

Allocation of Liability for Cargo Damage during Carriage by Sea Using Shipper-Owned Containers

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Abstrak

Pengangkutan barang melalui laut memiliki peranan penting dalam menunjang perdagangan dan perekonomian, khususnya di Indonesia sebagai negara kepulauan. Dalam praktik pengangkutan laut modern, penggunaan Shipper-Owned Container (SOC) menimbulkan persoalan hukum terkait pembagian tanggung jawab atas kerusakan muatan karena kontainer dimiliki oleh pengirim, sedangkan pengangkutan dilaksanakan oleh pengangkut. Permasalahan tersebut semakin kompleks karena SOC belum diatur secara khusus dalam hukum positif Indonesia. Penelitian ini bertujuan untuk menganalisis kedudukan hukum SOC dalam pengangkutan barang melalui laut serta pembagian tanggung jawab antara pengangkut dan pengirim atas kerusakan muatan. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan peraturan perundang-undangan dan pendekatan konseptual yang dianalisis secara deskriptif-analitis. Hasil penelitian menunjukkan bahwa kepemilikan SOC menyebabkan pengirim bertanggung jawab atas pemeliharaan dan kelaikan peti kemas, sedangkan pengangkut pada prinsipnya tetap bertanggung jawab atas keselamatan dan keamanan muatan selama proses pengangkutan. Pembagian tanggung jawab ditentukan berdasarkan penyebab kerusakan, kewajiban masing-masing pihak, dan hubungan sebab akibat antara kesalahan dan kerugian. Prinsip yang berlaku adalah presumption of liability, sehingga pengangkut dapat dibebaskan apabila mampu membuktikan bahwa kerugian tidak disebabkan oleh kesalahannya.

Kata Kunci: Shipper-Owned Container; Pengangkutan Laut; Tanggung Jawab Pengangkut; Kerusakan Muatan; Presumption of Liability.

Abstract

The carriage of goods by sea plays an important role in supporting trade and economic activities, particularly in Indonesia as an archipelagic state. In modern maritime transportation, the use of Shipper-Owned Containers (SOC) raises legal issues concerning the allocation of liability for cargo damage, as the container is owned by the shipper while the transportation is carried out by the carrier. This issue becomes more complex due to the absence of specific regulations governing SOC under Indonesian positive law. This research aims to analyze the legal position of SOC in the carriage of goods by sea and the allocation of liability between carriers and shippers for cargo damage. This research employs a normative juridical method using statutory and conceptual approaches, analyzed descriptively and analytically. The results indicate that SOC ownership places responsibility for the maintenance and fitness of

the container upon the shipper, while the carrier remains principally responsible for the safety and security of the cargo during transportation. The allocation of liability is determined based on the cause of the damage, the obligations of each party, and the causal relationship between fault and loss. The applicable principle is presumption of liability, under which the carrier may be released from liability if it can prove that the loss was not caused by its fault.

Keywords: *Shipper-Owned Container; Carriage of Goods by Sea; Carrier Liability; Cargo Damage; Presumption of Liability.*

INTRODUCTION

Indonesia is an archipelagic state whose geographical characteristics position the sea as an integral part of its living space, distribution networks, and national economic connectivity. With more than 17,000 islands and vast maritime areas, sea transportation serves not only as a means of inter-island connectivity but also as a principal instrument for the movement of goods within domestic and international trade chains. Within this framework, the effectiveness of maritime transportation is directly linked to the continuity of logistics distribution, interregional trade, and Indonesia's export and import activities.¹

At the same time, the strategic role of maritime transportation gives rise to legal consequences, as the movement of goods from one place to another inherently involves the risk of destruction, loss, damage, or delay in delivery. Therefore, the law of carriage does not merely regulate the process by which goods are transported, but also determines who bears the risk when goods entrusted for carriage fail to reach the consignee in the condition in which they ought to have been delivered.² Liability thus constitutes a fundamental aspect of transport law, as it concerns the protection of cargo owners' interests, the professional obligations of carriers, and the allocation of risk among the parties involved.

