THE TORT OF MULTIMODAL TRANSPORTATION AGREEMENT

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ABSTRACT - *Multimodal transportation is one transportation system that uses more than one mode of transportation. In the Government Regulation No. 8 of 2011 on Multimodal Transportation states that multimodal transportation is transportation which uses at least two (2) different transportation modes on the basis of one (1) contract / agreement as the transport document. The problem of this research is on multimodal transportation and legal issues regarding the default under the Civil Law, Commercial Law, The Law No. 23 of 2007, The Law No. 22 of 2009, and Government Regulation No. 56 Year 2009 on the Implementation of Railways, Government Regulation No. 8 of 2011 on Multimodal Transportation. The method used juridical normative and empirical approach. This study used a source of secondary law and primary law materials, in which secondary law materials include primary data, secondary data, and the tertiary data. Primary law materials are data obtained from the results of field research on the object of research done by direct interview. This analysis conducted qualitative analysis of data in the form of information and a description that is associated with the data - other data are used to gain clarity and truth that will strengthen the existing picture. Results of research conducted at PT. Kereta Api Indonesia (Persero) Lampung region show that PT KAI in Lampung region in carrying out its operations have not been used multimodal transportation system and also in solving the problem of the tort PT. KAI resolve it amicably. As for suggestions that can be expressed by the author is that PT. KAI Lampung region immediately improve its service to solve the tort problem and improve transportation services using multimodal transportation system to facilitate the users of transportation services, and for the users of transportation services should be able to comply with all existing regulations to safeguard the security, comfort, and safety.*

keywords: Transportation, Agreement, Tort, KAI, KUHPdt, KUHD

1. INTRODUCTION

Tranportation is one form of this type of business in the growing field of transport services in the community, many types of transportation used by people to promote economic growth in Indonesia, which are included in the category of developing countries, so it can be said that transport plays an important role in economic growth. The transportation is about those can be carried by people, animals, vehicles, trains, ships, aircraft, and others.According to HMN Purwosutjipto transportation is "a reciprocal agreement between the carrier with the sender, wherein the carrier binds itself to organize the transport of goods and / or people from one place to a particular destination safely, while the sender bind themselves to pay for transport".Transportation is an agreement in which there are the parties consisting of the carrier and the shipper or a passenger. The understanding of the carrier is "the person who committed themselves to organize the transportation of goods and / or people from one place to a particular destination safely".The understanding of the sender and / or passengers is "people who bind themselves to pay the cost of transportation and on this basis he is entitled to obtain transportation services" [3]. The transportation can be carried out as well as the transport of goods or passengers with the aim to deliver goods and passengers safely and to improve the use value and economic value of people and goods that are transported. Transport agreement that occurred between the two sides is an agreement which contains obligations and rights of the parties. According to the agreement which usually occur in the general public in its oral form, supported by the transportation document, but if the parties want, it can be also made in written form, called the charter party. The reasons of wanting the written agreement of the parties are as follows.

a. Both parties want to gain certainty about the rights and obligations
b. Detailed clarities about the object, purpose, and the burden of the risk of the parties
c. Certainty and clarity of payment and delivery of goods
d. Avoiding various kinds of interpretation of the meaning and content of the agreement
e. Certainty about when, where, and what reason the agreement end
f. Avoiding conflicts of implementation of the agreement due to unclear desired the parties purpose [4]. In the transport agreement there are public law principles and the principle of civil law that the two are related to each other. The principle of public law is the "cornerstone of legislation which prioritizes more on the public interest or the interests of the community, which includes business principles, the principle of benefit, the principle of fair and equitable, the principles of general interest, the principle of legal awareness, and the principle of passenger safety" [5]. Other than the principle of public law principles of civil law which is the fundamental principle in the transportation agreement and which prioritizes the interests of stakeholders in the transport, in the principle of civil law there is also the principle of agreements, coordinative principle, principle of the

mixture, the principle of retention and the principle of proof with documents. The development of the fast growing transportation now needs to be balanced with the development of transportation law that aims to protect the implementation of the transportation. "The implementation of transportation is a series of transportation acts which is the application of the provisions of law and / or transport agreements.

