



LIABILITY OF SHIPPING SERVICES DUE TO BREACH OF DAMAGE TO DELIVERY OF GOODS IN CASH ON DELIVERY TRANSACTIONS

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Abstrak: Liability of shipping services in the context of default that occurs due to damage to an item during delivery, especially in Cash On Delivery (COD) transactions, in the current digital era which is increasingly high and the COD payment method is very popular among e-commerce users, especially Shopee. The COD system provides convenience for buyers and sellers, but with this can create legal risks. With the increase in buyers and increased shipping of goods, the risk of damage and loss of goods can also increase, this can cause problems between the sender, shipping service and recipient of the goods. Damage to goods that occurs due to negligence of the shipping service during the shipping process can be called a default. In this case, the shipping company is obliged to be responsible in accordance with the shipping agreement clauses agreed with the seller.

Keywords: Liability, Expedition Services, Default, Damaged Goods, Cash On Delivery

INTRODUCTION

Development has a significant impact on human civilization, significantly impacting social values, culture, norms, and the economy within society. This is inextricably linked to human ideas, which have evolved into various innovations aimed at advancing civilization and helping people carry out all forms of daily life activities, thus creating a technology called the internet. Indonesia, with the largest territory in the world and supported by a very dense population, has become a very potential market for buying and selling transactions. (AD Wijaya, T.P Anggriawan, 2022)

Electronic media as regulated in Article 1 number 6 of Law No. 11 of 2008 concerning Electronic Information and Transactions (UUITE) stipulates that "the implementation of electronic systems is a benefit in electronic systems carried out by state administrators, individuals, business entities, and the community." Every electronic system administrator must organize the system safely and be responsible for the operation of the electronic system (Ahmad M. Ramli, 2004).

Buying and selling online can create problems between sellers and buyers when using various payment systems. This can pose significant risks due to the potential for fraud or

deception by sellers. However, other payment systems are considered safe and offer minimal risk, such as cash on delivery, or COD. Cash on delivery is an e-commerce payment system that allows buyers to pay for their ordered goods in cash upon arrival at their destination. This method is popular with consumers. Cash on delivery purchases are made by sellers advertising their merchandise by including images or photos of the items, including the product specifications, price, and the seller's phone number. However, in practice, these transactions are carried out based on a mutual agreement between the parties. (Riska Natagina Putri, Siti Nurul Intan Sari Dalimunthe, 2021)

The purchase and sale agreement has been regulated in detail regarding how the process of meeting directly on site to negotiate regarding the goods to be purchased through the payment system regarding the agreement or contract between the expedition service, namely Shopee Express, and the parties is one of the important aspects and needs to be further examined with this contract which contains provisions regarding responsibilities, claim procedures, and compensation that must be given if damage occurs during delivery of goods. However, with this, not all contracts have clear and fair provisions, so that it can give rise to disputes between the parties involved.

Shopee Express, as a shipping service, must fulfill its obligations to the owner of the goods shipped. If any incidents occur during shipping, such as loss, destruction, or damage, or delays in delivery, Shopee

Express, as the shipping service, will be held accountable. This encourages Shopee Express, as the shipping service, to take steps to avoid losses that shift responsibility from consumers to shipping service providers. Therefore, service providers must be able to reduce the possibility of product defects by updating information promptly. (Mamuaya & Aminah, 2016)

Possible factors include Shopee Express' negligence in carrying out its responsibilities and a lack of discipline during delivery. External factors, such as road conditions, can also contribute to damage, which significantly impacts the safety of goods. Damaged roads can lead to damage, and therefore, efforts are needed to mitigate this risk.

MAIN PROBLEM

What is the legal relationship between the parties in a shipping contract?

1. What is the legal relationship between the parties in a shipping contract?
2. What is the form of liability for shipping services in cash on delivery transactions due to default due to damaged goods?

METHOD OF RESEARCH

The method used in this research is a normative juridical approach. This normative juridical research is used to obtain secondary data through library research and primary data to identify facts occurring within the community, utilizing both legal and conceptual approaches.

