The Responsibility of a Sea Freight Transport Management Services Company for Damage to Goods in a Third-Party Logistics Agreement

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Abstract

This research aims to analyze the limits and forms of accountability carried out by Freight Forwarding companies which are based on TPL agreements. This research is normative legal research with a conceptual, case and statutory approach. The research results confirm that Freight Forwarding's liability limits only cover damage and loss of goods resulting from errors and/or negligence from management and logistics management aspects which are direct losses. In connection with losses that are consequential or indirect, responsibility cannot be held. Liability is excluded in the event of force majeure or losses caused by the carrier. The form of accountability that must be given by Freight Forwarding regarding its mistakes is that first Freight Forwarding must be able to prove that it is not guilty according to the principle of presumption of liability. However, if Freight Forwarding cannot prove that it is not at fault then the form of liability that Freight Forwarding must provide is compensation as specified in the TPL agreement.

Keywords: Freight Forwarding, Responsibility, Third Party Logistics.

I. Introduction

Sea transportation is one of the commonly used modes of transportation by the community in carrying out certain businesses. Transportation itself is the movement of people and/or goods from one specific place to be relocated to another place as agreed upon (Risma, 2023). To ensure legal certainty in transportation, instruments are needed to ensure that transportation is carried out precisely and accurately until reaching the destination (Janné & Rudberg, 2022). One of those instruments is the transportation agreement.

The transportation agreement is one form of legal action that accommodates the interests between the party offering transportation services and the consumer (Sembiring, 2019). In the transportation agreement, it is detailed what is being transported along with an estimate of when people and/or goods will arrive at the destination. In practice, transportation agreements come in various types to accommodate different needs related to transportation (Saputri et al., 2021). The transportation agreement is also present in various modes of transportation, including maritime transportation.

Sea transportation is one of the transportation modes chosen by the community, especially in relation to the transport of goods, and its destinations are located outside the island (Amin & Jufrin, 2020). In addition to its long range, sea transportation is chosen by the community for the reason that transportation by sea also offers time efficiency and affordable costs. One of the industries that utilizes sea transportation is the logistics industry (Valashiya & Luke, 2023). The logistics industry itself, especially post the COVID-19 pandemic, has experienced massive growth, as indicated by data from the Central Statistics Agency (BPS) in 2022, showing a growth rate of 19.87% compared to the previous year (Krisna Dwipayana Dira Putra, I Nyoman Sukandia, 2023). The increasing development of the logistics industry in Indonesia is also predicted to consistently rise until 2025, with an annual growth rate ranging from 5% to 8% (Aurelia Meagan Tan, Gunardi Lie, 2023).

One proof of the growing logistics industry is the implementation of policies in several companies that focus on the shipping and receiving of logistics by utilizing services from third parties. Efforts to streamline business processes through the outsourcing of logistics distribution commonly involve legal instruments in the form of agreements carried out by optimizing third parties known as Third Party Logistics (TPL). TPL is a form of optimizing the roles and tasks of logistics specifically entrusted to third parties (Karagiannis et al., 2022). In third-party logistics (TPL), the third party generally takes care of various aspects such as logistics transportation, inventory, as well as handling matters related to the delivery and receipt of required logistics (Qureshi, 2022).

The development of TPL is part of the development of modern business, where TPL is a form of evolution and construction of business development in Indonesia to ensure that businesses are conducted effectively and efficiently (Jovčić & Průša, 2021). The company or business that entrusts its logistics through a third party via Third Party Logistics (TPL) can indeed have several advantages, such as minimizing risks related to logistics distribution because logistics have been entrusted to a third party. The company can focus on developing quality and competence, and the logistics process within a company can run effectively and efficiently, thereby enhancing overall productivity.