2. METHOD AND ANALYSIS

Transportation agreement is an agreement between two or more people who bind themselves to each other mutually fulfilling each rights and obligations. The agreement made by the parties must fulfill the principles or the required validity of an agreement, pursuant to Article 1320 Civil Law Act requirements validity of a treaty agreed among other things, qualified, specific, and the causes are kosher. Agreed means that the parties involved in the agreement reach an agreement, qualified means is that the parties involved in the agreement have been capable or able to take legal action, specific means that the object of the agreement can be determined by minimal amount or kind, while the cause of the lawful means that the object of agreement does not conflict with the law, morality and public order. Other than those agreements validity of the terms according to scholars, there are four principles that are considered as fundamental principles in making treaties, namely: the principle of freedom of contract, consensualism principle, the principle of pacta sunt servanda, and the principle of good faith. Principle of freedom of contract is a fundamental principle contained in Article 1338 paragraph (1) of the Civil Law which occupy a central position in contract law, though it is not poured into the rule of law but it has a very strong influence in the contractual relations of the parties.

With the existence of this principle, the parties may not perform any agreement even if it is not set in the book-III of Civil Law Commitments as long as it does not conflict with the law, because of the nature of the book-III which embraces open systems, meaning that the law gives freedom to the parties to set their own agreement and the legal relationship patterns.

Consensualism principle is the principle contained in Article 1320 of Civil Law Act containing the will of the parties to have mutual improvement and to engender trust between the parties on the fulfillment of the agreement. Consensualism principle as contained in Article 1320 Civil Law Act which is according to this principle, the agreement was born simply by their agreement. Pacta sunt servanda principle or power binding contract, according to Niewwnhuis, it is stated that the binding force of a treaty that appears along with the principle of freedom of contract which gives the freedom and independence to the parties. Principle of Good Faith, in Article 1338 paragraph 3 of the Civil Law states that "agreements should be implemented in good faith" it means that the agreement was carried out according to decency and fairness.

Wirjono Prodjodikoro divides good faith into two kinds:

a. Good faith at the time of entry into the force of a legal relationship. In this context, the law provides protection to parties acting in good faith, and for the party acting not in good faith should be responsible to bear the risk

b. Good faith at the time of implementing the rights and obligations contained in the legal relationship

Definition of good faith under Article 1963 of Civil Law is the good will or the honesty of the person when he began to master the goods, which he thinks that the conditions have been met.The transport agreement negotiations are always preceded by a reciprocal action between the shipper or the passenger and the carrier. Deeds negotiations to reach an agreement can be seen from the theories developed in the community agreement of transportation business, while evolving theories are:

a. Will Theory
   Will theory stated by Hofmann express that agreement occurs and bind upon the parties had reached the will agreement or agreements on matters that are agreed. Approval of the will or the agreement is expressly stated in the form of spoken words or in the form of tangible actions that should be respected and binding on the parties. Advantages of the theory of the will are creating.
b. Reception Theory
   Reception theory stated by Opzoomer expressed agreement occurs and binded upon the parties when the offers are really accepted by the other party, which is concretely demonstrated by word and real action (accept) or with legal documents (proof of receiving).
c. Offer and Acceptance Theory
   This theory is generally developed in Anglo-Saxon countries, according to this theory of the bidding process that one is faced with a bidding process by the other party and on the other hand to achieve compatibility / suitability which will be expected by the parties on a reciprocal basis.

According to Government Regulation No. 8 of 2011 Article 1 what is meant by multimodal transport is the transportation of goods by using at least two (2) different transport modes on the basis of one (1) contract as a multimodal transport documents from one place of receipt of goods by the multimodal transport enterprises to a place designated for delivery of the goods to the consignee multimodal transport. Before the Government Regulation No. 8 of 2011, the setting of a multimodal transport is strictly regulated, except in the law No. 23 of 2007 on Railways. Multimodal transportation is a very vital and strategic necessity for Indonesia. The importance of multimodal transportation is reflected in the growing demand for multimodal transportation services for mobility of people and goods to and from the entire country.

