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*Corresponding author: Richa Yohana Rusli Siahaan, Faculty of Law Law, Study Program Universitas HKBP Nomensen Medan, Indonesia.

E-mail: richayohanarusli.siahaanstudent.uhn.ac.id

DATA IN SUMMARY | LAW, POLITICS, PUBLIC ADMINISTRATION

Responsibility of The Expedition Company to Sea Freight Service Users Who Experience Loss and Damage to Goods in The Port Area

Richa Yohana Rusli Siahaan^{1*}, Martono Anggusti², Fadillah Haryono³

^{1,2,3}Department of Law, Faculty of Law Science, Universitas HKBP Nomensen Medan, Indonesia. Email: richayohanarusli.siahaanstudent.uhn.ac.id¹, martono.anggusti@uhn.ac.id², fharyono12@gmail.com³

Abstract: Sea transportation is an important component in international trade, which plays an important role in the distribution of goods. However, there are losses greater than the losses caused by the transportation itself, such as shortages, damages, and loss of goods, which can arise during the process of unloading at the port carried out by the freight forwarding company by sea. This study aims to examine the limitation of responsibility in the legal relationship between freight forwarding companies, carriers, and sea transportation expedition companies in the context of sea transportation activities. Using a normative legal research methodology, this research relies on sources of legal materials, including laws and regulations and court decisions/rulings, using a legislative approach and a case approach. The results of this study show that, first, the limitations on the responsibility of the expedition party are regulated in Article 87 of the Commercial Code, as well as the limitations on the responsibility of the carrier regulated in Article 40 and Article 41 of Law Number 17 of 2008, and the responsibility of the sea freight expedition company in terms of providing facilities, licensing, supervision, and the implementation of order of sea transportation activities, as stipulated in Cassation Decision Number 2665 K/Pdt/2022 which corroborates the decision of the first judge in case Number 728/Pdt.G.2016/PN.Mdn, has been appropriate and fulfills the legal objectives that provide certainty, justice, and usefulness.

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

1. INTRODUCTION

The business world is a business that requires cooperation with various parties as partners. One of the parties related to it is the transportation sector that supports the progress of the business. One of the businesses that require sea transportation is the import-export business, both national and international, because sea transportation can be used as a means of connecting from one island to another and from one country to another (Ladesi, V. K., & Ridho, 2021). In addition to means of transportation, cooperation with the transportation expedition is also needed for the convenience of exported and imported goods because goods require a storage area called a stacking field before the goods are transported to the destination. However, even so, it can also cause various legal events or problems because the stacking field is also sometimes vulnerable to various risks faced, such as damage and loss of goods in the stacking field, both during the storage of cargo goods and the unloading of the goods.

As a country that has many islands (archipelagic state), Indonesia urgently needs an efficient sea transportation system to reach the entire region, both domestic and international. Shipping by ship often offers more affordable costs for transporting large quantities of goods and passengers. This

certainly provides benefits for sea transportation service users. Ports play an important role in supporting the sea transportation system, functioning as a link in the entire distribution chain. The port also serves as a trade gateway, attracting the attention of ships from within and outside the country, both those transporting passengers and goods.

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 that are used as a place for ships to dock, board and disembark passengers, and/or load and unload 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 intra- and intermodal transportation transfers. In addition, the port is also used as a place to dock various ships, both passenger ships and imported cargo ships or local goods from islands in Indonesia.

The definition of transportation according to Purwosutjipto is a reciprocal agreement between the carrier and the shipper, including the carrier's commitment to provide services for transporting goods and/or passengers from the original location to the destination safely, while the shipper is obliged to pay transportation costs. According to Sukardono, the transportation process involves movement from the starting point to the final location. In the context of sea transportation services, carriers will interact with various parties who want to take advantage of port services and facilities, including cargo handling activities. In practice, problems in transporting, unloading, and loading goods can arise if the goods received by the consignee or the designated shipper turn out to be in an unsafe state, for example lost or damaged. These losses can be caused by the transportation itself or the unloading process at the port (Chumaida, 2019). One of the striking cases involves CV. Sumatra Sejahtera, which sued a sea freight forwarding company, asked for responsibility for the loss of a device that functions to regulate the temperature in a container containing imported fishery products from the Port of San Pedro, United States. In his lawsuit, CV. Sumatra Sejahtera explained that the goods were transported using a Hyundai HDMU container 5576639 owned by Hyundai Merchant Marine (co-defendant I), then through the expedition service of the sub-agent PT. Sarana Jasa Bahari (co-defendant II), and in collaboration with the expedition service partner PT. Kemasindo Cepat Nusantara (also defendant III). In short, CV. Sumatra Sejahtera demanded that the expedition company compensate us for losses due to damage to imported products that were not fit for consumption after being tested, caused by the loss of the Frequency Converter. Another fact shows that the loss of the tool occurred when it arrived at the port which was under the supervision of the expedition company. In the trial, the expedition company refused to take responsibility and stated that co-defendants II and III should be responsible. However, the Panel of Judges in decision Number 728/Pdt.G/2016/PN Mdn granted part of 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 damages. Various efforts were made by the expedition company, including an appeal for cassation, but the Supreme Court in decision Number 2665 K/Pdt/2022 rejected the application.

