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Legal Analysis of the Responsibility of Expedition Companies X to Service Users Goods that are Damaged or Lost During Stacking in the Stacking Field

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Abstract: Sea transportation plays a very important role in international trade as one of the main components in the process of distributing goods. Nonetheless, the losses incurred in sea transportation activities are often greater than the losses caused by the transportation process itself, such as damage, shortages, and loss of goods that can occur during the process of unloading goods at the port by freight forwarding companies by sea. This study aims to analyze the limits of obligations and legal relationships between freight forwarding companies, carriers, and sea freight forwarding companies in the context of sea transportation activities. Using a normative legal research methodology, this study utilizes legal resources that include relevant laws and regulations as well as applicable court decisions, with a legislative approach and a case approach. The results of this study show that, first, the limitation on the responsibility of the expedition company regulated in Article 87 of the Commercial Code (KUHD), as well as the limitation of the carrier's liability regulated in Article 40 and Article 41 of Law Number 17 of 2008 concerning Shipping, unlawful acts under Article 1365 of the Civil Code, and the responsibility of the sea transportation expedition company in terms of providing convenience, licensing, supervision, and the implementation of order in sea transportation activities, as stipulated in Cassation Decision Number 2665 K/Pdt/2022 which corroborates the decision of the Medan District Court in case Number 728/Pdt.G/2016/PN.Mdn, is in accordance with and includes legal objectives which include legal certainty, justice, and benefits for all parties involved.

Keyword: Loss or Damage, Sea Freight, Sea Transportation Service Users, Port, Legal Liability.

INTRODUCTION

The business world is an endeavor that requires collaboration with various parties as partners. One of the parties related to this is the transportation sector which supports the progress of the business. One of the businesses that requires sea transportation is the export-

import business, both national and international, because sea transportation can be used as a means of connecting from one island to another and one country to another (Ladesi et al., 2021). Apart from means of transportation, cooperation with shipping expeditions is also needed for the convenience of exported and imported goods because goods require a storage place called a storage yard before the goods are transported to their destination. However, even so, it can also give rise to various legal incidents or problems because the stacking yard is also sometimes vulnerable to various risks faced, for example damage and loss of goods in the stacking yard, both when storing the cargo and unloading the goods.

Sea transportation is important to continue to boost the Indonesian economy, both through transporting goods between islands and importing goods from abroad (Kecana & Deri, 2020). Law No. 17 of 2008 concerning Shipping states that the definition of a port is a place consisting of land and/or waters with certain boundaries as a place for government activities and business activities which are used as a place for ships to dock, board and/or unload passengers. loading goods, in the form of terminals and ship berths equipped with shipping safety and security facilities and port supporting activities as well as a place for intra and intermodal transportation transfers. Apart from that, the port is also used as a berth for various ships, both passenger ships and imported goods ships or local goods originating from the islands of Indonesia. (Nanda AP, et al 2021; Kurniawan F, et al 2021;). Ports are very important to help exports and imports as well as domestic trade by sea. Distribution activities at ports require a place to store goods as the main facility on land. (Mulyono et al., 2020).

Expedition Company One effort to improve the performance of a company/organization is by implementing good corporate governance, which is usually called Good Corporate Governance (GCG). X Expedition Company is committed to implementing GCG because GCG will direct responsible business practices to the market and community and achieve healthy and sustainable financial performance. One of the GCG principles adhered to by Expedition Company X which will be discussed in this writing is Responsibility. This principle of responsibility must be applied by expedition company X, especially in the storage yard for goods that are still piled up in the port area. Based on the Regulation of the Board of Directors of Company that is :

1. Responsible for preparing policies, Standard Operating Procedures (SPO), work programs, and Key Performance Indicators (KPI) in connection with the main tasks and responsibilities related to operational and non-operational risks;
2. Responsible for risk culture and awareness, managing business continuity, standardizing best risk mitigation practices as well as managing risk communication and consultation;
3. Responsible for managing control strategies on an ongoing basis for risks that have high priority or significant risks;
4. Report the results of identification, monitoring and follow-up on risk control periodically;
5. Responsible for company asset insurance management policies;
6. Responsible for providing company asset insurance and the insurance claims process;
7. Responsible for following up on recommendations based on findings from the internal supervisory unit.

