TRANSNATIONAL BUSINESS LAW JOURNAL
Volume 1, Number 1, February 2020
P-ISSN: 2722-1105 Doi: 10.23920/tblj.v1i1.a4
Advance Access Publication Date: 27 February 2020
Publisher: Transnational Business Law Depaertment, Faculty of Law, Universitas Padjadjaran

CHARTER'S LIABILITY ON DEMURRAGE: AN INDONESIA'S PERSPECTIVE

Raisha Puti Diamar[*] and An An Chandrawulan[**]

ABSTRACT

Carriage of goods plays a substantial role for both domestic and international trade in pursuance of fulfilling the markets' supply and demand. Amongst all modes of carriage of goods, carriage of goods by sea is deemed to be the most effective mode-cost and quantity wise. However, carriage of goods by sea has a high possibility towards time indiscipline which could result to huge amount of damages, one of which concerning demurrage caused by expiration of laytime. In its practice, problems tend to arise when parties exert to determine the liability of demurrage. Hence, this article aims to discuss further regarding the concerned liability of demurrage. This article used descriptive analytical method, discussing limitation of liability terms written on bill of ladings and laytime exception clauses.

Keywords: bill of lading, carriage of goods by sea, laytime & demurrage.

I.INTRODUCTION

Carriage of goods is a crucial game changer in removing barriers of business and trades. The main purpose of carriage of goods is none other than to fulfil both international and domestic supply and demand which may be transported either by land, water or air. The transportation of cargo using two or more modes of transportation is defined as multimodal transportation.[1]

Sea transportation is widely deemed to be the most efficient mode of carriage of goods which under Indonesian Law carriage of goods by sea is regulated under the Commercial Code or *Wetboek van Koophandel* (WvK) specifically within chapter 2 of the book.

The efficiency of carriage of goods by sea plays a vital role for countries and private parties in doing business & trades where this high rates of efficiency may also bring high

[*] Undergraduate Law Student, Faculty of Law, Universitas Padjadjaran, Jalan Raya Bandung-Sumedang KM. 21 Jatinangor 45363, email: raishadiamar@yahoo.com.
[**] Professor at Faculty of Law, Universitas Padjadjaran, Jalan Raya Bandung-Sumedang KM. 21 Jatinangor 45363, email: ananchandrawulan@gmail.com.
[1] Ridwan Khairandy, Machsun Tabroni, Ery Arifuddin, Djohari Santoso, *Pengantar Hukum Dagang Indonesia*, Jilid 1, Yogyakarta: Gama Media, 1999, p. 196.

potential risks. This possibility of high risk can be caused by unexpected incidents that may occur at sea, such as natural disasters or other sea perils which at times are unavoidable. There are clauses that regulate charterer's rights and obligations such as arrangements of time, *laytime,* force majeure, warranty and other clauses. These clauses are set forth under a charterparty which creates legal relationship within the parties.[2]

The legal relationship arose by a charterparty ties carrier and other parties whereby the carrier binds to organize the transport of goods to a specific destination, while the other party (sender or consignee) is undertaken to fulfill the payment of agreed freight amount. The definition of an agreement itself is contained in the Code of Civil Article 1313 which reads as follows: "*An agreement is an act with which one person, or more binds himself to one another*". With the emergence of a rights and obligations, then the principle of *Pacta Sunt Servanda* will apply subsequently.

The charterer's obligations contained in the charterparty includes its responsibility for fuel costs and chartering related costs while carrier's obligation is to deliver goods to loading and discharging ports specified under the charterparty within the agreed time.

To cater the obligations, the loading time of the goods has been determined by the parties. This predetermined time is called "laytime" which commences after the issuance of notice of readiness (NOR) by carrier. Further, the charterparty also governs conditions that may interrupt the loading process of goods, however, if the charterer breaches the agreed laytime as a result of charterer's fault, an extra charge may be accrued and this is called demurrage. Demurrage is the agreed amount of damage which is to be paid for the delay of the ship caused by a default of the charterers at either the commencement or the end of the voyage. [3]

The questions whether the charterer is liable for this liability must be assessed based on the scope of the responsibilities of the parties which is governed under Indonesian regulations namely the aforementioned WvK as well as Law Number 17 of 2008 on Shipping (Shipping Law). Therefore, this paper will discuss the commencement of laytime and demurrage calculations and discuss the charterer's liability on demurrage. Before answering this question, we will first discuss the legal nature of carriage of goods by sea.

