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RESEARCH ARTICLE

RESPONSIBILITIES OF TRANSPORT OF OWNERS OWNED IN PIRACY IN THE HIGH SEAS.

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Abstract

Article 468 of the Indonesia law trading (KUHD) has stated the responsibility of the transporter, if due to the loss can be proven to occur due to the error of the carrier or its agents, the carrier can be said to be responsible according to Article 468 of the Indonesia law trading (KUHD). As for the case of ship hijacking, it is not the fault of the carrier and occurs outside the jurisdiction of Indonesian law. The problem is how the responsibility of the carrier to the owner of the goods in the event of piracy (piracy) on the high seas. the objectives to be achieved in this study are to determine the responsibility of the carrier to the owner of the goods for the damage and losses resulting from piracy, according to the arrangements contained in Chapter XI of the Indonesian Criminal Code about Avarij. the method used in this study is a legal research method, using an approach to statute approach, namely: an approach that emphasizes the search for norms in the provisions of legislation and other regulations relating to legal issues. the results of this study are the Indonesian Commercial Law Law governing the responsibilities of the carrier. Article 468 of the Criminal Procedure Code provides the scope in which the carrier can be held liable if there is a feeling and loss of the cargo during the delivery period. But the scope of this Article cannot cover all travel hazards that occur in the ocean during the delivery period. Because the essence of this Article the carrier can be responsible if it can be proven if the error is caused by the carrier. Losses due to piracy are other causes that come from outside. To overcome the greater loss and who will be responsible specifically for the problem of losses caused by piracy, in Chapter XI the Criminal Code is regulated regarding sea losses caused by piracy and is divided into two forms, namely: general sea losses and general sea losses specifically (simple avarij). In general sea losses, which are divided into contributions, and extraordinary costs, the liability of this loss is stated in Article 727 of the Indonesian Criminal Code. And for special marine losses, for losses of this type because they relate to compensation for goods, this is pre-insured in insurance. Where the insurance arrangements still refer to the Criminal Code.

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Introduction:-

Piracy is an act of violence committed by a certain group for personal purposes. Based on data from the International Maritime Organization (IMO), (m.business.com / industry) in 1998-2002, the Southeast Asian region continued to rank first in the case of ship piracy around the world. Of the 177 cases of ship hijacking in world waters in 1998, 63 cases occurred in Southeast Asia, from 299 cases in 1999 as many as 162 cases in Southeast Asia, and from 495 cases in 2000 as many as 251 cases in Southeast Asia, as well as from 371 cases in 2001 as many as 157 cases in southeast Asia.

Many of their actions are carried out in open waters, bearing in mind that these waters are not bound by the jurisdiction of any country so they are more free to take hostage actions against cargo carriers. Call it the MV. Sinar Kudus was taken hostage by Somali pirates on March 16, 2011 and brought 20 crew members. Hijacked in Somali waters, the Gulf of Aden Africa, around 350 nautical miles southeast of Oman. The ship was controlled by the hijacker for 46 days until it was finally released on May 1, 2011 with a ransom of Rp. 38.5 billion. MV Sinar Kudus is a cargo ship owned by Indonesia which is operated by PT. Samudera Indonesia Tbk and transporting ferronickel owned by PT. Aneka Tambang Tbk. With a travel route departing from Pomalaa, Southeast Sulawesi to Rotterdam, the Netherlands. (Leo Dumais, 2014)

Piracy as one of the dangers that occur at sea and the target is the transport ships, in the action many of which cause losses in transportation known as sea losses or avarij. (Sution Usman Adji, Djoko Prakoso, Hari Pramono, 2015) The responsibility of the carrier for piracy at sea is a problem according to the author because piracy often occurs on the high seas and afflicts cargo vessels / passengers who drive the Unitary State of the Republic of Indonesia (NKRI) is outside from the jurisdiction of the Republic of Indonesia which means that our National law does not apply in the region.