The importance of a company or business in outsourcing logistics to a third party through Third-Party Logistics (TPL) is to streamline logistics processes such as inbound and outbound goods, storage of goods, and inventory management, making them faster and more effective (Sumantri, 2020). One important aspect in the logistics of a company is related to the shipment of goods through maritime transportation. The role of maritime transportation in the logistics delivery becomes crucial because the logistical needs of a company are often supplied, even from abroad (Borgstrom et al., 2022). This means that the logistics process is a process of obtaining or delivering goods with estimated distances that may extend beyond islands to foreign countries. This is what makes, in the practice of logistics delivery, the use of sea transportation is attempted through the existence of a third-party logistics (TPL) agreement, in which the entire TPL process is carried out by a third party.

Efforts to improve efficiency in management, particularly in logistics delivery through Third-Party Logistics (TPL), are commendable steps. However, they pose legal challenges, especially concerning accountability in cases of obstacles, hindrances, or damage to goods during the logistics delivery process. Companies specifically engaged in managing logistics through TPL, commonly known as Freight Forwarding, sometimes encounter legal issues related to accountability when logistics goods intended for delivery face obstacles such as damage or a decline in quality (Afifah et al., 2021). This is as in the case of PT. Bumi Hanjaya Logistics as a Freight Forwarding company from PT Toba Surimi Industries, in which there is a case of damaged goods that subsequently led to a dispute in court regarding who and how the responsibility is to be accounted for. From the example case related to the responsibility of the above Freight Forwarding company, this research specifically aims to analyze the accountability carried out by Freight Forwarding companies based on the TPL agreement.

The previous research that discussed Freight Forwarding and TPL agreement was conducted by three previous studies, namely: first, the research conducted by Rahmah, et al. (2022) that discussed the analysis of the effectiveness and risks related to the use of TPL (Zai, Yulianti, et al., 2022). The novelty from Rahmah et al.'s (2022) research emphasizes the importance of Third-Party Logistics (TPL), particularly in logistics management. When TPL can handle logistics professionally, it enhances the productivity of the company. The second study, conducted by Fernando et al. (2022), focuses on analyzing the implementation of TPL business modes in maritime transportation (Zai, Widianto, et al., 2022). The novelty from Fernando et al.'s (2022) research is that the implementation of TPL (Third Party Logistics) business mode in maritime transportation is oriented towards reducing a company's business risks and potentially increasing its profits and productivity. The third study was conducted by Sitompul (2022), who analyzed logistics management strategies within TPL (Sitompul, 2022). The novelty of Sitompul's research (2022) lies in basing it on SWOT-based analysis. Therefore, logistics management strategies in Third-Party Logistics (TPL) can be optimally integrated because the third party is fully responsible for managing a company's logistics.

From the three previous studies mentioned above, research focusing on the

accountability conducted by sea freight management or Freight Forwarding companies based on the TPL agreement has not been specifically analyzed by the three previous studies. Therefore, this research is considered an original study.

2. Research Method

The research discussing the accountability undertaken by maritime transportation or Freight Forwarding service companies based on the TPL agreement is a normative legal research. The specific characteristic of normative legal research lies in the sui generis nature of legal science, where the use of theories, concepts, and legal principles forms the most important basis for normative legal research (Negara, 2023). In this study, the concept of legal accountability is the most important concept for analyzing the legal issues discussed. Primary legal materials in this research include: the Criminal Code (KUHPer), the Civil Code (KUHD), and Supreme Court Decision Number 2316 K/Pdt/2015 (MA Freight Forwarding 2015 Decision). Secondary legal materials include: journal articles, books, and research results discussing transportation law (especially maritime transportation), contract law, third-party liability (TPL), and Freight Forwarding. Non-legal materials include language dictionaries. The approach used in this research is a case, concept, and legislation approach. The analysis of legal materials is conducted in a prescriptive-normative manner, emphasizing concepts, theories, and legal principles to address and resolve a legal issue.

3. Results and Discussion

Limitation of Legal Liability of Sea Transportation Management or Freight Forwarding Company Based on TPL Agreement

Transportation refers to the Kamus Bahasa Indonesia (KBBI) and is derived from the word "angkut," which literally means to carry to move something (Pusat Bahasa Departemen Pendidikan Nasional, 2008). From that basic word, transportation essentially means an effort to carry people and/or goods for specific purposes and goals to a certain agreed-upon location. To ensure legal certainty, a transportation agreement is made in the transportation process. The transportation agreement is a form of agreement between the consumer, either a person or the owner of certain goods, and the transportation service provider (Ahmad Yusrin Siregar, Sunarmi, 2022). The transportation agreement, like

agreements in general, is bound by the provisions of Article 1320 of the Indonesian Civil Code (KUHPer) concerning its validity.

