A Freight Forwarders Responsibility for the Carriage of Goods by Sea: According to National and International Laws

Heru Iskhan
Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia
Kentingan, Jl. Ir Sutami No.36, Kec. Jebres, Kota Surakarta, Jawa Tengah, Indonesia 57126
heru.iskhan@student.uns.ac.id

I Gusti Ayu Ketut Rahmi Handayani
Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia
Kentingan, Jl. Ir Sutami No.36, Kec. Jebres, Kota Surakarta, Jawa Tengah, Indonesia 57126
Ayu_igk@staff.uns.ac.id

Hartiwiningsih Hartiwiningsih
Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia
Kentingan, Jl. Ir Sutami No.36, Kec. Jebres, Kota Surakarta, Jawa Tengah, Indonesia 57126
hartiwiningsih@staff.uns.ac.id

***Abstract*— Freight forwarders as expedition companies; fulfill a crucial function in enabling the efficient movement of goods from one place to another destination. They are responsible for ensuring the safety of goods during transportation and must account for the delivery of goods to interested parties. Hence, it is necessary to conduct a comprehensive analysis of Freight Forwarders from the perspective of Indonesian law concerning International conventions governing such matters. This article aims to examine the complex problems in determining the position of freight forwarders as agents or principal shipping operators or non-vessel operator's common carriers (hereafter NVOCCs) or logistics operators. This examination is based on the rules of Indonesian and international carriage. The present study employs a juridical normative research methodology, mostly drawing upon literature studies. The data and documents obtained are analyzed to conclude. This paper examines and discusses the obligations and responsibilities of freight forwarders as carriers from the perspective of international law and shipping law applicable in Indonesia. If problems arise due to legal actions carried out by the carrier, this research guarantees that it can provide solutions to resolve the problems of the parties involved.**

Keywords- Freight Forwarders, National Laws and International Laws

I. INTRODUCTION

Transport is a fundamental driver of a country's economy, as it enables economic development efforts to achieve satisfactory results. The relevance of transportation activities is demonstrated by the benefits that many companies and nations derive from these activities. Therefore, transport is essential for companies and the economy.

On the other hand, as a country's economy develops, it becomes increasingly important for freight forwarder services to help connect the flow of services and goods for economic sectors from the first partner (shipper) to the final customer (consignee) or could enable the flow of goods from one place to another.

A Freight Forwarder, which is part of transportation providers with a variety of work activities, shows the fact that they are inseparable from theoretical and practical problems and dilemmas regarding their responsibilities to interested parties.

The transportation of goods by sea, carried out by Freight Forwarders, allows the exchange of goods across national borders to continue to increase, and there are no longer geographic barriers in international trade due to modernization in transportation. The emergence of contemporary transportation systems has prompted numerous endeavors to provide a comprehensive definition for the term "freight forwarder." This definition pertains to a contractual arrangement for the movement of products, wherein a mix of various means of transportation, including road, rail, air, and sea, is employed. Defining 'freight forwarding' as a non-vessel-owning carrier (NVOCC: Non-Vessel Operator Common Carrier) within the context of a goods transportation agreement poses significant challenges and complexities. Consequently, it becomes imperative to adopt a modified approach that combines commercial law and traditional legal principles in order to ascertain the legal ramifications arising from such a contractual arrangement.

The global community has made many international trade agreements as a form of collective agreement that can be used to base free trade efforts. This international convention was then ratified as the basis for legal harmonization relating to the

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international transportation of goods. Regrettably, certain nations have chosen not to adopt these conventions, opting instead to exclusively rely on their domestic laws when addressing disputes arising from international carriage of goods within their jurisdiction.

The International Maritime Convention serves as the regulatory framework that outlines the obligations of maritime carriers. It establishes guidelines for the apportionment of risks and the equitable distribution of rights and responsibilities between carriers and goods owners.

The legal basis related to the operation and transportation by sea is regulated by the Commercial Law and Shipping Act, which explains the parties involved in shipping companies, sea and port supporting companies, and agreements between a person who owns a ship as well as a provider of transportation services with people who will use the service, to carry out the entire transportation by sea. From various legal perspectives and conventions that govern the transportation of goods by traditional shipping companies, the transportation industry lacks an integrated legal framework and uniform practices. As a result, it is the freight firm that assumes all liability for any harm incurred to merchandise during the process of maritime cargo transportation. However, the liability cannot be attributed to the freight firm solely on the grounds of fault or negligence.

