

LEGAL ASPECTS AND PRINCIPLES OF LEGAL LIABILITY IN MARITIME DISPUTES SETTLEMENT OF CRUDE PALM OIL SHIPPING

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I. **Crude Palm Oil (CPO) Shipping**

The geographical situation of Indonesia, which consists of thousands of islands, requires special efforts and strategies to evenly meet the needs of the people in Indonesia. Thus, sea transportation plays an important role to distribute the needs of people between islands. One of the needs carried out by sea transportation is the distribution of Crude Palm Oil / CPO.

Palm oil / CPO is one of the cargoes in the cargo which is routinely delivered by sea. The main reason is because palm oil / CPO is holds important role for the basic ingredient for cooking oil, cosmetics, biodiesel, toothpaste, paint, and others. In terms of transportation of palm oil / CPO by sea, three types of ship operations can be used, namely:

a. Industrial Vessel:

Its activities are specifically intended to serve goods transactions from an industrial company

b. Chartered Vessel:

The destination and schedule does not depend on the load, but the cost of the

Transportation is depending on the number of goods carried by them;

c. Sailing Vessel:

The destination and schedule have been determined, while the cost of transportation depends on the weight and volume of the goods carried.

In addition, the vessel eligibility is one of the important considerations to determine the success of the process of shipping and transporting palm oil. The following are the elements of vessel eligibility that needs to be considered:

a. Suitability of vessels for shipping in crude palm oil / CPO (origin country of vessel or the owner, flag of the registered vessel, age of vessel, type of tank and coating, and size of tank and pump, etc);

b. Understanding of vessel owners and crew on palm oil transportation terminology, such as lay days, delays, palm oil trading contracts, and the application of three cargoes where vessels only transport palm oil / CPO on the previous three voyages.

c. Vessel legal standing: classification, certification, insurance, etc.

otherwise specified in the shipping agreement.

II. Legal Principles And Agreement Of CPO Shipping

There are legal principles in sea transportation activities that form the basis for shipping and transporting palm oil. The principles of civil transportation law consist of:

a. Consensual principle

The shipping agreement is not required to be in written form, it is sufficient by agreement of the parties. However, to state that the agreement has occurred or already exists must be proven with or supported by the shipping documents;

b. Coordinative Principle

The parties in the shipping works have an equal or equal position, no party is higher or lower than the other. Although the carrier provides services and carries out the orders of the shipper, the carrier is not the subordinate to the shipper. The carrier is a form of power of attorney.

c. Hybrid Principle

Shipping agreement is a combination of 3 (three) types of agreements, namely: granting authorization, storing goods and carrying out work from the sender to the carrier. The provisions of these three types of agreements applied to the carriage, unless

d. The principle of documents evidentiary.

Every shipping works shall always be proven by the shipping documents. If the shipping documents is not exist, means that there is no shipping works agreement.

Furthermore, according to the Indonesian legal system, in actual, the shipping agreement is not required to be in writing, only verbally, as long as there is a consensus among the parties. From the above understanding it can be interpreted that for the existence of a shipping agreement it is sufficient to have an agreement (consent) between the parties, this is as regulated in the provisions of Article 90 of the Indonesian Commercial Code which regulates as follows:

The letter of transportation is an agreement between the sender or expeditor on the one hand and the carrier or the owner of the vessel with another party. The agreement, in addition to containing the agreement of both parties, such as the time limit for the implementation of sea transportation and regarding the compensation in the event of delays, also includes:

1. The name and weight or size of the goods transported, as well as the brands and quantities;
2. Name of consignee;
3. Name and place of carrier;
4. Total wages of the carrier;
5. Date;

6. Signature of the sender or expeditor.

presumption of guilt can be found in Article 468.

III. **Principles of Legal Liability of Maritime Dispute Settlement on Crude Palm Oil Shipping**

In relation to dispute resolution efforts, there are three principles of carrier liability that must be known and proven in order to determine the best efforts and the most effective strategies for dispute resolution. The three theories of carrier liability are as follows:

a. **Based On Fault Or Liability Based On Fault Principle**

In determining the responsibility for shipping, it is based on the view that the one who proves the fault of the carrier is the aggrieved party or the plaintiff. In Indonesian law, this principle based on article 1365 of the Indonesian Civil Code, which is known as the unlawful act (*onrechtmatigedaad*).

b. **Rebuttable Presumption Of Liability Principle**

The defendant is always considered guilty unless the defendant can prove that they are not guilty or can state things that can absolve them of guilt. Thus in this principle it is almost the same as the first principle, but the burden of proof is reversed, namely on the defendant to prove that the defendant is innocent. In the Indonesian Commercial Code, the principle of responsibility on the basis of

c. **Absolute Strict Liability Principle**

The party who is causing the loss (the defendant) is always responsible regardless of whether there is a fault or not, and regardless of who makes the fault. This principle of responsibility views errors or mistakes as irrelevant to be disputed. The carrier may not be free from liability for any reason that causes harm to the passenger or the shipper.

IV. **Conclusion**

To ensure the smooth process of CPO shipping, apart from determining the type of effective operation, the vessels eligibility factor must also be considered for the safety and security of the shipping process.

In connection with the evidence or agreement in sea transportation, Article 90 of the Indonesian Commercial Code has stipulated that the document/letter of transportation is an agreement between the sender or expeditor and the carrier or shipmaster.

Although without a transport document or letter, if an agreement is reached between the two parties, it means that the agreement already exists. Thus the transport document or letter is only a mere proof of the transport agreement.

Referring to the explanation of the principle of responsibility mentioned above, it can be concluded that the carrier is given a heavy burden to prove that the fault was not committed by them.

However, on certain principles, even if the carrier has proven his innocence, there must still be a loss or responsibility borne by the carrier.