RESEARCH RESULT AND DISCUSSION [Arial 12 Bold UPPERCASE]

1. Legal Relationship Of The Parties In The Shipping Contract

Under the Indonesian civil law system, a freight forwarding contract is an agreement between interested parties regarding the delivery and transportation of goods from one location to another. A freight forwarding contract also includes several key parties: the shipper, the freight forwarder, the carrier, and the consignee. The legal basis for a freight forwarding contract primarily refers to the principle of freedom of contract as stipulated in Article 1320 of the Civil Code, which requires agreement, capacity, a specific object, and a lawful cause. If these requirements are met, the agreement is considered valid.

A freight forwarding contract stipulates that the freight forwarding party is responsible for arranging and executing the delivery of goods from the sender to the recipient, using a freight forwarding service as the party handling the delivery process. This contract is reciprocal, meaning both parties have mutually binding rights and obligations, expressly stipulated in Article 1313 of the Civil Code. Each party to the freight forwarding contract has legal standing as a legal subject within the agreement. The parties not only act as actors in the activity, but also as owners of the rights and obligations outlined in the contents of the contract. (Soeroso, 2006)

The shipper is one of the parties in a shipping contract, acting as the party who owns the goods and requires shipping services to transport them to a specific destination. The shipper authorizes

the shipper to handle all shipping processes, including classifying carriers according to the shipping process. Shipping of goods by a shipping company (forwarder) held by the carrier can be referred to as a transportation agreement. According to Subekti, a transportation agreement is a one-party agreement in which one party undertakes to safely transport people or goods from one location to another, while the other party agrees to pay the shipping costs. (Subekti, 2006)

The shipper has rights and obligations, including the right to receive a guarantee of timely, safe, and appropriate delivery of goods to their destination. The shipper also has the right to receive information or reports on the shipping status and can file a claim for compensation if the goods are damaged or lost due to the shipper's negligence. The shipper is obligated to hand over the goods or documents correctly and completely to the shipper, complying with the terms of the contract, including paying the shipping costs and providing necessary information during the shipping process. (Purwosutjipto, 2003)

The legal basis for shipping goods is Article 1, number 3, of Law No. 22 of 2009 concerning Road Traffic and Transportation (LLAJ). Before shipping goods, the conditions for a valid agreement, as stipulated in Article 1320 of the Civil Code, must be met. A shipping agreement occurs when there is an agreement or consent between the carrier and the shipper, as stipulated in Article 1320 paragraph (1) of the Civil Code. The regulations established by the carrier constitute an agreement, stipulated in the general terms and conditions of

the agreement between carriers and shippers.

The carrier is responsible for transporting goods based on a contract with the forwarder, acting as the shipping company in the contract. Article 468 of the Commercial Code states, "The carrier is obliged to safeguard the goods transported until their destination. The carrier has rights and obligations equal to those of the shipper and receives the goods and documents that guarantee their safety until their destination." The carrier here acts as the subject of the contract, binding itself to transport goods for a certain fee and is obligated to be responsible if the loss is caused by force majeure and cannot be avoided. (Moch Isnaeni, 2014)

The carrier's rights and obligations include the right to detain the transported goods if the sender and recipient fail to fulfill their obligations within the time limit stipulated in Article 195 paragraph (1) of Law No. 22 of 2009. The carrier receives payment for the transportation or delivery of the goods. The carrier may demand refusal of transport if the sender fails to fulfill their obligations by paying the shipping costs. The carrier may also collect additional costs for goods that do not comply with the agreed agreement.