An analysis of the problem shows that the existing regulations in the field of transportation of goods have considered the situation that occurred. The provisions in the bill of landing agreed between the shipper and the carrier are generally a reference for determining liability related to damage or loss of goods during transportation. Although the principle of responsibility for the safety and security of goods remains with the shipping company, in practice, the sea freight forwarding company can avoid some or all of the liability if they can prove that the damage or loss was not caused by their negligence or fault.

Although the aspect of legal liability has been thoroughly regulated in the regulations and agreements between the parties concerned, the issue of damage, loss, or shortage of goods often raises

debates about the responsible parties. Claims from owners of goods that suffer losses due to damage are often faced with a disclaimer of liability by the parties involved in transportation, even if the losses suffered are quite significant. To protect both parties, namely the shipper and the consignee in sea transportation, the process of claiming compensation is usually carried out at the port of unloading by including the Bill of Lading and the Notice of Claim obtained from the carrier (Anantyo & Herman Susetyo, 2012). Therefore, it is necessary to discuss further how the legal responsibility protects sea freight service users from losses incurred by the shipping company, as well as the analysis of the judge's considerations and decisions regarding the responsibility of the shipping company for damage or loss at the port in the cassation decision Number 2665/Pdt/2022.

2. RESEARCH METHODS

The type of research used by the author is normative legal research with a statute approach. This approach is carried out by studying and interpreting all regulations and laws related to the legal issues being discussed (researched) and case approaches, by studying legal cases, both those that are happening and those contained in court decisions, as support in formulating prescriptive analysis. This study adopts a qualitative approach by using secondary data consisting of primary, secondary, and tertiary legal materials. These data sources include official documents, scientific publications, and relevant research reports. Data collection techniques are carried out through literature studies and document analysis.

3. RESULTS AND DISCUSSION

3.1. *Legal Responsibility in Protecting Sea Freight Service Users for Losses Caused by Sea Freight Expedition Companies*

In the world of shipping, every party involved in the transportation of goods by sea such as the export company, the carrier, and the port authority try to limit their liability. With a clear goal, namely, to reduce legal risks and maximize profits. However, efforts to limit this liability can be detrimental to the party sending or receiving the goods, especially if there is a problem during delivery. Therefore, to protect the interests of all parties involved in the process of shipping 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.

Regarding this responsibility, it is very important to discuss the occurrence of losses. According to Mr. J. H. Nieuwenhuis As translated by Djasadin Saragih, loss is the reduction of one party's wealth, caused by unlawful acts by the other party. As explained in the previous subchapter, the responsibility for losses suffered by the consignee lies not only with the sea freight forwarding company, but also involves other parties involved in the transportation agreement. All parties to 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 deliver goods quickly, safely, and neatly. In addition, the forwarder is also responsible for picking up goods from the sender's warehouse, storing them in the forwarder's warehouse, and delivering the goods to the eligible recipient or to the next carrier. These duties will only be performed if expressly provided for in the expedition agreement in question (Ratnawaty, 2022). According to Article 87, the main responsibility of the expedition ends after the goods sent are handed over to the carrier. But 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 liable. Moreover Article

89 of the Commercial Code also stipulates that the dispatcher is responsible for the actions of other expeditionaries (Tussen-Expéditeur) that it uses in the delivery process. In general, the main task of a transportation company is to deliver goods or passengers from the starting point to the destination safely. Because it has this obligation, the carrier company must also be responsible for any damage or loss that occurs to the goods or passengers during the delivery process. In other words, if there is a problem during the trip, the freight company must bear the losses suffered by the freight forwarder. The concept of carrier responsibility has been discussed in depth in various legal literature, especially those related to treaty law and civil law. (Gultom, 2009), in his research, highlighted that the carrier's obligation to ensure the safety of the goods or people being transported is the basis of its legal responsibility. Regarding the limitation of liability, Article 470 of the Commercial Code states that the carrier is not allowed to limit its liability. Article 468 of the Commercial Code stipulates the following conditions:

Article 470 paragraph 1, prohibits the carrier from agreeing to be not responsible at all or only liable up to a certain price limit, for losses caused due to:

- a) Lack of effort in maintenance, equipment, and production of ships.
- b) Lack of effort to the ship's ability to carry out transportation in accordance with the agreement.
- c) Mistreating or mistreating the guard 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 undertake that he shall not be liable for more than a certain amount for a piece of goods he is carrying, unless he has been informed of the nature and price of the goods before or at the time of receipt of the goods.

Furthermore, regarding the port authority, the sea freight expedition company related to this case has given the authority to organize port business. The responsibility of the port authority includes the provision of facilities needed at the port, such as docks and warehouses, as well as the management of permits needed for activities at the port. In addition, port authorities are also tasked with supervising goods entering and exiting the port and ensuring the smooth and safe operation of all activities taking place at the port. From the explanation of the limitation of responsibility of shipping companies, carriers, and port authorities can be associated with the principle of legal responsibility, there are three principles in determining responsibility in shipping activities, namely:

- a) The principle of liability is based on the fault principle.
- b) The principle of rebuttable presumption of liability.
- c) 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 liability based on fault principle. This principle states that to determine the liability of the carrier, the aggrieved party or the plaintiff must prove the fault of the carrier. In Indonesia's positive law, this principle is regulated in Article 1365 of the Civil Code, which is known as the provision on unlawful acts. According to the conception of this article, it requires the fulfillment of elements to make an unlawful act can be sued for compensation, namely: The existence of unlawful acts from the defendant; The act is to blame for him; There are losses suffered due to these mistakes (Massie, 2021). The second principle is 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 innocent or can present things that can exonerate him from wrongdoing. So, in this principle it 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, the party that caused the loss in this case is always responsible regardless of whether there is or is no fault or does not see who is at fault. The carrier cannot be free from liability for any reason that causes harm to passengers or shippers (Kristiyanti, 2022).

Article 1236 of the Civil Code regulates the responsibility of transportation which states that "The carrier is obliged to compensate for costs, losses and appropriate interest must be received if he does not hand over or does not take proper care to save the transported goods. Then article 438 of the Commercial Code states "He is responsible for the deeds of them, which he does and for all the differences he uses in organizing the transportation". The amount of compensation is the amount of loss which is obviously a provision of the law that should not be deviated by the carrier through the provisions of the agreement in his favor because this provision is compulsory (*dwingendrecht*). Based on the explanation above, the exporter, carrier, and port authority have limitations on legal responsibility in sea transportation. The responsibility of sea freight forwarding companies that process port authorities is important to be applied, because if there is a claim for damage to goods or loss of goods that cause great losses to the owner of the goods, where the central point concerns the principle of liability based on fault (liability based on fault principle) whose burden is influenced by strong evidence of errors that are in accordance with the events that occurred. Analysis of Judge's Considerations and Decisions Regarding the Liability of Sea Transportation Expedition Companies for Damage or Loss at the Port in Cassation Decision Number 2665/Pdt/2022.

The case that has been described earlier in the introduction is legal action taken by the Plaintiff for the losses it has experienced. However, based on the existing legal rules, the losing party, namely the sea freight forwarding company, can take legal action in the form of an appeal to the court, this happens because the judge's decision cannot be considered fair by the sea freight forwarding company. The types of legal remedies that can be taken vary, depending on the level of the court that has issued the decision. In this case, both the decision of the High Court and the Supreme Court have strengthened the decision of the Medan District Court Number 728/Pdt.G/2016/PN.Mdn. Article 1365 of the Civil Code is the legal basis for analyzing whether an act can be categorized as an unlawful act, including:

a) There is an unlawful act

An unlawful act is any act that causes harm that makes the victim can sue the person who committed the act. According to Rosa Agustina (2003) in her book *Unlawful Acts*, the Postgraduate of FH UI formulates that unlawful acts must meet the following requirements: first, the act is contrary to the legal obligations of the perpetrator, second, the act is contrary to the subjective rights of others, third, contrary to decency, fourth, contrary to propriety, thoroughness and prudence.