The validity of an agreement, as affirmed by Article 1320 of the Indonesian Civil Code, encompasses (Amin & Jufrin, 2020): (i) Unanimity, which is intended for the parties binding themselves to an agreement, (ii) competence, a legal requirement for someone to be considered valid in making a commitment, (iii) the existence of specific regulations, and (iv) a matter or cause allowed by law. In the first aspect, unanimity aimed at the parties binding themselves to an agreement is fundamentally emphasized that an agreement is only valid if the parties willingly and without coercion enter into the commitment of the agreement (Hernoko, 2014). This means that if one party involved in making an agreement is under threat, the agreement is not valid. The second aspect is competency, which in the context of civil law is a minimum age of 18 years or having entered into marriage (Syamsiah, 2021). The third aspect is the existence of certain things that are closely related to the principle of freedom of contract, where agreements or contracts can be made according to the wishes of the parties involved as long as they do not conflict with the law (Kemal Juniardi, Komariah, 2021). The fourth aspect is something or a reason permitted by law, essentially emphasizing that any provision, as long as agreed upon by the parties, is allowed in an agreement as long as it does not contradict the law (Priyanto et al., 2023).

Referring to the transportation agreement, which is part of the general agreement, the transportation agreement must also comply with the conditions for the validity of an agreement as stipulated in Article 1320 of the Indonesian Civil Code. In addition to referring to Article 1320 of the Civil Code, which relates to the conditions for the validity of an agreement, transportation agreements and agreements in general must also refer to the provisions of Article 1339 of the Civil Code, which substantively states that agreements must also consider or refer to various aspects such as customs, appropriateness, and laws or positive law (Rizky, 2023). If we carefully examine the provisions in Article 1339 of the Civil Code, then the transportation agreement must also refer to and accommodate various customs and proprieties that apply to transportation. From the explanation of the above agreement, it can be concluded that as part of the agreement, the transportation agreement must also comply with the provisions

governing agreements in general. Nevertheless, the primary focus of the transportation agreement is on a specific aspect, namely an agreement between the consumer or user of transportation services and the transportation service provider to transport people and/or goods to a designated location.

One commonly used transportation agreement in connection with the logistics services of a business or company is a sea transportation agreement based on Third Party Logistics (TPL). The sea transportation agreement itself is an agreement that utilizes sea transportation as the mode of delivery, specifically involving maritime vessels (Pratama et al., 2022). TPL itself is one form of logistics management carried out by a particular party, especially in the aspect of supply chain management (Proykratok et al., 2024). The development of Third-Party Logistics (TPL) in supply chain management truly began to evolve starting in 1989 and has continued to grow in tandem with companies' needs for the management and delivery of logistics (Krisdiyanti et al., 2023). In its development, Third-Party Logistics (TPL) in Indonesia essentially evolves covering five aspects, namely: Freight Forwarding, logistics management, courier services, warehouse or storage division, and logistics technology division (Hatta et al., 2021).

From the five aspects mentioned in the above TPL (Third Party Logistics), one of the crucial aspects is Freight Forwarding. Freight Forwarding, in general, is a business entity that provides service across all logistics-related fields for a company, including the aspect of shipping logistics (Baglio et al., 2022). In carrying out tasks in the field of service provision across all areas related to a company's logistics, Freight Forwarding generally collaborates with various related companies such as warehousing, shipping, and delivery services both domestically and internationally (Ejem et al., 2021). Generally, there are two positive impacts of using Freight Forwarding services in managing the logistics of a company, which include (Theresia et al., 2023): Firstly, economically, the use of Freight Forwarding services can be considered more effective and efficient, allowing companies to avoid focusing on logistics management. Companies can concentrate on other aspects such as managerial and production aspects since logistics management is already handled by Freight Forwarding services. Secondly, from a legal perspective, the use of Freight Forwarding services can

effectively distribute risks, especially those related to losses during the logistics shipment. In logistics shipments, particularly with sea transportation, there is sometimes a potential for loss, and with Freight Forwarding services, the potential risks can be proportionally shared (Husna & Yustitianingtyas, 2022).