---

[2] Simon Baughen, *Shipping Law Fourth Edition,* Oxford: Routledge-Cavendish, 2009, p. 1.
[3] Baughen, *Op. Cit.*, p. 357.

II. DISCUSSION

A. Charterparty

Charterparty is a contract for the use or hire of a vessel.[4] The execution of a charterparty is deemed to start when the goods are loaded to the vessel until it is unloaded or handed over to the recipient unless it is agreed otherwise. Charterparty under Indonesian law, with its consensual nature, is not required to be in a written form though supporting documents must be acquired whether in a form of a bill lading or a ticket as a contractual document.

B. Parties in Charterparty

1. Carrier

   Under the Article 466 of WvK, carrier is defined as follows:

   > "Carrier is anyone who, either with the time charter voyage charter, or some other agreement, is bound to carry on the transportation of goods, wholly or in part by sea."

   Or in other words, carrier is a person or a company that transports goods and is responsible for any possible loss of the goods during transport.

2. Receiver

   The receiver may be a charterer or is an interested third party, meaning that this third party is not the party in the charterparty but is also included as a legal subject of transportation who has the lawful authority to receive the goods sent to him. Receiver can also be said, but not always, as consignee. An entity which name is written on the bill of lading (B/L) as to whom the shipment is designated for.[5]

3. Forwarding

   Forwarder under Article 86 WvK is defined as follows:

   > "Forwarder is a person whose responsible is to delegate orders to other entity to carry out the carriage of goods by land or sea."

   The role of a forwarder is to find a carrier for the shipper, it must guarantee and heed all means to carry out the delivery of goods properly and as quickly as possible. Forwarding companies are included as supporting the transportation regulated in Articles 31-34 of the Shipping Law as a service business related to maritime transportation.

---

[4] UNCTAD Secretariat, *Charter Parties: A Comparative Analysis*, https://unctad.org/en/PublicationsLibrary/c4isl55_en.pdf (accessed on 14/02/20).

[5] http://www.kkfreight.com/consignee-notify-party-shipper.html [accessed on 14/02/20].

C. Contractual Documents

1. Under Article 506 WvK, B/L is defined as follows:

   "A dated letter, in which the carrier delineates that he has received the goods to be then transported and handed over to an authorized party at an appointed destination. Certain conditions on how the goods should be delivered must also be set out within the bill of lading."

   The functions of B/L as a contractual document are as mentioned below:

   a. As receipt of for goods shipped (quantity and conditions)
   b. Evidence of contract carriage

      A B/L is not the actual contract. However, it binds whoever holds the B/L to the terms set out and printed on the bill of lading.
   c. A document of title

      By holding a B/L, the holder obtains possession over the goods written within the bill and has the right to claim the goods.

D. What is Demurrage?

Generally, parties are in an agreement on the length of time needed to load and unload goods on board the vessel which is stipulated into what is called as a "laydays clause" in the charterparty. In the process of goods loading and unloading, there are often events that may interrupt the aforementioned process and caused laydays to expire as a consequence. This interruption simultaneously causes a number of extra costs to be paid which is known as demurrage.

The interpretation of demurrage can be seen in a English case, Harris v. Jacobs which interpreted demurrage as follows:[6]

"Demurrage is the agreed amount of damage which is to be paid for the delay of the ship caused by the default of the charterers at either the commencement or the end of the voyage."

Furthermore, the judges in The Spalmatori defined demurrage as follows:[7]

"*Laydays are the days which parties have stipulated for the loading or discharge of the cargo, **and if they are exceeded, the charterers are in breach; demurrage is the***

[6] John Schofield, *Laytime and Demurrage*, Oxon: Routledge, 2011, p. 357.
[7] *Ibid*.

agreed damages to be paid for delay if the ship is delayed in loading or discharging beyond the agreed period. "

In conclusion, demurrage is an extra charge that must be paid to the carrier if the execution of cargo unloading or loading exceeds the agreed time.

