



Delivery Business Owner Responsibilities in Damaged Goods Caused by the Employees Based on the Indonesian Consumers' Protection Law

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Abstract. The increase in the amount of users of goods delivery services has brought potential losses to the consumers. Human error such as, damaged goods, lost goods, wrong shipping addresses, etc. may increase, along with the increasing delivery of goods every day. This research aims to find out how the Business Actors is responsible for the damaged goods caused by the carelessness of employees. Consumers' of goods delivery should be protected by Act no. 8 year 1999 regarding Consumers' Protection. The researchers focus on the responsibility of the business actors based on the consumers' protection law. This is a descriptive research, categorized as a normative-empirical research. The data are collected through examination of various documents for literature research and interview to the respondents for the field research. This research shows that the responsibility of the delivery business actor for the goods that are damaged due to employees' error is to provide replacement or compensation. The fault verification is carried out through the Inverse Verification system; which means the business actors must prove that the fault does not come from their side. Business actors who refuse to respond or fail to fulfill the compensation can be sued through Consumers' Dispute Settlement Agency or litigation. However, the problem is that consumers sometimes refuse to take dispute, since the process is quite expensive and takes a lot of time – therefore it is not worth the value of the goods.

Keywords: Consumers' Protection · Goods Delivery · Damaged Goods

1 Introduction

COVID-19 pandemic has changed many things in our lives. One of the changes is in the pattern of shopping. Post-Covid-19 demands people to reduce their 'outdoor' activities, thus encouraging them to do online shopping. Not only safer; this option is also more practical and cheaper. In accordance with the increasing use of the platforms of online shopping, the use of goods delivery services is also increasing.

According to H.M.N Purwosutjipto, delivery service (or what is commonly known as transportation service) is a reciprocal agreement between the 'carrier' and the 'sender', where the 'carrier' carries the transportation of goods and/or people from one place to another (the destination) safely - while the 'sender' has to pay the transportation fee [1]. In post-Covid-19, the use of goods delivery services has increased significantly. Based on the data from the Association of Indonesian Express Delivery Service Companies (Asperindo); the average volume of deliveries of goods (nationally) throughout the first half of 2021 has grown by approximately 30% if compared to the one in early 2020 before the pandemic [2]. The amount of people who use delivery services brings potential losses for the community as the consumers; since with the massive amount of goods deliveries each day, the potential for errors in the delivery will also increase.

During goods delivery, certainly the goods may experience delays, damage, or loss because of several reasons, including accidents, mismatched or wrong delivery addresses, courier's carelessness, etc. Unpredictable things like that can cause the goods to arrive late or damaged, which causes loss for the consumers [3]. That way, the implementation of the delivery of goods does not go according to the agreed transportation agreement.

Based on the research which has been done; the Consumers' Dispute Settlement Agency (BPSK) states that in the process of goods delivery, there are often delays which are caused by the carelessness from the transportation company. Moreover, there are also other problems which may arise from the users of the delivery services, namely there may be damaged and lost goods/documents belonging to the consumers due to several internal or external factors originating from the transport party. Several factors which cause goods to be late, damaged or lost during delivery include natural disasters, carrier's carelessness, accidents that happen when the goods are sent, forget to include the code on the goods which gives the wrong address in delivery, etc. [4].

The problem that will be discussed in this research is the phenomenon of people who use goods delivery services although there is a risk of damage to the goods being transported. On one side, goods delivery service is a necessity for a community which facilitates the transactions between the 'sellers' and 'buyers', so that loyalty can be shaped between the two. However, the massive amount of deliveries can increase carelessness, which in turn may cause loss to the consumers. Many complaints on delays, loss, or damage to goods have been filed; however not all are being followed-up by the delivery service provider. Consumers who do not have sufficient knowledge of their rights as 'consumers' also cause the service providers to fail to consider it as a serious matter. Usually, the transportation company only "hides" behind the application of the standard clauses which have been signed by both parties, namely those contained in the proof of delivery receipt. In this case, sometimes consumers' loyalty can be misinterpreted by the delivery services provider, which leads to the exclusion of the consumers' rights [5].