The relationship between the forwarder and the carrier in the transportation agreement regulated in the Commercial Code requires the carrier to carry out the transportation as well as possible and is responsible for the safety of the goods during delivery. The forwarder acts on his own behalf in making the agreement with the carrier and is also responsible for the implementation of

the transportation to the sender in accordance with his authority as a power of attorney. The expedition agreement made by the forwarder with the delivery of goods which must be stated in oral or written form has certain conditions as the contents of the implementation of an agreement. The agreement made must not be contrary to law, public order, and morality. Article 1320 of the Civil Code stipulates that an agreement is considered valid if the following four conditions are met:

- a. A binding agreement for each party
- b. Capacity to make an agreement
- c. A specific matter
- d. A lawful cause

The first two subjective conditions concern the parties or subjects entering into the agreement. The last two are called objective conditions because the agreement itself is a legal act. An agreement must meet all four of the conditions listed above, both subjectively and objectively. If any of these conditions are not met, the agreement can be canceled or void by law. The shipping contract also encompasses several inter-party relationships, such as the legal relationship between the seller and the e-commerce platform, the e-commerce platform and the buyer, and the e-commerce platform and the shipping platform. These are explained in detail below, along with the rights and obligations of each party. (Subekti, 2006)

The seller is obligated to deliver the goods to the buyer at the agreed-upon price in the sale and purchase agreement, as stipulated in Article 1457 of the Civil Code. Article 1458 of the Civil Code stipulates that

after an agreement has been reached between the two parties regarding the goods and price listed on the e-commerce platform, the sale and purchase agreement can be declared valid even if the goods have not yet reached the buyer or payment has been made.

The legal relationship between e-commerce and buyers on this site is that buyers are only service users and e-commerce becomes a platform for consumers in conducting buying and selling transactions. E-commerce here acts as an intermediary between sellers and buyers, with this relationship arising when sellers and buyers make buying and selling transactions. The relationship that arises between the two is through the offer and acceptance system. This system explains that if a buyer orders an item and pays for the item at the stated price, the seller receives payment for the ordered item and is obliged to deliver the item. This reciprocal relationship arises because it is based on the birth of a sales agreement based on consensus (agreement), with this the parties bind themselves to an agreed agreement.

E-commerce collaborates with shipping companies to facilitate sellers in shipping goods, and buyers can choose which shipping company they want to use. However, this relationship is merely a partnership, where the shipping company and e-commerce must comply with the agreement/contract. Buyers do not have a legal relationship with the shipping company because the shipping company only acts as a courier who delivers the buyer's order, and the shipping company collaborates with the e-commerce company and the seller. The shipping

company hereby has a legal relationship under a transportation agreement with the seller, which has been linked in the cooperation between the e-commerce company and the shipping company (Aminah, 2019). This collaboration is carried out in the delivery of goods and providing confirmation to the seller if the goods have arrived at the buyer's hands without any problems or if there are problems, it is automatically confirmed in the application when the order has been sent and received, with this the expedition will receive payment for the delivery that has been made.

In an expedition contract, there are two main parties who have special positions and roles, namely the sender of goods and the expedition. The sender of goods acts as the party granting the power of attorney binding to deliver an item and pay the expedition service fee to the expedition. Meanwhile, the expedition acts as the sender's attorney who is responsible for arranging the transportation of the goods, finding and contracting with the carrier in carrying out the delivery of the goods. The expedition acts as an agent connecting the delivery and transportation but in the legal relationship with the carrier enters into a separate transportation agreement in the expedition agreement between the sender and the expedition. In the theory of power of attorney (agency theory) which is often used to explain the position of an expedition who acts as the sender's attorney to enter into a transportation agreement and with transportation on his own behalf but for the benefit of the sender, there are

provisions in Article 1792 of the Civil Code.

The position of the parties is based on the theory of freedom of contract, the theory of consensualism, and reciprocal obligations as regulated in Article 1338 of the Civil Code which states "that all agreements made legally apply as laws and must be implemented in good faith." Therefore, the sender and the forwarder are legally bound to carry out their rights and obligations in accordance with the contents of the agreement and in accordance with the provisions of applicable laws. The parties can demand implementation and accountability in accordance with the contents of the contract and if there is a breach of contract such as delay, damage, loss of goods, and the injured party has the right to request compensation from the responsible party based on the legal position and the contents of the agreement. In addition, the principles of good faith, justice, and the responsibilities of the parties with this principle have a very crucial role in ensuring that the legal relationship in the expedition contract must run smoothly and fairly.

