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Limitations On Insurance Subrogation Rights And Carrier Responsibilities: Case Analysis Of Decision 452/PDT/2021/PT.DKI In Sea Freight

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ABSTRACT
This research aims to analyze the carrier's responsibilities in sea transportation, as well as evaluate the suitability of the Panel of Judges' legal considerations in the case between PT. Asuransi FPG Indonesia and PT. Pelayaran Tempuran Emas related to subrogation in insurance and responsibility of sea carriers. The research method used is normative descriptive analytical using primary, secondary and tertiary data. Various regulations that are used as references include Law no. 40 of 2014 concerning Insurance, Law no. 17 of 2008 concerning Shipping, Government Regulation no. 20 of 2010 concerning Water Transport (PP No. 20/2010), Government Regulation no. 51 of 2002 concerning Shipping (PP No. 51/2002), and Minister of Transportation Regulation No. 76 of 2017 concerning the Organization and Working Procedures of the Shipping Court. This research analyzes Decision Number 415/Pdt.G/2019/Pn. Jkt. Utr. regarding the dispute between PT. FPG Indonesia InsuranceJaya Iriantoin vain against PT. The Golden Tempuran Voyage, which was later canceled on appeal through Decision Number 452/PDT/2021/PT.DKI. The decision stated that the Plaintiff was not entitled to receive compensation payments that had been paid to PT RAPP. The conclusion highlights the responsibility of the carrier in maintaining the safety of goods, as well as the importance of the right of subrogation in insurance law, although there is uncertainty in the legal interpretation used.

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INTRODUCTION

According to the National Transportation Safety Committee (KNKT) report, there were 13 shipping accident incidents in Indonesia in 2022. This number shows a decrease of 31.58% compared to the previous year which recorded 19 cases. From this data, the most frequent accidents are sinking and burning of ships. Five cases were recorded for each type of accident. For example, the ships that caught fire included Dumai Line 5, Sabuk Nusantara 91, Lit Enterprise, Mutiara Timur I, and Express Cantika 77. Meanwhile, the ships that sank included Satya Kencana III, Teman Niaga, Ladang Pertiwi 02, Permata Asia, and the Light of Arafat.

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Apart from that, there was one incident of collision between Trisula Bhakti II and Gate Samudra 2. There were also two cases where the ship was identified as having run aground, namely Young Yong and Sabuk Nusantara 96.

Accidents that often occur in sea transportation, especially in the transportation of goods using cargo ships, can potentially cause significant losses for both the transportation company and the goods owner. Losses that may be experienced by the owner of the goods could be in the form of damage, loss or destruction of the goods being transported by the cargo ship. This uncertainty regarding the possibility of a loss is known as risk.

Risk is uncertainty regarding the possibility of loss (*the uncertainty of loss*). In facing risks, companies have several strategic approaches. First, they can avoid risks by reducing or avoiding activities that have the potential to pose risks. Second, they can control risks by implementing effective control measures in their operations. Third, companies can choose to withstand risk by bearing some or all of the risks that arise. Finally, the company may also choose to transfer the risk to another party, for example by using an insurance policy or contract of carriage that transfers responsibility for the risk to a third party.

One strategy commonly used to deal with risks in transporting goods using cargo ships is to transfer the risk to an insurance company. This risk transfer process occurs when the owner of the goods insures goods transported by sea using a cargo ship, known as *Marine Cargo Insurance*. In the realm of insurance, losses occur as a result of an event or danger (peril), which can be caused by two main factors, namely natural factors and human factors. Natural factors include losses arising from natural events such as floods, lightning, storms and tsunamis. Meanwhile, human factors include losses caused by human actions or negligence. In situations where the loss is caused by another party, in the context of an insurance agreement, there is a principle known as the principle of subrogation. This principle gives the insurance company that has paid a loss claim the right to take over the right to compensation from the third party responsible for the loss, if a claim has been submitted by the insurance policy holder. There are many cases where the insurer who has the right of subrogation claims damages from the third party who is responsible for the losses suffered by the insured. Unfortunately, in many of these cases, the third party refuses to fulfill its responsibility in providing compensation to the insurer. The reasons for the rejection are various.