From a legal perspective, the relationship between the carrier and the shipper essentially arises from a contract of carriage.³ Within the framework of contract law, the validity of such a legal relationship is subject to the requirements stipulated in Article 1320 of the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata or "Civil Code"), while its binding force is grounded in Article 1338 of the Civil Code, which embodies the principle of *pacta sunt servanda*. A lawfully concluded agreement binds the parties as if it were law and must be performed in good faith. Accordingly, a bill of lading, sea waybill, or contract of carriage should not be regarded merely as a commercial document, but rather as a legal instrument that defines the scope of rights, obligations, and risks between the carrier and the shipper.⁴

¹ Hamid, Putri Abdul, Sofia Herlina, and Vinanti Putri Tilani. "Tanggung Jawab Pengangkut Kapal Atas Rusaknya Barang Muatan Berdasarkan Prinsip Tanggung Jawab Pengangkutan Laut." *Samudera Hukum* 1, no. 1 (2022): 85–92. <https://doi.org/10.31629/samuderahukum.v1i1.5350>

² *Ibid.*

³ Oktoviyanto, Parulian Napitupulu, and Muh. Fitriadi, "Tinjauan Hukum terhadap Perjanjian Pengangkutan Barang dengan Sistem Container (Suatu Studi di PT. Samas Kendari)," *Sultra Law Review* 1, no. 1 (2019): 115–29, <https://jurnal-unsultra.ac.id/index.php/sulrev/article/view/720>.

⁴ Oktoviyanto, Napitupulu, and Fitriadi, "Tinjauan Hukum terhadap Perjanjian Pengangkutan Barang," 115–29.

The development of modern maritime transportation is inseparable from the use of containerization, as recognized under the Indonesian Shipping Law, which has transformed the manner in which goods are packed, loaded, handled, and transported on a large scale in a more efficient manner. In practice, containers may be classified based on ownership into several categories, including Carrier-Owned Containers (COCs), which are owned or provided by shipping companies; Lease Containers, which are leased for use by the shipper; and Shipper-Owned Containers (SOCs), which are owned by the shipper itself. Each type of container has distinct ownership characteristics, operational arrangements, and legal implications.⁵

Nevertheless, the principle of freedom of contract cannot be interpreted as granting the parties unrestricted autonomy to derogate from mandatory legal provisions. In the context of the carriage of goods by sea, the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata) operates as *lex generalis*, while the Indonesian Commercial Code (Kitab Undang-Undang Hukum Dagang or "KUHD") and specific statutory provisions governing maritime transportation constitute *lex specialis* applicable to contracts of carriage. Accordingly, contractual clauses that limit, exclude, or reallocate liability must be construed in light of mandatory legal norms restricting a carrier's ability to exempt itself from liability arising from its own fault or negligence.

This principle is reflected in Article 466 of the KUHD, which defines a carrier as a person who undertakes, whether under a time charter, voyage charter, or another agreement, to carry goods wholly or partly by sea. Article 468 of the KUHD further imposes a fundamental obligation upon the carrier to safeguard the goods from the moment they are received until they are delivered to the person entitled to receive them.⁶ Where the goods are wholly or partly undelivered or damaged, the carrier is, in principle, liable for the resulting loss unless it proves that the loss resulted from an event that could not reasonably have been prevented or avoided, from the inherent nature or defect of the goods, or from the fault of the shipper. The same provision also extends the carrier's responsibility to persons employed by it and to objects used in performing the carriage.

Article 468 of the KUHD has significant theoretical implications for the applicable liability regime. Carrier liability under this provision cannot be regarded merely as a pure fault-based liability regime, under which the injured party must establish every element of the carrier's fault. Rather, the provision may be characterized as embodying a presumption of liability, since once it is established that the goods were received by the carrier but were subsequently lost, destroyed, or damaged during the period of carriage, the carrier must demonstrate the existence of circumstances capable of relieving it from liability. The carrier is therefore not subject to absolute liability; rather, it bears the burden of rebutting the presumption of liability by establishing that the loss resulted from circumstances beyond its legally attributable fault.

⁵ Slamet Pamujianto, Ningrum Astriawati, Handoyo Widyanto, Fridaylia Tamara Kusumaningtyas, and Ahmad Sabiq, "Efisiensi Pengiriman Barang Menggunakan Container Oleh Perusahaan Pelayaran PT Salam Pacific Indonesia Lines (SPIL)," *Majalah Ilmiah Bahari Jogja* 23, no. 1 (2025): 88–99, <https://doi.org/10.33489/mibi.v23i1.410>

⁶ Republic of Indonesia. *Kitab Undang-Undang Hukum Dagang (Wetboek van Koophandel voor Indonesië)*. Staatsblad 1847 No. 23.

A similar structure is found in Law Number 17 of 2008 concerning Shipping (Shipping Law), as most recently amended by Law Number 66 of 2024.⁷ Article 40 of the Shipping Law imposes responsibility upon water transportation companies for the safety and security of the goods carried and for the cargo according to the type and quantity specified in the cargo document or contract of carriage. Article 41(1) identifies the destruction, loss, or damage of goods, as well as delay, as circumstances capable of giving rise to the carrier's liability. Article 41(2), however, permits the carrier to be wholly or partially relieved from liability if it can prove that the loss was not caused by its fault. This evidentiary structure similarly reflects a presumption of liability rather than absolute liability.