Article 468 of the KUHD has stated the responsibility of the transporter, if due to the loss can be proven to occur due to the error of the carrier or its agents, the carrier can be said to be responsible according to Article 468 of the KUHD. While for the case of piracy is a sea danger that comes outside the jurisdiction of Indonesian Law and from the will of the carrier, if it is related to Article 468 of the Indonesian Commercial Code (KUHD) this is not enough to reach the carrier as the responsible party. based on this the authors are interested in conducting research on the responsibility of the carrier to the owner of the goods in the event of piracy (piracy) on the high seas according to the Criminal Code. Based on the things stated above, the problem is raised, namely: How is the responsibility of the carrier to the owner of the goods in the event of piracy in the high seas according to the Indonesian Commercial Code (KUHD). Research Objectives To find out how the responsibility of the carrier to the owner of the goods against the damage and losses resulting from piracy, according to the provisions contained in Chapter XI KUHD on Avarij.

Method of Research and Materials:-

Research and Materials Method: -

This research is a legal research, because law has a special character (sui generis discipline). This study uses an approach to statutory regulations, namely: an approach that emphasizes the search for norms in the provisions of legislation and other regulations relating to legal issues. The second approach is conceptual (conceptual approach), which is an approach based on the opinions of scholars, theories, concepts and doctrines related to the legal issues of transport responsibility. And the third case approach (case approach) this approach uses the ratio decidendi, namely legal reasons used by the judge to arrive at his decision (Peter Mahmud Marzuki, 2011). The fourth research method uses a comparative approach, according to Van Apeldron, comparative law is an auxiliary science for dogmatic jurisprudence in the sense that to weigh and assess legal rules and court decisions with the existing legal system. (P. Van Dijk Van Apeldoorn's, 2011) Legal materials used in this research study include: primary legal materials and secondary legal materials. Primary legal materials include laws and regulations relating to transportation law, maritime law, transportation agreements, marine insurance, international law, UNCLOS, and The Hamburg Rules. Whereas secondary legal materials include literature books, doctrines, journals, magazines, internet, and newspaper media that contain material relevant to this field of study. As for the Procedure for Collecting Legal Materials both primary and secondary obtained will be inventoried and identified for further use in analyzing problems related to the study of this study. In carrying out an inventory and identification of legal materials the card system is used, the management of which is carried out critically, logically and systematically. Legal Material analysis is carried out After going through the stages of inventory and identification of relevant sources of legal materials (primary and

secondary), the next step is to systematize the whole, existing legal materials both related to transportation law, sea law, transportation agreement, sea insurance, law international, and UNCLOS. The systematization process is also applied to theories, concepts, doctrines and other reference materials. The series of stages of inventory, identification and systematization are intended to facilitate the assessment of research problems. The next set of stages is to conduct an analysis using deductive reasoning accompanied by descriptive descriptions that are critically analytical.

Result and Discussion:-

The Responsibility of Carriers Against Piracy in the High Seas according to Article 468 of the Indonesian Commercial Code (Wetboek van Koophandel Trade Law KUHD).

In the case of the M.V Sinar Kudus ship, PT. Samudera Indonesia, in this case as a carrier and ship owner, has redeemed the ship being held hostage. The act of ransom payment is also included as a loss but not a loss of goods but a financial loss. Which also indirectly acts of giving ransom has prevented greater losses of the cargo. Because the seizure of ships by pirates is not within a matter of hours or days which can then be released without requiring months. And if this continues over a very long time it is not impossible that it will cause a large loss of cargo. Examples of the Sinar Kudus M.V ship containing ferronickel can cause the content of the item to drop if it is held for a long time because it is not immediately produced properly. And if this happens it will make the price of the goods go down, which means losses to the owner of the goods.

