

# Liability of the Carrier for the loss of the Delivery (Studi Kasus CV. Maju Berkah Tanjung Transport)

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**Abstract :** This research is motivated by the phenomenon of the loss of consignments experienced by CV Maju Berkah Tanjung Transport as a goods transportation service company. The research aims to describe the causal factors, the concept of responsibility, and the obstacles in resolving cases of loss of consignments. The research method used in this research is sociological/empirical legal research or other terms used are sociological legal research and can also be called field research conducted through interviews with CV employees. Maju Berkah Tanjung Transport and document studies related to cases of lost shipments over the past year. The results show that the main causal factors are human negligence in the company's operational system and criminal acts. The concept of responsibility is based on the transport agreement and insurance contract to ensure certainty of compensation for customers and financial protection of the company. There are several obstacles in the claims process such as lack of valid evidence, excessive consumer demands, and indications of claim fraud. In conclusion, effective risk management and claims handling are essential to ensure that cases of lost goods are resolved without harming all parties concerned.

**Key words:** Responsibility, Transportation of Goods, Loss of Shipped Goods

## 1. Introduction

Scientific advances are growing in all industries, including business and economics. These advances in science have an enormous influence on the basic and secondary needs of society. As technology advances, people are increasingly wanting their wishes to be fulfilled quickly. One of them involves the transportation of the product. Trade, driven by population expansion and rising demand for commodities, is carried out to boost development in various aspects of a nation's life. Trade plays an important role in boosting economic growth in Indonesia.

The legal protection proposed by Wirjono Prodjodikoro is an attempt to protect the subject of law against anything that it can do to defend or protect the interests and rights of such a legal subject. In the same way, the agreement that is to be executed in good faith (goerden troe) translated as "honesty" can be distinguished between two types, namely, first belief either at the time of the legal relationship or agreement and second, belief in the exercise of the rights and obligations arising from the legal relation or such agreement.

Scientific and economic advances in Indonesia, the continuously increasing production of goods and services, are critical to building efficient delivery infrastructure to facilitate the movement of merchandise and services between locations. One important component of this infrastructure is transportation. Indonesia, as an island state and a developing country, needs shipping and transportation services to establish links between the islands and other states due to international links. The existence of a shipping service becomes crucial as a consequence of this situation.

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Transportation or transportation of goods is the activity of moving goods from one place to another by means of transportation. Goods can generally be transported by land, sea, and air, but land transportation, especially by trucks, is still the primary option for large-scale long-distance shipments in Indonesia. Usually transportation refers to the transportation of persons and goods by a commercial company that is provided at a cost to individuals, and governments for the benefit of the company that provides the travel. If the goods are to be transported, then the promise refers to the contract of transportation of goods. A contract of carriage of cargo is a contractual agreement between the carrier and the consignor, in which the carrier undertakes to transport goods safely from one location to the destination location, ensuring that the product remains in excellent condition during the journey. The sender, who is responsible for shipping the product, undertakes to pay the cost of transportation. The carrier and the consignor have the rights and obligations set out in the agreement that has been mutually agreed upon. Parties involved in transport, that is, the legal body advocating rights and obligations, In the context of transport law, the individuals involved are referred to as carriers and shippers.

In the execution of the delivery of goods, the first party as the provider of the expedition service and the second party as a user of the expedition service are bound by an agreement. Generally speaking, the terms of an agreement are governed by article 1313 of the Code of Procedure, which states that a agreement is an act in which one or more individuals bind themselves to one or several other individuals. In a contract or agreement, there are various things that must be fulfilled or the validity of the agreement in accordance with Article 1320 of the Code of Procedure, which includes: their agreement that binds them, the ability to create an agreement, a particular subject matter, a reason that is not forbidden reason.

By fulfilling the four validity conditions of the above agreements, the agreements between the sides are deemed valid and binding for those who implement them. In the implementation of the agreement, there are a number of charges that must be understood by the parties, namely the charges of consensusism, contractual force, freedom of contract, and good faith.

