

JURIDICAL ANALYSIS OF CRIMINAL ASPECTS IN AGREEMENTS FOR THE TRANSPORTATION OF GOODS AND SERVICES USING SEA SHIPS

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Abstract

There are 3 (three) principles of carrier responsibility in transportation law, namely the first is the principle of responsibility based on fault (fault of liability), the second is the principle of responsibility based on presumption of liability, and the third is the principle of absolute responsibility. The carrier's responsibilities in the transportation law mentioned above apply to responsibilities that apply nationally and internationally. For all losses that may occur, the owner of the property that suffers loss can reduce or mitigate the loss, and the loss can even be borne by someone else as long as this is agreed upon in advance. An agreement that occurs between those who own goods because they are worried that they will suffer losses as a result of carrying out transportation due to the threat of danger at sea and those who are willing to bear the loss is called a (marine) insurance agreement. Based on the research results, it was found that Law no. 17 of 2008 concerning Shipping, what is meant by ship's seaworthiness in this Law is the condition of the ship that meets ship safety requirements, prevention of water pollution from ships, manning, loading lines, loading, welfare of the crew and health of passengers, legal status of the ship, management safety and prevention of pollution from ships, and safety management of ships for sailing in certain waters. Provisions regarding criminal acts in the field of shipping, contained in articles 284, up to article 336, Law No. 17 of 2008 concerning Shipping, which are used to facilitate understanding are divided into 2 (two) categories or sections, namely: Based on the Subject of the perpetrator and based on Responsibility criminal.

Keywords: *Agreement, Transportation of Goods and Crime.*

1. INTRODUCTION

The safety of shipping at sea concerns various public interests, where the safety of passengers and all their property must be accounted for, so supervision and guidance for this purpose is required which is carried out by a government institution called the harbormaster, led by a harbormaster. As stated in Article 1 number 33 of Law number 17 of 2008 concerning Shipping, Ship Seaworthiness is the condition of a ship that meets ship safety requirements, prevention of water pollution from ships, manning, loading lines, loading, welfare of the crew and health of passengers, legal status ships, safety management and prevention of pollution from ships, and safety management of ships when sailing in certain waters. Law Number 17 of 2008 concerning Shipping which contains acts that are subject to criminal sanctions are acts that violate provisions that cannot be sufficiently regulated simply by using administrative sanctions or civil sanctions. Administrative sanctions or civil sanctions are not effective enough to have an effect and prevent other people from committing the same act. Indonesia's maritime area includes tens of thousands of islands with a very extensive maritime territory. Indonesia is the largest archipelagic country in the world, with the largest territorial sea waters in the world and 95,108 km of coastline, the fifth longest in the world. Indonesian sea waters have a strategic geographical position as commercial and military routes .

Criminal provisions in the shipping sector should provide guarantees for the implementation of safe and comfortable sea transportation, so as to encourage the growth and development of sea transportation which ultimately supports economic growth so that it does not become an obstacle to the implementation of sea transportation or shipping in order to serve the mobility of people, goods and services. connecting inter-island economic activities and international relations. This is what

causes many maritime crimes to occur in Indonesia, such as ship hijacking, piracy, illegal fishing, and so on. This happens because of the weak monitoring and management system of Indonesia's marine resources. Since the handover of sovereignty to the Indonesian Government, law enforcement in the shipping sector is no longer administered in one unified system, and has been spread across various law enforcement agencies at sea. Enforcement of regulations in the field of shipping crimes cannot yet be implemented in an integrated and well-coordinated manner so that there is no overlap in enforcement authority. laws at sea that can reduce Indonesia's image in international relations.

Considering Indonesia's position on the world trade route, as one of the most important checkpoints in the world, where more than 40% of total trade related to world maritime culture passes through waters in Indonesia. The Strait of Malacca, for example, has a deadweight tonnage capacity of 300,000 dwt, which is greater than the Suez Canal. And Panama Canal, this means that the Strait of Malacca allows more goods to be transported than the two canals. Global political competition is also getting stronger where the two major world influences at the moment, the US and China, are increasingly focusing their influence on world waters, especially the South China Sea (SCS). This is because geopolitical and geoeconomic support has shifted to the Asian region, 70% of the world's fisheries are in the Asia Pacific, 30% of the world's fisheries products are supplied from Indonesia, and 10% of the world's fish catch is in the SCS region.

The role of loading and unloading entrepreneurs whose series of activities include stevedoring, cargodoring and receiving/delivery work can support economic development and improve services to the community for the smooth and safe movement of goods at the port. The current situation is that many service users, both senders and recipients of goods, are disappointed with loading and unloading services because of the many risks that arise with goods sent by service users, resulting in losses. Therefore, there must be clarity on the responsibilities of loading and unloading companies, clarity on the risks to goods sent by service users .