At this point, another fundamental principle of liability law becomes relevant, namely causation. The mere existence of damage does not automatically determine which party bears legal responsibility. A causal connection must first be established between the act or omission of a particular party and the resulting loss. The legal inquiry therefore cannot stop at the proposition that "the cargo was damaged during carriage"; rather, it must determine the effective cause of the damage and within whose legal sphere of responsibility that cause arose. This question becomes particularly important where the goods are carried in a container that is not supplied by the carrier but is owned or provided by the shipper.

It is important to emphasize that Indonesian positive law does not contain a complete regulatory vacuum regarding containers. Article 149(1) of the Shipping Law requires every container used as part of transportation equipment to satisfy container seaworthiness or fitness requirements. Article 149(2) further requires the handling, placement, and securing of containers to comply with ship-safety requirements. These provisions must be read together with Article 148(2), which requires cargo handling, placement, and securing to comply with applicable safety requirements. Indonesian law therefore distinguishes, at least normatively, between two dimensions of responsibility: the fitness of the container itself and the manner in which the container and its cargo are handled during transportation.⁸

This division of responsibility is further clarified by Government Regulation Number 31 of 2021 concerning the Administration of the Shipping Sector.⁹ Article 120(1) expressly requires the container owner to maintain the container so that it continues to satisfy applicable fitness requirements. Article 122(1) further provides that the container owner is responsible for ensuring that the container remains fit for use both during storage and operation. At the same time, Article 122(2) assigns responsibility to the shipper for determining and documenting the container's Verified Gross Mass (VGM).

These provisions have direct consequences for the legal construction of a Shipper-Owned Container (SOC). Where the shipper is simultaneously the owner of

⁷ Republic of Indonesia. *Law No. 17 of 2008 concerning Shipping*. State Gazette of the Republic of Indonesia 2008 No. 64, Supplement to the State Gazette No. 4849. As most recently amended by Law No. 66 of 2024 concerning the Third Amendment to Law No. 17 of 2008 concerning Shipping.

⁸ Republic of Indonesia. *Law No. 17 of 2008 concerning Shipping*. State Gazette of the Republic of Indonesia 2008 No. 64, Supplement to the State Gazette No. 4849. As most recently amended by Law No. 66 of 2024 concerning the Third Amendment to Law No. 17 of 2008 concerning Shipping.

⁹ Republic of Indonesia, *Government Regulation No. 31 of 2021 concerning the Administration of the Shipping Sector*, State Gazette of the Republic of Indonesia 2021 No. 41, Supplement to the State Gazette No. 6643, arts. 120 and 122.

the container, the shipper bears legal obligations in two different capacities. First, it acts as a party to the contract of carriage that delivers the cargo to the carrier. Second, it acts as the owner of the container and is therefore legally responsible for its maintenance and fitness. The shipper thus possesses a dual legal capacity in an SOC arrangement, which materially distinguishes an SOC from a Carrier-Owned Container (COC).

The regulatory framework is further operationalized through Minister of Transportation Regulation Number PM 25 of 2022 concerning Container Fitness and Verified Gross Mass, which remains in force and replaced Ministerial Regulation Number PM 53 of 2018.¹⁰ The Regulation governs container inspection, testing, certification of fitness, maintenance, repair, and VGM requirements. These rules also reflect international container-safety standards derived from the International Convention for Safe Containers 1972 (CSC 1972), which Indonesia approved through Presidential Decree Number 33 of 1989,¹¹ as well as the regulatory framework established under the International Convention for the Safety of Life at Sea 1974 (SOLAS 1974).

Under the SOLAS regime, responsibility for obtaining and documenting the VGM of a packed container rests upon the shipper. A packed container for which the required VGM has not been provided cannot ordinarily be loaded onto a vessel subject to the SOLAS requirements.¹² This demonstrates that international maritime-safety law does not allocate all container-related responsibility to the carrier. Certain risks and obligations are expressly assigned to the shipper, particularly those concerning information and circumstances originating before the container is accepted for loading.

Taken together, these rules allow for the development of a normative distinction based on the sphere of control. First, internal container risks, including structural condition, fitness, maintenance, pre-existing material defects, packing methods, cargo distribution, and the accuracy of VGM information, generally fall more closely within the sphere of control of the shipper or SOC owner.¹³ Second, operational carriage risks, including improper lifting, handling, stowage, lashing, positioning, securing, navigation, and treatment of the container after it enters the carrier's custody, fall more closely within the carrier's sphere of responsibility. The sphere of control approach does not automatically impose absolute liability upon either party; rather, it assists in identifying the party that was in the best position to control or prevent the source of the loss.¹⁴

¹⁰ Republic of Indonesia, Ministry of Transportation, Regulation of the Minister of Transportation No. PM 25 of 2022 concerning Container Fitness and Verified Gross Mass, State Gazette of the Republic of Indonesia 2022 No. 1011.