E. Charterer's Liability on Demurrage under Indonesian Law

Regulations concerning on cargo loading, unloading and demurrage are governed under several articles in the WvK which regulates the responsibility of the consignee to unload goods as soon as possible or within the agreed time, after the issuance of a NOR by the carrier. The following is articles that govern in regards to loading and unloading cargo in the WvK:

1. Article 519i:

   "When the vessel arrives at the nominated unloading port and is ready to transfer its cargo, the carrier informs the charterer or his representative. The carrier is obliged to notify the matter."

2. Article 519k:

   "The charterer or his representative must receive his goods. He is obliged to start it on the first day after receiving the notice referred to in article 519i, and do it as soon as possible within the permitted circumstances and the capabilities of the ship.

3. Article 519o:

   "The charterer must pay for losses caused by him as a result of delayed reception of goods to the carrier, unless otherwise is proven."

4. Article 519r:

   "If after days of berth, or agreed additional days of berth, the goods remain on board, the charterer must compensate for delays due to the charterer."

In the aforementioned articles, it can be concluded that the loading of goods must be carried out as soon as possible when the vessel arrives at the nominated port, executed by a party to carry out loading and unloading at the port of destination. In practice, the party with such authority to load and unload the goods is the valid owner of the goods whose ownership can be proven through the subject stated within the B/L.

F. Passing of Risks in the Execution of Cargo Unloading

In order to determine the responsibility arising out of demurrage can be examined in two ways, first, by assessing agreed clauses within the charterparty and discerning the agreed term under the bill of lading.

In pursuant to the above discussion, B/L can be functioned as a document to proof goods ownership. The subject written within the B/L is obliged to exercise its responsibility to unload the goods as soon as possible as regulated in Article 519s WvK which reads as follows:

> "If the goods are loaded and a bill of lading is issued, the provisions in articles 519k-519r, without prejudice to changes in article 519k mentioned in the following paragraphs".

Each bill of lading holder is obliged to begin receive the goods, immediately, if the goods are available to him, but not before the following first day after the notice referred to in article 519i of the first paragraph, on any day of the agreed anchorage in the party-charter starting. If no notice is made based on the provisions in the last paragraph of article 519i, each bill of lading holder is obliged to receive the goods immediately if available to him, the laydays agreed in the charters regardless of what day the party begins.

Bill of lading holders whose goods are still on board are liable to those who chartered for additional *demurrage* and for compensation, if a party has agreed on a certain number of additional anchor days or additional berths. With respect to their own fellow holders, all holders are required to hold receipts in the manner stated in article 519k. Any parties who is in negligence, or prevents others from accept the goods on time, is obliged to that person to compensate."

Based on the above article, it is very clear that the holder is the party responsible for unloading the goods and costs that may arise in the process. This is similar to one case in the *UK Brandt and others v. Liverpool, Brazil and River Plate Steam Navigation Co. Ltd*. where the judge gives his consideration as follows:[8]

> "*By those authorities it has been clearly established that where the holder of a bill of lading presents it and offers to accept delivery, if that offer is accepted by the shipowner the bill of lading holder does come under an obligation to pay the freight and to pay the demurrage, if any*."

[8] Schofield, *Op. Cit*., p. 357.

Passing of Risk can be agreed by the parties by stipulating the widely used International Commercial Terms or "Incoterms". Incoterms is a set of international regulations that aim to create certainty of risk transfer in international trade.

Terms like Free on Board (F.O.B.); Cost, Insurance, Freight (C.I.F.); Cost and Freight (C.F.R); and Carriage Paid to (C.P.T.) are the most used terms amongst all. These terms will be explained below:[9]

1. F.O.B: Free on Board

   "Free On Board" means the risk of loss of or damage to the goods passes when the goods are on board the vessel, and the buyer bears all costs from that moment onwards.

2. C.I.F: Cost, Insurance, Freight

   "Cost, Insurance, Freight" means that the shipper bears all costs and insurance with a minimum coverage during transportation of goods takes place (up to the final destination port). The risk passes when the goods are on board the vessel.