Therefore, it is necessary to conduct a research which examines the form of responsibility of the delivery service provider (in situation where the object of delivery is damaged). The responsibility analysis will be conducted based on the Indonesian Law No. 8 year 1999 regarding Consumer's Protection. It is because this research focuses on the rights of the community as users of good delivery services that are categorized as

‘consumers’ under this law. The purpose of this research is to help the consumers who use goods delivery services to comprehend their rights, as well as to understand what obstacles are faced to get these rights.

2 Method

This research is a normative-empirical research; which is a combination of a normative and empirical research - since the data used consists of secondary and primary data [6]. The first stage is to conduct a library research to obtain the secondary data and the second stage is to perform a field research so as to obtain the primary data.

This research is analytical descriptive. Its purpose is to obtain an overview or description of the main research problem, which is a juridical event that applies in the region and at a certain time that occurs in the community in detail, clearly and systematically. The object of this research relates to the responsibility of the goods delivery services provider regarding ‘the damaged object of delivery’.

This research is done in Pekanbaru. The location is chosen based on the researchers’ initial observations, there are many problems related to the damaged goods (the object of delivery). Furthermore, the transportation company that is being researched is PT. J&T Express in Pekanbaru. The research is conducted in several branch offices of the delivery service companies which have the largest market share in Indonesia. At the branch offices, the research is considered as sufficient; since each branch office performs the same operational standards as the head office.

The population and respondents of this research consist of Table 1.

The data used in this research consist of primary and secondary data. The details are as follows:

- a. Primary data is information which comes from the parties involved with the object obtained from the interviews conducted during the field research; through direct question and answer session.
- b. Secondary data is obtained indirectly from respondents that are sourced from law books, Indonesian Law No. 5 year 1999 regarding consumers’ protection as well as related laws and regulations, Legal Journals, previous Theses, news articles, as well as legal dictionaries.

Table 1. Data on the Population and Sample

No	Research Object	Sample
1.	The Chairman of J&T Express Pekanbaru head office	1
2.	Agent from PT. J&T Express Pekanbaru	4
3.	Consumer(s) that experience the problem	28
4.	The Chairman of Consumers’ Dispute Settlement Agency in Pekanbaru	1

The research tools used in this research are adjusted to the type of the data required. The secondary data is collected through document studies which are related to the topics discussed in this research. This information can be obtained from books, scientific journal, thesis, laws and regulations, as well as other written sources (both printed and electronic). These sources are analyzed thoroughly so as to obtain an understanding of the issues discussed. They can also be used as considerations to formulate the interview questions with respondents who are experts in their fields. Meanwhile, the primary data are collected through interviews. The interviews are conducted based on “interview guidelines” in the form of a structured list of questions regarding the problem being researched. The data are collected by recording the respondent’s conversation after getting permission from the person concerned. After every data is collected; all is then processed by being described in clear and detailed sentences. Afterwards, the discussion is performed by paying attention to legal theories, laws, documents and other data, as well as by comparing them with the experts’ opinions. Finally, the conclusions are drawn with inductive method, which is the inference from ‘special things’ to ‘general things’.

3 Result and Discussion

3.1 Forms of Responsibilities of Goods Delivery Services to Damaged Goods Due to the Carelessness of the Employees in PT. J&T Express Pekanbaru, Reviewed Under Indonesian Consumer’s Protection Law

Transportation is a popular service used in long distance transaction. Even though transportation and trade are two different things, they have the same meaning of making goods as objects and similarly start with an agreement [7]. According to Article 1313 of the Civil Code, an agreement means, “An act, where one or more persons enhance themselves against one or more persons”.

Every transaction certainly cannot be separated from risk(s), whether those occur intentionally or unintentionally. Minimizing the risk(s) is the responsibility of one of the parties. Responsibility is something which exists because of a legal relationship; causing rights and obligations for the parties involved.