So it can be concluded that transportation is a reciprocal agreement between the carrier and the sender, where the carrier binds itself to carry out the transportation of goods and/or people from one place to a certain destination safely, while the sender commits itself to pay the transportation money. A commercial transportation agreement is an agreement in which the carrier binds itself to carry out the transportation of passengers and/or goods from one place to a certain destination safely, and the passenger or sender binds themselves to pay the transportation costs. Transport agreements are always entered into verbally but are supported by transport documents which prove that the agreement has occurred.

Based on this background of thought, the problem can be formulated as follows:

1. How is criminal law enforced as a result of agreements to transport goods and services using ships?
2. What are the types and criteria agreement for the transportation of goods and services using sea vessels.?

2. RESEARCH METHODS

The research method explains the entire series of activities that will be carried out in order to answer the main problem to prove the assumptions put forward. The research method used in this research is combined normative and empirical research with a juridical approach.

3. RESEARCH RESULTS AND DISCUSSION

3.1 Enforcement of Criminal Law Due to Agreements to Transport Goods and Services Using Ships

Shipping crimes in this case are one of the special crimes regulated by a separate law, namely Law Number 17 of 2008 concerning Shipping, so that everything related to the world of shipping must comply with and comply with the rules contained in the Law. the. However, in this case the author does not explain one by one the contents of each article by article in the shipping law, but the author focuses more on the articles related to sailing permits (sijil) as well as articles

regarding violations in the world of shipping, so that it is integrated with the author's own research title of this thesis regarding criminal liability in the world of shipping.

The contents of these articles are:

Article 117 which reads:

The seaworthiness of ships as intended in paragraph (1) letter a must be fulfilled by every ship according to its shipping area, which includes: a. ship safety; b. prevention of pollution from ships; c. ship manning; d. ship loading and loading lines; e. the welfare of the Ship's Crew and the health of passengers; f. legal status of the ship; g. safety management and prevention of pollution from ships; and h. ship security management.

The inherent elements are:

1. ship's seaworthiness
2. fulfillment of requirements: a. ship safety b. prevention of pollution from ships c. ship manning d. ship loading and loading lines e. welfare of crew members and health of passengers f. legal status of the ship g. safety management and prevention of pollution from ships h. ship security management.

Explanation of the elements:

1. Ship seaworthiness What is meant by ship seaworthiness according to Article 1 number 33 of the Republic of Indonesia Law Number 17 of 2008 concerning shipping, is that ship seaworthiness is the condition of the ship that meets ship safety requirements, prevention of water pollution from the ship, manning, load lines, loading, welfare of the ship's crew and the health of passengers, the legal status of ships, safety management and prevention of pollution from ships, and the safety management of ships for sailing in certain waters.
2. A ship is said to be seaworthy if it has fulfilled the conditions set out in this article
Ships that have been permitted to sail are seaworthy ships, namely ships that meet the following requirements:
 - a) Ship safety Ship safety is a ship that meets the requirements for material, construction, building, machinery and electricity, stability, layout and equipment including radio and ship electronics, all of which is proven by a certificate;
 - b) Prevention of water pollution from ships Prevention of water pollution from ships is equipment on ships to process waste to a threshold value that is as low as or less than 15 ppm;
 - c) Crewing is crew members who are skilled, skilled, certified, disciplined and listed on the ship's certificate list.
 - d) Loading: Loading means that a ship is not permitted to carry more cargo than is permitted, which can be visually observed on the draft scale line at the bow height, stern height, and on the freeboard mark (plimsoll mark);
 - e) The health and welfare of the crew and passengers The health and welfare of the crew and passengers means that the ship is not infected with infectious diseases as proven by a health certificate (bill of health), including germs that can be transmitted by rats, as proven by a rat-free certificate (deratting certificate) in accordance with with the Public Health (Ship) Regulation 1970. Health officials stated that the ship was in a condition fit for boarding and disembarking passengers (free pratique).
 - f) Legal status of the ship The legal status of the ship means that the ship flies the flag indicating the ship's nationality, has complete ship and cargo documents, and all crew members have valid immigration documents.
 - g) As explained in Article 1 of the Law-Law Number 17 of 2008 concerning Shipping states that sea transportation, where the term transportation in waters is used, is the activity of transporting and/or moving passengers and/or goods using ships. Apart from the definition of water transportation, there are also important terms in sea transportation, namely:

1. Sea transportation is a transportation activity which according to its activities serves sea transportation activities, river and lake transportation is a transportation activity that includes reservoirs, swamps, canals.
2. Crossing Transportation is transportation that functions as a moving bridge that connects the road network and/or railway network that is disconnected due to the presence of water.

As a service activity in moving goods or passengers from one place to another, transportation plays a major role in creating a dynamic national distribution pattern. The practice of organizing transportation must be able to provide maximum use value or benefits in the world of trade. And its implementation must be carried out fairly and equally to all levels of society and prioritize the interests of public services for the community. Based on Article 6 of Law Number 17 of 2008 concerning Shipping, types of water transportation consist of:

- a. sea freight,
- b. River and lake transportation, and
- c. Crossing transportation.

