and unloading operators whose range of activities includes work stevedoring, cargodoring and receiving/delivery can support economic development and improve public services for the smooth and safe flow of goods on land. Currently, many service users, both senders and recipients of goods, are disappointed with the services of loading and unloading services due to the many risks that arise for goods sent by service users, resulting in losses. Therefore, there must be clarity of responsibility from loading and unloading companies, and clarity of risks to goods sent by service users. Throughout the era of human civilization, transportation has always played a vital role in human life. This role is increasingly decisive in connection with the increasing development of society, along with the progress of society itself.^[7]

The transportation process will not be carried out without the presence of goods or cargo as the object of the transportation activity. Cargo or cargo is simply defined as all goods (goods) sent by air (airplane), sea (ship), or land (container truck) which are usually traded, both between regions/cities within the country and between countries (international) which is known as export-import/ Whatever the type, all goods sent except postal items and passenger baggage, whether traded (export-import) or for other purposes (non-commercial) and equipped with transportation documents (SMU or Air Way Bill).^[8]

RESEARCH METHODS

Legal research can generally be classified into two types: sociological empirical legal research (field research), which is research conducted using an approach to legal reality in society. This research is based on the existence of symptoms in the form of a gap between expectations (the sole) with the statement (that is) in the field of law. and normative legal research, namely research conducted with an approach to legal norms or substances, legal principles, legal theory, legal arguments and comparative law. In this study, the author combines the two types of research, namely, in this type of research, the researcher conducts research by combining both types of Normative and Empirical research with a Qualitative approach as mentioned above in a study.

DISCUSSION

Transportation is a reciprocal agreement between the carrier and the sender, where the carrier binds himself to carry out the transportation of goods and/or people from one place to a certain destination safely, while the sender binds himself to pay the transportation fee. The parties involved in the transportation process are the carrier and the shipper. The nature of the agreement created is reciprocal, with each party having its obligations. The carrier must safely transport goods and/or people, while the shipper must pay the transportation fee. Regarding

transporting, this means that the transport can be carried out by the carrier himself or by another party on his instructions. By safe, it is meant that if the transport is not carried out safely, the carrier will be responsible.

Transportation, according to Law Number 22 of 2009 concerning Road Traffic and Transportation, is the movement of people and/or goods from one place to another using vehicles in road traffic space. According to the Commercial Code, transportation law is a law that regulates reciprocal agreements between carriers and senders, where the carrier binds himself to organize the transportation of goods and/or people to a certain destination, while the other party (Sender-Recipient or Passenger Sender) is required to fulfill certain payment costs for the transportation. According to the Civil Code (KUHP), transportation law is a law that regulates reciprocal agreements between carriers and senders, where the carrier binds himself to organize the transportation of goods and/or people from one place to a certain destination safely, while the sender binds himself by paying the shipping/transportation costs.

As for the meaning of transportation law when viewed from a civil perspective, we can point to the whole of various regulations, both inside and outside the codification (Civil Code; KUHD) which are based on and aim to regulate legal relations that arise due to the need to move goods and/or people from one place to another to fulfill obligations that arise from certain agreements, including agreements to provide intermediaries to obtain. The agreement creates an obligation between the two people who make it. An agreement is also called an agreement, because both parties agree to do something.

Regarding the definition or meaning of an obligation, there are no provisions in Book III of the Civil Code. According to legal science, an obligation is a relationship that occurs between two or more people in the field of wealth, where one party has the right to performance and the other party is obliged to fulfil that performance.

