



The Position of Bills Of Lading in The Carriage of Goods at Sea

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ABSTRACT

Legal rules for the transport of goods on an international scale are contained in three international conventions, namely The Hague-Visby Rules 1968, The Hamburg Rules 1978, and The Rotterdam Rules 2008. Meanwhile, on a national scale, they are regulated in the Criminal Code. In the activity of transporting documents used is a bill of lading or bill of lading. The bill of lading document used as the basis of this research is the bill of lading owned by PT. SPIL. The purpose of this study is of course to analyze documents for transporting goods such as bills of lading and explain the implications of issuing bills of lading belonging to PT. SPIL and the position of the bill of lading in agreements for the carriage of goods at sea in relation to the legal relations governing them. In addition to the location of the bill of lading which differs from each regulation, this also affects the legal consequences of issuing a bill of lading owned by PT. SPIL when viewed from legal regulations such as the Criminal Code, Criminal Code and the three international conventions and settlement of disputes that occur in the activity of transporting goods at sea. In carrying out the issuance of bills of lading, caution, accuracy and thoroughness are required. If you are not careful in issuing a bill of lading, it can lead to confusion.

Keywords: Bill of Lading, Carriage of Goods, agreement

INTRODUCTION

In the world of international trade, there are several international conventions on the transportation of goods by sea that are created and published with the aim of making legal uniformity globally in the trading industry, namely the Hague Rules 1924, Hague-Visby Rules 1968, Hamburg Rules 1978 and Rotterdam Rules 2008 which is the main reference for the law of transportation of goods by sea. While in Indonesia the regulation regarding the transportation of goods is regulated in the KUHD (Kitab Undang-Undang Hukum Dagang) which is an inheritance law from the Netherlands. In addition to the KUHD, there is also Law Number 17 of 2008 concerning Shipping which regulates the transportation of goods that are only cursory, so that the regulations of the Shipping Law still leave many problems of substance, one of which is the document of transportation of goods by sea which is not regulated in detail.¹

¹ Atur Tetty Lubis, *Towards a Reformed Carriage of Goods by Sea Law: Indonesia and Global Practice*, Mulawarman Law Review, Vol. 5 No. 1, Juni 2020, hlm. 62



Bill of lading is governed by international conventions such as The Hague-Visby Rules, The Hamburg Rules and The Rotterdam Rules. In all three conventions the bill of lading is referred to as a bill of lading. In the 1968 Hague-Visby Rules, a bill of lading is a document relating to a contract for the carriage of goods by sea or a similar document of title to regulate the relationship between consignee and shipper. In Hamburg Rules, a bill of lading can be defined as a document evidencing a contract of carriage by sea and the taking over or loading of the goods by the carrier. In the Rotterdam Rules, it is mentioned that there are documents that have the function of a bill of lading, namely transport records and electronic transport records. Although the contents of the electronic transport record are technically similar to the bill of lading, the Rotterdam Rules do not state that the document used is a bill of lading but an electronic transport record as well as the contract.

In the transportation of goods, one of the companies that conducts transportation activities is PT SPIL (Salam Pacific Indonesia Lines). PT SPIL is a shipping company and shipping logistics company (Shiplog) that serves in the delivery of goods and has a large-scale network throughout Indonesia. PT SPIL uses 2 different rules, namely international conventions and KUHD. In PT SPIL's terms and conditions sheet, the arrangement of rights and responsibilities tends to be imposed on the owner of the goods and also in the arrangement more follows the rules of the international convention than the rules of the KUHD.

In carrying out the transportation of goods at sea, PT SPIL certainly faces the problem of transporting goods domestically and internationally. The first challenge faced by PT SPIL is the problem of differences in regulations that apply to each country, which hampers the transportation of goods. The second problem is a complex document system where the documentation process required for international sea freight shipping has different standards or procedures for issuing documents as well as Indonesia which tends to be complex and convoluted. The third problem is the efficiency of transport and shipping time, every time transporting and shipping goods the biggest challenge faced is weather changes or events that have a high risk such as force majeure which causes delays in transporting and shipping goods.