Expedition Company X certainly has a stacking yard. A stacking yard is an open place used to store goods, both exported and imported, from above or onto ships located close to loading and unloading activities. There are two activity processes in the stacking yard: receiving and delivery. These two processes must be planned well so that the flow of goods in the multifunctional terminal area runs smoothly. Region 2 stacking yard is a facility provided by the multipurpose terminal for storing imported goods while completing the import administration process and carrying out physical inspections if necessary.

Based on Article 10 of the Regulation of the Minister of Finance of the Republic of Indonesia Number 88/PMK.04/2007, stockpiling of imported goods can be carried out for a maximum period of time:

- a. Thirty days from the date of stockpiling at TPS located in the port area (line I);
- b. Sixty days from the date of stockpiling at TPS outside the port area (line II); or
- c. Sixty days from the date of stockpiling in another place which is treated the same as a TPS which has obtained permission from the Head of Office.

Stacking yard facilities are the most important part in expediting cargo loading and unloading activities at multipurpose terminals. The storage yard in area 2 of the multipurpose terminal is a yard that is included in the line 1 yard. The line 1 yard is a temporary storage area (TPS) which is close to the loading and unloading activities of goods from/to ships. Because this is related to dwelling time at the port, the activity of releasing imported goods at the stacking yard is very important. Dwelling Time is the time required for imported goods from being transported to the port until leaving the port, which is around 5 to 7 days. By reducing the accumulation that exceeds the limit (dwelling time) at multipurpose terminals, you can save money and optimize the flow of imported goods at the stacking yard. (Sunanda & Rahmayani, 2020).

In practice, problems in transporting, unloading and loading goods can arise if the goods received by the consignee or designated sender turn out to be in an unsafe condition, for example experiencing loss or damage. These losses can be caused by the transportation itself or the unloading process at the port (Chumaida, 2019). One striking case involves CV. Sumatra Sejahtera, which is suing a shipping company. In its lawsuit, CV. Sumatra Sejahtera explained that the goods were transported using the Hyundai HDMU 5576639 container belonging to Hyundai Merchant Marine (co-defendant I), then via the sub-agent expedition service PT. Sarana Jasa Bahari (co-defendant II), and collaborates with expedition service partner PT. Kemasindo Cepat Nusantara (co-defendant III). In short, CV. Sumatra Sejahtera demanded that expedition company X. Other facts show that the loss of the equipment occurred when it arrived at the port which was under the supervision of the expedition company. During the trial, expedition company X refused to be responsible and stated that defendants II and III should be responsible. However, the Panel of Judges in decision Number 728/Pdt.G/2016/PN Mdn partially granted CV's lawsuit. Sumatra Sejahtera, stated that the expedition company had committed an unlawful act in accordance with Article 1365 of the Civil Code and was obliged to compensate for losses. Various efforts were made by expedition company X, including a request for cassation, but the Supreme Court in decision Number 2665 K/Pdt/2022 rejected the request.

Analysis of this problem shows that existing regulations in the field of goods transportation have taken into account the situation that occurred. The provisions in the bill of lading (Zaeni Asyhadie, S.H., 2024) agreed between the sender and the carrier generally become a reference for determining responsibility related to damage or loss of goods during transportation. Although the principle of responsibility for the safety and security of goods remains with the transportation company, in practice, expedition company X can avoid some or all of the responsibility if they can prove that the damage or loss was not caused by their negligence or fault.

Even though aspects of legal liability have been thoroughly regulated in regulations and agreements between the parties concerned, issues of damage, loss or shortage of goods often give rise to debate regarding the party responsible. Claims from goods owners who experience losses due to damage are often faced with denial of responsibility by the parties involved in the transportation, even though the losses suffered are quite significant. To protect both parties, namely the sender and recipient of goods in sea transportation, the compensation claim process is usually carried out at the port of discharge by including a Bill of Lading and Notice of Claim

obtained from the carrier (Anantyo & Herman Susetyo, 2012). Therefore, it is necessary to discuss further regarding the legal responsibility to protect users of sea transportation services from losses caused by expedition company X, as well as how to apply the law regarding the responsibility of expedition company Rev/2022.

METHOD

The type of research that the author uses is normative legal research with a statutory approach, this approach is carried out by examining and interpreting all regulations and laws relating to the legal issue being discussed (researched) and a case approach. (case approaches), by studying legal cases, both currently occurring and contained in court decisions, as support in formulating prescriptive analysis. This research adopts a qualitative approach using secondary data consisting of primary, secondary and tertiary legal materials. Source This data includes official documents, scientific publications and relevant research reports. Data collection techniques are carried out through literature study and document analysis.