As with any mode of transportation, organization of multimodal transportation is organized based on the following principles:

a. Principle of Profit
   Multimodal transport requires that deliver maximum benefit for the improvement of people's welfare, livelihood development which takes place continuously for citizens.
b. Principle of Balance
   it requires the implementation of a multimodal transportation which are in balance with the infrastructure, the interests, the interests of users and service providers, between the interests of individuals and society, and between the interests of local, national, and international.
c. Principle of Equity
   It requires a multimodal transportation services that are fair to all levels of society at an affordable cost by the community.
d. Principle of Public Interest
   it requires the implementation of multimodal transportation more priority to the interests of the wider community.
e. The Principle Integration
   Multimodal transportation requires a complete, integrated, mutually supportive and complementary between several modes of transportation.
f. The principle of Legal Awareness
g. it requires the implementation of a multimodal transportation by and abide by the law, both the organizers of multimodal transportation and the multimodal transportation service users.

Multimodal transportation as a combination and unity of two or more modes of transport was organized with the aim of totality of all modes destination of transportation. Therefore, multimodal transportation is organized for:

a. combining two or more modes of transportation as a unified whole and reliable

b. Streamlining the flow of the movement of people or goods with a safe, secure, fast, smooth, orderly, comfortable, effective, and efficient.

c. Reaching all corners of the territorial land and territorial water

d. Serving the community with a relatively affordable cost by purchasing power

e. Supporting the growth and distribution as well as national stability sustainable development

f. Confirming the embodiment of archipelago insight and strengthen national resilience

g. Prioritizing and protect national multimodal transportation

h. Strengthening the relationship between nations

Mutual obligations and rights of the parties arises from events such legal actions, events, or circumstances. Public transportation company is obliged to carry passengers or goods after the signing of the transportation agreement and / or the payments made by the cost of transporting passengers and / or shippers. In this case the primary obligation of the carrier is to carry passengers or goods and to issue transport documents as the exchange for their rights to obtain the cost of transporting and / or sender. The parties may also foretell:

a. Keeping and caring for passengers and maintaining goods transported with the best

b. Removing and dropping off passengers at a stopping point or destination safely and securely.

c. Submitting goods transported to the recipient intact, completely, not damaged, or not too late.

In addition, it can also be agreed also that the carrier is not required or refusing to transport goods that are prohibited by the law or endanger public order and the public interest. Public Transportation Company is responsible for the losses suffered by the passenger, sender, or a third party because of his negligence in carrying out the transport service. Public Transportation Company is also responsibility for passengers or goods started since removing the passengers or goods to place to the agreed objectives.

The amount of damages is equal to compensation which significantly suffered by passengers, shippers, or a third party. The real loss is the provision of the law that should not be deviated by the carrier through the provisions of the treaty in its favor as coercive.

Accidents are the events of transportation law in the form of incident or accident which is not desired by the parties, occurred before, within, or after the implementation of transportation due to human actions, or damage to the transporter, causing loss of material, physical, mental, or loss of livelihood for the passenger, other than the passenger, the owner of the goods, or the shipper. Based on the concept, it can be described the elements of the transport accident as follows:

a. Incident or accident

b. Not desired by the parties

c. Happened before, within, or after the implementation of transportation

d. Because of human actions or damage to the tool carrier

e. Give rise to material, physical, mental losses or loss of livelihood

f. For passengers, for other than the passenger, the owner of the goods, or the carrier.

3. Result / Discussion

A research is the process of finding the truth of nature described in a systematic form of activities and plans with based on the scientific method. As systematic and planned activities, there are certain patterns that must be followed and all research activities are based on measures that have been carefully planned in advance.

The research method is to reveal and explain a problem. Normative data used as a basis in enforcing a rule, empirical data are taken into consideration on an enforcement of the rules. Their research methods are expected to know the problem solving of the problems being studied. The approach used is the method of normative and empirical approach using secondary data (library data) as the main data and primary data (field data) as the supporting data.