Based on the background that has been conveyed, it is necessary to analyse the bill of lading and other documents relating to the regulation of the carriage of goods by sea owned by PT SPIL (Salam Pacific Indonesia Lines). The purpose of conducting this analysis is certainly to explain how the position of the bill of lading belonging to PT SPIL and the legal consequences of issuing a bill of lading in the agreement to transport goods at sea are associated with the legal relations governing it in the KUHD and the three international conventions namely The Hague-Visby Rules 1968, The Hamburg Rules 1978 and Rotterdam Rules 2008.

METHODS

This research method uses a doctrinal approach, doctrinal research is seen from the aspect of academic constituency, namely analysing legal theory, legal science,



jurisprudence, and legal philosophy.² According to Terry Hutchison as quoted by Mahmud Marzuki, doctrinal legal research is research that provides a systematic exposition of the rules governing certain categories of law, analyses the relationship between the rules, explains areas of difficulty and, perhaps, predicts future developments.³

The materials used in this research are from document review and the results of a review of the literature consisting of primary, secondary and tertiary legal materials. Primary materials are regulations related to legal issues, namely the Civil Code (KUHPer), the Commercial Code (KUHD), and the three international conventions such as The Hague Rules 1924, The Hague-Visby.Rules 1924, The Hamburg.Rules 1978, Rotterdam.Rules 2008. Secondary legal materials are legal materials that provide an explanation of primary legal materials. Books, journals, scientific articles and electronic media data relevant to the issues discussed. And finally tertiary legal materials, namely additional legal materials that provide information about primary and secondary legal materials such as Legal Dictionaries, Big Indonesian Dictionaries and English Dictionaries.

DISCUSSION

PT SPIL is a shipping company focused on the logistics business that offers the movement or delivery of goods from the initial port to the destination port using sea freight. PT SPIL has a series that includes shipping planning activities, service delivery (door to door, port to port, international shipment and others), agreement contract agreements, payment agreements, insurance for shipping goods, packaging goods and notification of the arrival of goods at the destination port. In the transportation activities of PT SPIL uses a document in the form of a bill of lading, and the bill of lading document is one of the requirements in carrying out the transportation of goods. In issuing a bill of lading there is a process that needs to be followed and the process is also related to other documents in carrying out the transport of goods at sea. These other documents are documents that are implicated by the agreement to transport goods at sea, so these documents are considered prerequisites to ensure the smooth and safe transport of goods at sea.

A. The Position of PT SPIL's Bill of Lading in the Carriage of Goods at Sea

1. The Position of PT SPIL's Bill of Lading According to International Conventions

The position of PT SPIL's bill of lading based on the three international conventions namely The Hague-Visby Rules 1968, The Hamburg Rules 1978 and The Rotterdam Rules 2008 has similarities and differences. The Hague Visby Rules 1968 explains that the bill of lading becomes the main mark required in identifying the goods to be transported, be it the number, weight, type and other matters completed by the shipper so that the order and condition of the goods are clear. However, there is an

² Muhamad Muhdar, 2019, *Penelitian Doctrinal dan Non-Doctrinal Pendekatan Aplikatif Dalam Penelitian Hukum*, Samarinda: Mulawarman University Press, hlm.8.

³ *Ibid*, hlm. 9



exception for goods governed by this convention as mentioned in Article 1 (c) The Hague-Visby Rules 1968 that the goods in question are trade goods of every kind except live animals.

In The Hague-Visby Rules 1968 explains that the bill of lading can be used as the main evidence in several cases such as loss or damage caused by negligence or unavoidable disasters. This is because the bill of lading acts as an agreement tool that contains transport and goods information so that the bill of lading is very important to be used as evidence in the event of a dispute over the transport of goods.

The Hamburg Rules 1978 regulates the bill of lading and also the position of the bill of lading in Part IV on transport documents which is regulated from Article 14 to Article 18 of the Hamburg Rules 1978. However, in Article 15 paragraph 1 of the Hamburg Rules 1978, more information than that stipulated in the bill of lading is allowed as long as it does not affect its legal nature and does not exceed the limits and responsibilities. However, if the bill of lading is incorrect and inaccurate then the carrier must enter an order for a bill of lading detailing the inaccuracy of the goods and their examination.