According to J. Satrio, an agreement is a legal relationship in the field of property law between two parties, where one party has rights and the other party has obligations. The Commercial Code does not contain a definition, form, or conditions for entering into a transportation agreement. Therefore, Article 1 of the Commercial Code states that the Civil Code also applies to matters regulated in the Commercial Code. The Commercial Code does not specifically regulate deviations, so this article determines the application of the Civil Code. According to Sri Redjeki Hartono, a (land) transportation agreement can occur without a transportation letter, meaning it can occur verbally or verbally. Therefore, an agreement is sufficient.^[9]

Article 90 of the Commercial Code stipulates that a transport document is not a valid requirement for a valid contract, as it does not require signatures from both parties (sender and carrier). A transport contract is a two-party agreement. Therefore, it merely serves as evidence of the existence of a transport contract.^[10]

It is merely a statement that the carrier or captain is willing to accept the goods to be transported according to the terms and conditions as written in the said transport letter. However, in practice, this transport agreement is consensual, meaning that for the existence of a transport agreement, it is sufficient if there is an agreement of will between the sender and the carrier. And there is no need for a bill of lading. Hence, the bill of lading regulated in Article 90 of the Commercial Code is only a mere means of proof of the existence of a transport agreement. Regarding the way in which a transport agreement occurs, it refers to a series of acts regarding offers and acceptances carried out; a series of such acts is not regulated in the Law, but rather exists in the customs that live in the practice of transport. The customs in transport referred to are when the Law does not regulate the obligations and rights, and conditions desired by the parties, or even if regulated, but are felt to be less the wishes the parties' desire. Then the parties follow the customs that have been in force in the practice of transport.

According to R. Soekardono, a transportation agreement is: "A reciprocal agreement, in which the carrier binds itself to carry out the transportation of goods and/or people to the destination. While the other party (sender, recipient, sender or recipient and passenger) is required to pay certain costs for the transportation."^[11]

Meanwhile, Abdulkadir Muhammad provides the following definition: An agreement by which the carrier binds itself to organize the safe transportation of goods and/or passengers from a destination. And the sender or passenger binds themselves to pay the transportation costs. What is meant by parties in land transportation are legal subjects who support the rights and obligations in the legal relationship of transportation. Regarding whom the parties are in transportation, there are several opinions put forward by experts, including: explains that in sea transportation, especially regarding the transportation of goods, three elements need to be considered, namely the sender of the goods, the recipient of the goods and the goods themselves.

According to H.M.N. Purwosutjipto, the parties involved in transportation are the carrier and the shipper. The carrier is the person who commits to transporting goods and/or people safely from one location to another. The opposite of the carrier is the shipper, who commits to pay the transportation fee, also meaning that he or she provides the cargo.^[12]

According to Abdulkadir Muhammad, the legal subjects of transportation are "those who support the obligations and rights in a legal relationship, namely the parties directly involved in the contractual process as parties to the transportation agreement." These include the carrier, shipper, passenger, recipient, forwarder, travel agent, loading and unloading operator, and warehouse operator. The legal subjects of transportation can be legal entities, non-legal entities, and individuals.^[13]

In a contract of carriage, the consignee may be the shipper himself, or may also be an interested third party. In case the recipient is the sender, then the recipient is a party to the carriage agreement. In the application of Indonesian Transport Law is a third party with an interest is involved; the recipient is not a party to the transport agreement, but as a third party with an interest in the shipment, is also classified as the subject of the carrier's law.

The freight forwarder functions as an intermediary in the transport agreement, acting on behalf of the shipper. Transport entrepreneurs such as freight forwarders work in the field of transporting goods, but in this case, they act as the transporter. This is evident in the details of the amount of transport costs set. A freight forwarder calculates the cost of freight (freight wages) from the carrier the amount of costs and provisions as wages for his own party, which are not carried out by the transport entrepreneur. Based on the description above, the criteria for expeditions according to the provisions of the law can be identified, namely: Travel agents (travel agents) are known in passenger transportation agreements. Travel agents are classified as subjects of transportation law because they have a very close relationship with the carrier, namely the passenger transportation company.^[14] Travel agents act as agents (representatives) in agency agreements (agency agreement), acting for and on behalf of the carrier. A travel agent is a company whose business is finding passengers for rail, public transportation, ship, or aero-plane transportation companies. To support the smooth flow of goods transport to a port, the loading and unloading of goods onto ships plays a crucial role. Furthermore, the safety and security of goods being loaded and unloaded at the port are closely related to these loading and unloading activities.