2. Form of Liability of Shipping Services In Cash On Delivery Transactions Due To Breach of Damage To The Shipping of Goods

2.1. Implementation of Goods Delivery on Shopee Express

Shopee Express is a delivery service provided by the e-commerce platform Shopee, founded in 2015. It has grown rapidly and become a major and leading platform in Southeast Asia. Starting operations in 2008, Shopee Express is part of

Shopee's mission to provide a better online shopping experience. It serves as a platform for online stores selling products on the Shopee platform. The Shopee Express service provides fast and reliable delivery to deliver products ordered by buyers throughout the region.

Shopee Express is committed to implementing good corporate governance (GCG), which is based on the principles underlying the company's management processes and mechanisms, based on laws and regulations and business ethics. Good corporate governance is a system that regulates how a company must be managed transparently, accountably, responsibly, fairly, and independently. Shopee Express's application of GCG principles extends beyond internal management to the company's delivery operations, involving consumers, delivery partners, and other parties within its ecosystem.

Good corporate governance principles provide a guiding framework for how a company should manage its operations with the public interest in mind. The implementation of GCG principles is crucial in Shopee Express' operations, ensuring that the company prioritizes not only profit but also customer satisfaction and long-term sustainability. The relevant GCG principles for Shopee Express' delivery operations include the following:

1. Transparency

Transparency requires companies to provide clear and accurate information regarding their decisions, including information on shipping costs, delivery status, and the condition of the goods during

delivery. Shopee Express implements this principle through a tracking system that customers can access in real time, allowing them to monitor the position and status of their deliveries. This is done not only to build customer trust but also to reduce the risk of misinformation that could harm customers. This GCG principle is contained in Law Number 8 of 1999 concerning Consumer Protection, which regulates the obligations of goods/service providers to provide clear information that does not mislead buyers.

2. Accountability

Accountability means that every party within a company organization must be responsible for the decisions and actions taken. Shopee Express must be responsible for delivering goods according to agreed terms, including timeliness, item condition, and cost. If delivery is damaged or delayed, Shopee Express must provide an appropriate solution, such as a refund or replacement. Accountability is regulated in Article 7 of the Consumer Protection Law.

3. Responsibility

Responsibility is stipulated in Law Number 22 of 2009 concerning Traffic and Road Transportation, which explains that companies must be responsible for fulfilling applicable legal and regulatory obligations and must consider the social and environmental impacts of their operations. Shopee Express, in carrying

out its delivery activities, must comply with regulations regarding freight transportation, transportation safety, and other provisions relevant to freight delivery operations. This law also regulates the safety and responsibilities of freight transport operators on the road.

4. Fairness

Fairness requires companies to treat interests fairly and equally. Shopee Express must provide fair service to all Shopee Express users, regardless of transaction status or size. Shipping costs must be commensurate with the service provided, and delivery must be conducted with fairness and non-discrimination. This is stipulated in Article 4 of the Consumer Protection Law.

5. Independence

Government Regulation Number 47 of 2012 concerning the Implementation of Freight Transportation stipulates the principle of independence, requiring a company to be independent of external or internal interests inconsistent with the public interest and company objectives. In managing freight deliveries, Shopee Express must make highly objective decisions based on consumer needs and company operational standards, without intervention that could compromise the integrity of the delivery process. By adhering to GCG principles, Shopee Express

can increase customer trust and create sustainable long-term value for the company and all stakeholders involved.

Shopee Express is a company engaged in shipping, expedition, and distribution services. The company delivers goods throughout Indonesia using land, sea, and air transportation. Shipments using Shopee Express are handled directly by Shopee, and the tracking number on the package can be tracked directly using the Shopee platform application. This allows for real-time tracking and prevents lost packages. Shopee Express offers four delivery options, each tailored to the needs of each buyer:

1. Shopee Express Standart

Shopee Express Standard is a delivery service that can reach the widest area and covers all provinces in Indonesia. Shipping using Shopee Express Standard can deliver large orders. This delivery time within Indonesia is estimated to be 2-3 business days, depending on the shipping destination. This delivery service is available in various regions, depending on the coverage area determined by Shopee.