METHODS

This research analyzes Decision Number 415/Pdt.G/2019/Pn. Jkt. Utr. regarding the dispute between PT. Asuransi FPG Indonesia against PT. The Golden Tempuran Voyage, which was later canceled on appeal through Decision Number 452/PDT/2021/PT.DKI. The decision stated that the Plaintiff was not entitled to receive compensation payments that had been paid to PT RAPP. There are also theories used in this research, including Friedman's Theory of Legal Responsibility and its impact, Roscoe Pound's Theory of Legal Certainty, and the Principle of Subrogation.

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ANALYSIS AND DISCUSSION

The principle of subrogation in insurance which confirms that the compensation received by the insured must not exceed the actual loss suffered as a result of the insured event. Subrogation aims to return the insured's financial condition to its original state, not to provide a profit. In claiming subrogation rights, the insurer may experience obstacles, such as a third party refusing to be responsible for the losses incurred, so that the insurer may experience significant financial losses. Typically, the insurer will try to settle the claim out of court first, but if that doesn't work, they can file a civil lawsuit. Discussing the application of the subrogation principle in insurance law through Decision case number 415/Pdt.G/2019/Pn. Jkt. Utr. between PT. Asuransi FPG Indonesia and PT. Pelayaran Tempuran Emas, in this decision, the panel of judges granted the plaintiff's claim and stated that PT. Pelayaran Tempuran Emas is responsible for losses arising from unlawful acts by their employees. However, this decision was later overturned on appeal on the grounds that the compensation payment received by the Plaintiff was inappropriate if the amount of loss proven was smaller than the insurance claim paid. Thus, the Plaintiff is only entitled to receive payment in accordance with the amount of loss proven to have arisen from the unlawful act.

There are two principles of Carrier Responsibility, namely:

a. *Absolute Liability* or *Strict Liability* (Principle of absolute responsibility): The principle of absolute responsibility (strict liability) is often identified with the principle of absolute responsibility (absolute liability). This principle applies when the carrier is responsible for goods or services that disappoint the consumer without considering fault. Consumers only need to prove a causal relationship between the business actor's actions and the losses they suffer. The principle of absolute responsibility can also be applied.
b. *Fault Liability* (Principle of responsibility based on fault): The principle of responsibility based on fault was first recognized in ancient Babylonian culture. This principle requires the party who caused the loss to be responsible for their mistakes and compensate for the losses incurred. In Indonesia, this principle is regulated in Article 1365 of the Civil Code concerning Unlawful Actions.

In terms of responsibility for the safety and security of passengers and/or goods transported, Law Number 17 of 2008 concerning Shipping uses the principle of responsibility based on fault. Article 41 paragraph (2) of Law Number 18 of 2008 concerning Shipping stipulates that if it can be proven that the loss was not caused by the company's fault, the company's regulation of sea transportation in Indonesia is regulated in various kinds of regulations, including: KUHD, special regulations, and regulations. outside the Criminal Code. Maritime transport law in Indonesia has undergone several changes, the latest with the force of the ordinance dated 4 February 1933.

In the legal system, unlawful acts include actions that violate the legal rules that apply in society, both those related to statutory regulations and unwritten legal rules that exist in society. Article 1365 of the Civil Code stipulates that every person who commits an unlawful act is obliged to compensate for the losses arising from his or her mistake. There are four elements whose existence must be proven if you want to sue based on an Unlawful Act,

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namely an unlawful act, fault, loss, and a causal relationship between the unlawful act by the perpetrator and the loss. There are three categories of unlawful acts, namely unlawful acts due to intention, unlawful acts without fault, and unlawful acts due to negligence. The model of legal responsibility in Indonesia includes responsibility with an element of fault (intentional and negligence), absolute responsibility (without fault) in a very limited sense, and responsibility with an element of fault, especially the element of negligence. In criminal law, there is a difference between intentional errors and errors due to negligence. This error must be accountable, because a person who does not know what he is doing is not obliged to pay compensation.