In addition to ransom payments, in Article 699 sub 14 the Indonesian Commercial Code (KUHD) also stated other consequences of piracy that cause other costs incurred such as the costs of demolition, wages to move to small ships, including the cost to bring ships to the port due to the pursuit of enemies or pirates. And between the two things according to the author, namely what is given to the pirates as a ransom or the issuance of other costs, including as a risk that must be borne by the carrier, and therefore this is closely related to the obligation of transportation in accordance with Article 468 of the Indonesian Commercial Code (KUHD) concerning the transportation agreement, where the carrier is obliged to maintain the safety of the goods which must be transported from the time of receipt until the time of delivery.

But as previously explained, if maintaining the safety of the goods is not the same as replacing the damage or loss that exists on the goods. So that even though it has become the responsibility of the carrier to maintain the safety of the goods until they arrive at their destination, including bearing all the risks, in the event of damage and loss to the goods, it cannot be used as a risk to be borne by the carrier. unless it can be proven that the loss is caused by the carrier and the burden of proof is on the plaintiff. Or the carrier is not responsible for damage and loss to the goods that occur not because of errors.

Risks that must be borne by the carrier in case of piracy are divided into two (2) forms of loss, namely:

1. There is a loss in the form of expenses, or extraordinary costs (Article 699 sub 14 Indonesian Commercial Code (KUHD)).
2. There is a loss that is given to the pirates as a redemption or contribution to a general sea loss (Article 699 sub 1 Indonesian Commercial Code (KUHD)).

Responsibility for extraordinary costs

These costs are incurred after the past danger, that is, after the typhoon or pursuit of the enemy / pirate, the ship is forced to pay costs for demolition costs, help money, costs for dragging the ship to a safe port and others.

Article 699 sub-1 of Indonesian Commercial Code (KUHD, regarding what is given to pirates as an attempt at redemption is included as a general sea loss (avarij grosse). What was given to the pirates was included as a donation of avariij grosse. According to Article 720 of the Indonesian Commercial Code (KUHD, the guarantor for ships, cargo, or transportation fees, each must pay a sum of general sea loss, if the goods are insured for each bearing the general sea loss, and so must be done with the balance between the insured part and the insured part. Article 720 Indonesian Commercial Code (KUHD) states:

"The guarantor, both for the ship or for the cost of transportation or for its cargo, for general losses (avarij) each pays as much as must be borne in a row by the goods in general (avarij) losses, if insurance is held for which coverage is held, and it is balanced between the insured and the insured ".

This provision means that the guarantor for; ships, cargo or transportation fees are obliged to incur losses from general sea losses, which are charged to goods that are not insured, regardless of whether the loss is based on Article 637.

Article 637 of the Indonesian Commercial Code (KUHD) states that there are many types of danger that are guaranteed such as typhoons, thunder, shipwrecks, shipwrecked ships, collisions, forced to change direction of travel, fire, robbery, hijacking of acts of war, wrongful actions or negligence of the captain or the children of other ships and in general all disasters that come from outside. All of these hazards are guaranteed, except if in the Act or in the policy specified specific hazards are not guaranteed. (Wirjono Prodjodikoro, 2015)

Both the ship and the goods are basically insured, the coverage of the goods includes the whole physical of the goods and not a part of the physical goods, some are insured and not insured. So what is meant in that Article "the insured part with the insured", is piracy. Namely the general sea losses that occur at sea and hit ships and their cargo.

In insurance, piracy is included as one of the dangers of molest because the insurer is free from such coverage (Article 647 Indonesian Commercial Code (KUHD)). But it can be insured, if specifically stated in the policy / insurance agreement. So piracy is a condition of loss that can be experienced by the owner of the goods. Whose losses can be insured or not covered by the insurance, based on the agreement of both parties in the insurance policy. Regarding piracy as an insured or non-insured part, in relation to Article 720 of the Indonesian Commercial Code (KUHD), if the ship is hijacked by pirates and held hostage then required to pay a ransom as a contribution to general sea losses given to the pirates, then by this Article it is required to carry out a balanced distribution of general losses (avarij) between the insured and non-insured items.