RESULTS AND DISCUSSION

Responsible for the Law in Protecting Users of Sea Transport Services for Losses Incurred by Sea Transport Expedition Companies

In the world of shipping, every party involved in the activity of transporting goods by sea, such as shipping companies, carriers and port authorities, tries to limit their responsibilities. With a clear objective, namely to reduce legal risks and maximize profits. However, attempts to limit this liability can be detrimental to the party sending or receiving the goods, especially if problems occur during delivery. Therefore, to protect the interests of all parties involved in the process of sending goods by sea, there needs to be a fair agreement between the rights and obligations of each party who has authority in sea transportation activities.

This responsibility is very important to discuss in terms of losses arising. According to Mr. J. H. Nieuwenhuis as translated by Djasadin Saragih, loss is a reduction in the assets of one party, which is caused by unlawful actions by another party. As explained in the previous subchapter, responsibility for losses experienced by the recipient of the goods does not only lie with expedition company X, but also involves other parties involved in the transportation agreement. All parties entering into the agreement are responsible for ensuring the safety of the goods until they are received by the owner in good condition. The responsibility of the forwarder is regulated in Article 87 of the Commercial Code, which states that the forwarder is obliged to send goods quickly, safely and neatly. Apart from that, the forwarder is also responsible for picking up the goods from the sender's warehouse, storing them at the forwarder's warehouse, and sending the goods to the rightful recipient or to the next carrier. These tasks will only be carried out if expressly stipulated in the relevant expedition agreement (Ratnawaty, 2022). According to Article 87, the main responsibility of the forwarder ends after the goods sent are handed over to the carrier. However, Article 88 of the Commercial Code provides an exception. If it can be proven that the damage or loss of goods after delivery to the carrier was caused by the fault or negligence of the forwarder, then the forwarder remains responsible. Apart from that, Article 89 of the Commercial Code also regulates that the forwarder is responsible for the actions of other forwarders (tussen-expediteur) that he uses in the shipping process.

In general, the main task of a transportation company is to deliver goods or passengers from the starting point to the final destination safely. Because they have this obligation, the carrier company must also be responsible for any damage or loss that occurs to goods or passengers during the delivery process. In other words, if there are problems during the journey, the transportation company must bear the losses experienced by the shipper. The concept of

carrier responsibility has been discussed in depth in various legal literature, especially those related to contract law and civil law. Gultom (2009), in his research, highlights that the carrier's obligation to ensure the safety of the goods or people being transported is the basis of his legal responsibility. Regarding limitation of liability, Article 470 of the Commercial Code states that the carrier is not permitted to limit its liability. Article 468 of the Commercial Code stipulates the following requirements:

2. Article 470 paragraph 1, prohibits the carrier from agreeing not to be responsible at all or only responsible up to a certain price limit, for losses caused by:
 - a. Lack of effort on ship maintenance, equipment and maintenance.
 - b. Lack of effort on the ship's ability to carry out transportation in accordance with the agreement.
 - c. Mishandling or improper handling of the goods being transported.
 - d. If there are such promises, they are void.

Article 470 paragraph 2 of the Commercial Code allows the carrier to agree that he will not be liable for more than a certain amount for a piece of goods he is transporting, unless he has been notified of the nature and price of the goods before or at the time he receives the goods. Furthermore, regarding port authorities, expedition company X which is related to this case is given the authority to carry out port operations.

The responsibility of the port authority includes providing the facilities needed at the port, such as docks and warehouses, as well as managing the permits required for activities at the port. Apart from that, the port authority is also tasked with supervising goods entering and leaving the port and ensuring the smoothness and safety of all activities taking place at the port.

From the explanation regarding the limits of responsibility of expedition companies, carriers and port authorities, it can be linked to the principle of legal responsibility, there are three principles in determining responsibility in transportation activities, namely:

- 1) The principle of responsibility based on fault (liability based on fault principle);
- 2) The principle of rebuttable presumption of liability principle;
- 3) The principle of absolute responsibility (absolute liability principle). (Kristiyanti, 2022).