The regulation of goods in The Hamburg Rules 1978 convention states that all kinds of goods including live animals are allowed where the goods are combined in containers, pallets or similar conveyances or where the goods are packed. In shipping goods, the goods to be shipped must be considered guaranteed in accordance with the information on the goods being transported as outlined in the bill of lading. In the event of inaccurate entry of the goods information, it is the shipper who will compensate the carrier for the loss. The shipper remains liable under the contract of carriage even if the bill of lading has been transferred by him to another party and the carrier's right to indemnity in no way limits its liability to anyone other than the shipper. Any party bound by the issuance of the bill of lading must have undertaken to indemnify the shipper or carrier or a third person for the acts or omissions of the shipper or carrier.

The Rotterdam Convention does not mention the bill of lading but rather the contract of carriage or transport document, which means that the bill of lading is part of the contract of carriage or transport document. It is explained in the definition section that a transport document is a document issued by a carrier based on a contract of carriage, and the contract of carriage in question certainly contains an agreement to transport goods from one place to another by sea and pay freight.

In its development, this convention adds electronic transport records because it follows the times, namely documents can be converted in electronic form. In this convention, electronic transport records are referred to as documents that can contain information based on the carrier's contract and can be used as evidence containing the contract of carriage and the performance of the contract of carriage. For the use and effect of electronic transport records in this convention, they are issued and used based on the agreement between the carrier and the shipper and have the same effect as ownership or transfer documents. However, it can be



excluded if it is agreed not to use the electronic transport record in practice and with the option that the transport record is non-negotiable or negotiable. The contract of carriage has the effect of evidence as described in Article 41 of The Rotterdam Rules 2008 of the United Nations Convention On Contracts For The International Carriage Of Goods Wholly Or Partly By Sea. Technically, the burden of proof is on the carrier responsible for the goods and the loss or damage must be proven. The documents of carriage described in this convention indicate that the documents of carriage are the initial evidence of the carrier's acceptance of the goods as stated in the contract particulars and may be used as evidence otherwise by the carrier in connection with other contracts.

2. The Position of PT SPIL's Bill of Lading According to the Code of Commerce (KUHD)

In the KUHD, the bill of lading is explained in Article 90 which states that the bill of lading is a document that forms an agreement between the shipper, expeditor and carrier in organising transportation. Meanwhile, the bill of lading is explained in Article 506 that the bill of lading is a dated letter explaining that the carrier accepts the goods to be transported to the designated place. In the KUHD, the parties authorised to issue a bill of lading are the carrier (Article 504 KUHD) and the skipper (Article 505 KUHD). The rules of the KUHD as a whole do not mention the types of goods that can be transported, therefore the transport of living creatures is not mentioned if it is allowed to transport live animals because there are no rules governing this in the KUHD.

If you look closely, in the KUHD, bills of lading and bills of lading are always separated by the word "or" which can be interpreted that the word "or" written indicates the direction of choice. However, both bills of lading and bills of lading contain information about the goods being transported on board. A bill of lading can be requested by the shipper to be issued containing information on his goods loaded and transported and the skipper is authorised to issue the bill of lading in accordance with the goods received for loading on board. The bill of lading issued may be exempted for the person ordered and the bill of lading shall include the name of the ship.

The KUHD specifies that the bill of lading issued is merchantable. With the tradability of the bill of lading, the carrier is obliged to deliver the goods in good faith and provide security in return. If the bill of lading has been issued, there is no longer a claim for the delivery of goods during the shipping process before the ship arrives at its destination. In the process of delivery of goods can be shown using a bill of lading as a sign of ownership either in the first party or third party based on good faith. If there is a dispute due to the number of goods and the nature of the guarantee, the matter can be submitted to the court.

The bill of lading also stipulates that if the contents, nature, weight and size of the goods are not known, it is not binding on the carrier, otherwise if the contents, nature, weight and size of the goods are known and checked, it is binding on the



carrier. And furthermore, if the condition of the goods is not mentioned in the bill of lading, the condition of the goods is considered in good condition when viewed from the outside.

In the explanation above, the position of the bill of lading apart from being a transport agreement, the bill of lading has other functions including:

- a) Protection of transported goods as it binds the shipper, consignee and carrier;
- b) As a receipt of goods;
- c) As proof of ownership; and
- d) As evidence of the transport of goods.

