

LEGAL PROTECTION FOR CONSUMERS IN THE CASE OF EXCESS SPEED BOAT CAPACITY AT DUFA PORT – DUFA

Fathurrahim

Fakultas Hukum, Universitas Khairun, e-mail: rinofathur@gmail.com

Abstract

In a carriage agreement, the position of the parties, namely the carrier and the service user, is equal. As for the things that can cause harm to passengers due to the fault of the carrier, among others, accidents caused by the negligence of the captain, conditions of transportation that are not suitable for use, or due to lost or damaged passenger luggage. The government should increase the socialization activities of Law no. 17 of 2008, both to sea transportation operators and to the wider community as users of sea transportation services, so that legal protection efforts against sea transportation service users (passengers) as regulated in Law no. 17 of 2008 can actually be implemented by all sea transportation companies.

Keywords: Protection, Consumer, Speedboat.

Abstrak

Dalam perjanjian pengangkutan, kedudukan para pihak yaitu pihak pengangkut dan pihak pengguna jasa sama tinggi. Adapun hal-hal yang dapat menyebabkan kerugian bagi penumpang akibat kesalahan pihak pengangkut antara lain kecelakaan yang diakibatkan kelalaian nahkoda, kondisi angkutan yang tidak layak pakai, maupun akibat barang bawaan penumpang hilang atau rusak. Pemerintah hendaknya semakin meningkatkan kegiatan sosialisasi UU No. 17 Tahun 2008, baik terhadap penyelenggara angkutan laut dan terhadap masyarakat luas sebagai pengguna jasa angkutan laut, agar upaya perlindungan hukum terhadap pengguna jasa (penumpang) angkutan laut yang sebagaimana diatur dalam UU No. 17 Tahun 2008 dapat benar-benar dilaksanakan oleh seluruh perusahaan pengangkutan laut

Kata Kunci; Perlindungan, Konsumen, Speedboad

PRELIMINARY

In the context of implementing national development and realizing the insight into the archipelago, it is necessary to arrange effective and efficient national transportation to support and at the same time drive the dynamics of development, increase the mobility of people, goods and services, help create a stable and dynamic national distribution pattern and support regional and regional development. further strengthen the development of the life of society, nation and state, and to support defense and security as well as to improve international relations. Transportation is one of the means to expedite the wheels of the economy, strengthen the unity and integrity of the nation in order to strengthen the realization of the archipelago

insight, improve and support the defense and security of the State which can further strengthen relations between nations. The importance of transportation is reflected in its implementation which affects all aspects of the life of the nation and the state and increases the need for transportation services for the mobility of people and goods within the country as well as to and from abroad. In addition, transportation also plays a role as a supporter, driver and driver for the growth of regions that have great natural resource potential but are not yet developed, in an effort to increase and distribute development and its results evenly.

Recognizing the importance of this transportation participation, sea transportation as a type of transportation in the waters must be organized into an integrated national transportation system that is able to realize the provision of balanced transportation services according to the level of need and the availability of safe, regular, smooth and fast transportation services. , easy to reach, on time, comfortable, affordable rates, orderly, safe and efficient.

The increase in national transportation activities, both in terms of land, sea, air and rail transportation, on the other hand, also has an impact on increasing transportation incidents and accidents. The high number of cases of marine accidents in Indonesia today must be a concern for all parties, not only ship owners but also the government, relevant agencies and the public who must be more active in providing information.

The main cause of marine accidents in general is due to the excess of transportation from the specified carrying capacity, both goods and people. In fact, it is not uncommon for shipping service users to force themselves to board the ship even though the ship is full of determination as long as it gets a place on the ship. In order to integrate transportation facilities and infrastructure that meet the requirements of transportation security and safety, it is necessary to have a Final Report of Standardization or regulations on systems and procedures, as well as professional human resources to realize a complete and effective and efficient transportation service. So for that we need a good governance system where the government has a function as a guide to transportation services covering aspects of regulation, aspects of supervision and aspects of control.