3. C.F.R.: Cost and Freight

   "Cost and Freight" means the shipper pays the costs and freight to the port of debarkation. At the CFR, the shipper will also bear of all the costs of export formalities. Risks of goods are transferred to the owner of the goods when the goods have boarded the ship.

4. C.P.T: Carriage Paid To

   "Carriage Paid To" means that the ownership rights of the goods are transferred to the buyer since the goods are at the place of transport, but the cost of transportation to the destination becomes the responsibility of the exporter/seller. In this term, the additional transportation costs and the risk of loss to the goods are the responsibility of the buyer since the goods are handed over to the carrier.

G. Laytime Clauses

1. Customary Quick Dispatch (CQD):

   In the "Charterparty Laytime Definitions 1980" concluded by BIMCO, CMI, FONASBA and GCBC, CQD is interpreted as follows:

   "CQD means that the charterer must load and/or discharge as fast as is possible in the circumstances prevailing at the time of loading or discharging"

[9] International Chamber of Commerce, *Incoterms 2010*, https://iccwbo.org/resources-for-business/incoterms- rules/incoterms-rules-2010/, (accessed on 28/12/2019).

From the definition given by "Charterparty Laytime Definitions 1980" it can be interpreted that the goods must be unloaded as soon as possible under reasonable conditions and when it is possible to do so.

When the parties under the sale & purchase agreement or charterparty did not agree on the length of the duration of the laytime, this laytime clause will give the consignee or shipper a leeway to load or unload the goods but still within a reasonable time. This means that the use of CQD does not completely freed the person concerned from its obligation to unload and load the goods under a practical time.

Laytime clauses with CQD term can also be interpreted that the loading and unloading activities must be carried out within the period specified by the port operator. This happens in some cases between the carrier and consignee using CQD terms as their laytime clause, i.e. in the case of *Postlethwaite v. Freeland and Ford and others v. Cotesworth and another*.[10]

In the case of *Postlethwaite v. Freeland,* a vessel (Cumberland Lassie) was chartered to transport rails and fasteners from Barrow-in-Furness, England to East London, South Africa. The agreement between the chareterer and the carrier stipulated that "the time of unloading of goods is adjusted to the customs in the port".

The custom at the port at that time was that the ship was propped up with a considerable distance and outside the berth, then the ship was pulled manually to the berth. However, due to a lack of tools and a crowded boat which caused a traffic jam to the berth, Cumberland Lassie had to wait for the time to unload for 31 working days. In this case, the carrier cannot sue the tenant to pay the demurrage fee because the obstacle arises from the customs of the port where the tenant cannot find out and overcome it.

2. Fixed Laytime

A charterparty or a sale and purchase agreement often use laytime clauses with definite duration of laytime or referred to as “fixed laytime” as fixed laytime provides certainty for the parties, especially the carrier, which will make it easier to calculate the amount of demurrage which arises in the event of an interruption in the loading or unloading process. The parties in determining laytime can be written in several manners, namely calendar days, conventional days and running days.[11]

a. Calendar days

[10] Simon Baughen, *Summerskill on Laytime*, London: Sweet & Maxwell Ltd., 2012, p. 49.
[11] Schofield, *Op. Cit.* (Note 7), p. 11-18.

An example of the utilization of calendar day units is in the case of *Commercial Steamship & Co. v. Boulton*, in which, all laytime was used when loading the goods, then when the vessel arrived at the port of destination on Tuesday at 05.00, the new unloading began on Wednesday at 08.00 to Thursday at 08.00. With such facts, laydays time is determined as more than 2 full "calendar days".

b. Conventional days

In conventional day units, if laytime is deemed to start on Monday at 06.00 and unloading or loading is finished on Thursday at 12.00, then according to conventional day units, laytime is used for only three days and six hours. Calculations with this unit are often used by multinational oil and gas company such as BP Bureau Ltd.[12]

c. Running days

The Voylayrules 1993 provides the following definition of running days: "RUNNING DAYS" or "CONSECUTIVE DAYS" shall mean days which follow one immediately after the other."

