

The Responsibility of Crane Company in terms of The Loss Occurred during The Sea's Transport Activity Based on Indonesia's Civil Law

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Abstract

Transportation activities, whether by land, air or sea, involve parties involved in the transportation process. The parties in the transportation activity have different legal obligations. Different legal obligations can be viewed from the different legal relationships that arise between the parties in transportation and the roles of the parties in transportation. In sea transportation, there are many parties involved with each other and it is even possible to have a legal relationship with parties who are not directly involved in the sea transportation, such as a crane company that is present only to rent crane equipment to the loading and unloading company so that loading and unloading activities can be carried out, which also does not rule out the possibility that the loading and unloading company can create a legal relationship with other parties in the transportation process. In transportation, the parties can also use insurance for both the activities or interests of the transportation process with the aim of reducing the risk of loss that can arise in transportation activities or other events during transportation activities. Within this study, the legal and operational responsibilities of crane companies functioning as intermediary service providers in maritime transportation are being investigated. Using normative legal research methodology with statute and conceptual approaches, the research analyzes Indonesian laws, regulations, and legal materials related to crane company responsibilities in maritime operations. The findings reveal that crane companies bear liability for operational losses, must provide suitable equipment, and should utilize insurance protection for risk transfer.

Keywords: Sea Transport, Parties in Sea Transport, Crane Company Liability, Indonesian Civil Law, Risk Management.

1. Introduction

Freight is an agreement between a carrier and a shipper to transport goods or people from one location to another safely and securely. Freight plays an important role in trade, both domestic and foreign, because it can facilitate the distribution of goods from factories to buyers to meet the needs of the community. The number of manufacturing companies using transportation services is increasing, which shows that transportation services in Indonesia are starting to show progress. Thus, transportation services provided by others are widely used in trade activities due to limitations in carrying and delivering goods to be moved to their destination and thus making many people choose to use freight services provided by other parties.

The modes of transportation in Indonesia consist of sea transportation, land transportation and air transportation, of the various modes of transportation that exist above, air transportation is a mode of transportation that has developed rapidly and rapidly starting



from 1946 through efforts to develop the aviation fleet, expand network, increasing fleet flight frequency and improving infrastructure (Aljufri, 2020). Thus, various transportation services provided by other people are widely used in trading activities due to limitations in carrying and delivering goods to be moved to their destination (Siahaan et al., 2023) and this makes many people choose to use goods transportation services provided by other parties (Aryati et al., 2022). The three types of transportation modes mentioned above, transportation by sea has a very large role in transportation for Indonesia (Chumaida, 2014; Sidauruk & Utomo, 2018).

Each party has different law's obligation regarding their activities in transportation especially in sea transport activity. Based on Indonesia's law, there are sets of law containing obligations of the parties (Fatahillah, 2015). The fact that Indonesia is using civil law system makes there are codification in the law's principle (Muhammad, 2013). In example, based on Article 1 Law Number (No). 22 of 2009 contains the definition of transportation itself, which it can be said that the carrier has the obligation to transport people and goods to the headed place. There are also others law regulating about transportation in sea and air, that are Law Number (No) 17 of 2008 about Shipping and Law Number (No) 1 Of 2009 about aviation. Also, there are other laws concerning about transportation such as Ministerial Decree of Transportation No. PM 59/2021 about Implementation of Related Service Businesses of Water Transport.

In Article 1 number 6-15 of Ministerial Decree of Transportation No. PM 59/2021 about Implementation of Related Service Businesses of Water Transport, it defines the parties relating in sea transport, which they also have series of obligation embedded. The question arises about the parties that are also in sea transport activity such as crane company. Crane company tends to appear leasing its load and loading activities such as crane itself. As it can be seen in its website, PT Samudera Indonesia appear as a company that leases and offer concerning about sea activity such as crane, ports and terminal. Unfortunately, cases occurred are questionable about who should be responsible if there are parties that are not related to the transportation itself but has the agreement to parties especially on sea transport. In example, there was a case occurred in Indonesia where a crane Tanjung Emas port fell and caused damaged to the nearby activity. Based on the background of the problem as described above, this study has the following objectives, namely to analyze the form of responsibility of the crane company as an intermediary in transportation that provides crane equipment for loading and unloading activities for goods in sea transportation.

2. Method

The type of research used in this study is normative legal research, meaning that in finding a legal issue using legal rules, legal principles, and legal doctrines to answer a legal issue faced (Efendi & Ibrahim, 2018). The normative research approach is carried out by using a method of studying laws and regulations, books and other legal materials related to legal research. In this study, the statute approach and conceptual approach were used. Conceptual approach is research conducted by examining all laws and regulations related to the legal problem being handled. The statute approach is an approach taken by examining laws and regulations related to the legal issues being handled, as well as studying the relationship between legislation by understanding the principles and hierarchy of legislation.