Considering the importance and strategy of the role of sea transportation which controls the livelihood of many people, its existence is controlled by the State whose guidance is carried out by the government. then Law Number 17 of 2008 concerning shipping was drafted which is a refinement of Law Number 21 of 1992, so that the operation of shipping as a system can provide the maximum benefit to all people, the nation and the State, foster public interest, and preserve the environment, coordination between the center and the regions as well as state defense and security.

In addition to the above, also explicitly and clearly regulated in this law is the establishment of an institution in the field of Marine and Coastal Guard Units (KPLP) which is formed and is responsible to the president and technically operationally carried out by the Minister of Transportation. KPLP has a command function in enforcing rules in the field of

¹ H.K.Martono and DKK, *Transportasi Di Perairan Berdasarkan Undang – Undang Nomor 17 Tahun 2008*, 2011.

shipping safety and security, and coordinating functions in the field of law enforcement outside of shipping safety².

With the enactment of Law no. 17 of 2008 is expected to help realize legal certainty for parties related to the implementation of transportation services, be it transportation entrepreneurs, workers (masters) and passengers. Operationally, the transportation management activities are carried out by the transportation captain, where the captain is a party that binds himself to carry out transportation activities on the orders of the transportation entrepreneur or carrier³. The driver in carrying out his duties has a responsibility to be able to carry out his obligations, namely transporting passengers to the agreed destination safely, meaning that in the process of moving from one place to another⁴, it can take place without obstacles and passengers are in good health, not experiencing danger, injury, sick or died. So that the purpose of transportation can be carried out smoothly and in accordance with the use value of the community.

But in reality, carriers still often take actions that are considered to cause harm to passengers, both real losses experienced by passengers (material losses), as well as immaterial losses such as disappointment and discomfort felt by passengers. For example, the excess of transportation from the specified carrying capacity, whether it is the transportation of goods or people. In fact, it is not uncommon for shipping service users to force themselves to board the ship even though the ship is full of determination as long as it gets a place on the ship. By looking at this fact, it can be seen that in the public transportation service sector there are still many classic problems. And in this case, service users often become victims of irresponsible transporter behavior

RESEARCH METHODS

This research was conducted using empirical research methods. In empirical research, the author conducted research at the port of Dufa-Dufa, especially speed boats. The data collected in this writing is done by collecting primary data and secondary data. Secondary data collection is divided into 3 (three), namely: Primary Legal Materials, namely provisions in laws and regulations that have binding legal force such as the Civil Codes⁵, KUHD⁶, Law no. 17 of 2008 concerning Shipping, Secondary Law materials, namely legal materials that are closely related to primary legal materials and can help analyze and understand primary legal materials while for Tertiary Law materials, namely legal materials that provide information and explanations regarding legal materials primary and secondary legal materials.

DISCUSSION

LEGAL PROTECTION FOR CONSUMERS USING TRANSPORTATION SERVICES IN THE CASE OF EXCESS CAPACITY

² Ibid. H.K.Martono H.K.Martono and DKK.hlm 3

³ 'No Title' <[http://repository.usu.ac.id/bitstream/123456789/28938/3/Chapter II.pdf](http://repository.usu.ac.id/bitstream/123456789/28938/3/Chapter%20II.pdf) %0A%0A>.

⁴ 'No Title' <<http://etd.eprints.ums.ac.id/4164/1/C100040073.pdf> >.

