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Pimpinan Fakultas Hukum Universitas Tarumanagara dengan ini menugaskan kepada:

Prof. Dr. Gunardi Lie, S.H., M.H.

Telah menjadi Penulis Jurnal dengan judul "*Liability for Compensation of Insurance Parties for Maritime Transport Accidents Analysis Decision Number: 640/ Pdt.G /2014/PN.SBY*".

Setelah 1 (satu minggu) acara dilaksanakan segera melaporkan kegiatan beserta dengan lampirannya.

Apabila tidak dilaporkan, maka penugasan kegiatan selanjutnya akan ditunda.

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Jakarta, 29 Oktober 2024

Dekan

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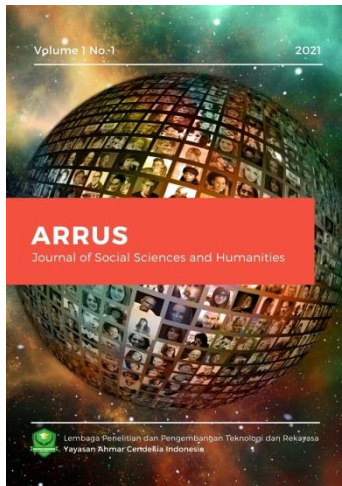
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RESEARCH ARTICLE

Liability for Compensation of Insurance Parties for Maritime Transport Accidents Analysis Decision Number: 640/Pdt.G/2014/PN.SBY

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Abstract: Trade becomes an important sector in the development of world economic. The focus of each country on establishing good relations occurs through cooperation in sending goods from one party to another. This research utilized a legal approach (statute approach through the studies obtained from the Shipping Law, Civil Code, Commercial Code, and Government Regulations. The delivery and transportation of goods that occurs is protected by another party called insurance. There are several responsibilities and risks faced during the transportation of goods, which aims to avoid out of control accidents. Insurance is a method used to protect and compensate for losses from goods damaged during transportation with insurance to minimize damage of goods during transportation.

Keywords: insurance, accident, and transportation

1. Introduction

In the scope of trade, transportation is the main and an important part as the support trading and development economics (Fajar & Mulyanti, 2019). The transportation sub-sector that is also an important focus in trade is shipping (DR. DA Lasse, SH, 2017; Yudhistira et al., 2022). Operating ships as a means of transportation in trade by looking at the large number of trades that occur through the maritime sector is a reality that currently exists in relations between nations, in which Indonesian takes part in developing the world of trade (Amalia et al., 2016; Autoridad Nacional del Servicio Civil, 2021). Specifically, the field trading and development economy oblige Indonesian country to take the active role, productive, and positive to balance other countries in realizing a safe country, conducive communication, intensive, and economical (Hernovianty, 2021; Ngatikoh & Faqih, 2020).

In sea transportation, the responsible person for the goods will be confronted with the risk that the goods in transit will reach their destination and the value of the goods will reduce through loss, damage in journey, or through extermination or other reasons. Reduction in the value of goods that are unknown to the owner of the goods are of course excluded. Any damage suffered by the owner can be transferred to the insurance company (Njatrijani et al., 2016; Winanda & Wirasila, 2019).

Sea transportation that has been given Indonesian ship status is also regulated herein Constitution Country Indonesia, including in Book Constitution Law Trade (Amin & Jufrin, 2020; Paikah, 2019). Therefore, dangers and risks will arise at any time during delivery process (DR. DA Lasse, SH, 2017; Surajiman & Surajiman, 2021). In order to minimize existing losses, a method of diversion risk is selected, which is known in Indonesia as "insurance" (Sikellitha et al., 2021).



Marine transportation insurance is the insurance that covers the risk of loss goods during sea, land, or air shipping, and problem insurance transportation or loading repeat goods by company transportation (Rani, 2016; Sikellitha et al., 2021). Usually, not only the goods being transported are insured, but also the transport equipment. Coverages in transport insurance are damage from transporting products by sea, land, and air. (Ika Putri et al., 2017).

Transport carried out by the carrier must always be insured, of course remember the importance of transportation insurance itself (Layali & Sudiarto, 2022; Pratama et al., 2022). Cargo Insurance Products to provide Guarantees for island exports, imports, and transportation in the form of goods involve general cargo, containers, bulk cargo, commodities, machinery, fertilizer, cement, fuel oil, and others (Gunarti et al., 2018; Ni Ketut Pitri Adi Gunarti, 2016). Of course, transporting goods and people by sea also carries many risks, including piracy, shipwrecks due to unpredictable waves, and shipwrecks due to collisions between ships or with coral reefs (Afifah et al., 2021; Pratama et al., 2022).