B. Legal Effects of PT SPIL's Issuance of Bill of Lading on the Transport of Goods at Sea

1. The Rights and Responsibilities of Parties in the Carriage of Goods by Sea

Bill of lading as a form of contract agreement for the implementation of the transport of goods by sea and who usually issues the bill of lading is the skipper or expeditor company. With the issuance of a bill of lading like a contract agreement, there will certainly be legal consequences that arise. The legal consequences of the issuance of a bill of lading can be in the form of the birth of legal relationships such as the emergence of rights and obligations, the emergence of sanctions, the emergence of risks and guarantees, and inseparably also the emergence of responsibilities between the parties in the bill of lading. According to Soeroso, legal consequences are the occurrence of actions taken in obtaining a desired result regulated by law where the action is referred to as a legal action.⁴ In accordance with the contract agreement, what is burdened is of course the rights and obligations inherent to the parties as stipulated in Article 1313 of the Civil Code. As a result of the issuance of the bill of lading owned by PT SPIL, it certainly creates general rights and obligations for the parties such as:

- a) Rights and Obligations of Expeditor (PT. SPIL)
 - 1) The expeditor is obliged to find ships and arrange ship schedules in the process of transporting goods by sea;
 - 2) The expeditor is obliged to issue a bill of lading and adjust the data of the shipper, carrier, and port data accordingly;
 - 3) The expeditor is obliged to deliver and guarantee the goods from the port of origin to delivery at the port of destination;
 - 4) The expeditor is liable for any data entry errors;
 - 5) The expeditor has the right to receive and give the goods to be transported and delivered;
 - 6) The expeditor is entitled to payment for the services contracted;
- b) Sender Rights and Obligations

⁴ Sri Wahyuni Agus, Kamsilaniah, Andi Tira. *Analisis Hukum Penerbitan Konosemen Dalam Pengangkutan Barang Melalui Moda Angkutan Laut*, Clavia : Journal Of Law, Vol 19 No. 2, Juli 2021, hlm. 198



- 1) The shipper is obliged to pay the freight for the service of organising the transport of goods;
 - 2) The shipper is obliged to comply with the applicable regulations to transport the goods as agreed;
 - 3) Shippers are entitled to protection for the carriage of goods from the place of loading to the place of destination;
 - 4) Shippers have the right to obtain and use worthy means of transport;
 - 5) The shipper is entitled to protection and safety of the goods from the place of loading to the place of destination;
 - 6) The shipper is entitled to compensation for damages suffered by the shipper due to the carrier's negligence during the performance of the transport.
- c) Carrier Obligations
- 1) The carrier is obliged to transport the goods once a carrier agreement has been concluded;
 - 2) The carrier refunds the freight paid by the shipper, in the event of cancellation of the departure;
 - 3) The carrier provides compensation if the shipper or third party suffers loss due to the carrier's fault in carrying out the transport voyage;
 - 4) The carrier insures liability for the goods it transports.⁵

In civil law, it is the right of business actors to be responsible for the services or goods offered. However, this does not mean that all existing rights and obligations only apply to business actors but all parties bound by the agreement. In addition to the emergence of rights and obligations, of course there are important things that are inseparable in the agreement, namely regarding the responsibilities between parties. The responsibility of the goods carrier is not only given to the carrier but to the shipper, expeditor, and skipper.

As a result of the process of issuing PT SPIL's bill of lading, it is clear that there are demands in carrying out the transportation of goods for the parties, namely the shipper and the carrier, namely the emergence of rights, obligations and responsibilities. However, there are some differences and similarities in the rights, obligations and responsibilities based on the legal rules of the KUHD and the three international conventions.

In addition to being regulated in the KUHD regarding the rights, obligations and responsibilities of carriers, the international conventions The.Hague-Visby.Rules 1968, The.Hamburg.Rules 1978, and.The.Rotterdam.Rules 2008 also regulate the rights and obligations and responsibilities between shippers and carriers. Compared to The.Hamburg.Rules 1978 convention, the rights and obligations of the carrier are not clearly regulated by The.Hamburg.Rules 1978 convention but there are responsibilities imposed on the carrier according to Article 5 and Article 10 of The.Hamburg.Rules 1978. In the Rotterdam.Rules 2008 convention, the rights and obligations of the carrier are regulated in Article 11, Article 13 and Article 14 of

⁵ *Ibid*, hlm. 198-199



The Rotterdam Rules 2008. For the responsibility of the carrier, the rules are more or less the same as the Hamburg Rules 1978 convention but there is an expansion of the responsibility imposed on the carrier, namely the exception for live animals.