Meanwhile, Article 7 details the types of sea transportation consisting of:

- a. Domestic sea transportation
- b. overseas sea transportation,
- c. Special sea freight and,
- d. People's shipping sea transportation.

In transportation there are several scopes or classifications in the operation of transportation which also determine supporting aspects as well as legal regulations that can be implemented in the transportation, the classification is as follows:

- a. Land Transportation, in land transportation to achieve the expected results and achieve its transportation functions, several adequate elements are required in transportation, namely:
 - The transportation equipment itself (operating facilities), every item or person to be transported of course requires adequate transportation equipment, both in capacity, size and equipment. The means of transportation in question can be trucks, trains, ships, buses or airplanes. The equipment provided must be appropriate to the goods being transported.
 - Facilities that will be passed by means of transportation (right of way), these facilities can be public roads, railways, waters/streams, navigation airports and so on. So if the facilities through which the transport passes are not available or are imperfectly available then the transport process itself may not run smoothly.
 - Transport preparation place (terminal facilities), this transport preparation place is necessary because a transport activity cannot run effectively if there is no terminal used as a preparation place before and after the transport process begins.
 - Apart from that, in the world of trade, transportation plays a very important role. Not only as a means of transportation that must carry traded goods to passengers but also as a means of determining the price of these goods.

As we all know, sea transportation is a vital means of uniting all regions of Indonesia. Ships as a means of sea transportation have a very important function and meaning and strategic value in supporting the success of sea transportation, as well as realizing an Indonesian insight. It is the duty of the authorities as representatives of the Government and private parties operating in the maritime transportation sector to jointly develop and regulate sea transportation facilities as well as possible, including those related to aspects of ship safety and life safety at sea. In a maritime country like Indonesia, the role of shipping is very important for the socio-economic life of the population, as well as for government administration purposes, as well as for defense and other purposes. Cruise, including something related to transportation in waters. Water transportation, including sea transportation. Sea transportation is any transportation activity using ships to transport passengers,

goods and/or animals on one or more trips from one port to another which is organized by a sea transportation company.

Ship seaworthiness is a requirement for sailing so as to create shipping safety. Ship safety is the condition of a ship that meets the requirements for material, construction, machinery and electricity, stability, layout, fire pollution prevention equipment, safety equipment, radio and ship electronics as proven by a safety certificate after inspection and testing. More sharply and specifically, it can be concluded that as the largest archipelagic country in the world, Sailing in Indonesia is organized with the aim of:

- a. Facilitate the flow of movement of people and/or goods through waters by prioritizing and protecting transportation in waters in order to facilitate national economic activities;
- b. Developing a maritime spirit;
- c. Upholding state sovereignty;
- d. Creating competitiveness by developing the national water transportation industry;
- e. Support, mobilize and encourage the achievement of national development goals;
- f. Strengthening national unity and unity in the context of realizing the archipelago insight; And
- g. Increasing national resilience.

Water transportation by ship is regulated by Law Number 21 of 1992 concerning Shipping (State Gazette of 1992 Number 98). At the time this Law comes into force, all legislation relating to water transportation which has still been in effect since the Dutch colonial era, is declared no longer valid. This law comes into effect two years from the date of promulgation. This law was promulgated on September 17 1992. Because it was no longer in accordance with current developing needs, this law was no longer enforced and was replaced with Law Number 17 of 2008 concerning Shipping. This Shipping Law came into effect on the date of promulgation, namely May 7 2008 in the 2008 State Gazette Number 64.

Apart from that, water transportation is also regulated in the Indonesian Commercial Code (KUHD), namely Book II Chapter V concerning Ship Charter Agreements and Chapter VA concerning the Carriage of Goods. The laws and regulations in the Indonesian Commercial Code (KUHD) are still declared to remain in effect. The provisions of the Indonesian Commercial Code (KUHD) are *lex generalis*. Accidents in shipping, both the transportation of passengers and the transportation of goods have caused many casualties, property and damage, as well as causing pollution to the marine environment. In Law Number 17 of 2008 it is stated that shipping safety and security is a condition of fulfilling safety and security requirements relating to transportation in waters, ports and the maritime environment. However, various accidents at sea still occur frequently.

Large or small accidents in shipping still essentially involve risks of loss of life, property and the environment. In an effort to prevent accidents at sea, the Government, in this case the Directorate General of Sea Transportation, Department of Transportation as the shipping safety development agency, has implemented regulations for ships (according to their type and size), to be required to complete the safety and welfare requirements of the ship's crew as well as passengers and the legal status of the ship as well as ship safety equipment and matters relating to shipping.

Statistical analysis shows that around 80% of shipping accidents are caused by human error, the essential truth that causes this is human actions and errors that play a role in every shipping accident, including construction damage or equipment damage which is the direct cause, the rest of the accidents are caused by factors nature and environment. To be able to create conditions for ships that operate as expected, these ships must be in a seaworthy condition, namely by carrying out continuous monitoring of both the ship, the shipping company that operates the ship and the ship's crew.