According to Article 1, second paragraph of Government Regulation Number 2 of 1969, a warehousing entrepreneur is "a company engaged in the field of goods storage services in a port warehouse while the goods in question are waiting to be loaded onto a ship or waiting to be loaded onto a ship or waiting to be released from a port warehouse under the supervision of

Customs and Excise Service" Meanwhile, according to the Regulation of the Minister of Trade of the Republic of Indonesia Number 90/M-DAG/PER/12/2014 concerning the Arrangement and Development of Warehouses, it is stated that: Business actors are every individual citizen of the Republic of Indonesia or a business entity in the form of a legal entity or non-legal entity established and domiciled within the legal territory of the Unitary State of the Republic of Indonesia which carries out business activities in the field of warehousing, while the warehouse owner is an individual or business entity that has a warehouse either managed by themselves or rented.

The principle of responsibility is based on presumption (presumption of liability). The carrier is always considered responsible for losses arising from the transportation he organizes. However, if the carrier can prove that he is not at fault, then he is released from the obligation to pay compensation. What is meant by not being at fault is not negligent, has taken the necessary action to avoid losses or events that cause losses. The burden of proof is on the carrier, not on the injured party. The injured party only needs to show that there was a loss suffered in the transportation organized by the carrier. The carrier must be responsible for paying compensation for any losses arising from the transportation process organized without having to prove whether or not there was a fault with the carrier. The carrier cannot be freed from responsibility for any reason that caused the loss. This principle does not recognize the burden of proof regarding fault. The element of fault is not relevant to the issue of whether it exists or not.

Typically, the shipping costs are paid by the sender, but sometimes they are also paid by the recipient. In any case, the carrier always has the right to claim payment of the shipping costs from both the sender and the recipient.

According to the transportation agreement, the status of the parties, namely the carrier and the shipper, is equal, unlike in the labor agreement, where the parties are not equal, namely, the employer has a higher position than the worker. This position is called Subordination (subordinated), while in the transport agreements, it is the same high position or coordination (Coordinated).

Article 1601 of the Civil Code stipulates that, in addition to agreements to temporarily perform services regulated by special provisions for that purpose and by agreed conditions, and if they do not exist by custom, there are two types of agreements by which one party binds himself to perform work for another party by accepting labor agreements and contracting out work. This is proven by the provisions in Article 371 paragraphs (1) and (3) of the Commercial Code. Article 371 paragraph (1) of the Commercial Code stipulates that the captain is obliged during the voyage to safeguard the interests of the cargo owners, take the necessary action for that purpose, and, if necessary to appear before a judge. If an incident occurs, Article 371 paragraph (3) stipulates, "in urgent circumstances, the is permitted to sell the cargo or part of it, or to finance expenses that have been made for the benefit of the cargo, borrow money by staking the cargo as collateral."

Commercial goods or trade goods are goods that are generally needed by the public and traded on the market with the aim of making a profit without changing their physical form.

According to the Regulation of the Minister of Trade of the Republic of Indonesia Number 36 of 2018 concerning Supervision of Trade Activities Article 5 Goods are any object, whether tangible or intangible, whether movable or immovable, whether consumable or non-consumable, and can be traded, used, utilized, or utilized by consumers or Business Actors. Commercial goods transportation is part of goods transportation that is limited to daily primary necessities that are traded in a general manner.

CONCLUSION

The legal responsibility of a transportation service company is to achieve philosophical values, namely justice, benefit and legal certainty relating to the legal obligations that must be fulfilled by the company in carrying out goods or passenger transportation services aimed at protecting the interests of service users, ensuring safety and security in transportation, and guaranteeing compliance with applicable laws.

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