One of the companies that operates in the field of transportation of goods by land using trucks is CV. Maju Berkah Tanjung Transport. The company is specialized in delivering various kinds of merchandise, especially sembako such as chili, from the entire territory of Indonesia. The primary task of this cargo company is to ensure that the cargo reaches its destination safely. Before the shipment, they also packed according to the packing standards of the goods to be transported.

The laws regulate a number of obligations that transport companies must comply with in carrying out their activities. If the expedition commits a breach in the exercise of its responsibilities, the full responsibility for such breach shall be borne by the Expedition. In accordance with article 91 of the Code of Commercial Law, the carrier is obliged to compensate the losses suffered by the injured party. Nevertheless, the carrier may be avoided from such sanctions by proving that the failure to perform the duty is caused by: defects inherent in the goods themselves, errors and/or negligence by the shipper or expeditor, circumstances of compulsion. (*overmacht*).

These obligations are also affirmed in the Law No. 22 of 2009 on Road Traffic and Transport, in particular in Article 188, which stipulates that the public transport operator shall be liable for damages incurred by the passenger or shipper of goods as a result of his negligence in providing the transport service.

Goods transportation is one of the crucial elements in the global supply chain, enabling companies to distribute their products to various locations. However, in the process of delivery of goods, there are various challenges that can affect the success of shipment, one of them is the loss of the shipment.

The liability of freight carriers for the loss of shipments is an increasingly important issue to be investigated given its impact on customer confidence and business sustainability. The loss of goods not only affects the financial aspects of the transport

company, but can also harm the parties involved in the supply chain. Therefore, this study aims to deepen and analyze the responsibility of CV.

This study uses the theory of carrier responsibility under Article 90 of the Law No. 22 of 2009 on Road Traffic and the Theory of Injury Promises (Prestation) in KUH Perdata. These theories will be used as a basis for analyzing the legal liability of CV. Thus, a comprehensive understanding of the subject is expected to be obtained.

The term liability in the sense of liability can be interpreted as liability. Claim liability is an obligation to bear damages resulting from a violation of the norm (Putra iPonsende, 2019). In a mutual agreement, if one of the parties is prevented from performing due to overpower, then the opponent must also be released to perform. (Sahban, 2019). The transportation of goods is an undertaking that has been ongoing throughout human civilization, because not every entity is capable of meeting its own needs. However, Agastya (2019) in his research explains basically as long as doing is a carrier's responsibility related to the safety and safety of both passengers and goods transported.

## 2. Materials and Methods

The type of research used by the researchers in this study is empirical sociological law research or other term used is sociological legal research. Or, in other words, a research conducted on the real situation or real situation that occurs in society with the intention to know and find the facts and data needed, after the required data is collected then towards the identification of problems that ultimately lead to the solution of the problem. The research data is collected through the study of the library by examining the regulations of the laws, books, journals, and other written sources relating to the responsibility of transportation of goods.

The population in this study is the entire employee CV. Maju Berkah Tanjung Transport that deals with the delivery of goods. The sampling technique used is purposive samplings with the criteria of employees who have worked for at least 2 years and know the process of insurance claims for delivery. The sample number is determined as many as 5 people. The research was carried out for 3 months. The place of the research is the CV office. The main instrument in this research is the researcher himself. The researchers used guidelines for interviewing and document studies to gather data. The data collection process began with a study of documents on transportation contracts, reports of loss of goods, and CV insurance claims.

The collected data is analyzed using interactive qualitative analysis models. Activities in data analysis include data reduction, data presentation, and conclusion drawings. The validity of the data is tested using triangulation techniques.

## 3. Results and Discussion

Concept of Liability for Lost Goods in CV. Advance Charitable Transport Liability has a crucial role in the contract of transportation, being the protection of the user of the transportation services. To understand this concept of responsibility, some literature provides an understanding that covers a variety of terms such as accountability, liability, or liability of the plaintiff. In literature, the term responsibility has two meanings, namely, responsibility and liability. Responsibility refers to responsibility in the performance of a duty or to a thing or individual, while liability includes responsibility for compensation for losses resulting from an accidental promise, an act against the law, or ownership or possession by another party.

According to the Code of Commercial Law (KUHD) Article 468, the carrier is obliged to ensure the safety of the goods during transportation and is required to compensate for losses resulting from non-delivery of goods or damage to goods.