Provisions regarding criminal acts in the shipping sector, totaling 52 articles, and contained in articles 284, up to article 336, Law No. 17 of 2008 concerning Shipping, which are used to facilitate understanding are divided into 2 (two) categories or sections, namely: Based on The subject of the perpetrator and based on criminal liability. In terms of legal subjects, individual actors, or groups of people or private entities, are contained in the following provisions:

- a. Any person who operates a foreign ship carrying passengers or goods between islands in Indonesian territorial waters will be punished without government permission;
- b. Any person who serves special sea transportation that transports goods belonging to another party or general goods of another party without government permission shall be punished;
- c. The captain of lake and river transportation was convicted of sailing his ship to the sea without the harbormaster's permission. And which results in loss of goods or results in the death of a person;
- d. Any Indonesian citizen or business entity who operates a ship for transportation in waters without a business permit from the government will be punished.
- e. Any person operating a ship for ferry transportation without operating approval from the minister/governor/regent/mayor for each ship to serve cross-ports in each region between provinces and between countries/between districts or within the relevant district/city area is punished.
- f. Anyone who provides transportation services on waters, lakes and rivers without government permission will be punished.
- g. Any person who does not carry out their obligations to transport passengers or goods, especially postal transport, will be punished.
- h. Any person, including providers of multimodal transportation services, who do not insure their responsibilities as a result of ship operations, in the form of death or injury to passengers being transported, destruction/loss/damage of goods being transported, delays in transportation of passengers/goods being transported, losses to third parties, will be punished.
- i. Maritime transportation companies will be punished for failing to provide special facilities and conveniences without being charged additional fees for disabled passengers, pregnant women, the elderly and children under the age of five.
- j. Anyone who transports special goods and dangerous goods does not comply with the requirements for packaging and stacking at the port, wearing safety signs or does not provide warning signs for dangerous goods, in accordance with national or international standard regulations, and which results in loss of property or death of a person.
- k. Anyone who builds and operates river and lake ports and who uses the coastline to carry out ship mooring activities, load and unload goods or pick up or drop off passengers for their own interests outside of activities at the port/special terminal/terminal for their own interests will be punished, as well as those who use special terminal for public use, without government permission.
- l. Any person, including business entities carrying out activities at the port, who does not provide compensation guarantees for carrying out activities at the port which result in damage to port buildings or facilities will be punished.
- m. Anyone who operates a special terminal to serve trade to and from abroad will be punished without fulfilling the requirements and without government stipulation.
- n. The captain was convicted of sailing his ship while he knew that the ship was not seaworthy, which resulted in loss of property or death of a person.
- o. Anyone who operates a ship and port without fulfilling shipping security and safety requirements as well as maritime environmental protection will be punished.

- p. Any person who operates a ship that does not fulfill or violates the ship's electronic navigation/navigation equipment requirements will be punished. Including those operating ships that are not equipped with radio communication equipment and accessories, as well as meteorological equipment.
- q. The captain was convicted when he was sailing and knew about bad weather which endangered sailing safety, but the captain did not communicate this to other parties and/or the government.
- r. Any person who employs crew members who do not meet the qualification and competency requirements in accordance with national and international regulations will be punished, as well as those who employ someone on board a ship in any position without a certificate and without having the competence and skills and without the required seafaring documents.
- s. Any person who obstructs the captain in carrying out his obligations on the ship while sailing is punished.
- t. Any person who uses a container as part of a means of transportation will be punished without fulfilling the requirements for the container's worthiness.
- u. Any person who intentionally or through negligence causes damage or damages or carries out actions that result in the non-functioning of shipping navigation aids and shipping lane facilities at sea, Sengai and lakes as well as shipping telecommunications.
- v. Anyone who dredges or reclamates shipping lanes or harbor pools without government permission will be punished.
- w. The captain was convicted of carrying out repair activities, sailing trials, overloading in the port pool, delaying and unloading dangerous goods without the harbormaster's permission.
- x. The captain who sailed without having a sailing approval letter issued by the harbor master was punished, and who caused a ship accident and resulted in loss of property and death.
- y. Ship crews will be punished for failing to prevent and control environmental pollution originating from the ship.
- z. Any person who disposes of ballast water waste, sewage, rubbish or other materials into waters outside the provisions of statutory regulations and results in pollution of the environment and which results in the death of a person will be punished.

3.2 Types and Criteria Agreement for Carriage of Goods and Services Using Ships

When transporting goods using containers by EMKL or shipping, you can directly hand over the goods to be sent to the CFS or Container Freight Station, which is the place for receiving or loading various shipments and then loading them into containers. Next, CFS will submit a receipt for the goods to be sent. Apart from that, in the Full Container Load system or solid loading containers, shipping or EMKL must provide the carrier or shipping company with a list explaining the condition of the goods being loaded, including the type of goods, weight and size of the goods. Next, the carrier will move the cargo to the loading dock. This is done by the company to unload the cargo and then put it on the ship. Loading of containers or other goods onto this ship together with the delivery instructions and a shipmaster's receipt by the shipping company to the ship's captain along with an EIR or Equipment and Interchange Receipt of cargo or damage to parts of the container to be loaded or unloaded at the time of handover from one work environment to another. other work environments.