b) There is an error

There are two types of mistakes that can cause losses, namely intentionality and forgetfulness. Intentionality occurs when a person is well aware that their actions will harm others. On the contrary, forgetfulness is the act of ignoring obligations or caution that should be done, resulting in losses to other parties. However, in some conditions such as compulsive circumstances or mental disorders, the element of error can be eliminated.

c) The existence of causal relationships

Have a causal relationship with the actions done and the consequences that arise. Losses caused by the perpetrator's actions will not arise if the perpetrator does not commit an unlawful act that causes harm to the victim.

d) Existence of losses Losses

What is meant in this second element, laws and regulations do not only describe the size and what is included as the loss. Only the nature of the loss is mentioned, namely material and immaterial (Fuady, 2005)

Furthermore, there is a basis for legal considerations that state that the Judge in deciding to grant the plaintiff's application has three important legal factors that need to be analyzed. In this consideration, the Panel of Judges found sufficient evidence to satisfy CV's lawsuit. Prosperous Sumatra related to the losses it faces, namely: The container belonging to defendant I (HMDU 5576639) filled with fishery products from the plaintiff was received in good condition on July 28, 2016, at the port by the sea freight forwarding company acting as the Defendant. However, on August 4, 2016, the container containing the plaintiff's fishery products disappeared from the port area managed by the sea freight expedition company. Throughout the process of storing containers at the port, the plaintiff has carried out its obligations by paying rent through co-defendant III/PT. Kemasindo Cepat Nusantara. This shows that there is an agreement that binds the rights and obligations between the plaintiff and the defendant. Based on Government Regulation Number 61 of 2009 concerning Ports in Article 73 it is stated, "In carrying out business activities at the port as referred to in Article 71 paragraph (1), Port Business Entities are obliged to maintain security, safety, and order at the terminals and port facilities they operate, as well as comply with the provisions of the law both nationally and internationally." However, the fact is that the sea freight forwarding company that manages the port does not implement the applicable rules, thus causing the loss of the container cooling machine.

Fishery products in the form of frozen tuna meat belonging to the Plaintiff in the HMDU container 5576639 not suitable for human consumption, this was revealed after the container was dismantled and tested on the fishery products belonging to the plaintiff on August 23, 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 rot of the plaintiff's fishery products. According to article 1367 of the Civil Code, "a person is not only responsible for his actions but also responsible for the objects under his supervision." Furthermore, based on article 1365 of the Civil Code, it is stated that "Every unlawful act that causes harm to another person obliges that person to compensate for damages due to his fault." Furthermore, Article 1366 of the Civil Code reveals that "everyone is responsible not only for losses caused by their actions, but also caused by their negligence." Linking the three articles with the loss of the cooling engine of defendant I which was stacked at the port managed by the sea transportation expedition company is the responsibility of the sea transportation expedition company, and the cause of the loss of the cooling engine resulted in the frozen fish belonging to the plaintiff being unfit for human consumption. The negligence of the sea freight forwarding company in maintaining and supervising the port where the goods are piled up has met the elements of unlawful acts.

The sea freight forwarding company is willing to compensate for the loss of the HMDU 5576639 container cooling engine and compensate CV for the loss. Prosperous Sumatra related to fishery products that are not suitable for human consumption. From this explanation, it is evident that the sea freight forwarding company was negligent in carrying out its authority and responsibilities and proved that it had committed an unlawful act based on the decision of the Panel of Judges.

Then, there is a basis for legal considerations so that the Judge in deciding to grant the plaintiff's petition there are three legal considerations of the judge that are important to analyze. In this consideration, the Panel of Judges found perfect evidence to grant CV's lawsuit. Sumatra Prosperous for the losses it experienced, namely:

The container belonged to defendant I (HMDU 5576639) whose contents were fishery products belonging to CV. Sumatra Sejahtera was received in good condition on July 28, 2016 at the port by the sea transportation expedition company which is the Defendant. However, on August 4, 2016, the container containing fishery products belonging to the plaintiff disappeared from the port area managed by the sea transportation expedition company. During the process of stacking containers at the port, the plaintiff carried out his obligation, namely paying rent through co-defendant III / PT. Kemasindo Cepat Nusantara. In this case, it is proven that there is an agreement that binds the rights and obligations between the plaintiff and the defendant. Based on Government Regulation Number 61 of 2009 concerning Ports in Article 73 it is stated that "In carrying out business activities at the port as referred to in Article 71 paragraph (1), Port Business Entities are obliged to maintain security, safety and order at the terminals and port facilities they operate and comply with the provisions of the law both nationally and internationally". However, the sea freight forwarding company that manages the port did not implement the rules that had been in force, causing the loss of the container cooling engine.