3. Results and Discussion

3.1. Role of Crane Companies in Loading and Unloading Services and Transportation Management in Maritime Operations

Transportation activities, especially sea transportation, are transportation activities that have high risks. The existence of high risks in sea transportation can arise due to shipping that occurs during transportation. With the possibility of risks in sea transportation, the carrier has responsibilities as stated in Article 40 of Law Number 17 of 2008 concerning Shipping. The imposition of responsibility on the carrier makes the carrier obliged to maintain the security and safety of the goods under his responsibility during the implementation of transportation (Guntara, 2016; Halomoan, 2021). The implementation of transportation using a means of transportation can be a ship. The implementation of transportation using a ship as a means of transportation must be in a condition that is worthy of transport that can provide a sense of security and comfort for users of transportation services or can be called seaworthy.

Maritime transportation activities also involve many parties in maritime transportation activities. This is regulated in the provisions of one law, namely Law Number 17 of 2008 concerning Shipping, in Article 31 paragraph 2 regulating service businesses related to transportation in waters, service businesses related to transportation in waters include: Loading and unloading of goods; Transportation management services; Port water transportation; Rental of marine transportation equipment or service equipment related to marine transportation; Independent tally; Container depot; Ship management; Intermediary for buying and selling and/or renting ships; Ship crew agencies; Ship agencies, and; Ship maintenance and repair (Solikin, 2019).

In carrying out the business activities of shipping goods, the freight forwarding party can act as a carrier or transporter which means that this freight forwarding company can also carry out transportation on its own behalf. If the freight forwarding carries out transportation acting as a carrier and carrying out transportation, then the freight forwarding company has an obligation to make a projection of the activity timeline with the aim of the interests of the sender of the goods for the implementation of safe transportation. By acting as a carrier, this transportation service company or freight forwarding company also has an obligation to find the appropriate means of transportation (Fauzi, 2019). Not only that, freight forwarding activities can also cooperate with loading and unloading activities in the transportation process.

Loading and unloading activities carried out by loading and unloading companies can be the result of agreements with other parties, for example from shipping or transport companies or with transportation management services such as freight forwarding. Thus, freight forwarding companies can enter into legal relations with loading and unloading companies to carry out loading and unloading activities (Hatta et al., 2021; Rani & Sucipta, 2019). In carrying out loading and unloading business activities, loading and unloading companies can provide their own cranes to carry out loading and unloading activities or rent cranes from third parties.

The port has an obligation to provide facilities to support port operational activities which are necessary for ships to dock at the port (Potoboda, 2014). One form of obligation that must be provided for the port to support operational activities is to provide port equipment facilities. The port equipment used is regulated in the laws and regulations in the Regulation of the Minister of Transportation Number 13 of 2023 concerning Amendments to the Regulation of the Minister of Transportation Number 12 of 2021 concerning Standards for Business Activities and Products in the Implementation of Risk-Based Business Licensing in

the Transportation Sector, that the provision of port equipment also includes business standards intended to provide loading and unloading equipment as a facility that must be available as a means of activities related to sea transportation. The existence of port equipment also provides an advantage for activities at the port because it can provide time efficiency and allow for large quantities of goods. This existence is manifested in the form of ship service equipment, equipment for loading and unloading activities, and others (Widyawati & Yuliantini, 2019).

The presence of port facilities is also inseparable from the role of the parties in providing port facilities such as loading and unloading equipment to support loading and unloading activities at the port, which is important for improving the implementation of unloading activities at the port as provided by PT Samudera Indonesia as stated on the internet page that this company provides port facilities such as containers, bulk, tankers and offshore. An important role for companies providing equipment such as those carried out by PT Samudera Indonesia in serving terminals and port equipment such as Harbor mobile cranes, Container cranes, Rubber-Tyred Gantry Cranes provides an increase in the productivity of unloading and loading services at the port. Thus, it is possible for third parties to be present to be able to rent crane equipment to loading and unloading companies or the loading and unloading companies themselves that provide the cranes themselves.

3.2. Obligations of Crane Companies as Equipment Lessors to Loading and Unloading Service Providers

The discussion of the form of responsibility and legal obligations of parties in maritime transportation activities cannot be separated from the role of parties in maritime transportation activities that carry out maritime transportation activities that have an interest in the implementation of maritime transportation as regulated in the provisions of the legislation, especially those regulated in the Regulation of the Minister of Transportation Number 59 of 2021 concerning the Implementation of Service Businesses Related to Transportation in Waters, one of the substances of which regulates service businesses related to transportation. The parties in maritime transportation activities in these legal provisions have legal obligations that must be carried out as a series of maritime transportation activity processes (Muhammad, 2015). The roles and legal obligations can be said to have been regulated in these laws and regulations as regulated in Article 1 numbers 5 to 15 in these legal provisions provide definitions and implicitly explain the obligations of each party.