To carry out transportation arrangements to the port of destination, the shipping company or issue a Bill of Lading (B/L) which is a document indicating the recipient of the cargo by the party carrier. After the ship arrives at the destination port, the captain will submit documents to the shipping company or shipping company agent for carrying out unloading, Equipment and

Interchange Receipt (EIR), Delivery Order and Master's Receipt. Unloading of cargo is carried out by a company that specializes in loading and unloading. This loading and unloading company starts its activities based on a work order from the shipping company or shipping company agent. Then the loading and unloading company proposes the activities it will carry out in the form of a form containing:

- a. Collection point for items to be dismantled.
- b. For goods that will be unloaded by direct transportation, a copy of the manifest or cargo document must be attached to settle dock fees.

With the birth of containers, there are several ways to send goods by sea as follows:

1. General Cargo delivery in conventional crates and conventional ships;
2. Delivery of General Cargo goods by containers/barges transported by container ships or semi-container ships (Semu, Container Vesseis).
3. Delivery of bulk goods by vessels specifically for bulk cargo (bulk carrier);
4. Delivery of liquid goods by tanker;
5. Basically, containers are transported by special container ships which are commonly called Celelu Ships. But there are also containers transported by ordinary ships and then from there the containers are transferred to special container ships. The shipping company that carries out this kind of container transportation is called Feeder Line Service.

Based on handling, cargo is divided into two large groups, namely general cargo and special cargo. Meanwhile, based on the service method and product type, cargo is divided into general cargo, special shipments and dangerous cargo products. The types of cargo are as follows :

- a. General Cargo, namely ordinary shipping goods so that they do not need special handling, but they still have to meet the requirements set in terms of safety aspects. Examples of goods categorized as general cargo include: household goods, office equipment, sports equipment, clothing (garments, textiles) and others.
- b. Special Cargo are consigned goods that require special handling. This type of goods can basically be transported via air transportation and must meet special requirements and handling in accordance with IATA and/or carrier regulations. Objects or materials included in the special cargo category are:
 1. Live Animals (AVI), namely live animals sent via airplane such as horses, cows and fish; Human Remains (HUM) namely human corpses, including AbdulKadir Muhammad, Land, Sea and Air Transport Law, PT. Citra Aditya Bakti, Bandung, 1991.
 2. For bodies that are transported in coffins or bodies that are already in the form of ashes and are usually sent in urn boxes.
 - Perishable goods (PER) namely goods that are easily damaged, destroyed, rotten, such as fruit, meat and plant seeds.
 - Valuable goods (VAL) namely goods that have high value or valuable items such as gold, diamonds and pearls.
 - Strongly smelling goods namely items that have a strong smell such as durian, perfume, eucalyptus oil.
 - Live Human Organs (LHO) namely in the form of human body organs that still function, such as eyeballs and kidneys.
 - Diplomatic Pouch (DIP) namely diplomatic shipments.

Dangerous Goods namely shipping goods that are dangerous and can cause damage to the environment, humans and safety during transportation, types of Dangerous Goods include:

- Explosive goods (REX) namely dangerous goods that easily explode such as machines, bullets, firecrackers, fireworks.
- Gases (RPG) namely volatile items such as Butane, Hydrogen and Propane

- Flammable liquids (RFL) namely goods that are liquid and flammable such as certain paints, alcohols and varnishes.
- Flammable Solids (RFS) namely solid and flammable substances such as Matches.
- Oxidizing Substances (ROX) & Organic peroxide namely items that easily evaporate if humans inhale them causing dizziness or drowsiness such as Calcium Chlorate, ammonium nitrate
- Toxic (RPB) & Infectious Substances (RIS) namely items that contain poison such as cyanide, pesticides, live viruses, live bacteria, the HIV virus.
- Radioactive Material (RFW) namely substances that when exposed to light will react and can be dangerous for humans, animals and certain types of cargo
- Corrosives (RCM) are items that contain rust such as battery acid and mercury.
- Miscellaneous Dangerous goods (RMD) namely other items that are considered dangerous and threaten flight safety when transported using air transportation, such as magnets, vehicles and electric wheelchairs.

According to Abdulkadir Muhammad, the transportation process that the process of organizing transportation (of goods) includes 4 (four) stages, namely:

- Transportation preparation stage, including providing transportation equipment and handing over goods for transportation;
- The stage of organizing transportation, includes the activity of moving goods by means of transportation from the place of departure to the agreed destination;
- The stage of handing over goods to the recipient, includes handing over the goods to the recipient as agreed safely;
- The stage of clearing/solving problems that arise/occur during transportation or as a result of transportation.