2. Shopee Express Sameday

This Sameday service delivers goods to the buyer's address on the same day, with a maximum delivery distance of up to 100 km and a distance of

up to 40 km within the specified coverage area. For this type of delivery, consideration must be given to weight and delivery time. The weight must be no more than 7 kg, and the item must be shipped before 1:00 PM to ensure same-day delivery. If the order is shipped after this time, it will be shipped the next day.

3. Shopee Express Instant

This instant delivery service delivers items directly to the buyer within a maximum of 2 hours from the time the order is confirmed as successfully picked up. This type of delivery is chosen by buyers who urgently need an item and saves time. However, this type of instant delivery is only available to selected sellers within the Shopee Express Instant delivery coverage area.

4. Shopee Express Hemat

Shopee Express Hemat is a delivery service created by Shopee with more economical shipping costs compared to other Shopee Express delivery services and delivery areas that are almost the same as Shopee Express Standard delivery.

2.2. Liability of Shipping Services in Cash on Delivery Transactions Due

to Default Due to Damage to Shipping Goods

Legal liability is known as responsibility and accountability in both criminal and civil law. According to Peter Mahmud Marzuki, the term "liability" (aansprakelijkheid/liability) can refer to a legal entity that must pay compensation in the form of damages after a legal event occurs. A COD (cash on delivery) sale and purchase transaction involves legal liability arising from a legal event.

Liability arises when a party is found guilty and bears the risk of an unlawful act, known as breach of contract. Therefore, liability is divided into two areas: liability arising from the contractual relationship between the parties and liability due to unlawful acts. Another consequence of a clause in an agreement that is legally determined must be voluntarily complied with based on the agreed agreement, as stipulated in Article 1338 of the Civil Code. (Fifi & Gianto 2002)

Shopee has its own delivery service, Shopee Express, which is widely used by shoppers. Shopee Express also offers lower shipping rates than other delivery services. The provisions in Shopee's terms of service, agreed to by buyers upon making a transaction, stipulate that the delivery service is responsible for damage to goods delivered by the courier service. Proof of damage is provided in the form of photos or videos of the goods received. The courier service is not responsible for damage suffered by the sender due to force majeure, such as

rebellion, natural disasters, or unforeseen circumstances experienced by the courier service. If such circumstances occur, the agreement is immediately void and null and void.

If such circumstances arise, the agreement is void and null and void. This is in accordance with the principle of freedom of contract as outlined in Article 1338 of the Civil Code, which states, "With the freedom to choose and enter into an agreement, the freedom to make or not to make an agreement, and the freedom of the parties to determine the content of each party's agreement, as well as the freedom to choose the subject matter of the agreement, as long as it does not violate the law or contradict the law." However, sellers and buyers cannot waive the valid conditions of an agreement stipulated in Article 1320 of the Civil Code. Agreements contain subjective and objective conditions that must be met by both parties. If subjective conditions are not met, the agreement can be canceled, and if objective conditions are not met, the agreement is void. (Perdana *et al*, 2020)

If an error occurs during the delivery of goods by the carrier, the shipping company, which will execute the transportation agreement, is responsible for the error and must pay compensation in accordance with Article 468 paragraph (2) and Article 477 of the Commercial Code. Therefore, acts of default by the shipping company are caused by internal and external factors that lead to

the default. Therefore, if damage or other undesirable events occur during the delivery process, the shipping company is obligated to handle such matters. This is regulated in Article 19 paragraph (1) of the Consumer Protection Law, which states, "Business actors are responsible for providing compensation for damage, contamination, and consumer losses resulting from the use of goods or services produced or traded."