Every discussion on the responsibility of transportation is usually about the applied “liability principle”. The use of a certain liability principle depends on certain circumstances. Currently, there are at least 3 (three) liability principles or theories, namely [8]:

a. Fault liability, liability based on fault principle

A very important thing in the liability principle based on the existence of an element of error (*schuld* theory, fault principle) is the problem of the burden of proof. The common rule tells that the plaintiff is the one who must prove that the defender has disobeyed the law or made a mistake, which brings loss to the plaintiff.

Up to this day, the existence of an element of error as the basis for the existence of a civil liability is a generally accepted provision and able to dominate the compensation systems - both in the Continental legal system (civil law system) and in the Anglo Saxon legal system (common law system). In the former, public transportation for goods and passengers are both based on a transportation agreement, which

absolutely obliges the ‘carrier’ to ensure the safety of the goods or passengers until they arrive at the destination (strict contractual duty) [9]. In other words, the ‘carrier’ is absolutely responsible for accident or loss which may happen to the passengers or goods delivered.

b. Rebuttable presumption of liability principle

Based on the principle of “presumption of liability”, the ‘carrier’ is a *prima facie* who is responsible for the losses that may happen, unless the ‘carrier’ can prove that he/she has taken all the necessary actions to avoid loss, or if it is not possible to do so. Therefore, either the plaintiff or the victim can file a claim for compensation without having to prove a fault from the side of the ‘carrier’. Their only obligation is to prove that the accident occurs on the aircraft, or during embarkation or disembarkation. Therefore, what is meant by “the carrier’s responsibility is based on presumption” is that his/her responsibility can be avoided if he/she can prove that he/she is in absence of fault [9].

c. Non-fault liability, absolute/strict liability principle

The obligation of transportation is to ensure that the passengers and goods arrive at the destination safely. Therefore, the obligation of the ‘carrier’ is to achieve a certain result (*obligation de resultat*), and not only to organize the transportation (*obligation de moyens*). The principle of absolute liability means that the defender is responsible for the losses suffered by the plaintiff, without questioning whether or not there is an element of error on the defender.

Indonesian Law No. 8 year 1999 regarding Consumers’ Protection in Article 19 paragraphs (1) and (2) also regulates that:

- a. Business actors are responsible to provide compensation for damage, pollution, and/or consumers’ losses due to consuming goods and/or services produced or traded.
- b. The compensation referred to in paragraph (1) may be in the form of a refund or replacement of goods and/or services of a similar or equivalent value, or health care and/or the provision of compensation based on the provisions of the applicable laws and regulations.

The Commercial Code (*KUHD*) also regulates compensation in Article 472, which mentions, “Compensation which must be paid by the carrier for not delivering all or several parts of the goods, is calculated based on the value of goods of the same kind and nature at the delivery destination, at the time the goods are supposed to be delivered, minus what is spared for duties, costs and transportation fee in the absence of delivery. If the remaining cargo has the same destination provisions, in situations where the transportation is not responsible, or fails to reach the destination, then the compensation will be calculated based on the value of goods of the same kind and nature at the place and at the time the goods are imported”.

A goods delivery services company must provide a guarantee to its service users to ensure that the goods sent will be in the same condition as when they arrive at the destination. However, transportation in Indonesia does not fully guarantee the condition of the goods [10]. Consumers’ loyalty tends to be misinterpreted by the goods delivery services provider, which leads to the exclusion of consumers’ rights. Regarding the

responsibility of the ‘carrier’ based on the provisions regulated in Article 468 of the Commercial Code; “If the goods are damaged during delivery, it becomes the carrier’s responsibility. This, however, will be excluded by the condition of over-match, where if it happens, then the carrier is free from responsibility due to incident(s) which cannot be prevented or avoided”. As regulated in the Standard Operating Procedure of J&T Express delivery itself, there is provisions for responsibility on losses from the sender after using J&T Express goods delivery services. The responsibility for the compensation can be provided by means of guarantees submitted to the users of the delivery services in the form of material and immaterial guarantees. The former includes compensation for movable and immovable objects - while the latter includes non-material guarantees or compensation in the form of money.

