

Liability of a Carrier Based on Sea Carriage Document in Indonesia (A Way Forward to E-Document)

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Abstract

Maritime Document tin Indonesian law refers to the regulations of the Indonesian Commercial Code and International Conventions such as The Hague Rules in 1928 and The Hague Visby Rules of 1968. As an essential document in international trade, the conventions are also very influential. One of the latest conventions is the U.N. Convention on Contract for the International Carriage of Goods Wholly or Partly by Sea, which was signed in Rotterdam in 2009 (Rotterdam Rules). The problem arises when until now Indonesian Government is not a party nor ratified of those Convention and for the e-document Indonesia only apply e-Bill of Lading (e-B/L). The research method is a legal analysis of the key provision of the relevant law upon Maritime Law. The findings indicated that Maritime Documents in Indonesia, are divided into charter agreement and bill of lading agreement. It also find that E-B/L Bill is not suitable in Common nor Civil law jurisdiction.

I. Introduction

Generally, document or agreement of sea carriage is assumed as obligations of involved parties, ¹ such as goods receivers, freight forwarders, loading companies, insurance companies, banking, and carrier or owners of vessels.²

¹ Abdulrahim, H. M. (1994). *Maritime Carrier's Liability for Loss of or Damage to Goods under the Hague Rules, Visby Rules and the Hamburg Rules, Compared with His Liability as an Operator under the Relevant Rules of the International Multimodal Transport Convention*. University of Glasgow (United Kingdom).

² Al-Kabban, R. A. (1988). *The effect of deviation occurring in the course of a maritime voyage on the liability of the carrier under the Hague/Visby rules and Hamburg rules, in relation to certain countries* (Doctoral dissertation, University of Glasgow).

Usually, a carriage document is related to transportation agreements based on another transportation document.³ A carriage document carriage is regarded as a guideline or evidence of a specific carriage of goods or passenger agreement. Article 506 of the Indonesian Commercial Code explains that what a Bill of Lading means ⁴a dated letter in which the carrier explains that it has received certain goods to be transported to a specific destination and delivers the goods to a specific person by mentioning the requirements concerning the delivery of the goods⁵. As mentioned above, the Bill of Lading is one of the sea carriage documents usually used in international trade.

In maritime practice, there are several forms of the Bill of Lading standards issued by various shipping lines or the organization of shipping lines in which there are some clauses as the requirements of the carriage⁶. Besides, there are also short forms of Bill of Ladings, which refer to general conditions of carriage and can be found in the head office of a shipping line for public information.

As a document that plays a very significant role in international trade, the Bill of Lading is not free from the influence of international law. ⁷The international convention generally becomes the basis of clauses in the Bill of Lading concerning the aspects of the carrier's responsibilities in the Brussel Convention 1924 (Convention for the Unification of Certain Rules of the Bills of Lading).

2. Research Method

This research will be implemented using the analytical descriptive and the comparative law method. The study will be done with an illustrative analysis method because the investigations are conducted on the substance of the secondary data provisions. As an interdisciplinary study, this research will use community-based development to seek the empowerment effectiveness of interdiction shipping. This study uses secondary data as primary data, and the selected material is a matter of law. This research method used juridical legal materials, including primary, secondary, and tertiary legal materials. Primary legal materials are a binding legal force, while secondary legal materials are legal materials related to primary legal materials. The research used a descriptive method to prove the marine agency's handling of shipping interdiction in Southeast Asia. Show the regional regulation conducted by ASEAN countries and how the English Legal System influences the Singapore. However, exploratory methods used to understand and look for shipping interdiction have been

³ Margetson, N. J. (2008). *The system of liability of articles III and IV of the Hague (Visby) Rules*. Uitgeverij Paris.

⁴ Smeele, F. (2010). The maritime performing party in the Rotterdam Rules 2009. *EJCCL*, 2, 72

⁵ Aladwani, T. (2015). A comparative study of the obligation of due diligence to provide a seaworthy vessel under the Hague/Hague-Visby Rules and the Rotterdam Rules.