Indonesian shipping law states that companies are responsible for the safety of passengers and goods based on fault. It is stated that Law Number 17 of 2008 uses the principle of responsibility based on fault. Article 41 paragraph (2) states that if the company can prove the loss was not due to their fault, they are not responsible. Indonesian shipping law includes various regulations and has been updated, most recently on 4 February 1933. In legal terms, unlawful acts include actions that violate the written and unwritten laws of society. Article 1365 of the Civil Code requires anyone who commits an unlawful act to compensate for losses caused by their mistake. To sue for an unlawful act, four elements must be proven: the act itself, fault, loss, and the causal relationship between the act and the loss.

Differences of opinion occurred between Prof. Soekardono and Purwosutjipto regarding the responsibilities of the captain and carrier company. Prof. Soekardono believes that ship entrepreneurs are responsible when the ship is in port, while the captain is responsible when the ship is sailing. However, Purwosutjipto believes that as long as the skipper is not fired from his position, responsibility remains with the skipper. It also states that the development of modern communication systems allows ship operators to monitor conditions on ships 24 hours a day. In addition, responsibilities related to the safety and security of passengers and goods transported are regulated in various regulations in Indonesia, such as the Criminal Code and other special regulations. The carrier's responsibility as a debtor is regulated in Article 1236 and Article 1246 of the Civil Code. Article 1236 of the Civil Code states that if a debtor does not carry out the performance he promised, the debtor can be declared in default by the creditor. In this case, debtors who are in default are obliged to provide compensation for costs, losses and interest in accordance with the provisions regulated in Article 1239 of the Civil Code.

In addition, Article 1246 of the Civil Code states that compensation for costs, losses or interest by the debtor must be proven by the debtor's negligence, especially in the case of late payment. The new debtor becomes obliged to pay compensation for costs, losses and interest after being declared negligent. Highlighting the responsibilities of transport companies in waters, protection for passengers, and the responsibilities of captains in the context of ship accidents based on Law Number 17 of 2008 concerning Shipping, namely:

a. Protection for Passengers, Especially Disabled People and Sick People: Article 63 paragraph (1) of Law Number 17 of 2008 states that disabled people and sick people have the right to receive special treatment in water transportation. This shows the

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importance of seaworthiness regulations which are also related to the ship's responsibility towards passengers.

b. Responsibility of Water Transport Companies: Article 86 of Law Number 17 of 2008 confirms that water transport companies are responsible for the consequences arising from the operation of their ships. This responsibility includes death or injury to passengers, loss or damage to goods transported, delays in transportation, as well as other consequences related to ship operations.
c. Responsibility of the Master: Although the responsibility of the transport company is regulated in shipping law, the responsibility of the master is also important in the context of a ship accident. If the actions taken by the captain cause the death of a passenger, his responsibility will be regulated in Chapter XXIX of the Criminal Code. However, it is emphasized here that the focus of this research is more on civil liability resulting from ship accidents rather than criminal law aspects.

Article 321 of the Commercial Code states that ship entrepreneurs are responsible for losses caused by unlawful acts of people working on ships in their work environment. The responsibility of the ship entrepreneur is divided into two:

a. For legal acts committed by people who work on the ship.
b. For losses resulting from unlawful acts of people who work on a ship for the purposes of the ship or its cargo, as long as these acts are carried out within their work environment.

The 1945 Constitution emphasizes the importance of protecting all Indonesian citizens and creating a just society and a prosperous national life. The right of subrogation in marine insurance is the transfer of the insured's right to the insurance company to claim damages from the third party responsible for the loss, in accordance with Article 284 of the Criminal Code. The subrogation rights dispute resolution process involves the following steps:

1. The insurer gives a summons to the third party after receiving a letter of transfer of rights from the insured.
2. The third party pays compensation to the insurer.
3. If the third party refuses to pay compensation, the dispute can be resolved through litigation or non-litigation.
4. Dispute resolution patterns include binding adjudicative methods (such as litigation, arbitration, mediation-arbitration, and private judges) and non-binding non-adjudicative methods (such as conciliation, mediation, *mini-trial, summary jury trial, neutral expert fact-finding*, and *early expert neutral evaluation*).