In this case, the forwarding company, they will be responsible for their actions in accordance with Article 468[1] and Article 505[1] of the Indonesian Commercial Code, the operation of sea transportation must be in an agreement involving service providers and service users. An agreement is needed in this case so that the rights and obligations of both parties arise. A shipping company performing the duties of a carrier (without owning or managing any vehicles) has no control over the goods delivered to the vessel. They only have and carry out the responsibility of supervising the goods. Likewise, “Freight forwarders who play a role and participate in the transportation process, even though they do not participate directly, are still responsible for fulfilling the achievements in the agreement.

The maritime movement of products plays a crucial role in facilitating international trade. The international transportation of commodities by water involves multiple entities, and the specific obligations of each entity are contingent upon the relevant legal framework. The role of Freight Forwarders, whether Freight Forwarders acts as a 'Shipping and Freight Agent'; 'Customs House Agent'; 'Cargo Broker'; Clearing Agent' or as a 'Principal'. In this regard, the question and main concerns issues regarding the limitation of Freight Forwarder's liability and responsibility are as follows what is the extent of a Freight Forwarder responsibility in sea transportation according to Law Number 17 Year 2008 concerning Shipping and the Commercial Code (KUHD) and what are the duties and responsibilities of a Freight Forwarder during the transportation of goods by sea under international law.

II. Literature Review

The law of maritime transportation concerns civil law, specifically the relationship between carriers and users of marine transportation services who are subject to contract law. This differs from public law, which pertains to the law of the sea. In the legal literature, there exist different terms such as shipping Act and the sea Law (in a narrow sense) that are synonymous with shipping law and Admiralty law.[2] Additionally, the terms maritime law or sea transport law is frequently utilized, contingent on the substance of the law which essentially involves various issues related specific content, to encompass a wide range of topics connected to the vast extensive maritime domain. The meaning of 'Shipping Law’: refers to the domain of maritime law that pertains to the legal aspects associated with ships, the personnel engaged in or in proximity to them, and the transportation of products by commercial vessels.[3]

According to Wiwoho Soedjono, maritime law is the law regulating the transportation of goods and/or people by sea.[4] From this understanding, the law of transportation can be classified as civil law, which is regulated in the Book of Commercial Law (KUHD). However, for international shipping, the Hamburg Rules, it replaces the Hague Rules 1924 to better meet needs and keep pace with technological developments.[5] On the other side, HMN Purwosutjipto expressed his opinion that the law of sea transportation is all the rules (rules, norms) that regulate traffic regarding sea crossing transportation.[6] As stated by to R.Sukardono, the sea transportation law for crossing does not have a sea object in a public sense but is based on a civil relationship that is caused by an agreement, namely an agreement to cross the sea with a commercial ship.[2] After the UN declare Law of the Sea Convention (LOSC) in 1982, it regulates sailing safety, shipping, manning the ship, marine pollution, economic regulation and maritime civil law,[8] and with the opinion expressed by M. Husseyn Umar, Indonesian Law of the sea is legal framework in Indonesia that governing maritime transit of goods and persons,[9] So that normatively the formulation of transportation law with existing regulations does not provide a specific definition of transportation.[10]

Defining the duties, powers, and responsibilities of the "agent" and "principal" in a contract for the delivery of goods, the position of the parties in the law will lead to a very broad understanding. H.M.N. Idris Ronosentono in his book 'Freight Forwarding' mentions internationally applicable understandings and definitions; each person or certain party will be able to express their respective opinions, based on their own experiences, especially those that are in accordance with what is felt and the benefits obtained during the services from a forwarder to his economic activities.[11] Whether the freight forwarder acts as a 'shipping and shipping agent'; 'customs brokers’ of goods in trade who plays the role of an intermediary between the recipients of the goods or shipper on the one hand and as a carrier (carrier) and seeks to conclude a contract of responsibility for the carriage of goods, thereby often resulting in a contradictory understanding of the role and responsibility. In this case, it leads to the responsibility of the sender in the contract of delivery of goods. When a forwarder, traditionally acting as agent or principal,

arranges transportation, pays shipping costs, insurance, packing, and processes customs documents, and then charges fees to their customers as the owner or shipper of the goods. The importance of the consignor's contract as an agent or principal is that if the shipper acts as an agent, the company will not be liable for any breach of the cargo's agreement between the shipping company and the carrier.