With the three principles of legal responsibility in transportation that have been discussed, the first principle is responsibility based on fault (liability based on fault principle). This principle states that to determine transport liability, the injured party or plaintiff must prove fault on the part of the carrier. In Indonesian positive law, this principle is regulated in Article 1365 of the Civil Code, which is known as the provisions regarding unlawful acts. According to the conception of this article, it requires the fulfillment of the elements to make an unlawful act subject to a claim for compensation, namely, among others: The existence of an unlawful act by the defendant; This act can be blamed on him; There are losses suffered as a result of this error. (Massie, 2021). The second principle, namely the principle of responsibility based on presumption (rebuttable presumption of liability principle), where according to this principle the defendant is always considered guilty unless the defendant can prove that he is not guilty or can state things that can exonerate him from guilt. So this principle is almost the same as the first principle, only the burden of proof is reversed, namely on the defendant to prove that the defendant is innocent (Kristiyanti, 2022). The third principle, the principle of absolute responsibility (absolute liability principle), according to this principle, is that the party who causes the loss, in this case the defendant, is always responsible regardless of whether there is or is not a mistake or whether he is at fault. The carrier cannot be free from responsibility for any reason that causes losses to passengers or goods senders. (Kristiyanti, 2022).

Article 1236 of the Civil Code regulates transportation responsibilities which states that "The carrier is obliged to compensate the costs, losses and interest that are appropriate to be received if he does not deliver or does not take reasonable care to save the transportation goods.

Then article 438 of the Commercial Code states "He is responsible for the actions of those he carries out and for all the goods he uses in carrying out the transportation". The amount of compensation is equal to the actual loss. This is a statutory provision which the carrier must not deviate from through the provisions of the agreement which benefit him because this provision is coercive (*dwingendrecht*).

Based on the explanation above, forwarders, carriers and port authorities have limited legal responsibilities in sea transportation. It is important to implement the responsibility of the sea freight forwarding company which handles the port authority, because if there is a claim for damage to goods or loss of goods which results in major losses for the owner of the goods, the central point of which concerns the principle of legal responsibility based on fault. (principle) whose imposition is influenced by strong evidence regarding guilt in accordance with the events that occurred.

Application of the Law Regarding the Responsibility of Expedition Company X for Damage or Loss at the Port in Cassation Decision Number 2665/Pdt/2022.

In the introduction, the legal action taken by the plaintiff for the losses he experienced was explained. However, based on applicable legal regulations, expedition company X can take legal action in the form of filing an appeal to court because the judge's decision has not been deemed fair by expedition company X. The types of legal action that can be taken vary, depending on the level of court that has issued the decision. In this case, both the High Court and Supreme Court decisions have upheld the Medan District Court decision Number 728/Pdt.G/2016/PN.Mdn.

The legal rules which are the basis for analyzing and/or conveying whether an action can be classified as an unlawful act (tort law) are regulated in Article 1365 of the Civil Code, namely:

1. There is an unlawful act

Tort law is the scope of the civil law system and is enforced by personal action. Torts emphasize issues such as the difference between negligence, this means that a party must pay damages only when the party fails to take efficient action. Then there is liability, which means that the party must pay for any accidents caused by their actions (Dr. Rudyanto Dorotea Tobing, S.H., 2024).

2. There is an error

There are two categories of errors that can cause losses, namely intentional and negligent. Deliberation occurs when someone intentionally and with full awareness carries out an act that could harm another party. Meanwhile, negligence is an action carried out by ignoring obligations or caution that should be observed, which results in losses to other parties. However, in certain conditions such as an emergency or mental disorder, the element of error can be considered non-existent or eliminated.

3. There is a causal relationship

There is a causal relationship between the actions carried out by the perpetrator and the consequences that arise as a result of those actions. The losses experienced by the victim would not have occurred if the perpetrator had not committed an act that was contrary to the law which caused the loss.