In “running days” unit, the used laytime is interpreted based on the operating time of the vessel, unless stated otherwise in the agreement or governed in a different way by the port.

H. Laytime Exceptions

Charterparties generally specify conditions which are reckoned as interruptions to laytime. These conditions are known as laytime exceptions clause and that includes “Conoco Weather Clause”, “weather permitting clause” and “working days”:

1. *Conoco Weather Clause* (CWC)

The CWC clause is defined as follows:[13]

“*Delays in berthing for loading or discharging and any delays after berthing which are due to weather conditions shall count as one half laytime or, if on demurrage, at one half demurrage rate”*

If the parties agree to use this clause, it can be construed that if there is a delay in berthing due to weather conditions, then the delay is calculated to be half the time of laytime. If it

[12] Interview research with Shipping Manager of BP Bureau Ltd on 9/1/20.
[13] Donald Davies, *Commencement of Laytime*, London: Informa Law, 2006, p. 118.

happens when the demurrage is running, then the delay is calculated as half the demurrage time.[14]

2. Weather Permitting

   "Weather permitting" means that if bad weather occurs during the process of loading or unloading, and such event makes it impossible for both parties to conduct the aforesaid process after the vessel is berthed, the laytime should not be considered to have begun.[15]

   In the case of The Vorras, the laytime clause is stipulated as "72 running hours, weather permitting". The meaning of the clause is that the duration of laytime is 72 hours is the weather allows to conduct unloading of goods. In other words, laytime is only considered to be interrupted if the weather makes it unable to unload goods. An interruption due to operational cause will still be calculated as a running laytime.[16]

3. Working days

   "Working days" means Sundays and holidays is not calculated as laytime. An example on the application of working days clause is in the case of The Rubystone. The judge in *casu quo* interpreted that working days should be determine in accordance with the rules at the designated port regarding working days and hours.[17]

I. Charterer's Liability Practices on Demurrage in Indonesia

Demurrage caused by the fault of the charterer or consignee to unload at the nominated port, i.e. caused by operational causes, must be recompensed to the carrier, as it is due to the increased operation expenses while berthing that must be bear by the carrier. The practices in regards to demurrage liability caused by charterers or consignees in Indonesia will be set out below:

1. PT Andalan Lancar Niaga (PT ALN) v. PT Borneo Samudra Perkasa (PT BSP):[18]

   PT ALN and PT BSP were in an agreement to to deliver coal using PT ALN's vessels namely TB. Michelle II and BG. Benami II from the HBPM Jetty in Sungai Putting to the Paiton Baru Power Plant. When the vessels arrived and berthed at the nominated port, CV.

[14] *The Laura Prima* [1980] 1 Lloyd's Rep. 466.
[15] Schofield, *Op. Cit.* (Note. 10), p. 29.
[16] *The Vorras* [1983] 1 Lloyd's Rep. 579 (C.A.).
[17] *The Rubystone* [1955] 1 Lloyd's Rep. 9 (C.A.).
[18] Banjarmasin District Court Decision No. 73/Pdt.G/2014/PN.Bjm.

Borneo Energy as a third party, failed to unload the coal due to its negligence and inducing a tremendous amount of demurrage, Rp1,525,900,000.

2. PT Bangka Offshore Shipping (PT BOS) v. PT Tanjung Manau Trans Barito (PT TMTB):[19]

   PT BOS in *casu* chartered five vessels owned by PT TMTB to deliver coal. However, PT BOS failed to fulfill its obligation to load the goods within the agreed time. In the court decision Number 123/Pdt.G/2015/PN.Bjm, the demurrage recapitulation arose out of PT BOS' negligence amounted to Rp5,841,750,000.

3. PT Budi Bakti Prima v. PT Sinarsuci Anekacandra, PT Vale Indonesia and PT Multi Pondasi Utama:[20]

   PT Sinarsuci Anekacandra were in a subcontractor agreement with PT Budi Bakti Prima for the work of the Mangkasa Point Jetty 5000 DWT Project in Sorowak, South Sulawesi, where PT Budi Bakti Prima appointed PT Multi Pondasi Utama (carrier) to deliver the stake equipment.