¹¹ Republic of Indonesia. *Presidential Decree No. 33 of 1989 concerning the Ratification of the International Convention for Safe Containers (CSC)*. 1989.

¹² International Maritime Organization. "Verification of the Gross Mass of a Packed Container." Accessed September 9, 2026. <https://www.imo.org/en/ourwork/safety/pages/verification-of-the-gross-mass.aspx>

¹³ Hoffmann, Niclas, Robert Stahlbock, and Stefan Voß. "A Decision Model on the Repair and Maintenance of Shipping Containers." *Journal of Shipping and Trade* 5, no. 1 (2020): 1–21. <https://doi.org/10.1186/s41072-020-00070-2>

¹⁴ United Nations Economic Commission for Europe (UNECE). "Proposed Amendments (World Shipping Council) Submitted on the Code of Practice for Packing of Cargo Transport Units (CTU

This construction is also consistent with the exceptions to liability contained in Article 468 of the KUHD. Where damage is proven to have resulted from the condition or inherent defect of the goods or from the shipper's fault, such circumstances may constitute a legal basis for the carrier to rebut the presumption of liability. In an SOC context, structural unfitness, corrosion, defective doors, leakage, insufficient load-bearing capacity, or other deficiencies resulting from inadequate maintenance by the container owner may therefore constitute legally relevant facts in determining whether the damage can properly be attributed to the carrier.

However, the fact that the SOC is owned by the shipper cannot automatically exempt the carrier from all liability. Once the SOC has been accepted into the carrier's custody, the carrier's duty to safeguard the cargo under Article 468 of the KUHD and Article 40 of the Shipping Law continues to apply to risks falling within the carrier's sphere of responsibility.¹⁵ Moreover, Article 470 of the KUHD restricts contractual attempts to exclude liability for losses resulting from inadequate maintenance or fitness of the means of transportation, improper treatment, or insufficient care of the goods.¹⁶ Accordingly, contractual provisions intended to eliminate such fundamental obligations cannot be justified merely by invoking freedom of contract.

The principle of *pacta sunt servanda* must therefore be balanced against the principles of good faith, reasonableness, and mandatory rules of liability. A clause in a bill of lading stating that an SOC is the shipper's responsibility may legitimately allocate risks that are factually and legally within the shipper's control. It should not, however, be construed as a blanket exemption relieving the carrier from every loss occurring after the container has entered its custody. Such clauses must instead be assessed by reference to the source of the damage, causation, the respective legal duties of the parties, and each party's ability to prevent the loss.

This constitutes the central legal problem concerning the use of SOC's. Indonesian law already regulates the carrier's obligations toward cargo, the container owner's obligation to ensure container fitness, the shipper's VGM obligations, and safety requirements governing container handling and stowage. Nevertheless, these provisions do not yet establish a specific rule expressly determining the point of transition or the formula for allocating civil liability between the carrier and the shipper where cargo damage occurs in an SOC and the damage may result from a combination of container-related defects and the carrier's conduct. The issue therefore does not constitute a complete absence of regulation, but rather normative fragmentation and a liability-allocation gap.

Code).” Informal Document No. 6 (2012). <https://unece.org/DAM/trans/doc/2012/wp24/Informal-document-EG-GPC-No06-2012.pdf>.

¹⁵ Aryo Baskoro, Sinta Agtrianasari, and Muhammad Naufal. “Cargo Claims under Indonesian Shipping Law and Implementing the Limitation of Liability.” *ARMA Law*, July 7, 2026. <https://www.arma-law.com/news-event/newsflash/cargo-claims-under-indonesian-shipping-law-and-implementing-the-limitation-of-liability>.

¹⁶ Aryo Baskoro, Sinta Agtrianasari, and Muhammad Naufal, “Cargo Claims under Indonesian Shipping Law and Implementing the Limitation of Liability,” *ARMA Law*, July 7, 2026, <https://www.arma-law.com/news-event/newsflash/cargo-claims-under-indonesian-shipping-law-and-implementing-the-limitation-of-liability>.

