

## **Dispute Resolution Between Transportation Carrier/Freight Forwarder Services and Exporters Regarding Damage to Goods/Cargo by Sea Line in Medan**

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### **ABSTRACT**

Sea transportation services that transport certain goods have many problems, for example related to the responsibility of sea transportation services for damage to goods or delays in goods, so these matters must be resolved in forums or dispute resolution institutions. The legal research method used in this research is normative juridical research which is research carried out or aimed only at written regulations with the nature of descriptive analysis research, which is a method that functions to describe or provide an overview of the object under study. The data source used is secondary data with quantitative data analysis. The results of this research are that the carrier must be responsible if loss or damage occurs from the transportation activity. As explained in Article 40 to Article 42 of the Shipping Law, the carrier company is responsible for the safety of the goods or passengers it transports in accordance with the agreement agreed upon by both parties." that the carrier's responsibility for damage to the goods is realized through the provision of compensation in accordance with article 472 of the Commercial Code, the procedures for settling claims from customers in the process of organizing the transportation of goods by sea are usually settled at the port of unloading between the follower and the recipient of the goods. The things that need to be done by the owner of the goods when submitting a claim for compensation is that the sender or recipient of the goods includes a Bill of Lading and a Receipt in submitting a claim for compensation

**Keywords:** Sea Freight, Disputes, Resolution

### **INTRODUCTION**

The main function of transportation is to distribute goods from the place of origin to the destination effectively and efficiently. Transportation classification can be categorized into 3 means, namely land transportation routes (via roads and trains), sea transportation routes, and air transportation routes. Of the three types of transportation modes mentioned above, the researcher will take the case of transportation by sea. In general, there are 2 options for sending goods by sea, namely by using a bulk ship and using a container or container from the shipping company / container ship. Expedition via container or what is more commonly called a container, is a storage and delivery medium for goods that is most often used in inter-island expedition activities. Transportation Management Services Business (freight forwarder) is a business activity aimed at all activities necessary for the delivery and receipt of goods via land, rail, sea and/or air transportation. As a freight forwarding company.

Article 53 of Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs states that provisions on prohibitions and/or restrictions issued by technical agencies must be submitted to the Minister of Finance u.p. Director General of Customs and Excise. Regarding the provisions conveyed, the Director General of Customs and Excise conducted research and the

Director General of Customs and Excise on behalf of the Minister of Finance determined a list of goods prohibited or restricted for import or export based on Minister of Finance Regulation Number 224/PMK.04/2015 concerning Import Control or Export of Prohibited and/or Restricted Goods, to be further supervised by DJBC. In other words, the shipper is the seller or owner of the goods who sends the cargo to the consignee. Consignee is someone who receives the shipped cargo. Therefore, it can be concluded that the consignee is the recipient of goods / buyer of goods sent by the previous shipper in accordance with the sale and purchase agreement of both parties. Usually there is an agreement between the shipper and the consignee before shipping the goods. The purpose of the agreement is to agree on the terms and delivery procedures intended by both parties to avoid or anticipate the occurrence of default.

However, in reality, most transportation does not have a written agreement with the seller or owner of the goods but only has an unwritten agreement between the logistics / freight forwarding service provider and the shipper / sender or owner of the goods or consignee / buyer or recipient. Transportation as an agreement is generally verbal (not written) but is always supported by transportation documents which prove that the agreement has occurred. These parties have the freedom to determine the rights and obligations that must be fulfilled in sending/transporting goods. The law only applies as long as the parties do not specify other agreements that they agree to and as long as this does not harm the public interest. In this case, the carrier has an important role in the process of delivering goods safely, quickly and intact. It cannot be denied that freight forwarders can also be sued for the integrity of the cargo when it arrives at the destination, even though in some cases, the freight forwarder does not carry out the loading process so that the freight forwarder also does not know the condition of the goods being loaded, whether in terms of quality and quantity they are in accordance with the agreement of the buying and selling parties or No. So from the description above, there are problems in Freight Forwarding's responsibility in shipping cargo.

## METHOD

This research uses normative juridical research and the nature of this thesis's research method is descriptive analysis, namely research that describes, examines, explains and analyzes a legal regulation, in this case related to Dispute Resolution Between Transportation Carrier/Freight Forwarder Services And Exporters Regarding Damage To Goods/Cargo By Sea Line In Medan. Source The legal materials used in this research are secondary data which is data obtained from official documents, books or any form of research related to research objects and research results in the form of reports, journals, theses, dissertations and statutory regulations. The data analysis technique used is qualitative data analysis, namely a research procedure that produces analytical descriptive data, namely by collecting materials and data as well as applicable regulations and legislation which are then analyzed using logical legal thinking.