⁶ Sturley, M. F. (1991). The history of COGSA and the Hague Rules. *J. Mar. L. & Com.*, 22, 1

⁷ Cheng, C. J., & Cheng, J. (Eds.). (1990). *Basic documents on international trade law*. BRILL.

regulated by sea law. The regulation has been used in various regional treaties in other areas and in ASEAN member countries' national laws, which may be applied at the local level in Southeast Asia, mainly in the Malacca Straits (between Malaysia, Singapore, and Indonesia)

3. Results and Discussion

The following are the parts usually included in the bill of lading (as a case study, the following is a bill of lading issued by P.T. Jakarta Lloyd). The parts of the bill of lading of P.T. Jakarta Lloyd are⁸:

Carrier (sender)

The sender usually is the party who at first prepares a bill of lading and provides necessary details of the goods.⁹ This is when Hague, Hague-Visby Rules, Hamburg Rules, or Rotterdam Rules are applied; the sender must obtain an explanation of the existing regulations if the goods are shipped.¹⁰ On the other hand, the sender is obliged to provide answers about the goods; and incorrect description, the sender may have prosecuted by the carrier.

Consignee (receiver)

Consignees are not of the interest of a ship but in the matter between the shipper and prospective buyer. The column for a consignee in the bill of lading can be "bearer" or "holder," or it can be mentioned as "name of the consignee," "to order," or the column is left empty.¹¹ They all show the transfer of ownership of the bill of lading and the monitoring of goods acceptance.

Vessel

The name of the Vessel carrying the goods must be clear.¹² A bill of lading must provide information that the goods have been physically transported from the seller to the buyer. Given example is a bill of lading from P.T. Djakarta Lloyd, which has fixed to sail to Australia. Goods are first shipped to Singapore by a ship of Djakarta Lloyd as the feeder and from Singapore by a large container vessel, an alliance of Djakarta Lloyd with other shipping companies.¹³

So, that is why there are two blank columns, i.e., the above one is for a ship sailing from Indonesia to Singapore, and the second is intended for Ocean Vessel from Singapore to Australia. The place of Receipt is the place of the bill of lading

⁸ Bill Of Lading issued by PT Jakarta Lloyd in Suyono, op. Cit. page 267.

⁹ Krumwiede, D. W., & Sheu, C. (2002). A model for reverse logistics entry by third-party providers. *Omega*, 30(5), 325-333.

¹⁰ Kroon, L., & Vrijens, G. (1995). Returnable containers: an example of reverse logistics. *International journal of physical distribution & logistics management*.

¹¹ Mavlanova, T., Benbunan-Fich, R., & Koufaris, M. (2012). Signaling theory and information asymmetry in online commerce. *Information & management*, 49(5), 240-247.

¹² Aas, B., Halskau Sr, Ø., & Wallace, S. W. (2009). The role of supply vessels in offshore logistics. *Maritime Economics & Logistics*, 11(3), 302-325.

¹³ Bill Of Lading issued by PT Jakarta Lloyd in Suyono, op. Cit. page 267.

accepted by the shipping company.¹⁴In the example, the acceptance of the bill of lading is in the head office of Djakarta Lloyd in Jakarta. It is essential to know the origin of the goods shipped. The origin of the goods is vital to be known by buyers. This is under the regulations of the Hague, or Hague-Visby Rules

Port of Discharge (ocean vessel)

The Port of discharge has been determined in the bill of lading. Destination except it is obstructed by a condition endangering the Vessel.¹⁵ As explained earlier, the Vessel has deviated from its course to sail to another destination.¹⁶Port of discharge should also be paid attention to so that there will not be Hamburg Rules applied in the Port of loading, which should have Hague Rules in effect. This example is the Port of discharge (Ocean Vessel) in Melbourne.

Carrier's description of goods.

According to Hague, Hague-Visby, or Hamburg Rules, the carrier has the right to demand a bill of lading from the Vessel,¹⁷ which clarifies the details of goods loaded. By looking at the bill of lading, buyers can know about the goods inside the Vessel.¹⁸Further detail is deemed necessary in the world of trade. The load details are needed because the load often causes troubles and the carrier only knows the Condition from the outside. This then creates the terminology: apparent good order and Condition.¹⁹ In this bill of lading, the details of goods are divided into Marks & numbers, Number of containers or other Packages, pieces or units, description of goods, Container numbers, Gross and weight, and measurement.

Condition of carriage

Condition of carriage when goods are carried by Vessel can be seen on the back page of the bill of lading. The conditions are written in very small letters, and they are hard to read as if the conditions are not essential matters, and they are of the same importance as on the front page. The shipping company must be able to explain clearly to the carrier.

The company in Indonesia all refer to Hague or Hague Visby Rules. It is rare to find the application of the Hamburg Rule or even the Rotterdam Rule.²⁰ Sometimes there is also a variation of both conventions. This is interesting since the Government of Indonesia has not ratified those conventions. But, Article 517 c of the Indonesian Commercial Code enables carriers in Indonesia to apply the

¹⁴ Hollnagel, E. (2016). *Barriers and accident prevention*. Routledge.