The gap becomes apparent when Article 468 of the KUHD is read together with Article 122 of Government Regulation Number 31 of 2021. On the one hand, Article 468 imposes responsibility upon the carrier for the goods from receipt until delivery and extends liability to objects used in performing the carriage. On the other hand, Government Regulation Number 31 of 2021 specifically requires the container owner to ensure that the container remains fit for use. Where the container is an SOC, a normative question therefore arises as to the extent to which the container should be regarded as an “object used in the carriage” falling within the carrier’s responsibility and the extent to which it remains the shipper’s property whose fitness must legally be guaranteed by its owner. Indonesian maritime transport law has yet to provide an explicit answer to this intersection of obligations.¹⁷

A similar difficulty arises from the perspective of transfer of custody. Legal ownership of the container remains vested in the shipper, while factual custody may transfer to the carrier once the SOC is delivered and accepted for carriage. Ownership and custody therefore do not necessarily rest with the same party. Consequently, an ownership-based approach alone is insufficient to determine liability. Legal analysis must distinguish between liability arising from ownership, particularly the obligation to ensure container fitness, and liability arising from custody and performance of the carriage, particularly the duty to exercise proper care in safeguarding and handling the cargo.¹⁸

From the perspective of liability theory, the responsible party should therefore be determined through at least four parameters. First, duty, which identifies the legal obligations imposed respectively upon the shipper and the carrier.¹⁹ Second, breach, which determines whose obligation was not properly performed. Third, causation, which establishes whether that breach was causally connected to the cargo damage. Fourth, burden of proof, which determines which party, under the applicable presumption-of-liability regime, must establish the existence or absence of circumstances capable of excluding liability.

Accordingly, liability should not be determined merely by asking “who owns the container?” Instead, the analysis should identify who controlled the relevant source of risk and whose breach of legal duty constituted the effective cause of the loss.²⁰ Where the damage results from an SOC that was already unfit before carriage and the shipper, as owner, failed to comply with its maintenance obligations, liability may normatively be attributed to the shipper. Conversely, where the SOC was fit when delivered but the damage resulted from improper handling, stowage, lashing, collision, or inadequate supervision while in the carrier’s custody, liability should

¹⁷ Oktoviyanto, Parulian Napitupulu, and Muh. Fitriadi. “Tinjauan Hukum terhadap Perjanjian Pengangkutan Barang dengan Sistem Container (Suatu Studi di PT. Samas Kendari).” *Sultra Law Review* 1, no. 1 (2019): 115–129. <https://jurnal-unsultra.ac.id/index.php/sulrev/article/view/720/433>

¹⁸ Oktoviyanto, Napitupulu, and Fitriadi, “Tinjauan Hukum terhadap Perjanjian Pengangkutan Barang,” 115–29.

¹⁹ Maulinasari, Leyla. “General Review of Legal Relations and Responsibility of Carriers in Sea Transportation.” *International Law Discourse in Southeast Asia* 1, no. 1 (2022): 79–98. <https://doi.org/10.15294/ildisea.v1i1.56868>

²⁰ Kamaluddin, Muhammad Aqil, and Zahry Vandawati Chumaida. “Liability of Freight Forwarding Companies for Losses on Delivery of Fishery Products Due to Container Shortage Effects.” *Media Iuris* 8, no. 1 (2025): 113–136. <https://doi.org/10.20473/mi.v8i1.55052>

remain with the carrier. A situation of concurrent causation may also arise where both a defect in the SOC and the carrier's negligence contribute to the loss, thereby requiring an assessment of proportional or contributory responsibility.

A causation-based approach is also relevant to Supreme Court Decision Number 2665 K/Pdt/2022. Although the case did not specifically concern an SOC, it involved legal responsibility for damage to imported fishery products within the maritime transportation chain. The case illustrates that liability for cargo damage cannot be attributed simplistically to a single party but must instead be examined by reference to the legal position of the parties, the stage at which the damage occurred, and the actual source of the loss.²¹

The principal legal issue concerning SOC's is therefore not merely the absence of the specific term Shipper-Owned Container from the Shipping Law. Rather, the central problem lies in the absence of a sufficiently explicit rule of attribution connecting container ownership and fitness, transfer of custody to the carrier, and the causal relationship between container condition and carrier conduct. This regulatory fragmentation creates the possibility that a carrier may be held liable for losses actually arising from an unfit SOC, while conversely allowing a carrier to rely excessively upon the container's SOC status to avoid responsibility for losses caused by its own negligence.

Accordingly, liability should be allocated by reference to the source of the relevant legal duty, control over the risk, causation, and burden of proof. Ownership of an SOC does not, by itself, determine liability. The analysis must distinguish between the shipper's responsibility for container fitness and the carrier's responsibility for cargo care, while taking into account the principles of presumption of liability, due diligence, good faith, and sphere of control. Such a framework is necessary to determine whether cargo damage should be borne by the shipper, the carrier, or both parties where their respective acts or omissions jointly contribute to the loss.