⁵ *Kitab Undang-Undang Hukum Perdata.*

⁶ *Kitab Undang – Undang Hukum Dagang.*

The public as users or consumers of transportation services is protected by law, such as Article 1 point 1 of Law No. 8 of 1999 concerning Consumer Protection which states that consumer protection is all efforts that guarantee legal certainty to provide protection to consumers. The implementation of transportation or transportation in general includes two subjects, namely the sender or passenger and the carrier company. In this case the carrier company provides transportation services for the sender or passenger, in other words that the sender or passenger is the user or consumer of the transportation service provided by the transportation company. This is in accordance with the provisions of Article 1 number 2 of Law No. 8 of 1999 concerning Consumer Protection which states that a consumer is every person who uses goods and or services available in the community, both for the benefit of himself, his family, other people, and other living beings. and not for trading

In the field of sea transportation, there have been several laws and regulations aimed at protecting consumers, including Law No. 17 of 2008 on Shipping⁷, the Commercial Code (KUHD), the Civil Code (KHUPer), international conventions that have been ratification and other implementing regulations, such as government regulations, ministerial decrees, directors' decrees and so on.

Through these two provisions, it can be seen that the relationship between consumers and service users, users of transportation services in this case are categorized as consumers of transportation services. As consumers, users of transportation services certainly cannot be separated from the aspect of protection both from losses that may be suffered or occur when using transportation services or while traveling with media or transportation equipment provided by the transportation company. Not only consumer protection is a concern, but the fulfillment of the rights and obligations of passengers as consumers of transportation services or the fulfillment of obligations and rights by transportation companies/transportation service providers must also receive legal protection.

The Head of the Jasa Raharja Ternate Representative, explained that the safety of passengers using sea transportation services is a priority for attention and cooperation for all relevant agencies in preventing accidents. Jasa Raharja as a government agency in providing guarantees of protection for people who use sea transportation services, requires the active role of all parties to support Jasa Raharja's performance when quoting mandatory marine premium fees.

Based on the explanation above, in fact there are several transportations carried out by the carrier at the port of Dufa-Dufa that are not in accordance with the rules, for example in the use of charter ships where the carrier does not collect passenger data even though passenger data collection is very important, in the event of an accident, where by doing passenger data collection then there is a guarantee of passenger protection. So, the passenger list is very important so that we know how many passengers are transported so that passengers are protected by law.

⁷ Pemerintah Republik Indonesia, *Undang – Undang Nomor 17 Tahun 2008 Tentang Pelayaran* (Indonesia: Lembaran Negara Republik Indonesia, 2008).

The purpose of consumer protection is regulated in article 3 of the UUPK, namely increasing consumer awareness, ability, and independence, elevating the dignity of consumers, increasing consumer empowerment in choosing, determining and demanding consumer rights, creating a consumer protection system that contains elements of legal certainty, raising awareness business actors regarding the importance of honest and responsible consumer protection in doing business, improving the quality of goods or services, health and comfort, security and safety of consumers.

There are formal sources or legal rules that aim to protect consumers in the field of sea transportation showing the existence of normative legal protection. Normative legal protection means legal protection based on the presence or absence of legal norms that can be used as the basis for consumers to protect their rights and interests and consume goods and/or services produced by business actors.

With the existence of these legal rules or norms, the creation of laws for certain consumers against the rights and interests of consumers must be protected. When consumers have problems and/or may suffer losses from consuming goods and/or services produced by business actors, consumers will easily take refuge behind these norms or legal rules as a means of self-protection. Article 1 point 1 UUPK stipulates that consumer protection is all efforts that guarantee legal certainty to provide consumer protection. Based on the inventory of laws and regulations in the field of sea transportation, both public law and civil law, it can be said that normatively (law in the book) sea transportation consumers are sufficiently protected by law, meaning that laws and regulations are a source of formal legal protection for transportation consumers. the sea is sufficient. Formal sources include Law No. 8 of 1999 on Consumer Protection, Law No. 17 of 2008 on Shipping, Civil Code, KUHD, International Conventions, other related laws, several regulations, material decisions and regulations. other implementers.