¹⁵ Bill Of Lading issued by PT Jakarta Llyod in Suyono, op. Cit. page 267.

¹⁶ Zhang, Y., Meng, Q., & Zhang, L. (2016). Is the Northern Sea Route attractive to shipping companies? Some insights from recent ship traffic data. *Marine Policy*, 73, 53-60

¹⁷ Wanigasekera, A. (2011). Comparison of Hague-Visby and Hamburg Rules.

¹⁸ Hesketh, D. (2010). Weaknesses in the supply chain: who packed the box. *World Customs Journal*, 4(2), 3-20.

¹⁹ Zhao, L. (2013). Retla clause on bill of lading. *Lloyd's Maritime & Commercial Law Quarterly*, 2013, 426-432.

²⁰ Interview with Directorate General of Sea Communication, Bobby R. Mamahit

convention. As earlier mentioned, Indonesia does not ratify any of the conventions on the carriage of goods at sea. However, Hague or Visby rules could apply to domestic and international trade by implementing a choice of law. For instance, the Indonesian national shipping line P.T. Djakarta Lloyd includes the Hague Rules as a paramount clause in its bill of lading.

Some critical content of the bill of lading from Indonesia/ Australia/ Straits Service is:

Hague Rules Governing Law and Jurisdiction

To provide information that this bill of lading is based on Hague Rules made in Brussel on 25th August 1924 and Protocol Hague Rules on 28th February 1968, which becomes the foundation of responsibility of the carrier.²¹ Goods loaded on a vessel based on this bill of loading are protected by Hague-Visby Rules and the law of Indonesia. There is no prosecution of the carrier except if it is done in the court in Indonesia or the carrier decides to do it in another country.²² So this article explains that the existing law is only Hague -Visby Rules and the law of the Republic of Indonesia.

Carrier Liability

This article explains more about the responsibility of a carrier towards the load. The carrier is not shared and has the right to reject each good, loaded with deep consideration.²³ Carrier is not responsible for the goods provided in the delivery place or available in the place of goods delivery if it deals with living animals (including sickness or death).²⁴

In the case of damage or loss of load on the deck, or the case of fire but not the carrier's fault, the act of God, or an act of public enemies,²⁵ this article discusses the carrier's responsibility toward the carrier's load. ²⁶Carrier is not responsible for the goods the carrier does not receive, as mentioned in the bill of lading. The Hague Rules do not cover the sender's fault as long as the carrier can prove the loss and delay. ²⁷ The responsibility of a carrier is not as important as what is mentioned in Hague Rules; ²⁸moreover, when the carrier can prove that other reasons caused the loss or damage. The damage can be caused by another vessel not having seaworthiness or damage caused by forced sail.

²¹ Bill of Lading issued by PT Jakarta Llyod, Ibid.

²² LEV, D. N. S. (2006). The state and law reform in Indonesia. In *Law reform in developing and transitional states* (pp. 263-294). Routledge.

²³ Bill of Lading issued by PT Jakarta Llyod,

²⁴ Harris, T. (2008). Welfare aspects of the long distance transportation of animals-the Animal Transportation Association. *Veterinaria Italiana*, 44(1), 31-41.

²⁵ Bill of Lading issued by PT Jakarta Llyod,

²⁶ Lee, E. S. (2002). The Changing Liability System of Sea Carriers and Maritime Insurance: Focusing on the Enforcement of the Hamburg Rules. *Transnat'l Law.*, 15, 241.

²⁷ Bill of Lading issued by PT Jakarta Llyod,

²⁸ Jnr, F. A. O. (2016). Carriers' Liability in Contracts for the Carriage of Goods by Sea: Is there a Justification for the Hamburg and Rotterdam Rules?. *Business Law Review*, 37(6).

General Average, New Jason Clause

If "general average" happens, it will be resolved in Melbourne, Australia, or another port or place appointed by a carrier according to York-Antwerp Rules 1974.²⁹ The general average statement application will be implemented and declared by an adjuster appointed by a carrier. Additional cost or fare will be collected from goods receiver based on responsibility. So, this article discusses the solution relationship between carrier and trader who has goods.