Fishery products in the form of frozen tuna meat belonging to the Plaintiff in HMDU containers 5576639 not suitable for human consumption, this was known after the dismantling of the container and testing of the fishery products belonging to the plaintiff on August 23, 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 rotten fishery products belonging to the plaintiff. According to article 1367 of the Civil Code, "a person is not only responsible for his actions but is responsible for the objects under his supervision". Then article 1365 of the Civil Code states that "Every unlawful act that therefore causes harm to another person, obliges the person because of his fault to cause the loss to compensate for the loss." Furthermore, Article 1366 of the Civil Code states that "every person is responsible not only for the losses caused by his actions but also caused by his negligence." Of the three articles, if it is related to the loss of the container cooling machine belonging to HMDU 5576639 which was stacked at the port managed by the sea freight forwarding company, it is the responsibility of the sea freight forwarding company, and because of the loss of the refrigeration machine, the frozen fish belonging to the plaintiff is not suitable for human consumption, and the negligence of the sea freight forwarding company in supervising and guarding the port where the goods are piled up has fulfilling the elements of unlawful acts.

The sea freight forwarding company is willing to pay losses for the loss of the HMDU 5576639 container cooling machine and compensate CV for damages. Prosperous Sumatra are fishery products that are not suitable for human consumption. From this explanation, it is evident that the sea transportation expedition company was negligent in carrying out its authority and obligations and it was proven to have committed an unlawful act based on the decision of the Panel of Judges. If it is related to the decision of the Panel of Judges and Gustav Radbruch's theory of legal objectives, it can be described the steps of the judge in integrating the three legal objectives in his decision, namely:

a) Legal Certainty

The Medan District Court Decision Number 728/Pdt.G/2016/PN.Mdn has provided legal certainty for both parties. With the obligation of sea freight expedition companies to pay compensation, therefore CV. Prosperous Sumatra has obtained certainty to regain its rights that have been taken away.

b) Justice

Based on Gustav Radbruch's view, it is stated that "there is a priority order that needs to be enforced, where the main priority is justice, because the law functions as a protective tool for human suffering in society." The Panel of Judges has comprehensively interpreted the

prosecution of unlawful acts in this case. Thus, the action of the sea freight forwarding company that harmed the Plaintiff can be classified as an unlawful act. This decision reflects the court's dedication to bringing justice to the Plaintiffs.

Benefits

A court decision ideally fulfills three important aspects: fairness, legal certainty, and utility. In this case, the court decision has succeeded in realizing these three aspects. The court's decision has provided justice for CV. Prosperous Sumatra, legal certainty for both parties, as well as useful solutions to resolve disputes. Furthermore, the element of usefulness in the Decision of the Judge of the Medan District Court is also supported by the Decision of the Judge of the Medan High Court and the Supreme Court which stated that it strengthens the Decision of the Medan District Court 728/Pdt.G/2016/PN.Mdn.

4. CONCLUSION

Based on this analysis, the cassation decision Number 2665 K/Pdt/2022 which strengthens the first-level decision regarding the responsibility of sea transportation expedition companies for damage to fishery products and the loss of refrigeration engines in HMDU 5576639 containers has provided a strong legal basis in enforcing the responsibilities of parties involved in the supply chain of imported goods. An in-depth analysis of this ruling reveals several key points:

- a) Clear division of liability: The ruling confirms the limitation of the responsibilities of each party, namely the forwarder, the carrier, and the port authority, in the process of shipping goods. Each party has specific obligations and can be held accountable in the event of loss or damage to goods.
- b) Application of the principle of error: This ruling emphasizes the importance of the principle of error in determining responsibility. The party who is proven guilty of the losses incurred will be required to provide compensation.
- c) Justice and legal certainty: The verdict has provided justice for CV. Sumatra Sejahtera by requiring sea freight forwarding companies to be responsible for the losses incurred. In addition, this decision also provides legal certainty for all parties involved in the case.
- d) Benefits: This ruling has provided an effective solution to the legal problems faced by the parties and has ended a protracted dispute.

This cassation decision not only provides legal certainty for business actors in the field of logistics, but also makes a significant contribution to the development of jurisprudence in the field of liability for losses in the delivery of goods. The suggestion of this study is that further research is needed on the implementation of this decision in practice and its impact on the logistics industry in Indonesia. It is necessary to make improvements and improvements to the laws and regulations related to the responsibility for the delivery of goods, to provide better protection for all parties involved.

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