Government Regulation No. 17 of 1988 on the Maintenance and Entrepreneurship of Maritime Transport also establishes the liability of the shipping company in accordance with the provisions of the applicable laws. International rules, such as The Rule 1924, regulate that the responsibility of the carrier begins from the time the goods are loaded until they are unloaded. The Republic of Indonesia Law No. 17 of 2008 on Ship-

ping affirms the liability of the carrier for the death or injury of passengers, damage or loss of goods, delay in transportation, and loss of third parties. The amount of damages is regulated in Article 292 of the Act.

The concept of responsibility for missing goods in the CV. Advanced Transportation is at the heart of this research. In understanding this concept, it is necessary to pay attention to some key aspects that include the policies, procedures, and operational practices of freight transport companies. This discussion will dig deeper into these aspects and associate them with relevant supporting theories.

First of all, liability for the shipment covers various factors that may affect the success or failure of the delivery. These factors involve the security, reliability, and integrity of the shipment of goods. In the context of CV. Advanced Transportation, the concept of responsibility must be translated into real actions that are implemented throughout their logistical processes.

One key aspect that needs to be evaluated is the company's policy regarding liability for lost goods. Do companies have a clear and comprehensive policy regarding their liability? To what extent does this policy cover aspects such as accountability, monitoring, and corrective action? Evaluation of this policy can provide insight into the extent to which the company has understood and assumed responsibility for the risk of loss of goods. Furthermore, it is important to look at the procedures that have been implemented by the CV. The process of reporting, investigating, and communicating with stakeholders such as customers and insurers can reflect the extent to which responsibility is carried out in everyday practice. How does the company react when the shipment is lost? Do they have a dedicated team to handle the investigation? These questions can provide a further overview of the effectiveness of the accountability run by the company.

In the framework of the goods transportation agreement and insurance contract between CV. Maju Berkah Tanjung Transport (CV MBT) and several insurance companies, the concept of liability for loss of goods shipment has been clearly regulated. CV MBT is responsible for loss and damage to goods during the transportation process, from loading, transportation, to unloading at the destination point. Information about the value and type of the insured goods is listed in the invoice and packing list each time the shipment, with the consumer obliged to report the details of the goods along with the value to the MBT CV. Loss insurance claims can be filed up to 3 days after the recipient receives goods at the destination point, through an official report to the CV MBT with physical proof such as a receipt of damaged goods or not in accordance with the Packing List.

The investigation process and the calculation of the amount of damages are agreed on the basis of the market price of the goods when the loss occurred or the value of the liability, whichever is smaller. The payment of the claim is made within 30 days after the claim has been approved, through calculation and negotiation between the MBT CV, the insurance company, and the consumer. Cases of loss as a result of force majeure such as natural disasters, charges, terrorism, become the full responsibility of the MBT CV up to the value of the goods listed at the beginning of the agreement, because they are not covered by insurance liabilities.

In the case of fraud or violation of claims procedures such as report delays, incomplete evidence attachments, until claims beyond the liability value, will be difficult to obtain damages. This concept of responsibility provides certainty of the rules of play in the handling and settlement of lost consumption shipments, advancing the basis of transparency, fairness, and the interests of both sides between the CV MBT and the consumer of the shipper of the goods. In addition, the insurance liability also serves to protect the financial condition of the company in the face of the risk of loss resulting from loss of goods during shipment.

The explanation of the percentage of damages depending on the level of damage to the goods provides a related picture of the extent to which the First Party is willing to be held accountable for the loss incurred. For example, in the case of minor damage, the

First Party agrees to compensate for a loss of 25%, while for major damage, compensation promised to reach 50%. This shows that corporate liability is not only recognized, but also calculated proportionately depending on the degree of damage occurred.

Furthermore, in terms of claims, this agreement provides a legal basis for the Second Party to file a claim against the First Party in the case of default in payment or loss of goods. It creates a reliable mechanism for resolving disputes and affirming the rights and obligations of each party.