If the insurance company chooses litigation, they can file a civil suit with the district court as the party with the authority to decide the case. If the parties are dissatisfied with the decision of the court of first instance, they have the right to submit an appeal to the High Court. After the appeal process, if the parties still feel that there is an error in the application of the law by the judge at the court of first instance and appeal level, they have the right to submit a cassation request to the Supreme Court. Subrogation rights disputes that originate from damage or loss of insurance items which result in losses for the insured's property. However, these losses can be caused by various events that are part of the dispute resolution.

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According to Article 1367 of the Civil Code, liability for losses caused by the actions of employers and people they appoint to represent their company, as well as goods under their supervision. Article 468 of the Commercial Law Law (KUHD) stipulates that the carrier is responsible for the actions of the people he employs and the goods used when transporting goods. In addition, Article 191 of Law Number 22 of 2009 concerning Road Traffic and Transportation confirms that public transportation companies are responsible for losses caused by the actions of people they employ in transportation operations. Therefore, the authors conclude that transport companies are responsible for the actions of their employees, regardless of whether such actions violate the law or even constitute a criminal offense.

Several aspects related to responsibility in the transportation and shipping industry, as well as the insurance claims process related to damage to goods, include:

1. Insurance Claim: The insured party submits a claim to the insurance company to obtain compensation for damage to goods, by receiving a letter of assignment of rights, or an assignment reception.
2. Transport Company Responsibility: According to Article 468 of the Commercial Code, the transport company is responsible for losses resulting from not delivering goods intact or damaged, unless it can be proven that non-delivery of the goods was unavoidable.
3. Responsibilities of Water Transport Companies: Law Number 17 of 2008 concerning Shipping and Government Regulation Number 20 of 2010 regulate that water transport companies are responsible for the safety of passengers and goods transported. This responsibility covers various consequences of ship operations, such as death or injury to passengers, damage or loss of goods, delays in transportation, and losses to third parties.

According to *The Hague Rules* 1924 (Article 1(2)), the carrier's responsibility starts from the time the goods are loaded until the goods are unloaded. This is in line withThe Hamburg Rules 1978 (Article 4) which states that the carrier's liability occurs when the goods are under his control, namely at the port of departure until the port of unloading.

In the use of subrogation rights, the insurer can apply the principle of responsibility based on the principle of presumption, which states that the carrier is responsible for losses that occur during transportation. However, the carrier can also be released from responsibility if they can prove that the loss was not caused by their fault. In the situationforce majeure, the carrier is not completely relieved of responsibility; they must prove that they have made reasonable efforts to avoid or minimize the consequences offorce majeure the. In the case of damage to the insured object, the insurer can still hold the transportation company responsible based on the principle of presumption, depending on evidence of whether the event was caused by third party negligence or force majeure.

In the case study of Decision Number 452/PDT/2021/PT.DKI, there is transportation insurance protection owned by PT. Asuransi FPG Indonesia and PT. Pelayaran Tempuran Emas, where the insurance guarantees loss, damage and responsibility for goods in accordance with the agreed coverage. There is also a focus on studying legal effectiveness

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theory, which emphasizes the importance of comparing legal reality with legal ideals to evaluate its effectiveness, including:

a. Success in implementing the law, which shows that the law made has achieved its objectives.
b. Failure in implementation, which shows that the legal provisions stipulated do not achieve their objectives.
c. The factors that influence it, which can be analyzed from the aspect of success and failure, range from legal factors themselves, law enforcement, to community factors.

CONCLUSION

The conclusion of this research is as follows. First, the carrier's responsibility in sea transport includes the task of organizing the shipping process as well as ensuring the safety of the goods or individuals being transported from the beginning to the end of the shipment. This responsibility appears as an integral part of the carrier's role, which affirms that the carrier has an obligation to protect the transported goods from all risks that could harm the sender or recipient. Second, the right of subrogation in insurance is a legal process that allows the insurance company to take over the insured's rights to claim damages from the responsible third party. This process requires the insurance company or the bearer to meet all the conditions that have been set. Although there is some uncertainty in the interpretation of the law used, the judge's decision in this case is stated to have complied with the principle of subrogation rights that apply in the context of insurance law.

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