RESEARCH METHOD

This study employs a normative juridical method using statutory and conceptual approaches. The statutory approach is applied to examine the legal framework governing maritime transportation, carrier liability, container fitness, and the obligations of shippers under Indonesian law. The conceptual approach is used to analyze relevant legal doctrines and principles, particularly those concerning contractual liability, risk allocation, causation, due diligence, and the distinction between ownership and custody in the use of Shipper-Owned Containers (SOCs).²²

The study focuses on the legal status of SOC's and the allocation of liability between carriers and shippers for cargo damage arising during the carriage of goods by sea. The legal materials consist of primary legal materials, including applicable statutes and regulations relating to maritime transportation and containers, and

²¹ Bridail, Hasim Purba, Dedi Harianto, and Detania Sukarja. "Tanggung Jawab Hukum atas Kerusakan Produk Impor Hasil Perikanan di Pelabuhan: Studi Putusan Mahkamah Agung No. 2665 K/Pdt/2022." *Locus Journal of Academic Literature Review* 3, no. 3 (2024): 297–316. <https://doi.org/10.56128/ljoalr.v3i3.302>

²² Peter Mahmud Marzuki, *Penelitian Hukum*, Edisi Revisi (Prenadamedia Group, 2017).

secondary legal materials, such as legal textbooks, scholarly journal articles, and other relevant academic literature.

The materials are collected through library research and analyzed using descriptive-analytical and prescriptive legal analysis.²³ The descriptive analysis is used to identify and systematize the applicable legal rules, while the prescriptive analysis is employed to assess how liability should be allocated between carriers and shippers when cargo damage involves an SOC. Particular attention is given to the source of the damage, the parties' respective legal obligations, control over the relevant risk, and the applicable burden of proof. This study is limited to the normative legal aspects of SOC use and the allocation of responsibility in the carriage of goods by sea under Indonesian law.

This article treats SOC ownership as legally relevant only insofar as ownership corresponds to a contractual or statutory sphere of control. The shipper's ownership of a container may support duties concerning container fitness, maintenance before delivery to the carrier, packing, cargo securing, and the accuracy of declared weight. It does not, without more, establish liability for damage occurring after the carrier has accepted custody. Conversely, the carrier's custody does not make it responsible for a latent container defect, improper packing, or inaccurate VGM attributable to the shipper. Liability therefore turns on duty, control, breach, causation, and any applicable exoneration rather than ownership alone.

The International Convention for Safe Containers (CSC), ratified by Indonesia through Presidential Decree No. 33 of 1989, and the domestic container-fitness regime provide a safety framework that complements the contract-of-carriage rules. Government Regulation No. 31 of 2021 expressly places maintenance duties on the container owner. These rules are relevant to the condition of an SOC, while carrier liability for cargo remains governed by the commercial-code, shipping-law, contractual, and mandatory-liability rules applicable to the voyage. The regimes should therefore be read cumulatively rather than as competing sources of liability.

RESULTS AND DISCUSSION

The Legal Status of Shipper-Owned Containers in the Carriage of Goods by Sea

The use of containers in modern maritime export-import activities demonstrates that containers no longer function merely as packaging, but have evolved into unit load devices integrated into door-to-door logistics systems. This functional transformation carries legal consequences because containers serve not only as protective devices for cargo, but also as integral components of loading, placement, securing, carriage, and unloading operations. From a normative perspective, this position is consistent with Article 149 of the Indonesian Shipping Law, which requires every container used as part of the means of transport to satisfy applicable fitness requirements, while its handling, placement, and securing must comply with ship-safety standards. Accordingly, the law does not treat containers merely as physical objects, but also as objects to which specific legal obligations attach in the performance of maritime carriage. The legal issue becomes more complex where ownership of the container rests with different parties. In a Carrier-Owned Container (COC) arrangement, the container is owned or provided by the

²³ Peter Mahmud Marzuki, *Penelitian Hukum*, rev. ed. (Jakarta: Kencana, 2017).

carrier, whereas in a Shipper-Owned Container (SOC) arrangement, the container is owned or provided by the shipper. This distinction creates a separation between ownership and custody. Consequently, liability for cargo damage must be determined by reference to the source of the legal obligation, control over the relevant risk, and the causal relationship between the acts or omissions of the parties and the resulting loss. Where the damage originates from structural unfitness, defects, or the pre-existing condition of the SOC, liability is more closely attributable to the shipper as the container owner. Conversely, where the damage results from improper handling, lifting, stowage, lashing, or securing after the SOC has entered the carrier's custody, liability may remain with the carrier. Therefore, container ownership constitutes only the starting point for determining liability, while final attribution should be based on the principles of duty, custody, control, and causation.²⁴²⁵