The form of liability referred to in point 10 of the Standard Operating Procedure of J&T Express is to replace 10 (ten) times the cost of the goods delivery and not exceed Rp. 2,000,000.00 (two million rupiah). The compensation is done by J&T Express to maintain the loyalty and trust from the users of the delivery service. Purwosutjipto explains that the ‘carrier’ of goods (which in this case is J&T Express) is obliged to deliver and guarantee the condition of the goods being transported [11].

As a transportation service, if J&T Express can prove that the error is not their fault but due to the carelessness and error on the part of the sender of the goods, or because there is a *force majeure* situation; then J&T Express will be freed from claims for compensation submitted by the sender [12]. As described in Article 468 paragraphs (2) and (3) of the Commercial Code, “The carrier is obliged to compensate for all losses caused if the goods cannot be delivered as a whole or in several parts, or due to damaged goods, except when it is proven that the non-delivery of the goods or the damage is caused by a disaster which cannot be prevented, or a defect in the goods, or by the sender’s fault. The proof of error in this case uses Inverse Verification, as adopted in Indonesian consumers’ protection law; where the defender or the delivery service must prove that the error referred to by the plaintiff does not come from their party.

Therefore, if the liability principle on the part of the ‘carrier’ for the goods delivery is linked to Article 468 of the Commercial Code, then the ‘carrier’ is deemed to be presumptively responsible (Presumption of Liability Principle) for any errors or losses which arise in the process of organizing the goods delivery. However, if the company manages to prove its innocence, then it will be freed from the responsibility [13]. That means the company has not made any mistakes or omissions and has taken the necessary action to avoid the loss or risk which cannot be prevented or avoided. Therefore, the burden of proof lies within J&T Express instead of in the ‘party at loss’. The ‘party at loss’ only needs to show that the loss happen during the delivery that is organized by J&T Express. Furthermore, the ‘carrier’ is also responsible for the actions of the employees, as well as for all objects used in the delivery.

3.2 Implementation of Accountability for Goods Delivery Services in PT. J&T Express

Based on a research done in J&T Express; the J&T is only responsible for losses suffered by the consumers as a result of damage or loss of goods’ packages during the goods delivery, as long as the loss that happens when the goods (or documents) sent are still

supervised by J&T. This comes with a note that the damage or loss on the goods happen due to the carelessness of J&T agents and employees.

J&T is not responsible for the losses which arise during the process of goods delivery that are caused by events which may arise beyond the ability of J&T Express in the area through which J&T Express transportation passes. J&T Express will not provide compensation to the sender for the damage(s) arising from natural disasters (*Force Majeure*).

Based on the results of the interview, other than the applicable provisions in the J&T Express Company, there are also policies from the branch offices and related agents in terms of providing compensation for consumers who make transactions - but do not use insurance. This is done by the J&T Express as an effort to restore trust to the consumers. The policy of the branch offices and agents is in the form of early negotiations, and the goods' packages worth more than 2 (two) million will still be compensated for only a few percent of the total value of the goods. Meanwhile, for the goods worth hundreds of thousands; the offices or Drop Points are the ones who will provide full compensation based on the total value of the goods.

However, the responsibility given to the customers is not comparable to the compensation provisions specified in the J&T Express' SOP. The results show that the compensation received by the consumers is not in accordance with the price of the goods (as the object of delivery). The goods delivery services company is responsible for providing compensation in the maximum amount of Rp. 1.000.000,-, however the compensation received is Rp. 200,000, -, while the value of the goods delivered is more than Rp. 1,000,000.

This means that the clause in the agreement regarding compensation given to consumers if the goods delivered are damaged or lost is not applied in accordance with the provisions of the applicable agreement. The company fails to fulfill their responsibility when the goods delivered are damaged or lost. The company is considered to be unfair in providing compensation for losses suffered by the consumers. The agreement clause which applies to J&T Express states, "During the delivery, J&T Express does not guarantee that the entire delivery process runs smoothly and properly, which may be caused by events that arise beyond the ability of J&T Express in the area that J&T Express transportation passes". This clause means that J&T Express seems to refuse to be held responsible if there is a loss on the consumers, since during the delivery; the goods do not proceed smoothly and properly. J&T Express does not guarantee that the entire delivery runs smoothly and properly.