Hypotheses: Entrepreneurial competencies consist of those skills that are deeply rooted in a person's background as well as skills that can be acquired and learned at work (Man & Lau, 2005). According to Mitchelmore and Rowley (2013), one of the objectives to develop classifications of entrepreneurial competencies is to be able to measure such skills. It has been recognized as a specific group of skills that are relevant to business success among women entrepreneurs. Ahmad et al. (2010) have found eight competency domains, namely strategic, commitment, conceptual, opportunity, organizing and leading, relationship, personal, and technical competencies which are the most relevant and context-specific domains of entrepreneurs' entrepreneurial competencies.

Hence, this study examined every domain of the entrepreneurial competencies to investigate whether each of the competencies would directly affect the women micro-entrepreneurs' business success. The investigation is based on the following hypothesis:

- H1: Strategic competency is significantly and positively related to business success among women micro-entrepreneurs.
- H2: Commitment competency is significantly and positively related to business success among women micro-entrepreneurs.
- H3: Conceptual competency is significantly and positively related to business success among women micro-entrepreneurs.
- H4: Opportunity competency is significantly and positively related to business success among women micro-entrepreneurs

2. Research Methods and Materials

This research used a legal approach (statute approach), obtaining from the Shipping Law, Civil Code, Commercial Code, and Government Regulations (Irianto, 2017). The legal materials used in this research included statutory regulations and all official documents containing legal provisions as well as secondary legal materials which provided descriptions as supporting primary legal materials, such as books, articles, journals, research results, and the related articles with laws relating to marine insurance (Sulaiman, 2018).

3. Results and Discussion

Marine insurance is a form of civil contract in which the insurer makes a promise, in exchange for insurance payments, to the insured in whose favor the contract is made to compensate them for losses they may suffer as a result of the occurrence of danger or accident (Kajwang, 2022). Insurance requirements for goods damaged during shipping depend on the type of insurance taken by the sender or owner of the goods. If the sender or owner goods emit insurance transportation, company insurance will act inmanage, see,



and assess any damage that occurs during the transportation of goods (Alwi, 2021). However, the nature and extent of an insurance company's liability may vary depending on policy provisions insurance. There is several types of insurance shipping (Novikova et al., 2022), as follows:

1. *All Risk Insurance*. Insurance that covers all risks of damage and loss of goods that may occur during shipment, except risks that are excluded by the transport company.
2. *Total loss insurance*. Only protects the owner of the goods on the total loss, namely damage or loss of goods during transportation that exceeds the limit, which specified in policy.
3. *Marine Insurance*. Insurance that protects goods during transportation through sea or air. This type of insurance generally covers damage or loss, which caused by incident such as wind typhoon, fire, or crash.

In the occurrent of transport damage to the goods, the sender or owner of the goods should immediately notify the insurance company and file a complaint. Then, an investigation will be carried out by the insurance company to determine the cause of the damage and its magnitude compensation that must be paid (Anon, 1983; Rani, 2016). However, please note that some damage or lost goods can excluded from policy insurance, such as damage caused by loss or accident by negligence or error sender, or recipient goods (Ching & Yip, 2022).

For claim insurance on goods damaged at the time of delivery, several conditions that must fulfilled by policy owner or goods sender (Kajwang, 2022):

- a. Report damage or loss of goods to the insurance company in time determined in policy, usually within 24 hours to 7 days of receipt of the goods.
- b. Provide complete and clear evidence of damage or loss of goods, such as photos or videos, delivery notes, invoice, and other related document.
- c. Make sure the shipped goods are insured before shipment and inform the insurance company of the value of the shipped goods.
- d. It is prohibited to carry out actions that may cause further damage to the object, such as attempting to repair it yourself or moving the object from its original location.
- e. Not provide false or misleading information to the insurer about the condition of the item or cause damage.
- f. Do not take any action that is prohibited and stipulated by law, such as shipping prohibited goods or violating customs regulations.

In addition, special conditions apply to certain types of transport insurance, e.g shipping insurance, which contains special conditions related to the risk of damage or losses during sea or air transportation. Compliance with the above provisions is crucial. It is important to obtain insurance compensation for goods damaged in shipping. Thus, it is important for shippers to read the signed policy carefully and understand what needs to be done to make a claim (Dadiani, 2018; Portia Ndlovu, 2022; Raunek, 2018).