4. There is a loss

Not only does it describe the size and categories of the loss, but the statutory regulations also state the nature of the loss, namely material and immaterial. (Mahlil, 2024). Furthermore, in the legal considerations used as the basis by the Panel of Judges in deciding to grant the plaintiff's request, there are three important legal factors that must be analyzed systematically. The Panel of Judges considered that there was sufficient evidence to support CV's claim. Sumatra Sejahtera regarding the losses it experienced, including the following:

1. The container belonging to Defendant I (HMDU 5576639) containing the plaintiff's fishery products was received in good condition on 28 July 2016 at the port by expedition company X acting as Defendant. However, on August 4 2016, the container disappeared from the port area managed by the sea freight expedition company. During the process of storing containers at the port, the plaintiff carried out his obligations by paying rent through co-defendant III/PT. Kemasindo Fast Nusantara. This agreement which binds the rights and obligations between the plaintiff and the defendant is in accordance with the provisions regulated in Government Regulation Number 61 of 2009 concerning Ports, Article 73, which requires Port Business Entities to maintain security, safety and order at the terminals and port facilities they manage. However, in reality, expedition company.
2. The plaintiff's fishery product in the form of frozen tuna meat contained in container HMDU 5576639 was declared unfit for human consumption after testing the plaintiff's fishery product on 23 August 2016, with test results (LHU) Number 0802/46.0/LHU/ VIII/2016. Based on these considerations, the loss of the container cooling machine was the cause of the plaintiff's fishery products rotting. In accordance with Article 1367 of the Civil Code, every person is responsible not only for his actions but also for objects under his control. Furthermore, Article 1365 of the Civil Code states that unlawful acts that cause harm to other people require the party committing the act to compensate for the loss. Apart from that, Article 1366 of the Civil Code also confirms that every person is responsible for losses arising from their negligence. By connecting these three articles, the loss of the cooling machine caused by the negligence of the sea transport expedition company in guarding the port has fulfilled the elements of an unlawful act which caused losses to the plaintiff Expedition company Sumatra Sejahtera is related to fishery products that are not suitable for human consumption. This proves that expedition company.

Based on these considerations, the Panel of Judges in deciding this case referred to three legal objectives according to Gustav Radbruch, namely:

1. Legal Certainty

Medan District Court Decision Number 728/Pdt.G/2016/PN.Mdn provides legal certainty for both parties. By requiring expedition company X to pay compensation, CV. Sumatra Sejahtera received certainty to get back its rights that had been confiscated.

2. Justice

According to Gustav Radbruch, justice must be the main priority in law enforcement, because the law functions as a tool to protect human interests in society. The Panel of Judges has carried out a comprehensive interpretation of the unlawful actions in this case, which classified the actions of the sea transportation expedition company as unlawful. This decision reflects the court's efforts to uphold justice for the plaintiff.

3. Expediency

The court's decision also takes into account the element of expediency, by creating a solution that is beneficial for resolving this dispute. This decision not only creates justice and legal certainty, but also provides benefits for both parties in resolving existing disputes. This court decision was strengthened by the decision of the Medan High Court and the Supreme Court which confirmed the Medan District Court Decision Number 728/Pdt.G/2016/PN.Mdn.

CONCLUSION

Based on the analysis that has been carried out, Cassation Decision Number 2665 K/Pdt/2022 which strengthens the first level decision regarding the responsibility of Expedition Company towards parties involved in the supply chain of imported goods. Analysis of this decision shows several important things as follows:

- a. Clear Division of Responsibility: This decision confirms the division of responsibility between each party involved, namely the expeditor, carrier and port authority, in the process

- of sending goods. Each party has specific obligations that can be held accountable if loss or damage occurs to the goods sent.
- b. Application of the Fault Principle: This judgment emphasizes the importance of applying the fault principle in determining responsibility. Parties who are proven to have made a mistake or negligence in causing the loss will be required to provide compensation in accordance with applicable legal provisions.
 - c. Justice and Legal Certainty: This decision has provided a sense of justice for CV. Sumatra Sejahtera by requiring the Sea Freight Expedition Company to be responsible for any losses incurred. Apart from that, this decision also provides legal certainty for all parties involved in the case, both plaintiffs and defendants.
 - d. Benefits: This decision has provided an effective legal solution to the problems faced by the parties and succeeded in ending a dispute that has been going on for quite a long time.

This cassation decision not only provides legal certainty for business actors in the logistics sector, but also makes a significant contribution to the development of jurisprudence in terms of liability for losses arising in the process of sending goods.

As a suggestion from this research, further research needs to be carried out regarding the implementation of this decision in practice and its impact on the logistics industry in Indonesia. Apart from that, there is a need to improve and perfect the laws and regulations relating to responsibility for the delivery of goods, in order to provide better and fair protection for all parties involved in the process of sending and distributing goods.

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