The transportation process is quite long, it is possible that an incident may occur which results in the goods not being safe. Unsafe goods can be interpreted as meaning that the goods do not exist, have disappeared/lost, been shrunk, destroyed or that the goods are there but are partially or completely damaged due to various possible events.

In connection with the responsibility for organizing transportation, Saefullah Wiradipradja that "There are at least 3 (three) principles of carrier responsibility in transportation law, namely First the principle of responsibility based on fault (fault of liability), Second the principle of responsibility based on presumption of liability), Third the principle of absolute responsibility of liability)." The carrier's responsibility in the above transportation law applies to responsibilities that apply nationally and also internationally. Specifically, transportation law in Indonesia is adhered to in Indonesian legislation, in terms of carrier responsibility, it only adheres to 2 (two) principles of responsibility, namely the principle of responsibility, namely responsibility based on an element of fault (Fault of liability) and the Principle of responsibility based on based on presumption (presumption of liability).

Meanwhile, the principle of absolute responsibility (absolute liability) and the principle of limited responsibility (limitation of liability) are not adhered to in the legislation for the transportation of goods in Indonesia, where the principle of absolute responsibility (absolute liability) implies that every error that occurs Carrying out transportation is absolutely the responsibility of the carrier and the principle of limited liability (limitation of liability) is a limited responsibility to compensate for losses. In connection with agreements and insurance for the transportation of goods and services using sea transportation services, it will be closely related to marine insurance law, which is part of Commercial Law and is contained in the Commercial Law Book II, title 9. By entering into an insurance agreement, this results in Risk transfer occurs because there may be a danger that will threaten the goods being transported and is not normally expected to happen to someone else who takes over the risk to compensate for the loss. In practice, the insurance agreement is executed on the stock exchange through a broker. Broker regulations are contained in Book II of the Commercial Code, title 9, part six, including Articles 681-685, the

contents of which regulate the terms or conditions relating to the Decree of the Minister of Finance No. Kep. 457/MK/IV/5/1975 dated 2 May 1875 concerning Licensing of Loss Insurance Brokerage Business jo. Minister of Finance Decree No. Kep. 595/MK/IV/8/1969, concerning Registration of all Brokerage Businesses in the Insurance Sector in conjunction with Decree of the Minister of Finance No. Kep. 932/MK/IV/ 12/ 1971 dated 2 December 1971 concerning Acceptance of Adjuster Business in the Loss Insurance Sector. In a marine insurance agreement, what is considered is the causal relationship between the loss suffered by the goods insured and the performance that must be carried out by the insurer. So if a loss is the result of an event covered by the policy, the insurer must compensate for the loss. This means that the insured cannot simply say that because an event has arisen, the insurer is required to compensate for the loss by conducting an investigation first or carrying out an inspection jointly between the owner of the goods and the carrier and witnessed by the insurance company as the insurer. the cause of that particular loss.

3.3 Theoretical Analysis Enforcement of Criminal Law Due to Agreements to Transport Goods and Services Using Ships

When talking about law enforcement, it cannot be ignored to talk about legal issues. Article 1 paragraph (3) of the 1945 Constitution of the Unitary State of the Republic of Indonesia states that "Indonesia is a state of law". In general, in every country that adheres to the rule of law, three basic principles always apply, namely supremacy of law, equality before the law, and law enforcement in a way that does not conflict with the law (due process). of law). An important principle in a rule of law is equal protection or equality before the law. According to Dicey, the concept of equality before the law applies, where everyone must submit to the law, and not no one is above the law. The term due process of law has the connotation that everything must be done fairly. The concept of due process of law is actually contained in the concept of fundamental rights and the concept of ordered liberty.

The procedural due process of law concept is basically based on the legal concept of "fundamental justice". Development, procedural due process of law is a formal process or procedure that is fair, logical and appropriate, which must be carried out by the authorities, for example with the obligation to carry a valid warrant, provide appropriate notification, adequate opportunity to defend oneself including using experts such as lawyers if necessary, presenting sufficient witnesses, providing adequate compensation through an appropriate negotiation or deliberation process, which must be done when dealing with matters that can result in violations of basic human rights, such as the right to life, the right to independence or freedom (liberty), the right to own objects, the right to express opinions, the right to religion, the right to work and seek a decent living, the right to vote, the right to travel wherever one likes, the right to privacy, the right to fair treatment. equal protection and other fundamental rights. Meanwhile, what is meant by substantive due process of law is a juridical requirement which states that the making of a legal regulation must not contain matters that could result in unfair, illogical and arbitrary treatment of humans. The rule of law can be differentiated into 2 (two) characteristics, namely from a formal legal perspective and from a material legal perspective. In Indonesia, legislation is the main way of creating law. Legislation is the main pillar of the national legal system. The use of statutory regulations as the main pillar of the national legal system is because the Indonesian legal system as a result of the Dutch East Indies legal system is more visible as a continental legal system which prioritizes the form of a written legal system (*geschrevenrecht*, written law). . The politics of national legal development prioritizes the use of statutory regulations as the main instrument when compared with jurisprudence and customary law. This is partly because the development of national law which uses statutory regulations as an instrument can be prepared in a planned manner (can be planned).