The freight forwarder assumes the principal role, they will bear liability in most carriage claims, as the agent is typically at the center of the dispute. However, agents can also take on the principal role if agreed upon in the contract. On the other hand, the parties can entrust the goods to an agent who acts only as a carrier, responsible for maintaining and controlling them, the goods and delivering them to a third-party carrier who delivers the goods to the consignee. Therefore, it is almost impossible to define a freight forwarder who acts as an agent or principal in carrying out the delivery and transportation of goods on behalf of the user the service or the owner of the goods, without himself acting as a carrier This condition is excluded when it comes to customs procedures or when there are claims that may arise in any case involving a contract for the carriage of goods.[12] Fridman,[13] quotes Valin J as saying[13]: Agency refers to the legal relationship between two parties, the agent and the principal. In this relationship, the agent is recognized by law as the principal's representative; with respect to third parties by means of contractual agreements or the transfer of property. The legal protection that can be provided and accessed by agents providing sea transportation services is very dependent on the agreement's contents. For this reason, the parties must agree on the carrier's obligations and the burden of proof in transporting goods by sea.[14] Violation of this obligation is a reason for liability.

III. RESULTS AND DISCUSSION

The Freight Forwarder's liability to the customer may vary, depending on the conditions of the shipment. The freight forwarder as an intermediary (*direct representative*) shall also be liable for any other party to the contract, which is involved in the execution of the shipment on its behalf, and shall be liable for all services rendered by them in accordance with the regulations. Freight Forwarders will be held liable as a carrier, following pertinent provisions, if they arrange transportation of the shipment in accordance with freight forwarding contract, assume contractual responsibility for its fulfillment, and come to an explicit agreement with the principal.

The historical development of the international law of the sea can be traced back to a collection of customary law principles, which represents one of the most ancient fields within the realm of international law. The above provisions were gradually formalized, leading to the effective ratification of UNCLOS in 1982.[17] The UNCLOS encompasses the legal framework that governs the conduct of States and other entities in their maritime activities, and is widely recognized as the primary body of international law pertaining to the oceans. The basic aspects of international law of the sea can be divided into two distinct components. First, it pertains to the spatial allocation of jurisdictional boundaries of nations. Second, it facilitates international collaboration among states in marine matters, thereby safeguarding the collective interests of the global community.[18]

The Maritime Law Committee of the International Law Association in The Hague took the initial steps in 1924 to create a comprehensive regulatory framework. This effort culminated in the signing of an International Convention in Brussels on August 25, 1924, by the principal nations engaged in international trade, commonly known as **the Hague Rules**. The primary objective of the Convention was to provide a harmonized framework for bills of lading, while also delineating the fundamental responsibilities and constraints of the carrier in terms of responsibility. The development of these regulations occurred over time, prompted by discontent with the inadequate safeguards provided to cargo proprietors under **the Hague Rules.** As a result, several proposals for revisions of the rules were formulated, culminating in a consolidated text that was ratified in Brussels in February 1968, sometimes referred to as **The Hague - Visby Rules**.

The Hamburg Rules, which were officially enacted in 1978 and subsequently changed on November 1, 1992, are a set of regulations that provide a uniform legal structure for defining the rights and responsibilities of shippers, carriers, and consignees with regards to contracts pertaining to the maritime transportation of products via marine means. UNCITRAL formulated a novel set of regulations referred to as the Rotterdam Rules on December 11, 2008. The provisions concerning the carrier's liability outlined in these regulations merge the negligence liability system from the 'Hamburg Rules' with the burden of proof allocation more akin to that of the 'Hague Rules'. As stated in Article 1(2) of The Hague Rules of 1924, the carrier assumes responsibility for the goods from the moment of loading until they are unloaded. Following this, the carrier's liability ceases to exist when the products are unloaded and delivered in close proximity to the vessel. Furthermore, it is important to note that the carrier bears no responsibility or liability for any potential harm or destruction that may arise as a consequence of such actions:

1. Furthermore, according to the Hague Rules of 1924, in the event of loss or damage caused by fire, the carrier is not obligated to compensate for such damages or losses, unless the fire is their own error or they intentionally conceal the fire's existence, which they acknowledge is an Act of God;
2. War action;
3. Behavior exhibited by public adversaries;
4. Capture or confinement of princes, monarchs, or nations;
5. Restrictions on quarantine;
6. An action or failure to act by the carrier or proprietor of the goods.