The *KUHD* (Commercial Law Book) regulates trade and business in Indonesia. In insure damage in journey, the Commercial Code apply a number of rules (Sagita, 2022; Wijaya et al., 2016) as follows:

- a. Article 1866 of the Criminal Code stipulates that delivery of goods is considered has begun when given to the carrier. Therefore, the owner of the goods must reconfirm the goods that have been insured before handing it over to carrier.
- b. Article 1867 of the Commercial Code stipulates that the carrier has responsibility to safeguard, protect, and cope with in order to avoid damage or loss of goods occurring during shipment. In this context, if the carrier can prove that the damage or loss

resulted from unavoidable circumstances or events beyond its control that were not possible and beyond the carrier's prediction.

- c. Article 1874 of the Commercial Code stipulates that the shipper may voice a claim to compensate the carrier for damage to or loss of the goods during delivery. If the carrier refuses or fails to provide adequate compensation, the shipper may claim insurance for damage to or loss of the goods during transit or delivery process.

The implementation of the *KUHD* or Commercial Code relates to coverage for goods damaged during delivery by ensuring that the sender or owner of the goods has insured its delivery, which bears the risk of damage or loss of goods during delivery process. If goods damaged or is lost during delivery, sender or owner goods can do claim insurance in accordance provision, which applies with company insurance. Preferably, the delivery of goods must also comply with the provisions of the Commercial Code regarding obligations carriers and shippers, and avoid threats that could worsen the damage or lost during handover (Wijaya et al., 2016).

Based on Decree No.: 640/Pdt.G/2014/PN.SBY regarding cargo ship accidents and claim for compensation from the insurer. There is an insurance contract based on Article 1 Paragraph 1 Constitution No. 2 of 1992 on Business Insurance. The plaintiff (PT. AXA INDONESIA INSURANCE) acts as guarantor "who provides compensation loss to the insured in the event of loss, damage, or suspected loss of goods the insured." On the other hand, Heri Setiabudi acts as the insured "who has paid insurance premiums to the insurer based on the applicable contract and has authority for entitled submit claim to underwriter on loss, damage, or lost profit, which expected on goods insured."

In this case, goods insured by Mr. Heri Setiabudi (insured) to the plaintiff, in connection with accident that occurred on September 25, 2013 during sea transportation using the ship "MV. CANCI. Furthermore, the plaintiff paid change loss/claim as big as Rp. 2,929,500,000,-, submitted by Heri Setiabudi (the insured) for damage to the insured goods committed by the defendant. The plaintiff obtained all rights owned by the Insured (Subrogation Right) to the defendant (as the shipping company cruise or company transportation) in relation to the compensation based on Article 284 of the Commercial Code that the plaintiff was entitled and legitimate, as well as recognized based on Constitution and regulation in force in Indonesia to file a lawsuit for "Deeds Oppose Law" on the defendant for the loss caused by the defendant.

In addition, a letter of demand for compensation/claim to the Plaintiff is appropriate with regulation applies, which has set in insurance, that is before pay demands compensation/claim to the insured obtaining more first pointed company evaluator loss insurance. PT. Cunningham Lindsey Indonesia, as the company appointed to assess insurance losses for this incident, accept cost service company evaluator loss of Rp. 127,174,900,-.

In this case, the Chairperson of the Panel granted the plaintiff's request by establishing the defendant in a tort action and imposing a fine on the defendant in the form of money damages and sentencing the defendant to pay forced money (Dwangsom) to the claimant in the amount of Rp. 10,000,000.00, - every day. If the defendant does not fulfil and carry out the contents of the decision since the decision was read. Reporting the value of the Conservatoir Beslag that has been placed, covering movable and immovable property consisting of vessels owned by the defendant and the office building with its inventory.

4. Conclusion

Marine transportation insurance is insurance that covers the risk of loss goods insured during sea, land, or air voyage besides, problem insurance transportation or loading repeat goods by company transportation. As a rule, not only the goods being transported are insured, but also equipment the transportation. The insurance requirements for goods



damaged during shipment depend on the type of insurance taken out by the shipper or owner of the goods. If the shipper or owner of the goods takes out transport insurance, the insurance company will address and take care of the damage incurred during the transport of the goods. Compliance with the above provisions is essential to obtain insurance compensation for damaged goods, if the goods are damaged or lost during shipment, the shipper or owner of the goods can make an insurance claim according to the provisions.

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