1) Normative research method, done by looking at the legal issues as rules that are considered suitable with normative juridical research conducted on theoretical matters. This approach is done by studying the principles of law that exist in the opinion of scholars and regulations in force.
2) Method of the empirical approach is an approach made to analyze the extent to which regulation or legislation or law that is being applied effectively, by analyzing the multimodal transportation system applied in Indonesia as well as legal protection of a multimodal transportation service users. The approach is done by field studies in an attempt to get the primary data through observation or interview to obtain particulars information relating to the implementation of the multimoda transportation system. Transportation agreement is an agreement between two or more people who bind themselves to each other each in fulfilling each rights and obligations. The agreement made by the parties must fulfill the principles or the requirements for validity, pursuant to Article 1320 Civil Law Act requirements validity of a treaty agreed among other things, a conversation, a certain thing, and the causes are kosher. Agreed means that the parties involved in the agreement reach an agreement, qualified means that the parties involved in the agreement have been capable or able to take legal action, specific means that the object of the agreement can be determined in minimal amount or kind, while the cause of the lawful means that the object does not conflict with the agreed law, morality and public order. In addition to the above agreements validity of the terms according to scholars, there are four principles that are considered as fundamental principles in making treaties, namely: the principle of freedom of contract, consensualism principle, the principle of pacta sunt servanda, and the principle of good faith.
The principle of freedom of contract is a fundamental principle contained in Article 1338 paragraph (1) of the Civil Law which occupy a central position in contract law, though not poured into the rule of law but has a very strong influence in the contractual relations of the parties [9]. With this principle, the parties may not perform any agreement even if it is not provided in the book III of Civil Law Commitments as long as it does not conflict with the law, because of the nature of the book-III is embracing an open system, meaning that the law gives freedom to the parties to set their own agreement and the legal relationship patterns. Consensualism principle is the principle contained in Article 1320 Civil Law Act contains the will of the parties to have mutual increase and to engender trust between the parties on the fulfillment of the agreement. Consensualism principle as contained in Article 1320 Civil Law Act which according to this principle the agreement was born simply by their agreement. Pacta sunt servanda principle or power binding contract, according Niewwnhuis states that the binding force of a treaty that appears along with the principle of freedom of contract which gives the freedom and independence to the parties. Principle of Good Faith, in Article 1338 paragraph 3 of the Civil Law states that "agreements should be implemented in good faith", it means that the agreement was carried out according to decency and fairness. Definition of good faith under Article 1963 Code Civil Law is the good will or the honesty of the person when he began to master the goods, which he thinks that the conditions have been met. The transport agreement negotiations are always preceded by a reciprocal action between the shipper or the passenger and the carrier. In the case of the tort of multimodal transportation agreement or negligence in performing its obligations then, the settlement will be carried out by way of negotiations meaning that the settlement was made without involving a third party, if the negotiations do not come to fruition then, the problem will be resolved through the mediation, settlement meaning that using mediators which has been appointed. If the road does not come to fruition then it must be determined by legal means, through the courts, but until now there has been no passenger compensation process to the court.
Compensation process passengers are settled directly with the consensus because the settlement process is easy and mutually beneficial to the parties and more efficient because it does not take a long time. Tort derived from the word achievement meaning that something that must be met by the debtor (carrier) in each engagement. Achievement is the object of engagement in civil law obligation to meet achievement is always accompanied by a guarantee from the debtor (carrier) in 1131 KUHPdt article which states "any debt material either moving or not moving, either already existing or new will in the future, be borne for all individual engagement. Article 1234 KUHPdt states that the replacement of costs, losses, and interest due to non-fulfillment of an engagement, then began obliged, if the debt after being found negligent to meet its engagements, but sliding it or if something should be given or made could only be given or made within the time limit has been passed.
According to the provisions of article 1234 KUHPdt, there are three possible forms of achievement, namely:
a) provide something is handing over the real power of an object of the debtor (transport) to the creditor (passenger) in terms of offer and acceptance of carrier offering the passenger conveyance and agreed to accept the offer of transport and vice versa.
b) Do something: the debtor (carrier) must perform certain acts that have been established in the engagement such as committing the debtor (transport) and must meet all the provisions of the debtor engagement (the carrier) and should be responsible for actions that are not in accordance with the terms of the engagement
c) Not doing anything is doing nothing that has been set in the engagement, for example, if a creditor (carrier) act the opposite to the engagement he was responsible for violating the agreement
Non-fulfillment of obligations by the debtor (the carrier) is caused by two possible reasons as in the