Tabel 1. Hak dan Tanggung Jawab Pengangkut

KUHD	<i>The Hague-Visby Rules</i>	<i>The Hamburg Rules</i>	<i>The Rotterdam Rules</i>
1) Liable for goods accepted for carriage, unless caused by defects in the goods themselves, circumstances beyond the control or fault or negligence of the shipper; 2) Not liable for delays in transport caused by force majeure; 3) The carrier has the right to choose the means of transport unless there is a specific equipment transport agreement; 4) The carrier is responsible for the safety of the goods and is responsible for delivery in full; 5) Liable to compensate for failure to deliver in whole or in part due to damage or defect of the goods; 6) May not be liable for more than the	1) Shall be bound by the agreement at the commencement of the voyage and shall be free to be bound by the agreement in any case as long as it is not contrary to public policy; 2) Shall be entitled and responsible for loading, handling, storing, transporting, entrusting, maintaining and unloading goods; 3) Shall not be liable for any loss or damage arising or resulting from unseaworthiness at sea unless caused by a desire on the part of the carrier to make the vessel seaworthy; 4) Whenever loss or damage results from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or	1) Liable for the goods from the time of taking over responsibility for the period during which the goods are at the port of loading, during transport and at the port of unloading. 2) Liable for loss or damage to goods or delay in delivery caused by fire, if the claimant can prove that the fire was caused by the fault or negligence of the carrier, its employees or agents; 3) The carrier shall not be liable for loss, damage or delay in delivery of live animals resulting from the special risks inherent in that type of transport; 4) The carrier shall be entitled to save life or from reasonable	1) Carriers are obliged to comply with applicable laws both in international conventions and other legislation; 2) The carrier is responsible for receiving, loading, handling, storing, transporting, keeping, caring for, unloading and delivering the goods properly and carefully; 3) The carrier is liable for loss, damage to goods, as well as delay in delivery, if the claimant can prove that the event or circumstances causing or contributing to it occurred during the term of the carrier's liability and released from all or part of its liability if it can be proven that it was not its fault or that of another person; 4) The carrier may be released from all or part of its liability



<p>amount of goods transported;</p> <p>7) Liable to pay damages for failure to deliver the whole or part of the goods;</p> <p>8) Liable for losses due to late delivery unless it can be proven from an unavoidable result;</p> <p>9) Obligated to store goods at the cost and danger of loss that has been agreed and stated in the bill of lading.</p>	<p>other person claiming exemption; and</p> <p>5) Neither the carrier nor the vessel shall be liable for loss or damage arising or resulting from the acts, omissions, or negligence of the skipper or carrier in the management of the vessel relating to the lives of the crew and unavoidable force majeure.</p>	<p>measures before saving property at sea;</p> <p>5) Liable to the extent that loss, damage or delay in delivery is caused thereby;</p> <p>6) Only liable within its scope of work.</p>	<p>if it can prove that one or more of the following events or circumstances caused or contributed to its loss, damage or delay; and</p> <p>5) The contract of carriage may provide for limiting the liability or responsibility of the carrier if the goods being transported are live animals.</p>
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In addition to the carrier, of course, the shipper also bears certain rights, obligations and responsibilities for his loaded and unloaded goods which are handed over to the carrier. Similarly, international conventions, such as The Hague-Visby Rules 1968 regulate the responsibility of the shipper. However, in contrast to The Hague-Visby Rules 1968, The Hamburg Rules 1978 provides exceptions to the shipper regarding the rights, obligations and responsibilities of the shipper.

Tabel 2. Sender Rights and Responsibilities

KUHD	<i>The Hague-Visby Rules</i>	<i>The Hamburg Rules</i>	<i>The Rotterdam</i>
<p>1) Obligation to disclose the values and properties of the goods;</p> <p>2) Has the right to request the issuance of a bill of lading and the shipper is obliged to deliver the goods in accordance with the bill of lading;</p> <p>3) Eligible to pay</p>	<p>1) The shipper warrants to the carrier the accuracy of the marks, numbers, quantities and weights declared at the time of delivery;</p> <p>2) The shipper shall not be liable for any loss or damage suffered by the carrier or vessel, or arising</p>	<p>1) The shipper shall not be liable for any loss suffered by the carrier unless such loss, damage or loss is caused by fault or negligence on the part of the shipper;</p> <p>2) The shipper is obliged to mark or label the dangerous goods and to inform the</p>	<p>1) The shipper is obliged to deliver the goods in such condition that they will withstand the intended carriage, including loading, handling, storage, lashing and securing, and unloading, and that they will not</p>