7. Hazards such as natural disasters, shipwrecks, and other unforeseeable circumstances may arise on the sea.

The ramifications of the several customs pertaining to contracts for the transportation of products via maritime vessels exhibit a certain level of intricacy. Many states abide by the original Hague Rules and have integrated the Hague/Visby amendments, nevertheless certain jurisdictions have chosen to adopt the Hamburg Rules and have established implemented a blended framework that integrates elements from both the Hague-Visby and Hamburg Rules. The carrier's main responsibilities, as detailed in the Hague-Visby regulations, include issuing of a bill of lading, the exercise of reasonable care to ensure the ship's seaworthiness, adherence to the agreed-upon route without deviation, and the proper handling and preservation of the commodities.[19] The original article that governed the assignment of a carrier under the Hague-Visby Rules was Article III (1 and 2), which was explicitly set out.

The carrier is legally obligated to exercise reasonable care prior to and at the commencement of the journey. This duty includes: (a) ensuring the ship is in a suitable condition for sailing; (b) adequately staffing, outfitting, and provisioning the ship; (c) preparing the holds, refrigeration and freezing compartment and all other areas of the ship used for transporting goods so that they are suitable and safe for the storage, transport and preservation of goods. The carrier is obligated to adhere to the regulations outlined in article IV, which pertain to immunities. Additionally, the carrier is responsible for proficiently and performing tasks including loading, handling, stowing, transporting, maintaining, and unloading the conveyed items (emphasis added). This provision encompasses critical components of the carrier's obligations and forms the basis of its accountability. The phrase 'due diligence,' which is employed in this section as a norm of behavior, has garnered significant scholarly interest and has been subject to many interpretations in case law. In the next paragraph about the main tasks of the carrier based on, what is meant by due diligence, when it should be carried out and by whom is critical to understanding and applying this important rule.[18]

The Hamburg Rules, set out the carrier's duty and the associated burden of proof. This responsibility is set out in Article 5(1) of the Convention, the carrier is responsible for any loss or damage sustained by the products, as well as any instances of delayed delivery. The liability is incurred when a loss, damage, or delay occurs during the period when the products were under control and responsibility of the carrier, as stipulated in Article 4. Nevertheless, the carrier has the power to exonerate themselves from legal responsibility by providing evidence that they, in conjunction with their workers or representatives, implemented all essential measures to avert the occurrence and its ensuing ramifications. This law covers the basic obligations of the carrier in terms of shipping worthiness and control of goods. The carrier's obligations, similar to those set forth in the Hague-Visby Rules, relate to the carrier's liability for the acts or omissions of its employees and agent and are to be observed in a confidential manner.[20] According to article 4 of The Hamburg Rules 1978, the carrier is responsible for the goods under his control during the transport from the port of departure to the port of discharge. Positive law in Indonesia also states that the carrier is released from responsibility if they are proven to not be at fault during the transportation process until it reaches the port of unloading.

IV. CONSCLUSIONS

The results of the study and analysis of this research show that there are main differences in responsibilities between freight forwarders, carriers and third parties who interact with each other which can be summarized as follows The concept of carrier responsibility arises from the rebuttable presumption of liability principle, which is outlined in Art. 41, para. (2) of Shipping Act. According to this principle, the carrier is deemed to have full responsibility for any damages that may arise from the transportation services provided by them. Nevertheless, in the event that the carrier is able to provide evidence demonstrating that the incurred damage is not attributable to their own actions or negligence, it is possible for the carrier to be exempted from the obligation to provide partial or whole compensation. The carriage document serves as evidence that the agreement for the purpose of carriage between the parties involved was not executed in writing, and it does not function as a formal written contract. This is due to the legal rights and responsibilities of the parties already being established by law. The Rotterdam Rules integrate the fault liability framework of the 'Hamburg Rules' with the more stringent burden of proof requirements found in the 'Hague Rules', specifically in regards to carrier responsibility.

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