In an SOC arrangement, ownership of the container remains with the shipper, while factual custody of the container may transfer to the carrier once the container has been accepted for carriage. Therefore, container ownership cannot serve as the sole basis for determining liability.²⁶ Responsibility for the fitness and initial condition of the container generally rests with its owner, whereas the duty to properly safeguard, handle, position, and transport the container attaches to the party exercising custody and control during the carriage process. This dual function of the container gives rise to a distinct legal issue, as ownership may rest with parties occupying different legal positions under the contract of carriage, namely the carrier or the shipper. Such differences in ownership structure have significant legal implications for the allocation of risks and liabilities arising from cargo damage during maritime transportation.²⁷

A Shipper-Owned Container (SOC) is a container owned or independently procured by the shipper for the carriage of its goods. In practice, the shipper may own or lease the container and deliver it for transportation after it has been packed with the relevant cargo. Physically, an SOC is not fundamentally different from a Carrier-Owned Container (COC), as both are generally subject to the same international safety and identification standards, including the Convention for Safe Containers (CSC) and the registration system administered by the Bureau International des Containers (BIC). The principal distinction between SOCs and COCs therefore lies not in their physical characteristics, but in their ownership structure and the corresponding allocation of legal responsibility.²⁸

²⁴ Levinson, Marc. *The Box: How the Shipping Container Made the World Smaller and the World Economy Bigger*. 2nd ed. Princeton, NJ: Princeton University Press, 2016.

²⁵ Transcon Indonesia. "SOC vs COC Containers: Which Is Best for Your Business?" Accessed September 9, 2026. <https://www.transcon-indonesia.com/en/blog/soc-vs-coc-containers-which-is-best-for-your-business>

²⁶ TGL Group. "SOC and COC Containers." Accessed September 9, 2026. https://www.tgl-group.net/id/search-detail1090_10_0.htm

²⁷ New Priok Container Terminal One (NPCT1). "General Conditions for Services and Facilities at NPCT1." Accessed September 9, 2026. <https://www.npct1.co.id/NPCT1-General-Conditions-for-Services-and-Facilities>

²⁸ Transcon Indonesia. "Container SOC dan COC: Mana Yang Terbaik?" Accessed June 9, 2026. <https://www.transcon-indonesia.com/id/blog/container-soc-dan-coc-mana-yang-terbaik>

A Carrier-Owned Container (COC) is owned or provided by the carrier or shipping service provider for use in transporting the shipper's goods. In such an arrangement, the carrier generally assumes responsibility for the provision, maintenance, and fitness of the container within the scope of its ownership and control. By contrast, under an SOC arrangement, the container is procured and managed by the shipper itself. Consequently, responsibilities relating to the ownership, maintenance, technical fitness, and continued suitability of the container primarily remain with the shipper as the container owner or provider.²⁹ This distinction has important legal implications for the allocation of liability. While the shipper bears responsibility for ensuring that the SOC is fit for its intended use prior to carriage, this does not automatically transfer all risks associated with cargo damage to the shipper. Once the container has been accepted into the carrier's custody, the carrier remains responsible for obligations arising from its handling, stowage, securing, carriage, and delivery of the container and its cargo. Accordingly, the legal consequences of using an SOC must be determined not merely by ownership, but by the respective duties, custody, control, and causal contribution of the shipper and the carrier.³⁰

The use of Shipper-Owned Containers (SOCs) in maritime transportation offers several advantages to shippers. First, shippers obtain greater autonomy and control over the containers they use, including the flexibility to determine shipment schedules according to their business needs without being subject to the container-use time limits commonly associated with Carrier-Owned Containers (COCs). In practice, such time restrictions may result in additional charges, including demurrage and detention, where containers are not returned within the period specified by the carrier.³¹ Second, SOCs may be repurposed after the cargo has been discharged, for example as project offices or temporary accommodation for workers at project sites. This provides additional flexibility, particularly for projects located in remote areas where supporting facilities are limited. These advantages enable SOCs to offer greater operational efficiency and logistical flexibility than COC arrangements.³² The practical benefits of SOCs have contributed to their increasing use in the carriage of goods by sea. Nevertheless, despite their growing commercial relevance, the use of SOCs has not yet been expressly and comprehensively regulated under Indonesian legislation, particularly with respect to their specific legal status and the allocation of responsibilities between shippers and carriers.³³

²⁹ Transcon Indonesia, "Container SOC dan COC: Mana yang Terbaik?," accessed June 9, 2026, <https://www.transcon-indonesia.com/id/blog/container-soc-dan-coc-mana-yang-terbaik>.