Based on the results of interviews with five employees of the CV and the study of documents related to the loss report of goods during 2022, some factors revealed the loss of the goods in the company. Lack of supervision over the unloading process is a potential cause because the process is susceptible to loss as a result of large amounts of goods moved without optimal supervision, leaving a gap for theft or loss of items mixed with other shipments.

Besides, the negligence of workers in the handling of goods is also a significant factor. Employees often make technical mistakes such as incorrect packaging, improper packaging of goods, to administrative errors that cause the documents to be incompatible with the quantity of shipments. Disruption or damage to means of transport, especially trucks, can also lead to loss of goods. Engine failure or damage to the body of the truck can cause the goods to scatter on the road or shift from their original position, with the condition of the old and aus truck being an additional risk.

Bad weather such as heavy rain, slippery roads, and strong winds are also identified as causes of loss of goods, as they can lead to truck accidents resulting in the loss or damage of the goods. In addition, criminal acts such as robbery and theft during transit trucks are also a threat, where trucks can be infiltrated by criminal perpetrators to take valuables without the driver's knowledge.

Considering the findings, the main factor causing the loss of goods in the CV is human error, i.e. negligence and errors made by employees during the delivery process. Therefore, more optimum supervision, improved employee competence, and standard evaluation of company operational procedures are needed to minimize the risk of loss of goods.

Obstacles to Liability Settlement for Delivery Lost in CV. Advanced, Charitable Transportation Based on the results of interviews with five employees CV. Charitable transportation advanced that deals with the process of insurance claims for loss of shipment goods, identified some obstacles that frequently appear in the settlement of company liability as a carrier to consumers.

The process of verification and investigation related to the loss of goods is time-consuming because of the difficulty of carrying out inspections and stock opname in detail, especially when the quantity transported reaches tens of tons. This condition requires strong evidence for the insurance claim to be approved.

Secondly, the high value of claims over expensive goods becomes a significant obstacle. Some losses involve high-value items such as electronics, vehicles, or factory machinery, requiring approval from the company's top management and negotiations with insurance to ensure that the burden of damages does not burden the corporate finances.

Thirdly, the existence of claims of recipients that exceed the value of the goods is a problem. Consumers sometimes claim damages that exceed the value stated at the beginning of the contract or without prior official reporting, making it difficult for the company to verify and calculate damages.

In addition to having to replace losses, the company has difficulty providing a replacement fleet quickly, especially if the loss of goods occurs on several fleets it owns.

Fifth, the presence of indications of fraudulent claims by certain individuals is also an obstacle. Companies may face situations where loss claims are made in bad faith or fraud to obtain damages.

All these problems slow the process of settling corporate liability for loss of goods. The main obstacles include a lack of valid evidence, a large claim value, excessive

consumer claims, and indications of fraud that can be detrimental to all parties. Therefore, effective risk management and claim handling are required so that corporate liability can be settled without damaging consumers or companies.

### **Discussion**

Liability plays an important role in the transport agreement, serving as a protection for the user of the transport service. In the context of CV. Advanced Transportation, the concept of liability for lost goods involves an understanding of key aspects such as policies, procedures, and operational practices of freight transport companies. First of all, corporate liability must be reflected in a clear and comprehensive policy related to the loss of goods. Evaluation of this policy becomes essential to understanding the extent to which the company has identified and assumed responsibility for the risk of loss of goods. Factors such as accountability, monitoring, and corrective action should be an integral part of the policy.

Further, it is necessary to pay attention to the operational procedures applied by the CV. Advance Transportation in dealing with the situation of loss of goods. The process of reporting, investigating, and communicating with stakeholders such as customers and insurance reflects the extent to which responsibility is implemented in everyday practice. The key question is how companies respond when shipments are lost and whether they have a dedicated team to deal with the investigation.

In the context of the contract of transportation of goods and insurance between CV. Maju Berkah Tanjung Transport and the insurance company, the concept of liability for loss of shipment goods is clearly regulated. The company is responsible for the entire transportation process, from loading to unloading at the destination point. This includes the obligation to compensate for losses resulting from loss or damage to goods. The insurance claims process is also regulated in detail, setting deadlines, procedures for filing claims, and criteria for assessing the amount of damages. The percentage compensation determined depends on the degree of damage to the goods, showing the proportionality of the company's liability. It creates a clear and transparent framework in dealing with liability for lost goods.