## RESULTS AND DISCUSSION

### Results

In general, a breach of contract will occur if one of the parties is declared to have failed to fulfill the performance or in other words, a breach of contract exists if one of the parties cannot prove that he or she has committed the default through no fault of his own or due to compelling circumstances. Default by one party can of course cause losses to the other party. Forms of Maritime Dispute Resolution Legal disputes or disputes in a legal relationship can generally be resolved through two methods of resolution, namely:

- a. Peaceful settlement (non-litigation),
- b. Settlement through authorized institutions or institutions (litigation).

The two types of dispute resolution above can also be applied in sea transportation. However, both types of dispute resolution have their respective advantages and disadvantages. Peaceful dispute resolution requires the will and ability to negotiate to achieve a peaceful resolution of the dispute. The use of a non-litigation dispute resolution model prioritizes a "consensus" approach and seeks to reconcile the interests of the disputing parties and aims to obtain dispute resolution results towards a win-win solution.

The justice to be achieved through this mechanism is commutative justice. Meanwhile, resolution through an authorized institution or agency requires knowledge of the procedures and/or rules that apply to resolving the dispute, namely in the form of procedural legal rules. Apart from that, legal protection can also be applied in sea transportation as regulated in the Consumer Protection Law. Based on the provisions of Article 1 point 1 UUPK states "Consumer protection is all efforts that ensure legal certainty to provide protection to consumers". The above formulation is an effort by law makers to fortify or protect consumers from arbitrary actions by business actors. So if a business actor, in this case a carrier, violates one of the acts prohibited in the UUPK which can cause harm to consumers, in this case passengers, then consumers who are harmed can resolve the dispute by filing a lawsuit against the business actor, either through an institution tasked with resolving disputes between consumers and perpetrators. business or through courts within the general judiciary, as regulated in Article 45 UUPK

### Discussion

The responsibility of shipping business actors or ship entrepreneurs is regulated in article 321 of the Commercial Code which states "entrepreneurs are responsible for losses caused to third parties due to unlawful acts of those who are in permanent or temporary service on ships because of their position or because they carry out their activities on the ship carrying out work for a load. According to this article, there are two types of responsibility of ship entrepreneurs, namely:

- a. Ship operators are responsible for the legal actions that people working on ships carry out in their respective work environments.
- b. Ship operators are responsible for losses caused by unlawful acts of people who work on ships for the purposes of the ship or its cargo, provided that the unlawful acts are carried out within their respective work environment.

There is no requirement for a transportation agreement to be in writing, just verbally, as long as there is agreement of will (consensus). From the above definition, it can be interpreted that for a transportation agreement to exist, it is sufficient to have an agreement (consensus) between the parties, this is as stated in

the provisions of Article 90 of the Commercial Code which states that a transportation document is an agreement between the sender or forwarder on one party and the carrier or skipper. boat to another party and the letter contains in addition to what would have been agreed upon by both parties, such as regarding the time within which the transportation must be completed and regarding compensation in the event of delays, it also contains:

- a. Name and weight or size of the goods being transported, as well as brands and numbers;
- b. The name of the person to whom the goods are sent;
- c. Name and location of the carrier or boat owner;
- d. Amount of carrier wages;
- e. Date;
- f. Signature of the sender or forwarder.

According to Article 1367 of the Civil Code, hereinafter abbreviated to the Civil Code, legal responsibility for people who suffer losses is not only limited to their own actions, but also the actions of their employees, employees, agents and representatives if they cause losses to other people, as long as the person acts in accordance with the duties and obligations assigned to that person

The carrier is always considered responsible in accordance with the provisions of article 41 paragraph (2) of Law No. 17 of 2008. In this principle, the carrier is always considered responsible for any losses arising from the transportation it carries out. However, if the carrier can prove that the loss incurred was not his fault, then the carrier can be released from the responsibility to pay some or all of the compensation. In the carrier's responsibility for damage to the goods, it is realized through the provision of compensation, as stated in article 472 of the Commercial Code as stated that: "Compensation that must be paid by the carrier due to delivery of the goods in whole or in part, must be calculated according to the price of the goods and the type and the same situation at the place of delivery when the goods were supposed to be handed over, with deductions for what has been saved in terms of duties, costs and transportation costs, due to not handing over the goods.