The Challenging Of Application E- Bill Of Lading

Paper bills of lading are still widely used in international trade.³⁰ Although the legal status of modern paper bills of lading has matured, there are still practical limitations. First, paper bills of lading can be used as forgeries or issued fraudulently. However, traders have tolerated this risk in exchange for speed and convenience. Second, it takes time for paper bills of lading to arrive at the destination port.³¹ Original paper bills of lading are no longer guaranteed to reach the consignee or endorsee prior to the products' arrival at the port of destination. The transition from sail-powered to steam-powered and then to motor-powered ocean vessels has accelerated maritime travel. A transaction may entail a documentary credit, necessitating that the bill of lading make an additional detour to the bank and delaying transmission.

Congestion at ports may also be caused by the late arrival of bills of lading if the cargo receivers do not have an original bill of lading to present in order to accept delivery of the goods.³² There is a well-established industry practice of delivering cargo against indemnity letters. The original bills of lading when products are delivered without bills of lading being presented. However, this places the vendor in the precarious position of not receiving payment for the released cargo, which may result in protracted litigation.

Using electronic techniques to convert paper bills of lading into an electronic format is one technological solution for addressing the practical limitations of paper bills of lading. Not only will this prevent the occurrence of fake and fraudulent bills of lading, but it will also result in the instant transmission of a bill of lading. Electronic bills of lading have existed for a number of years, and platforms for their use are readily available, but they have not been well received due to uncertainty regarding their legal validity.³³ This

²⁹ Ibid.

³⁰ The Use of Transport Documents in International Trade' (26 November 2003) UNCTAD/SDTE/TLB/2003/3

³¹ Paul Todd, *Maritime Fraud & Piracy* (2nd edn, Informa 2010) [2-050].

³² Miriam Goldby, 'The CMI Rules for Electronic Bills of Lading reassessed in the light of current practices' [2008] LMCLQ 56, 66-67;

³³ Nicholas Gaskell, 'Bills of lading in an electronic age' [2010] LMCLQ 233, 283; Koji Takahashi,

uncertainty can be attributed to the absence of a legal infrastructure to support the use of electronic bills of lading, the controversial registry model approach to identifying the holder of an electronic bill of lading, and the absence of suitable technology to facilitate the token model approach. Compared to modern bills of lading, registry systems more closely resemble the practice of registering cargo aboard ships in the record-keeping parchment journals of the eleventh century.³⁴ According to UNCITRAL, rights in commodities represented by documents of title are typically contingent upon the physical possession of an original paper document, such as a bill of lading, warehouse receipt, or other comparable document. Electronic bill of lading registries appear to operate like electronic bill of lading books due to the fact that the electronic bill of lading under the registry model represents the rights in goods through the control of a registry record.³⁵ There is a genuine risk that the adoption of the registry model will revert to medieval bills of lading, reversing several centuries of progress. In an effort to give the electronic bill of lading the same level of legal recognition as the paper bill of lading, the method of holding the ETR was intended to be based on the fundamental purposes and functions of the primary paper bill of lading.³⁶ It is appropriate to apply token model base on electronic bill of lading since it is a subject to immediate visual verification on the spot, similar to a physical paper document.⁴² The identification of an electronic token's possessor is contained within the token itself. The holder can therefore demonstrate entitlement or right to the possessory interest.³⁷ Consequently, the holder can assert this right, protect its interest, and defend itself by seeking remedies for wrongful interference with commodities.

4. Conclusion

The main conclusions of the study may be presented in a short Conclusions section. The conclusion section should lead the reader to important matter of the manuscript.

Even though international conventions have to consider the global legal system's conceptual differences carefully, the world maritime history of the past and the influence of the growing trade and economic globalization process may also explain this continuing development. The Indonesian national shipping line P.T. Djakarta Lloyd, PELNI, for instance, includes the Hague Rules as a paramount clause in its bill of lading. The ship is an essential component of international

³⁴ Heiko Giermann, *The Evidentiary Value of Bills of Lading and Estoppel* (LIT Verlag Münster 2004) 21.

³⁵ UNCITRAL Secretariat, *United Nations Convention on the Use of Electronic Communications in International Contracts* (United Nations 2007)

³⁶ Ibid.

³⁷ Satoshi Nakamoto, 'Bitcoin: A Peer-to-Peer Electronic Cash System' (2008) 2 <<https://bitcoin.org/bitcoin.pdf>>

trade due to marine Pollution. Commercial fleet on the marine environment caused accidents and particular purpose, legal and illegal Pollution during routine operations in the ocean or dock. Beside National and International regulations, Indonesian ships must comply with International standards since Indonesia is a member of I.M.O.

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