following:
1. Because the fault of the debtor (the carrier), whether intentionally not fulfilling the obligations due to negligence2. Because of the circumstances of force (coercion), force majeure beyond the ability of debtors.
It is stated that the debtor (carrier) intentionally or negligently does not meet achievement with 3 types, namely:
1. Debtor (carrier) does not meet the feat at all
2. Debtor (carrier) meets achievement but not good or in erroneous
3. Debtor (carrier) meets achievement but not timely or late
In order for the debtor (the carrier) meets his achievements, Debtor (carrier) must get complaints from creditors (passengers) in which a passenger transport as the service user, for example if one of the parties in this case the carrier does not meet the obligations required, a written warning letter from the creditor can be given to the debtor. The warning letter is called by subpoena.Summons is a notice or statement from the creditor to the debtor which contains provisions that requires the fulfillment of immediate or within a period of achievement as specified in the notification.According to Article 1238 KUHPdt, it is stated that: "The debt is negligent, if he is with a warrant or with a kind deed that has been declared is negligent, or for the engagement itself, if it is established that the debt must be considered negligent with the passage of time specified" Of the provisions of that article it can be said that the debtor is declared in tort when there is a claim letter (in gebreke Stelling). The forms of subpoena under the section 1238 KUHPdt are:
1) warrant
The warrant came from the judge who usually shaped fixing. With this designation letter bailiff verbally notify the debtor at the latest when he had to perform. This is commonly called "exploit bailiff "
2) a kind deed
This deed can be a deed under the hand and notarial deed.
3) Summed up in the engagement itself. That is since the making of the agreement, creditors have determined the time of tort.
During the process, a subpoena or reprimand against debtors who neglect their obligations can be done verbally but to facilitate evidence before the judge if the matter goes to court then it should be given a written warning.In certain circumstances a summons is not required to be stated that a debtor is in tort in terms of the deadline in the agreement (fatal termijn), achievements in the form of the agreement does nothing, the debtor recognizes himself in tort. Then the legal consequences for debtors who have been in tort gets punishment or sanction of law as follows:
1. The debtor is required to pay damages suffered by creditors.
Compensation is often broken down into three elements: costs, damages and interest.
a. Costs are all expenses or charges been issued manifestly by one party.
b. Loss is loss due to damage to items belonging to creditors caused by negligence of the debtor.
c. interest are losses in the form of profit lost that have been imagined or calculated by the creditor.
Code Civil specifies the compensation in two elements, namely *dommages et interests*. Dommages covers the costs and losses such as the purpose of mentioned above, while interest is equal to the interest in terms of profit lost. In the matter of redress, by law given provisions are restrictions on what can be demanded as compensation. Article 1247 KUHPdt determines:
"The debtor is only required to reimburse the loss and the real interest has been or should originally be expected when the agreement was made, except if the agreement is not fulfilled due to deceits done by him". Article 1248 KUHPdt determines: "Even if the agreement is not met because of the deceitfulness of the debtor, replacement costs, loss and interest, just about the losses suffered by the indebted and profits lost for him, merely consisting of direct result of noncompliance with the agreement".
A further restriction in the payment of compensation is contained in the regulation concerning on *moratoir* interest. If the achievements is in the form of a payment of money, the losses suffered by the creditor if the payment was late, is in the form of interest, rents or interest.a. The words *"moratoir"* comes from the Latin word *"mora"* which means forgetfulness or negligence. So *moratoir* interest means the interest to be paid (as a punishment) because the debtor was negligent in paying debts, set at 6 percent a year. Besides, the interest is the newly calculated since sued to court, so since the inclusion of the lawsuit. (Article 1247)
b. If it is a reciprocal engagement, because the creditor can demand termination or cancellation of the engagement by the judge (Article 1266 KUHPdt)
c. In an engagement to provide something, the risk is transferred to the debtor since the event of tort (Article 1237 KUHPdt)
d. The debtor is required to fulfill the engagement if it still can be done, or cancellation done with compensation payments (Article 1267 KUHPdt)
e. The debtor is obliged to pay court fees if it is sued upfront the court and convicted.
Cancellation of the agreement, aimed at bringing the two sides back to the situation before the agreement was held. It is said that the cancellation was retroactive to the second bore agreement. If a party has received something from the other party, either money or goods, then it must be returned. The point is that the agreement was abolished.
Cancellation of the agreement due to the negligence of the debtor is set out in article 1266 of the Civil Code governing conditional engagement, which reads: "Conditions are considered null and forever included in the agreements of reciprocity, when one party does not fulfill its obligations. In such case the agreement is not null and void, but the cancellation must be