   In the subcontractor agreement between PT Sinarsuci Anekacandra and PT Budi Bakti Prima, it was agreed that PT Sinarsuci Anekacandra was the party responsible for managing all operational licenses in Sorowako, South Sulawesi. However, on May 9, 2014, PT Multi Pondasi Utama in the commencement of goods loading discovered that PT Sinarsuci Anekacandra failed to provide all the required permits and operational licenses for loading and unloading at Mangkasa Sorowako site resulted a 69 days' delay starting from May 9 to July 17, 2014 with a total demurrage of Rp1,750,000,000.

J. Demurrage Liability: The Issue

To determine which party is liable for a demurrage liability, a detailed technical analysis is very much required as the emergence of demurrage involves a complex timeline interpretation as well as interpretation of passing of risk. Subsequently, this has caused issues in determining the responsible party for the demurrage. The problem of determining the party responsible for demurrage often ensues when the parties have different interpretations of what is considered to be a *force majeure* event, which occurred in the case of PT. Petrobas v. PT Cosmic Indonesia and others as follows:

1. Parties:

[19] Banjarmasin District Court Decision No. 123/Pdt.G/2015/PN.Bjm.
[20] South Jakarta District Court Decision No. 208/Pdt.G/2015/PN.Jkt.Sel.

PT Petrobas (Plaintiff), PT Cosmic Indonesia (Defendant I); Kim Sai, Director of PT Cosmic Indonesia (Defendant II); Koh Beng Tee, Group General Manager of PT Cosmic Indonesia (Defendant III); PT Pelayaran Nasional Aeromic Indonesia (Defendant IV); PT Indonesia Asahan Aluminum (Co-Defendant).

2. Facts:

   PT INALUM and PT Petrobas entered into a sale and purchase agreement on August 12, 2011. Then PT INALUM as the owner of the goods has the obligation to unload and take over the goods from the MT. Cosmic 11 owned by PT. Pelayaran Nasional Aeromic on August 20, 2011. However, until August 22, 2011, at which time PT INALUM had not yet carried out its obligation to take over the goods that were lawfully owned by PT INALUM according to the B/L with CIF term. On 22 August 2011, MT. Cosmic 11 was inspected by the port authority (KP Anis Madu – 649). After the inspection, the goods belonged to PT. INALUM was confiscated as evidence. This confiscation then resulted a large amount of loss which deprived PT. Pelayaran Nasional Aeromic.

3. Decision

   The Judges in *casu quo* decided that PT INALUM as the owner of the goods is not liable for the demurrage arose from the day the vessel arrived and during the confiscation of vessel.

   The Judges considered that the responsibility of the goods on board have not yet been transferred to the goods owner, and therefore all operating costs incurred were still the responsibility of the carrier.

4. Writer's opinion regarding the case

   In determining carrier's liability, events occur during the delivery of goods needs to be sorted based on timeline interpretation. In this case, the carrier arrived at the port within the agreed time and has issued the NOR to notify the consignee that the vessel was ready to conduct unloading of goods. Furthermore, consignee who is obliged to receive goods as soon as the vessel arrived, failed to carry out its obligations. In addition, the arrest of ship occurred as a result of absence goods permits which in this case the goods belonged to PT INALUM.

   All obligations of PT Pelayaran Nasional Aeromic which included loading goods, sending and arriving at the port of destination on time has been exercised. Referring to the regulations in Article 517n WvK which governs that when a carrier is unable to unload his

cargo at the destination port in time, due to negligence of the consignee, the loss incurred is not the responsibility of the carrier.

Furthermore, under Article 519j WvK, PT Pelayaran Nasional Aeromic has fulfilled its obligation to deliver the goods in accordance with the enabling conditions. Therefore, it is unfair if the loss of demurrage is borned by PT Pelayaran Nasional Aeromic as PT Pelayaran Nasional Aeromic has fully satisfied its obligation towards the other parties.