1. Legal Reform Function

Legislation is an effective instrument for legal reform compared to the use of customary law or jurisprudence. It has been stated that the formation of statutory regulations can be planned, so

that legal reforms can also be planned. Legislative regulations do not only perform the function of updating (existing) statutory regulations. Legislation can also be used as a means of updating jurisprudence. Customary law or customary law. The function of updating legal regulations, especially those relating to agreements for the carriage of goods and services by ships, must continue to be carried out, considering that shipping activities are increasingly becoming one of the leading modes of transportation in the world.

The restructuring of various legal systems relating to agreements for the carriage of goods and services by ships is not intended to eliminate various legal systems, especially legal systems that exist as a reality that is adopted and maintained in social interactions. The development of a legal system for agreements for the carriage of goods and services by ships is in order to integrate the various legal systems so that they are arranged in a harmonious order with each other.

2. Function of Legal Certainty

One other important instrument is related to legal certainty (*rechtszekerheid*, legal certainty) which is an important principle in legal action (*rechtshandeling*) and law enforcement (*hendhaving, uitvoering*). It is important to note that agreements for the carriage of goods and services by ships are not merely placed in written form (*geschreven*, written). To truly guarantee legal certainty, legislation must, apart from having to meet formal requirements, meet other requirements, namely:

- a. Clear in its formulation (unambiguous).
- b. Consistent in its formulation both internally and externally. Internally consistent means that within the same statutory regulations a systematic relationship must be maintained between its rules, standard structure and language. Externally consistent, there is a "harmonization" relationship between the legal and regulatory framework.
- c. Use language that is appropriate and easy to understand. The language of laws and regulations must be language commonly used by the community. But this does not mean that legal language is not important. Legal language, whether in the sense of structure, terminology or certain ways of writing, must be used properly because it is part of and an effort to guarantee legal certainty.

So the issue of criminal legislation policy relating to agreements for the transportation of goods and services by ships is very closely related and cannot be separated from the criminal law enforcement process, because criminal legislation is basically a system of criminal law enforcement "in abstracto" which will be realized in law enforcement "in concrete". These criminal legislation policies can be in the form of material criminal law (Criminal Code, Laws outside the Criminal Code, Laws), formal criminal law (Criminal Procedure Code and criminal implementation law) . According to Sidik Sunaryo, if we discuss the law enforcement system, various relevant views can be expressed from any perspective that leads to the implementation and effectiveness of laws or legislation.

The Purpose of Law According to Progressive Legal Theory and the Utilitarian School. Laws made or created of course have targets to be achieved. That is the aim of the law, which is essentially to create an orderly, safe, peaceful social order and a balance in life. According to Satjipto Rahardjo, "law is for humans", not the other way around. In this regard, the law does not exist for itself, but for something bigger. So every time there is a problem in and with the law, it is the law that is reviewed and corrected and not humans who are forced to be included in the legal scheme. Law is not an absolute and final institution but is very dependent on how humans see and use it. Humans are the ones who determine, but in essence legal theories are rooted in these two factors. In another context, law is always in the process of becoming. Law is an institution that continuously develops and changes itself towards a better level of perfection. The quality of its perfection can be verified into the factors of justice, welfare, concern for the people and other factors, this is the essence of "law which is always in the process of becoming". The law does not exist for the law itself, but for humans.

Police/PPNS, Prosecutors and Judges in the jurisdiction of the Riau Islands are very rarely used, this is due to the integration and coordination of law enforcement which is still weak, where

the belief that natural resource conservation is one limited sector is not a process that needs to be considered by all sectors.

Law is a series of regulations regarding people's behavior as a society, the purpose of life is to provide safety, happiness and order in society, because each society has interests so that to regulate the various interests of society in order to achieve balance in life, the law has sanctions to be imposed on members of the community who violate the law.

3.4 Constraints in the process of paying insurance claims by ship owners

As explained in Article 246 of the Commercial Code states that insurance is an agreement between two or more parties where the insurer binds itself to the insured by accepting insurance premiums, to provide compensation to the insured for loss, damage or loss of expected profits or legal responsibility to third parties that may be suffered by the insured arising from an uncertain event or to provide payments based on the death or life of the person responsible. This is in accordance with the definition of a loss insurance company contained in article 1 point 5 of Law Number 40 of 2014 concerning Insurance Business which states that insurance provides services in dealing with risks of loss, loss of benefits and legal responsibility to third parties, which arising from uncertain events. In general, accident insurance is handled by life insurance companies as an extension of the guarantees provided by life insurance companies to the insured. This means that someone who closes life insurance can expand coverage with accident insurance by paying a premium. The policy used is a life insurance policy which states accident insurance, then the accident conditions are attached to the policy, which is an inseparable part of the policy. However, accidents in transportation (land, sea and air) and road traffic can only be handled by PT Jasa Raharja as mandatory insurance. In practice, insurance companies that operate in the field of loss insurance also have accident insurance programs and in this insurance there are also extended guarantees, such as motorbike riding clauses, pregnancy clauses and health clauses. Obstacles originating from the insured include:

1. Premium payments do not comply with the provisions so that often when a claim occurs the premium payment for the policy has not been made. This results in the claim not being able to be processed further or no claim, because in insurance there is a no premium no claim principle.
2. In reporting a claim, the insured often makes delays. The time period for this reporting delay varies. If the reporting period is less than 7 days, the insurer will ask why this happened. From several experiences, the reasons for late reporting are as follows;
 - the insured's family does not know if the insured has insurance, when the report is made the insured has finished treatment;
 - the accident coincides with a long holiday, so after the effective working day it is reported to the insurer;
 - Don't know the insurer's telephone number, sometimes insurance coverage is done through an agent, so that if a loss occurs the insured contacts the agent first, then the agent reports it to the insurer. These reasons do not absolve the insured of his responsibility, so the insurer still has to make payment for the claim. However, if the reporting period exceeds 7 days and there is no supporting reason for this, the insurer will immediately reject the claim in writing to the insured.
3. Because the incident is not guaranteed by the policy conditions. Of all the personal accident insurance claims reported to PT Asuransi Jasa Indonesia (Persero) Batam City Branch Office, all of them were incidents that were guaranteed by the policy conditions so that there was no claim rejection on the grounds that the incident was not guaranteed by the policy.
4. The insured is unable to complete the claim supporting documents requested by the insurer. In some cases, the document that the insured cannot fulfill is a traffic accident

certificate from the police. However, this does not relieve the insurer of its responsibility to provide compensation to the insured.

5. The insured does not submit a claim for 12 months after the claim occurs or the insured cannot fulfill the claim supporting documents for 12 months. If this happens, the insurer will immediately send a rejection letter to the insured because according to the policy provisions, if there is no claim from the insured after 12 months then the claim will not be processed further.
6. The insured's claims do not match the matters guaranteed in the policy.

Obstacles originating from the insurer include:

- There is only 1 claims officer at PT Asuransi Jasa Indonesia (Persero) Batam City Branch Office, so this makes some claim settlements take longer than required.

Insurers sometimes do not follow up on documents that have not been fulfilled by the insured, and the insured themselves are less active in communicating with the insurer regarding the fulfillment of documents. So often these claims exceed the time period for fulfilling the documents. The most important obstacle is the public's lack of knowledge about insurance, so people are reluctant to submit claims. People think that filing a claim is difficult because the procedure is complicated.

4. CONCLUSION

Based on the results of research conducted by the author, the author can draw conclusions including:

1. Law no. 17 of 2008 concerning Shipping, what is meant by ship's seaworthiness in this Law is the condition of the ship which meets ship safety requirements, prevention of water pollution from the ship, manning, loading lines, loading, welfare of the ship's crew and health of passengers, legal statusships, safety management and prevention of pollution from ships, and safety management of ships when sailing in certain waters. Provisions regarding criminal acts in the field of shipping, contained in articles 284, up to article 336, Law No. 17 of 2008 concerning Shipping, which are used to facilitate understanding are divided into 2 (two) categories or sections, namely: Based on the Subject of the perpetrator and based on Responsibility criminal
2. There are 3 (three) principles of carrier responsibility in transportation law, namely the first is the principle of responsibility based on fault (fault of liability), the second is the principle of responsibility based on presumption of liability, and the third is the principle of absolute responsibility. The carrier's responsibilities in the transportation law mentioned above apply to responsibilities that apply nationally and internationally. The transportation process is quite long, it is possible that an incident may occur which results in the goods not being safe. Unsafe goods can be interpreted as meaning that the goods do not exist, have disappeared/lost, been shrunk, destroyed or that the goods are there but are partially or completely damaged due to various possible events. In conditions like this, the carrier is responsible for losses that cause the goods to not survive. For all losses that may occur, the owner of the property that suffers loss can reduce or mitigate the loss, and the loss can even be borne by someone else as long as this is agreed upon in advance. An agreement that occurs between those who own goods because they are worried that they will suffer losses as a result of carrying out transportation due to the threat of danger at sea and those who are willing to bear the loss is called a (marine) insurance agreement.
3. There is a sharing of the risk burden that can be done through risk retention, which is risk coverage itself. Risk sharing is the sharing of risks where the principle of mutually responsible cooperation or protection is established. Risk transfer is transferring risk to another party. Ship owners who do not transfer responsibility for the removal of shipwrecks that have sunk as a result of accidents during shipping in Indonesian seas can

be held absolutely responsible for violating the law based on the risk burden they bear themselves (risk retention).

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