The term “consumer protection” relates to legal protection. Therefore, consumer protection contains a legal aspect. The material that gets protection is not just physical, but moreover - rights that are abstract. In other words, consumer protection is actually identical to the protection provided by law regarding consumer rights. In general, there are 4 (four) basic consumer rights, namely:

1. Right to security
2. Right to information
3. Right to vote
4. The right to be heard.

These four basic rights are recognized internationally. In its development, consumer organizations that are members of The International Organization of Consumer Union (IOCU) have added several rights, such as obtaining consumer education, the right to compensation, and the right to a good and healthy environment. Steps to increase the dignity and awareness of consumers must begin with efforts to understand the basic rights of consumers, which can be used as the basis for the struggle to realize these rights. Consumer rights as stated in Article 4 of Law no. 8 of 1999 are as follows:

- a. The right to comfort and safety in consuming goods and/or services

- b. The right to choose such goods and/or services in accordance with the exchange rate and the promised conditions and guarantees.
- c. The right to correct, clear and honest information regarding the conditions and guarantees of goods / or services
- d. The right to have their opinions and complaints heard on the goods and/or services used.
- e. The right to obtain protection advocacy and appropriate consumer protection dispute resolution efforts.
- f. The right to get consumer coaching and education
- g. The right to be treated or served correctly and honestly and not discriminatory.
- h. The right to obtain compensation and/or replacement if the goods and/or services received are not in accordance with the agreement or not properly.
- i. The rights regulated in the provisions of other laws and regulations.

As for consumer obligations are explained in Article 5, namely:

- a. Read or follow information instructions and procedures for the use or utilization of goods and / or services, for security and safety
- b. Good faith in making purchases of goods and/or services
- c. Pay according to the agreed exchange rate
- d. Follow legal efforts to settle consumer protection disputes properly⁸.

The author is of the opinion that from the results of the author's interviews with several respondents, in fact carriers in providing services to consumers generally do not pay attention to consumer rights even though as stipulated in Article 4 of Law no. 8 of 1999 concerning consumer rights. One of them that was put forward by Opan explained that he did not pay much attention to consumer rights because consumers themselves did not really care about their rights because what they thought was that the ship arrived safely to its destination and could meet with relatives, while according to Ibu Ici, she explained that there is no know about the rights that must be owned in boarding the ship as long as it reaches its destination safely.

Unlike the case with Dodi, who said that sometimes he felt anxious and uncomfortable because the ship he was on was always crowded with crammed passengers even though he himself had yelled at the carrier but the carrier still picked up passengers with the excuse that the front was still empty. Departing from this, the author will describe the implementation of the supervision of KPLP officers on carriers in terms of excess capacity at the Dufa-Dufa port in the next discussion.

IMPLEMENTATION OF SUPERVISION OF KPLP OFFICERS ON CARRIERS IN THE CASE OF EXCESS CAPACITY AT DUFA-DUFA PORT

Shipping transportation activities continue to increase in accordance with the increasing traffic of people and goods between islands and in tune with national and local economic developments. This shipping transportation activity needs to be accompanied by an increase in the aspect of shipping safety, especially for non-conventional ships. Load lines are

⁸ Celina Tri Siwi Kristiyanti, *Hukum Perlindungan Konsumen*, 2009.

currently being developed by referring to several appropriate international documents as well as existing national documents.

Every ship that sails must have its load line determined in accordance with the rules, so all ships that sail carrying cargo or not have been determined not to be submerged under sea water or fresh water. With the maximum load line, that is limiting the maximum number so that the ship does not experience overload which can cause an unstable ship balance.

The implementation and arrangement of the loading line inspection has been regulated in the previous Shipping Law, namely Law No. 21 of 1992 and further regulated in the Regulation of the Minister of Transportation no. KM. 3 of 2005. In subsequent developments the Shipping Law has been updated with Law No. 17 of 2008 concerning Shipping in which the loading line is regulated in article 147.

Stability and Sea Trial is one aspect in the implementation of seaworthiness of sailing ships if the ship has good stability. In general, good ship stability is defined as the buoyancy and rocking ability of the ship to receive excess force when operating and can return to its original upright position. Every new ship building construction completed must be subjected to a stability test or what is called the Inclining Test and a sailing test or Sea Trial. This inclining test was carried out to determine the stability characteristics of the empty vessel against the center of gravity and the metacentric point.