Based on the results of interviews and document studies, the factors that caused the loss of goods in the CV cover some key aspects. Lack of supervision over the unloading process becomes a potential cause of vulnerability to loss due to lack of optimal supervision, leaving a gap for theft or loss of mixed goods.

The negligence of workers in the handling of goods is also a significant factor. Technical errors such as incorrect packaging, improper accumulation of goods, so that administrative errors can cause the document to be incompatible with the quantity of good. Disruption or damage to means of transport, especially trucks, can also lead to loss of goods, requiring special attention especially to the maintenance and reliability of the fleet. Bad weather such as heavy rain, slippery roads, and strong winds are also identified as the cause of loss of goods. Criminal acts such as robbery and theft during transit trucks are threats that need to be taken into account in efforts to prevent loss of goods.

Interviews with employees dealing with insurance claims for loss of goods in the CV. Maju Berkah Tanjung Transport revealed some obstacles in the settlement of

company liability to consumers. First of all, the problem of proof of the loss of goods becomes the main obstacle. The verification and investigation process is time-consuming due to the difficulty of conducting detailed inspections, especially on large quantities of goods. It reaffirms the need for strong evidence to support insurance claims and determine corporate liability.

The high value of claims on expensive goods becomes a significant obstacle. Negotiations with the insurance and top management of the company are necessary to ensure that the burden of damages does not burden the company's finances. There is a claim of a recipient that exceeds the value of the goods is also a problem. The process of verification and calculation of damages becomes difficult when consumers claim damages exceeding the value specified in the initial agreement.

The limitations on the number of fleets and the time the company has become an additional barrier. The process of replacing losses to consumers and the provision of replacement fleets becomes difficult, especially if the loss of goods involves several fleets at once.

There's an indication of a fraudulent claim by a certain person being the last obstacle. Companies should be careful in responding to suspicious claims and develop mechanisms to detect potential fraud. All these obstacles require effective risk management and careful handling of claims so that corporate liability can be settled without prejudice to all parties. Further efforts are needed to improve verification processes, maintain transparency in claims negotiations, and develop fraud prevention strategies

#### 4. Conclusions

Based on the results and discussions above, it can be concluded that the concept of liability for lost goods in the CV. Clear policies, effective operational procedures, and adaptive risk management are needed. Factors such as lack of surveillance, negligence of workers, and disruption of means of transport require special attention. Obstacles to settlement of liability, including issues of proof and claims of high value, require careful management of claims. Overall, holistic risk prevention and management efforts are needed to maintain integrity and confidence in freight services.

#### References

- Amira, F., & Asrori, M. H. S. (2016). Liability of Delivery of Expeditionary Goods for Loss and/or Damage of Goods under Act No. 38 of 2009 on Post (Studi Kasus di Kantor Pos Solo). *Private Law*, 4(1), 117–124.
- Agastya, Ida Bagus Ketut, I Made Udiana, and Anak Agung Ketut Sukranatha. 2019 "Legal Protection of Users of Public Motor Vehicle Delivery Services in Pahala Express Deliveries Denpasar." *Kertha Semaya : Journal of Legal Sciences* 7, no. 2 : 1–15. <https://doi.org/10.24843/KM.2019.v07.i02.p12>
- Broker, Y. Y., & Hook, A. (2023). Legal status of couriers of goods delivery services to consumers according to the Act No. 8 of 1999 on... *Lex Privatum*, 12(1).
- Daming, S., & Wibowo, T. A. (2022). Liability of the Transportation Service Company in Delivery of Goods. *Yustisi*, 8(2), 152–172.
- Farkhan, N. & Witasari, A. Prosiding Scientific Constellation of UNISSULA Students (KIMU) 5, 16–35. <http://jurnal.unissula.ac.id/index.php/kimuh/article/view/17893>
- Ferdian, M. (2020). Consumer Protection against Loss. 11(1), 40–52.
- Farkhan, N., & Witasari, A. (2021). The liability of the shipment company for consumer losses resulting from the loss, damage and