The party concerned can submit a claim officially and in writing to the carrier with proof of valid documents, but usually claim settlement is based on the principles of kinship and deliberation. However, in this case, it also does not rule out the possibility that compensation could take the form of repairs to damaged goods so that it can be assumed that the carrier has made compensation payments. The interests of consumers must be protected so that consumers will easily hide behind these legal norms or rules as a means of protection for themselves. This is based on Article 1 point 1 of Law Number 8 of 1999 concerning Consumer Protection. Based on the results of an inventory of statutory regulations in the field of maritime transportation, both in public law and civil law, there are formal sources of these regulations, including Law no. 8 of 1999 concerning Consumer Protection, Law no. 21 of 1992 concerning Shipping, Civil Code, KUHD, Conventions, International Conventions, other related laws, several government regulations, ministerial decisions and other implementing regulations. Therefore, consumers (senders or recipients of goods) have the right to claim against the carrier through claims for compensation as stated in article 472 of the Commercial Code.

Compensation claims (claims) are usually settled at the port of discharge between the retainer and the consignee. The things that the owner of the property needs to do when filing a claim for compensation are as follows:

- a. The sender or recipient of the goods includes the Bill of Lading and the Mualim's Receipt from the cargo party when submitting a claim for compensation.
- b. Every sender or recipient of goods has the right to receive a statement from the shipping carrier or carrier called a "Notice of Claim".
- c. Usually shipping airlines issue certificates including: E.B (except bewijs) and C.C.B (claim constateting bewijs)

Based on the above evidence, the recipient of the goods has the right to submit a letter of demand for compensation (claim) to the carrier, which contains, among other things: information regarding the delivery of the goods, appointment to TBT and a brief explanation regarding the shortage of goods being shipped upon inspection. has been carried out, the amount of compensation claimed and an explanation of the basis for calculating the amount of compensation stated in the CCB are submitted to the carrier. After the sender submits a loss claim letter to the carrier, the carrier inspects and examines the shortage/damage to the goods. Apart from that, the carrier also needs to examine the claim letter to see whether the claim has expired or not within 1 year after delivery of the goods. In accordance with article 487 and article III paragraph 6 of The Hague Rules, it is stipulated that the collection of the right to "legal claim" for compensation for losses must be carried out within 1 year after delivery of the goods. If the carrier is proven to be at fault for damage/loss to the goods, the carrier will reimburse the amount of compensation money determined by the regulations stated on the bill of lading. However, if there is no price information for the goods at the destination, the carrier will compensate the loss on the basis of the f.o.b price, C & F price and c.i.f. price

After submitting a claim to the carrier, the sender or recipient of the goods can carry out the settlement of the claim for compensation for violations committed by the carrier in 2 (two) ways in accordance with the contents of Article 45 paragraph (2) of Law Number 8 of 1999 concerning Consumer Protection, that is :

Non-Litigation Settlement of consumer disputes outside of court through a mediation, arbitration or conciliation process which aims to reach an agreement regarding the form and amount of compensation so that losses suffered by consumers do not occur again as regulated in Article 47 of Law Number 8 of 1999 concerning Consumer Protection.

Litigation: Settlement of consumer disputes through institutions tasked with resolving disputes between consumers and business actors or through courts within the general judiciary.

In general, sea transportation service dispute resolution can be carried out in a non-litigation manner because it relates to claims for damage to goods and delays in delivery made at the port when the goods arrive. However, it does not rule out the possibility that maritime transportation service disputes can be resolved through litigation through a lawsuit for compensation.

## CONCLUSION

Responsibility of the carrier (freight forwarder) if cargo is damaged during sea transportation. The carrier must be responsible if loss or damage occurs as a result of the transportation activity. As explained in Article 40 to Article 42 of the Shipping



Law, the carrier company is responsible for the safety of the goods or passengers it transports in accordance with the agreement agreed upon by both parties. that the carrier's responsibility for damage to the goods is realized through the provision of compensation in accordance with Article 472 of the Commercial Code, which is a form of normative legal protection to protect the sender or recipient of goods in sea transportation. Procedures for settling claims from customers in the process of organizing the transportation of goods by sea are usually completed at the port of unloading between the follower and the recipient of the goods. The things that need to be done by the owner of the goods when submitting a claim for compensation is that the sender or recipient of the goods includes a Bill of Lading and a Receipt from the cargo party in submitting a claim for compensation. Every sender or recipient of goods has the right to obtain a statement from the shipping carrier or carrier that called a "Notice of Claim". Usually shipping airlines issue certificates including E.B (except bewijs) and C.C.B (claim constatetering bewijs). Based on this evidence, the recipient of the goods has the right to submit a letter of claim for compensation (claim) to the carrier, which contains, among other things: information regarding the delivery of goods goods, appointment to the TBT and a brief explanation regarding the shortage of goods being shipped if an inspection has been carried out then submitted to the carrier, the amount of compensation claimed and an explanation regarding the basis for calculating the amount of compensation stated in the CCB.

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