Based on the research, it can be concluded that the consumers' protection for the loss of damaged goods is still weak. The goods delivery services company is not fully responsible for the loss and the fulfillment of information related to the terms and conditions set by the company has not been done optimally. Based on this research, some consumers do not know if the damaged or lost goods will actually receive compensation if the goods delivered have previously been insured by the J&T Express. The goods delivery does not always run smoothly.

The clause in the J&T Express agreement which states that it will pay compensation in the amount of a maximum of 10 (ten) times the cost of delivery or the price of the goods is taken with the lowest value. This clause of the agreement must not be

applied to consumers who experience losses during the goods delivery, because if the goods delivered by the sender have a high value or price, or if the goods are classified as expensive; the clause can potentially be an exoneration clause - which is not in accordance with the provisions of Article 18 paragraph (1) – a of the Indonesian Law No 8 year 1999 which regulates that every document or agreement of a business actor is prohibited from including a standard clause stating the transfer of responsibility.

Article 18 paragraph (3) of the Indonesian Law No. 8 year 1999 regulates that any standard clause which has been set by a business actor in a document or agreement violates the provisions of Article 18 paragraph (1) of the Consumers' Protection Law, thus the agreement is null and void. If this happens, the agreement clause regulated by J&T Express will become invalid. The agreement clause is also not subject to the law of the agreement as regulated in Article 1320 of the Civil Code regarding the legal terms of the agreement, and Article 1338 (3) regarding the provisions of the principle of good faith in the agreement since the agreement is not done with propriety and justice. During the goods delivery, not all consumers know about the agreement clauses regulated by J&T Express.

The fulfillment of the rights and the implementation of the obligations of the transportation company must be done in good faith. However, if in the future, obstacles still exist (such as a delay or damage in the goods delivery); then the consumers have a strong legal basis to obtain compensation from business actors. The process of resolving disputes which occur between business actors and consumers will be resolved according to the applicable provisions, namely by submitting a claim to the transportation company. If necessary, it can involve Consumers' Dispute Settlement Agency to serve as a mediator between the business actors and consumers. However, the court will still be the last resort if there is no agreement in the non-litigation level. Based on this research, it can be seen that consumers are sometimes feel reluctant to take the dispute resolution route, since the process is not worth the value of the goods.

4 Conclusion

In general, the discussion of the responsibility of transportation is regarding the applied liability principle. The use of a certain liability principle also depends on certain circumstances. Currently, there are at least 3 (three) liability principles or theories, namely the principle of responsibility based on an element of error, the principle of responsibility based on presumptions, as well as the principle of absolute responsibility. Based on Article 468 of the Commercial Code, goods which are damaged during their delivery become the responsibility of the 'carrier'. The form of the responsibility is referred to in point 10 of the J&T Express' SOP, namely to replace it with 10 (ten) times the cost of the goods delivery and not exceed Rp. 2,000,000.00 (two million rupiah). However, as a 'carrier', if J&T Express can prove that the error is not their fault, but due to the carelessness and error of the sender of the goods, or because there is a force majeure situation; then J&T Express will be freed from demands for compensation submitted by the sender. Therefore, in this case, the proof of error uses Inverse Verification; that is where the defender (or the delivery services) must prove that the error referred to by the plaintiff does not come from their party.

The responsibility given to the customers is not comparable to the compensation provisions specified in the J&T Express' SOP. The results show that the compensation received by the consumers is not in accordance with the price of the goods (as the object of delivery). The company fails to fulfill their responsibility when the goods delivered are damaged. The company is considered to be unfair in providing compensation for the losses experienced by the consumers. The process of resolving disputes which occur between the business actors and consumers will be resolved based on the applicable provisions, namely by submitting a claim to the transportation company. If necessary, it can involve the Consumers' Dispute Settlement Agency to serve as a mediator between the business actors and consumers.

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