- exchange of goods in P.T. Indonesia Post Kota Tegal. Procedure of the Scientific Constellation of UNISSULA Students (KIMU) 5, 16–35. <http://jurnal.unissula.ac.id/index.php/crime/article/view/17893>
- Hamed, H., Kurniasari, T. W., & F, F. (2021). Liability of the Expedition Service Company for Delayed Delivery of Goods (Studi Penelitian di PT. Jalur Nugraha Ekakurir Cabang Stabat). *Scientific Journal of Students of the Faculty of Law of the University of Malikussaleh*, 4(1), 53–62. <https://doi.org/10.29103/jimfh.v4i1.4713>
- Jaya, K. A., Budiarta, I. N. P., & Ujianti, N. M. P. (2020). Liability of the Expedition Company for Damage and Loss of Goods in Land Transport. *Legal Interpretation Journal*, 1(1), 66–71. <https://doi.org/10.22225/juinhum.1.1.2188.66-71>
- Kamila, M., & Haryanto, I. (2022). *Usm Law Review*, 5(2), 832. <https://doi.org/10.26623/julr.v5i2.5750>
- Ketut, I., Wiranata, A., Gusti, I. Mandala, P., Adhya, P.T., Prima Bali, A. & National, U.P. (2019). Legal Responsibilities of Goods Transportation Companies in the Event of Non-Performance (Pt. Adhya Avia Prima Branch Bali Case Study). *Journal of Legal Analysis*, 2(2), 2620–3715. <http://journal.undiknas.ac.id/index.php/JAH/index>
- Kevin Patria, D. K., & Ariana's son, I. G. (2020). Liability of Expedition Service Companies for Damage to Consumer-Owned Delivery (Studi Pada Ninja Xpress). *Kertha Semaya : Journal of Legal Sciences*, 8(9), 1366. <https://doi.org/10.24843/ks.2020.v08.i09.p07>
- Mahfiroh, R. (2020). Legal Protection of Consumer Delivery Users of the Go-Send Instant Courier Service Through Tokopedia. *Lex Renaissance Journal*, 5(1), 235–249. <https://doi.org/10.20885/jlr.vol5.iss1.art15>
- Maksum, A. (2008). *Research Methodology*. Surabaya: Univesity Press
- Mubarak, N. (2016). *The Dictation Book of Commercial Law. Shariah and Law Faculty of Sunan Ampel University*.
- Ndolu, C. M. J., & Rade, S. D. (2023). Liability of Carrier Companies for Damage to Goods Carried in Air Transport under Ministerial Regulation No. 77 of 2011. *Deposits: Journal of Publications of Science*, 1(3), 60–73.
- Nugroho, M. A. L. & A. (2019). Responsibility of Online Shipping for Loss of Consumer Goods. *Juridis Journal*, 6(1), 112–131.
- Nurhilmayah, N. (2019). Perma No. 3 of 2017 on Guidelines for the Trial of Women's Matters before and after the Law. *De Lega Lata: Journal of Legal Science*, 4(2), 211-219.
- Putapiposende iance (2019). The liability of the carrier in the contract of carriage of goods by sea is reviewed from article 468 of the Code of Conduct on the Carriage of Goods (Analysis of Supreme Court Decision No. 2316K/Pdt/2015). *Rechtsregel*, 2(2), 693–712.
- Rieza, F., & Kadriah. (2020). Responsibility of PT Indah Logistics Cargo for damaged and lost shipments. *JIM Privacy Law*, 4(1), 110–119.
- Sahban, S. (2019). Federation Commander's liability for defects of goods in the freight contract. *Al-Ishlah: Law Scientific Journal*, 22(1), 7–15. <https://doi.org/10.33096/aijih.v22i1.23>
- Saharuddin Daming and Tri Adi Wibowo, (2021), Responsibility of Transportation Company in DeliveryBarang,Journal,UniversityIbnuKhaldunBogor
- Siregar, A. S., Iriansyah, & Afrita, I. (2022). The legal liability of the contractor of the delivery of goods to the losses of the consumer. *Nusantara: Journal of Social Sciences*, 8(7), 2398–2408.