Several factors may occur, including negligence on the part of the shipping company and a lack of discipline in servicing the goods during delivery. Factors leading to default by the shipping company are divided into two categories: internal and external (Munir Fuady, 2010). These factors include internal factors, such as damage to the goods being shipped, where initially intact goods become damaged during delivery. This damage can be caused by other items in the same container box in the shipping vehicle. External factors include natural factors, which are the cause of the shipping company's default.

Buyers who experience losses due to goods damaged during delivery by the shipping company can pursue remedies as stipulated in Law Number 8 of 1999 concerning Consumer Protection. Article 4 states, "Consumers have the right to comfort, safety, and security in consuming goods or services, and compensation shall be based on the value and condition of the damaged goods as promised." Article 6 explains,

"Business actors have the right to receive payment in accordance with the agreed exchange value for the goods traded, and this can be resolved through consumer dispute resolution." (Nangin, Chikie, 2017)

The form of liability for Shopee Express in the Cash On Delivery method or referred to as COD is due to default of damage to goods during delivery. With this payment method, there is no liability to the buyer because the consumer has not made payment because in accordance with Article 1531 of the Civil Code it explains "The main obligation of the buyer is to pay according to the price of the goods agreed upon in the agreement which means that if the buyer has not paid for the goods ordered then there is no form of liability to the buyer." (Rokfa *et al*, 2022)

To file a claim for damage during shipping, buyers must also provide the necessary photos/videos for compensation, including unboxing video evidence. Before opening the order, they must ensure that the product was indeed defective upon receipt. If an item shipped by Shopee Express is damaged, whether intentionally or unintentionally by the shipping company, the replacement process for damaged or lost items will be completed no later than 7 days after the order status is recorded as shipped. The amount of compensation for damaged or defective items due to shipping errors will be determined by applicable regulations.

Shopee recommends that buyers always purchase insurance if the item ordered has a high resale value or is not covered by insurance for the price of the item being shipped. Shopee will review the buyer's request for a replacement for damaged items in accordance with Shopee's policies, which will determine whether the request will be approved.

Shopee provides the fastest response to cancellation requests, with a response time of only 3 days. Therefore, sellers must respond quickly and responsively to issues such as this when requesting a return or refund. Discussions with the buyer are necessary to determine whether a claim is still possible. If an agreement is not reached, the seller can request assistance from Shopee by providing strong evidence to support their argument. Both parties can monitor the submitted product to evaluate the shipping service used. If the complaint arises from an item shipped via a shipping service and there is a possibility of negligence on the part of the shipping company or the store's operations, the buyer can file a complaint if the action does not comply with the provisions stipulated in Article 4, letter d of Law No. 8 of 1999, which states that consumers have the right to be heard when submitting complaints. Consumers have the right to choose goods and services and to receive goods and services that meet the promised exchange rate, conditions, and guarantees. The shipping

company also receives payment for the goods shipped in accordance with the consumer's losses. (Nababan *et al*, 2021)

CONCLUSION

Based on research conducted on the liability of shipping services due to defaults on damaged goods delivered in Cash On Delivery (COD) transactions, it can be concluded that shipping services, such as Shopee Express, have an inherent legal responsibility to maintain and ensure that the goods delivered arrive in good condition according to the delivery agreement.

The COD payment system, which requires buyers to pay upon receipt of the goods, increases the burden of responsibility of shipping services to maintain the security and quality of goods until they reach consumers. Damage or loss of goods during the shipping process is a form of default that must be borne by the shipping service provider, except in cases of force majeure such as natural disasters or unforeseen circumstances.

The legal relationship between the shipper and the shipping service is regulated in a contractual agreement based on the principle of consensualism in the Civil Code, which requires clear agreements and obligations from each party. Furthermore, to reduce the risk of loss, sellers are advised to use shipping insurance, especially for high-value goods.

Transparent claims mechanisms and return procedures are also important solutions in providing legal protection for consumers and maintaining trust in shipping services. Therefore, shipping services are

required to provide fair and responsible service in accordance with consumer protection laws and applicable laws and regulations. Enforcing this responsibility not only protects buyers' rights but also supports the sustainability and credibility of shipping services in the increasingly evolving era of e-commerce.

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