Moreover, the B/L renders the written consignee an authority to represent the shipper at the port of destination. By becoming the lawful owner of the goods, the consignee must adhere to stipulations within the B/L such as the shipping instruction because of its binding nature to its holder. The B/L binds the holder as there exists a clause stipulated as below:

> "*IN ACCEPTING THIS BILL OF LADING, the shipper and consignee agreed to be bound by all stipulations and exceptions, whether written, printed, or stamped on the front or back hereof the Bills of Lading*."

The B/L has a very important role, especially in determining the passing of risk and limitation of responsibility. In the decision No. 41/Pdt.G/2012/ PN.Jkt.Pst, the agreed term within the bill of lading is CIF which means that the risk of loss of goods moves to the buyer or owner of the goods as the goods are on board.

Further, referring to an English case of *Brandt and others v. Liverpool, Brazil and River Plate Steam Navigation Co Ltd* where under the judgment it was determined that the B/L holder is responsible for the obligation to make all payments agreed upon, and to pay demurrage if any on the basis that the B/L holder is deemed to be subjected to the terms and conditions contained in the bill of lading.

The carrier is also subjected to all terms and conditions stipulated within the B/L which includes delivering the goods and maintaining the safety of the goods. In the application of CIF term, the carrier is only responsible to exercise the main purpose of carriage of goods, which is delivering goods to the nominated port within the agreed time. Additionally, in the decision number 41/Pdt.G/2012 /PN.Jkt.Pst MT. Cosmic 11 has fully carried out this obligation. Therefore, the carrier is entitled to claim demurrage.

III. CONCLUSION

To conclude, laytime & demurrage clauses and passing of risk terms & conditions must be stipulated clearly by the parties so that the parties have the same perspective in regards to calculation of laytime and demurrage. Thus, no parties will suffer from any loss as to misinterpreted term in the case of a party's default. Further, the parties must also aware of the binding nature of B/L, so that the parties will exercise the term accordingly.

REFERENCES

Books

Abdulkadir Muhammad. (1998). *Hukum Pengangkutan Niaga*. Bandung: Citra Aditya Bakti.

Abdulkadir Muhammad. (1991). *Hukum Pengangkutan Darat, Laut dan Udara*. Bandung: Citra Aditya Bakti.

Capt. R.P. Suryono. (2007). *Shipping: Pengangkutan Intermodal Ekspor Impor Melalui Laut*. Jakarta: PPM.

Donal Davies. (2006). *Commencement of Laytime*. London: Informa Law.

H.M.N Purwosutjipto. (2001). *Pengertian Pokok Hukum Dagang Indonesia*. Jakarta: Djambatan.

John Schofield. (2011). *Laytime and Demurrage*. Oxon: Routledge.

Simon Baughen. (2012). *Summerskill on Laytime*. London: Sweet & Maxwell Ltd.

Thesis

Weena Akarachotikavanith. (2015). Legal Problems on Demurrage in Voyage Charters. Thammasat University, Bangkok.

Journals

Charles Debattista. (2003). "Laytime and Demurrage Clauses in Contracts of Sale – Links and Connections". *Lloyd's Maritime and Commercial Law Quarterly*, Issue 4.

Cases

The General Capinpin [1987] 2 Lloyd's Rep 354.

The Vorras [1983] 1 Lloyd's Rep. 579 (C.A.).

The Laura Prima [1980] 1 Lloyd's Rep. 466.

Nielsen v. Wait, *Nelson & Sons Ltd* v. *Nelson Line (Liverpool) Ltd (No 3).*

The Rubystone [1955] 1 Lloyd's Rep. 9 (C.A.).

Banjarmasin District Court Decision No. 73/Pdt.G/2014/PN.Bjm.

Banjarmasin District Court Decision No. 123/Pdt.G/2015/PN.Bjm.

South Jakarta District Court Decision No.208/Pdt.G/2015/PN.Jkt.Sel.

Central Jakarta District Court Decision No. 41/Pdt.G/2012/ PN.Jkt.Pst.

Websites:

International Chamber of Commerce. (2010). *Incoterms 2010*, https://iccwbo.org/resources-for-business/incoterms-rules/incoterms-rules-2010/.

Laytime Definitions for Charter Parties 2013. https://www.bimco.org/contracts-and-clauses/bimco-contracts/laytime-definitions-for-charter-parties-2013.