Supervision of ship stability is carried out when:

- a. Before the ship was built
- b. Completed construction, and
- c. Ship operating

Stability trials or inclining tests are not only carried out for newly built ships but also for ships undergoing overhaul, changes that result in changes in ship weight, center of gravity and metacentral point of the ship. While the sailing trial or sea trial is the final process of ship building that must be carried out to obtain initial information on the performance and operational capabilities of the ship on equipment and machinery and ship electricity.

The results of the interview with Trisno, staff of the shipworthiness section, explained that the supervision of the stability of the ship was carried out before the ship's construction had calculated the safe stability for a ship and after the construction was completed the supervision of the ship during operation was only carried out by monitoring the loaded capacity so that it was not overcapacity which could This causes the stability of the ship to be unsafe, this is what causes the ship to sink, for this supervision to be carried out by the KPLP and the Department of Transportation.

This is also supported by the results of an interview with the author and Mr. Djamal, the head of the port of Dufa-Dufa, who explained that if it was found that the quality, safety and security of the ship were very bad, the officers postponed the ship's departure until the captain repaired the ship.

The seaworthiness of a ship is when it follows the provisions governing the safety of the ship, including the ship's hull, equipment, passenger certificates, radio safety certificates, radio telegraph equipment and certificates for auxiliary equipment and other equipment as

well as the safety of goods in accordance with Ordinance 1935, Stb. 1935, and in detail contained in the Presidential Decree No. 203 of 1966 SOLAS Convention 1960 (International Convention for the Safety of Life at Sea), which applies in Indonesia as follows

- a. Examination of certificates.
- b. Accident check
- c. Inspection of mechanical and electrical installations
- d. Fire prevention on ships and on passenger ships and cargo ships
- e. Navigation safety
- f. Safe transportation of dangerous goods
- g. Safety of nuclear ships, as well as their certificates.
- h. And others

Safety equipment is all safety equipment that is only used in an emergency regarding the safety of humans and/or ships. The number, type and completeness of safety equipment have been regulated by safety regulations which refer to the provisions of the Intergovernmental Maritime Organization (IMO) through SOLAS 1974. This regulation applies to all ships, whether sailing, anchoring, fishing, docking and docking). This equipment must be on board in sufficient quantities in accordance with applicable regulations and approved by the authorities.

Safety equipment is all equipment used for crew members (life jackets, immersion suits) to leave the ship (abandon ship) if the ship is declared dangerous by the master including lifeboats, life rafts, and life rafts. This safety equipment must be on board and placed in places that are easily accessible and launched from the ship.

Departing from the above, according to the author, ship safety is determined through inspection and testing. Ships declared to meet ship safety requirements are given a ship safety certificate by the government. Every ship that has obtained a certificate as referred to in Article 35 paragraph 3 must be maintained so that it still meets the ship safety requirements. Every ship that enters the port and while in the port is obliged to comply with regulations to maintain order and smooth traffic of ships whose supervision is carried out by the harbormaster. And every ship that will sail is required to have a sailing permit issued by the harbormaster after fulfilling the ship's seaworthiness requirements.

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CONCLUSION

In fact, there are several transportations carried out by the carrier at the port of Dufa-Dufa that are not in accordance with the rules, for example in the use of chartered ships where the carrier does not collect passenger data, even though passenger data collection is very important, if an accident occurs, where by collecting passenger data, there is passenger protection guarantee. So, the passenger list is very important so that we know how many passengers are transported so that passengers are protected by law. While the fulfillment of consumer rights, both ship passengers and shippers, there are still passengers who do not know their rights and have not fully obtained their rights, such as the right to security, comfort and safety.

Supervision carried out by KPLP officers at the port of Dufa-Dufa does not pay attention to passenger capacity and the passenger list is often not recorded at the time of chartering the ship carried out by service users.

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