The advantages of using Freight Forwarding services as explained above are not always positively impacting companies because there are some negative implications of using Freight Forwarding services, including: first, for companies, there may be difficulties related to trust in Freight Forwarding, especially in the agreed-upon risk distribution. Agreements between companies and Freight Forwarding bound by TPL agreements must certainly be based on trust and good faith in the use of Freight Forwarding services and the company (Maulinasari, 2022). Secondly, companies incur specific and additional costs related to the use of Freight Forwarding services compared to when the logistics process is carried out in-house by the company itself.

From the positive and negative impacts of the use of Freight Forwarding services above, it can be concluded that the use of Freight Forwarding services still provides positive orientation in the form of convenience for companies in managing various aspects related to company logistics. Freight Forwarding, as a logistics management service for companies, is generally bound by a document called the Third-Party Logistics Agreement (TPL agreement). The TPL agreement is essentially an agreement for the management of company logistics involving various parties such as the company, Freight Forwarding or logistics service provider, and the carrier (transportation service) (Putra, I Wayan Partama, 2022). In the TPL agreement, it is emphasized regarding the rights and obligations of each party and how the accountability of each party takes shape. Legal issues arise when damage to goods occurs during the logistics delivery through maritime transportation. This raises the issue of which party should rightfully be held responsible for the damage to goods in the process of shipping, referring to the TPL Agreement. The damage to goods in the logistics delivery process through maritime transportation using Freight Forwarding services has indeed occurred factually, as in the case of Supreme

Court Decision Number 2316 K/Pdt/2015 (MA Decision on Freight Forwarding 2015).

The case in the MA Freight Forwarding 2015 Decision began when PT Toba Surimi Industries utilized the services of PT Bumi Hanjaya Logistics, a Freight Forwarding company whose logistics provider was Stavis Seafood Inc., located in Boston, United States. In short, during the logistics delivery process, there were obstacles leading to losses incurred by PT Toba Surimi Industries. These challenges arose due to problems in the storage and delivery system of logistics by Stavis Seafood Inc. PT Toba Surimi Industries then filed a civil lawsuit seeking compensation from PT Bumi Hanjaya Logistics. In the MA Freight Forwarding 2015 Decision, the Supreme Court affirmed that, in accordance with Article 468 paragraph (2) of the Indonesian Civil Code, issues arising during transportation are entirely the responsibility of the transportation service provider, and consequently, Freight Forwarding cannot be held liable for such issues (Dicky Arifianto, Gurnadi Lie, 2023).

Regarding Freight Forwarding as a logistics service provider, the MA Freight Forwarding Decision of 2015 has two implications. First, concerning the MA Freight Forwarding Decision of 2015, the losses incurred by PT Toba Surimi Industries should not be attributed to Freight Forwarding. The responsibility for losses in the transportation process lies entirely with the transportation service provider and not with Freight Forwarding. Second, the MA Freight Forwarding Decision of 2015 emphasizes the essence of the principles of justice and balance, where the imposition of responsibility must be based on the dimensions of justice and balance for all parties involved. In the context of the MA Freight Forwarding Decision of 2015, Freight Forwarding should not be held accountable based on the principles of justice and balance, considering that, in the TPL agreement, the obligations of Freight Forwarding are only related to logistics management services and not the transportation process (Elly Kusumawati, Dwi Haryanto, 2022). This means that if there are losses incurred during the logistics transportation process, the responsibility lies with the transportation service provider rather than the Freight Forwarding service.

The substance of the Supreme Court Decision on MA Freight Forwarding 2015 has implications for the limitation of liability imposed by Freight

Forwarding in TPL agreements, which only cover aspects of logistics management and administration that involve direct losses. This means that, regarding losses of a consequential or indirect nature, accountability cannot be sought. The limitation of liability by Freight Forwarding in TPL agreements, in the context of logistics management and administration, only encompasses damages and losses resulting from errors and/or negligence in logistics management and administration, with accountability excluded in the presence of force majeure or losses caused by the carrier.