requested to the judge. This request should also be done, although the terms about the unfulfilled obligation are stated in the agreement. If it is not stated in the agreement, the judge is free according to circumstances at the request of the defendant, to provide a period of time for the opportunity to meet its obligations, a period which should not be more than one month ". Cancellation of the agreement must be sought from the judge, not canceled automatically even if the debtor obviously neglects its obligations. The judge's decision is not *declaratoir* but constitutive, actively cancel the agreement. The judge's decision does not state "Stating the cancellation of the agreement between the plaintiff and the defendant" but rather, "Canceling the agreement".

The judge must have the *discretionair* authority, meaning that the power to assess the size of the omission of the debtor in comparison with the severity due to the cancellation of the agreement which might befall the debtor. If the judge considers debtors' negligence is too simple, while the cancellation of the agreement would bring losses that are too serious for the debtor, the request to cancel the agreement will be rejected by the judge. Under section 1266 judges may give the debtor a period of time to still meet its obligations. This time period is known as the *"terme de grace"*.

As a third sanctions for negligence of a debtor mentioned in Article 1237 KUHPdt, what is meant by "risk" is the obligation to bear the loss in case of an event beyond the fault of either party, which overrides the goods which is the object of the agreement.

The transition risk can be described as follows:

According to article 1460 KUHPdt, then the risk of the sale and purchase of certain items is borne to the buyer, even though the goods have not been delivered. If the seller was late handing the goods, then this omission had been threatened with transfer risk from the buyer to the seller. So with the seller neglect, the risk is transferred to him. According to Article 1267 KUHPdt the creditor may choose to require or compel the debtor to fulfill the agreement if it is still possible or choose to terminate the agreement invitation replacement costs, damages, and interest. Paying The Waiver Fee The payment of the court fee as the fourth sanctions for a negligent debtor is summed up in a regulation Procedural Law, that the defeated party is required to pay court fees. If in the implementation of multimodal transportation agreement the tort happends or negligence in performing its obligations then, the settlement will be carried out by way of negotiations meaning that the settlement was made without involving a third party, if the negotiations do not come to fruition then, the problem will be resolved through the mediation, a solution used a mediator who has been appointed. If that way does not come to fruition then it must be determined by legal through the courts, but in practice the process of compensation is often resolved directly by way of consensus.

3. CONCLUSION

Based on the results of research and discussion that has been described in the chapters above, conclusions can be described as follows.

1. PT. Kereta Api Indonesia is responsible for the losses suffered by the user of transportation services since the start of transportation up to the ending of the transportation at the destination, then in the tort that cause losses for users of transportation services in the settlement, the carries should make the effort such as:

a. Negotiating, it means that the settlement is done without involving a third party.

b. Mediating, it means that settlement is done using mediators who have been appointed.

c. Doing Legal paths that use the legal settlement.

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