AB Massier and Marjanne Termorshuizen-Arts give balanced meaning (in evenwicht, evenwichtig, evenredig, gelijkwaardig (van de rechten / plichten van) contracterende partijen (Agus Yudha Hernoko, 2010) is according to the balance (evenredig, naar evenredigheid, pondspoudsgewijs), contracterende partijen) (Agus Yudha Hernoko, 2010) by giving an example: repayment must be considered valid for each loss according to the balance of each amount.

Balance is often interpreted in terms of equality, proportional in number, size or position. (Agus Yudha Hernoko, 2010) In the context of equitable distribution of losses on piracy, the intended balance is: the large amount of donation burden that must be given to the pirates at the time piracy occurs is the same when the goods are insured or not insured. So the magnitude of the burden of losses is given in the form of public avarai donations, the balance is valued based on the price of the goods. And the balance of the burden of loss, does not lie in whether the items are insured or not. This means that the distribution of the burden given to the goods remains the same when insured or not insured, that is, it still refers to the price value of the goods in question, as the basis of balance that is used as a benchmark in the distribution of Avariij gross contributions.

So between the extraordinary costs and what is given (donations) to the pirates both are included as general sea losses. In Article 727 of the Indonesian Commercial Code (KUHD) it is stated that the loss of the general sea is borne by ships, cargo and transportation fees. Then to divide the general sea losses on ships, cargo and transportation money need to know the price of the ship, cargo and transportation money.

What is meant by the value of goods that are related to avariij grosse is as follows:

The value of the ship is the price of the ship at the place after the destination, plus the compensation money from Avariij Grosse;

Value of cargo goods is the price of goods which:

1. At the time of the avariij grosse it was located, both on the original ship, and on the rescue ship;
2. Before the occurrence of avariij grosse, due to an emergency, it had been dumped into the sea where the price had been replaced;
3. Has been sold to cover costs incurred due to damage;
4. Coins also bear general sea losses according to the value at the place where the journey ends.

Value of transportation money (freight) is the amount of transportation money reduced by salary and other living costs for the skipper and his subordinates.

So what is given by PT. Samudera Indonesia to Somali pirates, has explained the involvement of the transporter to the owner of the goods in the effort to maintain the safety of the goods. Namely by the act of giving a ransom to release the ship along with the cargo goods from being held hostage, it is a transport obligation as well as a risk that must be calculated.

PT. Samudera Indonesia in the case of MV Sinar Kudus is the owner of the ship as well as a carrier, has a responsibility to the owner of the goods only to maintain the safety of the goods during the delivery process, but if during the delivery process there is damage to the goods in whole or in part due to pirate acts, the carrier is not responsible for damage that occurs to the cargo.

So in terms of the responsibility of the carrier here, then what is called the principle of responsibility based on presumption (presumption of liability) According to this principle transportation is considered always responsible for any losses arising from the transportation it carries out, but if the carrier can prove if it happened not because of his mistakes, so he is not obliged to pay compensation. "Not guilty" is not committing negligence, having taken the necessary actions to avoid loss, or the event that caused the loss is impossible to avoid.

Conclusions:-

The Indonesian Commercial Code regulates the responsibilities of the carrier. Article 468 of the Indonesian Commercial Code (KUHD) provides the scope in which the transporter can be held liable if there is damage and loss to the cargo during the delivery period. But the scope of this Article also has a very limited effect on transportation and cannot reach all travel hazards that occur at sea during the delivery period. Because the essence of this Article the carrier can be responsible if it can be proven if the error is caused by the carrier. Losses due to piracy are other causes that come from outside. To cope with the occurrence of greater and ready losses that will be specifically responsible for the problem of losses caused by piracy, in Chapter XI KUHD, it is regulated regarding sea losses caused by piracy and is divided into two forms, namely: general avarij losses and sea losses specifically (simple avarij). In general sea losses, which are divided into contributions, and extraordinary costs, the liability of this loss is stated in Article 727 of the The Indonesian Commercial Code. And for special marine losses, for losses of this type because they relate to compensation for goods, this is pre-insured in insurance. Where the insurance arrangements still refer to The Indonesian Commercial Code

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