<p>freight charges at the place of delivery or time of delivery as promised;</p> <p>4) Obligated to deliver the goods for loading and entitled to compensation if the ship departs without the goods;</p> <p>5) Entitled to unload the goods and obliged to pay rearrangement; and</p> <p>6) The right to demand the departure of the ship. After 3 weeks have passed since the goods were loaded, the shipper has the right to demand re-unloading at the carrier's expense.</p>	<p>from any cause whatsoever which is not due to an act, omission or negligence on the part of the shipper. However, Article 4 paragraph (2) of The Hague-Visby Rules 1968 describes the carriage, where the shipper is liable for loss or damage suffered by the carrier due to acts, omissions or negligence caused by the shipper; and</p> <p>3) The shipper is responsible for all damages and costs arising directly or indirectly from the shipment of dangerous goods.</p>	<p>carrier of the nature of the dangerous goods;</p> <p>3) The shipper is liable to the carrier for losses resulting from the shipment if the carrier was unaware of the dangerous goods;</p> <p>4) The shipper shall warrant to the carrier the accuracy of the particulars relating to the general nature of the goods, their markings, number, weight and quantity as set out in the bill of lading. The shipper shall be liable for any loss incurred by the carrier as a result of inaccuracies in such particulars;</p> <p>5) The shipper is entitled to a guarantee or contract promised to indemnify the carrier against damages resulting from the issuance of the bill of lading by the carrier or on behalf of the carrier, without making reservations that</p>	<p>endanger persons or property;</p> <p>2) The shipper is obliged to provide information, instructions and documents relating to the transport of goods for proper handling;</p> <p>3) The shipper shall be liable for any loss or damage suffered by the carrier if the carrier proves that such loss or damage was caused by a breach of its obligations under this convention;</p> <p>4) The shipper must provide the carrier, in a timely manner, with accurate information necessary for the compilation of contract details and the issuance of electronic transport record transport documents;</p> <p>5) The shipper must inform the carrier of the dangerous nature or character of the goods. If the shipper fails to do so and the carrier or the</p>
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		do not apply against third parties included in the acceptance of the goods, to whom the bill of lading has been transferred; and 6) The Shipper is entitled to a guarantee or contract shall not be used by the Carrier or anyone acting on its behalf to defraud any party by removing the reservation.	executing party is unaware of their dangerous nature or character, the shipper is liable to the carrier for any loss or damage resulting from the failure to inform; and 6) Shipper shall mark or labelled dangerous goods in accordance with laws, regulations, other general requirements
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In the rules of The Hague-Visby.Rules 1968 and the rules of The Hamburg Rules 1978 do not provide for the liability of the servants or agents but they have the right to defence and limit the liability of the carrier as mentioned in Article 4bis paragraph (1) of The Hague-Visby.Rules 1968 and in Article 7 paragraph (2) of The Hamburg Rules 1978. Therefore, the question may arise whether the formulations adopted in both Rules require that the servant or agent is also subject to the carrier's liability. The Rotterdam.Rules 2008 have similar provisions to those of The Hague Visby.Rules 1968 and The Hamburg.Rules 1978. The Rotterdam.Rules 2008 has expanded the category of persons to whom the rules apply i.e. maritime persons. and clearly stipulates that all such persons are also subject to the obligations and liabilities of the carrier.

2. The Arising of Disputes and Their Settlement in the Carriage of Goods by Sea
According to Farida and Witasari, the bill of lading functions as a proof of receipt and delivery of goods by the carrier, so in carrying out the transportation of goods must be in accordance with the contents contained in the bill of lading until the delivery of the goods to the recipient of the goods. However, it is not always the function of the bill of lading in the agreement to transport goods at sea goes well and in accordance with the target or target expected by the parties so that it is possible that it still causes obstacles or disputes due to unlawful acts and defaults.⁶ Default is the non-fulfilment or negligence in carrying out obligations as specified in the agreement made. There are 4 (four) consequences of default, namely:

⁶ Kurniawan, *Fungsi Konosemen dalam Perjanjian Pengangkutan Barang di Laut (Suatu Tinjauan Yuridis Normatif)*, JALHu: Jurnal Al-Mujaddid Humaniora, Vol.6 No. 1, Oktober 2020, hlm. 34



- a) The engagement remains;
- b) The debtor must pay compensation to the creditor;
- c) The burden of risk shifts to the debtor's disadvantage, if the obstacle arises after the debtor has defaulted;
- d) If the obligation arises from a reciprocal agreement, the creditor can release himself from his obligation.⁷

PT SPIL's terms and conditions sheet has included some limitations on rights and responsibilities but has not regulated dispute resolution. If there is a dispute between the shipper, carrier and expeditor, the settlement is carried out based on the rules of international conventions, KUHD and KUHPer. If there is a dispute, the settlement of problems based on international conventions and the KUHD and KUHPer can be done by non-litigation and litigation.

The KUHD also states that there is a provision that mentions the ability to negate the responsibility of the insurer for the harm described in Article 647 of the KUHD. In the KUHD, disputes due to default are divided into two forms of loss, namely *avary-grosse* or general loss in Article 699 of the KUHD, and simple *avary* or special loss in Article 701. The KUHD states that the carrier and expeditor can be exempted from compensation if it is due to things that cause special losses such as *force majeure*, seizure, shipwreck, or accidental shipwreck. In this case, if there is a dispute between PT SPIL and the shipper where one of the parties makes a default, the claim for compensation in sea transportation is seen from what causes the loss to arise and pays attention to the limits of authority in carrying out transportation activities and the rights and obligations arising therein.

Compared with international conventions, in conducting dispute resolution in The Hague-Visby Rules 1968 does not regulate settlement in disputes over transport activities and delivery of goods, in contrast to The Hamburg Rules 1978 and The Rotterdam Rules 2008 in which there is a specific regulation of dispute resolution, namely using settlement through arbitration.

Arbitration was first included in The Hamburg Rules 1978, but a new convention, The Rotterdam Rules 2008, provides more detailed provisions. In the jurisdiction and arbitration provisions, the claimant has a wider choice of courts i.e. the domicile of the carrier, the place of receipt, delivery of the goods or the port of loading and unloading to bring the claim.

The Hamburg Rules 1978 and the Rotterdam Rules 2008 provide that in the event of a dispute relating to the carriage of goods, the dispute may be settled by court or arbitration. In resolving through the court or arbitration, the authorised institution is required from its place as follows:

- a) Principal place of business or in the absence of the defendant's residence;
- b) The place where the contract is concluded;
- c) Port of loading or port of unloading; or
- d) The place designated for the purpose stated in the contract of carriage by sea.

⁷ Joko Sriwidodo, Kristiawanto, 2021. *Memahami Hukum Perikata*, Yogyakarta:Kepel Press, hlm. 20-21



If following the above legal rules, PT SPIL, which has a position as an expeditor, can note that if a dispute occurs, the filing of claims must be adjusted to the applicable laws in the country and international law. In this case, it means that if the dispute between PT SPIL and the shipper occurs in Indonesia, the two parties must comply with the laws of the KUHD, Civil Code and international conventions. If it occurs between 2 different countries, it is necessary to pay attention to the authority that applies to the domicile of the carrier, the place of receipt, delivery of goods or the port of loading and unloading in filing claims.

CONCLUSIONS

1. The position of the bill of lading in each regulation has similarities, namely as a document that shows the information or identity of a transported item and can be used as evidence that there is an agreement in the transportation of goods at sea. There are also differences in the position of bills of lading in each regulation, namely the definition of transport documents, periods of responsibility, geographical scope, freedom of contract, transportation of live animals and burden of proof.
2. The legal consequences of the issuance of PT SPIL's bill of lading are the rights, obligations and responsibilities between parties based on the provisions of KUHD law and the three international conventions, namely The Hague-Visby Rules 1968, The Hamburg Rules 1978 and Rotterdam Rules 2008. If there is a dispute relating to the transport of goods, the settlement is through the court or arbitration. And in the provisions of jurisdiction and arbitration, the plaintiff has a choice of court based on the domicile of the carrier, the place of receipt, delivery of goods or the port of loading and unloading to file a claim.

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