In this study, focusing on the responsibility of the crane company that rents cranes to loading and unloading companies in sea transportation activities as there are two forms of implementation of responsibility if the crane is part of a loading and unloading company that provides crane equipment or a crane company as a third party that rents port equipment to support loading and unloading activities (Gultom, 2020). Discussion of this crane if a third party, can create a legal relationship with the civil basis of Article 1320 Burgerlijk Wetboek to make an agreement between parties by considering the provisions of Article 1234 Burgerlijk Wetboek regarding the achievements of the parties in making an agreement to be responsible if damage occurs due to crane equipment during the transfer of goods. The achievements of the crane company as a party that rents crane equipment are one of them providing crane equipment according to capacity where for example a harbor mobile crane is used to transport containers weighing 100 tons or other crane equipment that is in accordance with the capacity of the container to be transported. Not only that, the obligation to fulfill the achievements of the crane company as a third party is to provide appropriate officers.

Meanwhile, if the loading and unloading company has a crane business as part of the loading and unloading company, the loading and unloading company is responsible if damage

occurs during the loading and unloading process due to the crane being operated causing losses to cargo goods. This compensation by the loading and unloading company that provides the crane can be subject to Article 1365 Burgerlijk Wetboek which regulates Unlawful Acts where this Article regulates unlawful acts and causes losses to others, requiring the person who caused the loss due to his mistake to replace the loss. This also applies to crane companies that provide crane equipment that is rented to loading and unloading companies that can be subject to Article 1365 Burgerlijk Wetboek if it is proven that there is a mistake from the crane company. On the other hand, the implementation of loading and unloading in its business activities uses equipment from third parties such as provider companies to the government has a legal obligation as a form of contractual agreement to carry out the contract in good faith. This can refer to the provisions of the law of obligations on the principle of good faith in Article 1338 Burgerlijk Wetboek where the crane company when renting out crane equipment also refers to this legal provision because it has the same civil relationship.

The provision of crane equipment does not rule out the possibility that the loading and unloading company needs another party to rent crane equipment from another party so that it can be said that loading and unloading equipment can be provided by ships or third parties. In the provision of loading and unloading equipment there are factors that have an influence on loading and unloading equipment where in the provision of loading and unloading equipment must pay attention to maintenance because it is a determining factor and can have an impact on the time used which can result in decreased productivity of loading and unloading activities. The factors that must be considered in the provision of loading and unloading equipment are as follows: equipment function where the loading and unloading equipment used must be in accordance with its work function; equipment capacity function where the equipment must be in accordance with the capacity of the equipment used; how to operate the equipment which is an important factor where the equipment is adjusted to the ability of the equipment in terms of tool speed, tool direction, tool movement cycle and others; type and condition of the soil, the use of loading and unloading equipment depends on the condition of the soil.

If there is a danger to the goods loaded during the transportation process, the provisions of Article 1365 Burgerlijk Wetboek contain regulations regarding unlawful acts that have an impact on losses to other people, including in the specifics of this thesis, the goods transported by crane. However, there are elements that must be met so that the act is an unlawful act, including the existence of an error, an unlawful act, namely an act that is considered to be against written legal provisions or principles that exist in society, losses, and a causal relationship between the unlawful act and the losses that occur. So that if it is associated with transportation activities and the presence of the principles in Article 1320 Burgerlijk Wetboek, the parties in the transportation activity sea especially crane companies as third parties and stevedoring companies have legal obligations to implement contracts as a form of contractual process of the parties. Civil law also contains the principle of proportionality which if reviewed in the form of an agreement can be used as a basis for guaranteeing the exchange of rights and obligations to the contract. Thus, it can be said that crane companies must comply with legal provisions, especially civil law arising from agreements and crane companies must pay attention to the cranes used so that they are in accordance with the capacity of their use in transportation activities.

4. Conclusion

The crane company has the liability as long as it can be proven that the loss occurred was because of the fault of the crane company in renting the loading and unloading service company, In Indonesian law using the *Burgerlijk Wetboek voor Indonesië* (Indonesian civil law), article 1365 arranges about what the liability of person making fault and bringing loss to other people should be responsible to pay the loss. Applying this article of 1365 *Burgerlijk Wetboek voor Indonesië* should consider the constituent of this article itself, which the liable constituent. Crane company also should rent the equipment that are suitable. Suitable crane equipment might be the capacity of the crane itself. Crane companies are advised to use insurance protection in carrying out contract activities from renting to crane equipment objects with the aim of risk transfer as the main function of insurance where there is a transfer of risk whose insurance function can be applied in the loading and unloading process using the crane. The suggestion of using insurance is inseparable from the principles of insurance that can be applied, one of which is the principle of insurable interest so it is recommended to use insurance.

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