Legal Accountability Form of Sea Transportation or Freight Forwarding Service Company Based on TPL Agreement

Freight Forwarding, which is a logistics management service based on the TPL agreement. Freight Forwarding can be described as an "intermediary" between companies and transportation service providers (Baglio et al., 2022). In carrying out its duties as a Freight Forwarding, sometimes there is confusion in determining accountability, which falls within the domain of Freight Forwarding or transportation service providers (Nanda Dwi Rizkia & Hardi Fardiansyah, 2023). This is because Freight Forwarding is situated between companies and transportation service providers, requiring precise and careful efforts to determine the legal responsibilities of Freight Forwarding.

The term "pertanggungjawaban hukum sendiri" in the field of law is commonly known as "liability". (Vattipalli, 2020). "Liability" is a term that specifically relates to legal responsibility, as it refers to the proportionality between rights and obligations (Almadina & Badriyah, 2023). The concept of legal accountability as liability must be distinguished from the term responsibility, which is commonly synonymous with accountability in the political sense (Syalom W.J. Gerungan, Anna Wahongan, 2022). The term liability, as another term for legal accountability, is relevant to the discussion of legal accountability by Freight Forwarding. Freight Forwarding is obligated to provide legal accountability based on the agreed upon Third-Party Liability (TPL) agreement. The legal accountability carried out by Freight Forwarding not only must adhere to the TPL agreement but also needs to refer to the customs prevalent in the logistics management practices conducted by Freight Forwarding (Borgstrom et al., 2022).

The accountability undertaken by Freight Forwarding essentially needs to refer to several principles or principles of accountability in transportation law, such as (Gultom, 2020): (i) Presumption of liability or the principle of accountability that emphasizes that Freight Forwarding must prove that it is not at fault to avoid being held responsible, (ii) Presumption of non-liability, which is the principle where the company or user of Freight Forwarding services must prove the fault of Freight Forwarding to establish liability, (iii) Based on fault, the principle where, in the absence of a carriage agreement, the burden of proof lies with the aggrieved party, (iv) Absolute liability, meaning that Freight Forwarding is absolutely responsible for any loss without prior proof, and (v) Limitation of liability, which relates to restrictions on compensation for losses.

Referring to the provisions of Article 522 paragraph (1) of the Indonesian Criminal Code (KUHD) in substance, it emphasizes that logistics service providers, particularly Freight Forwarding, are responsible unless they can prove their innocence. Referring to the above provisions of Article 522 paragraph (1) of the KUHD, it can be concluded that the provisions in the KUHD essentially adhere to the principle of presumption of liability, emphasizing that Freight Forwarding must prove its innocence to avoid being held accountable (Purba & Sinaga, 2021). In relation to the accountability of Freight Forwarding, the efforts of Freight Forwarding to prove its innocence must be emphasized in terms of management and direct loss logistics management. This means that accountability cannot be sought for losses that are consequential or indirect.

Regarding the accountability that must be given by Freight Forwarding related to its errors, it is not only based on legal regulations but also on TPL agreements. The form of accountability that Freight Forwarding generally has to provide is in the form of compensation for losses suffered by users of Freight Forwarding services as specified in the TPL agreement.

4. Conclusion

The accountability limits of Freight Forwarding only cover damage and loss of goods caused by errors and/or negligence in logistics management and administration that result in direct losses. This means that accountability cannot be sought for losses that are consequential or indirect in nature. Accountability is

exempted in cases of force majeure or losses caused by the carrier.

The form of accountability that must be provided by Freight Forwarding regarding its fault is, first of all, Freight Forwarding must be able to prove that it is not at fault, as per the principle of presumption of liability. However, if Freight Forwarding cannot prove that it is not at fault, then the form of accountability that must be provided by Freight Forwarding is compensation for losses as specified in the TPL (Third-Party Liability) agreement.

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