³⁰ IDS Attorneys. "Navigating the Liability of Sea Carriers under the Indonesian Law." June 19, 2026. <https://idsattorneys.com/insight/navigating-the-liability-of-sea-carriers-under-the-indonesian-law>

³¹ Hariesh Manaadiar, "Difference between a Shipper Owned Container and a Carrier Owned Container," Shipping and Freight Resource, accessed June 9, 2026, <https://www.shippingandfreightresource.com/difference-between-a-shipper-owned-container-and-carrier-owned-container/>.

³² Nikaki, Theodora, and Barış Soyer. "A New International Regime for Carriage of Goods by Sea: Contemporary, Certain, Inclusive AND Efficient, or Just Another One for the Shelves?" *Berkeley Journal of International Law* 30, no. 2 (2012): 303–348. <https://doi.org/10.15779/Z38866J>.

³³ Ilyas, Reynalda Basya, and Setyawati Fitrianggraeni. "Liability and Legal Considerations Under a Bill of Lading in Indonesia." *Lexology*, May 22, 2024. <https://www.lexology.com/library/detail.aspx?g=ff9aaa87-a07e-4260-ad0d-ff6d4e1a4ff7>

The legal status of Shipper-Owned Containers (SOCs) has not yet been expressly and specifically regulated within the principal framework of Indonesian maritime transport law, particularly under the Indonesian Commercial Code (Kitab Undang-Undang Hukum Dagang or “KUHD”) and the Shipping Law. This regulatory gap has generated uncertainty regarding the precise legal position of SOCs and the allocation of rights and obligations arising from their use. In the context of carriage of goods by sea, the legal relationship generally involves two principal parties, namely the shipper and the carrier.³⁴ Article 466 of the KUHD defines a carrier in the carriage of goods by sea as a party who, under a time charter, voyage charter, or another form of agreement, undertakes to perform the carriage of goods wholly or partly by sea. Article 468(1) of the KUHD further reflects a distinction between the carrier and the shipper, insofar as the shipper or cargo owner does not necessarily possess the means of transport required to perform the carriage and therefore relies on the carrier to deliver the goods to the consignee. In such circumstances, the legal functions of the shipper and the carrier are performed by different parties with distinct rights and obligations. By contrast, the Shipping Law does not provide a specific definition of the carrier equivalent to that contained in Article 466 of the KUHD. This normative distinction becomes particularly relevant in SOC arrangements because the shipper may simultaneously act as the cargo owner and the owner or provider of the container, while the carrier retains responsibility for the performance of the maritime carriage. Consequently, the absence of an explicit statutory formulation concerning SOCs creates interpretative uncertainty as to how ownership of the container should interact with the respective legal responsibilities of the shipper and the carrier.³⁵

Abdulkadir Muhammad defines a carrier as a business operator engaged in the provision of transportation services, either by using its own means of transport or by utilizing transportation facilities owned by another party under a lease agreement.³⁶ The United Nations Convention on the Carriage of Goods by Sea 1978 (Hamburg Rules) distinguishes between two categories of carriers, namely:

1. Carrier, meaning any person by whom or in whose name a contract of carriage of goods by sea has been concluded with a shipper; and
2. Actual Carrier, meaning any person to whom the performance of the carriage, or part of the carriage, has been entrusted by the carrier, including any other person to whom such performance has subsequently been entrusted.

Although the Indonesian Shipping Law does not expressly and specifically regulate Shipper-Owned Containers (SOCs), their legal position may nevertheless be examined through the statutory provisions governing containers. A container is

³⁴ Anantyo, Sendy, Herman Susetyo, and Budiharto. “Pengangkutan Melalui Laut.” *Diponegoro Law Review* 1, no. 4 (2012): 1–7. <https://www.neliti.com/publications/19496/pengangkutan-melalui-laut>

³⁵ Fitrianggraeni, Setyawati, Reynalda Basya Ilyas, and Fildza Nabila Avianti. “Indonesia: Introduction to the Overview of Carriage of Goods by Sea.” *Anggraeni and Partners (ACTIO Insight)*. Accessed September 9, 2026. <https://www.ap-lawsolution.com/actio/indonesia-introduction-to-the-overview-of-carriage-of-goods-by-sea>

³⁶ Abdulkadir Muhammad, *Hukum Pengangkutan Niaga* (Bandung: Citra Aditya Bakti, 2013), 93.

generally understood as a specially designed, standardized unit capable of repeated use for the storage and transportation of cargo.³⁷

Article 40 of the Shipping Law imposes a statutory duty upon water transportation companies to ensure the safety and security of the goods entrusted to them for carriage. This responsibility is further elaborated in Article 41(1), which encompasses the destruction, loss, or damage of cargo, delays in the carriage of goods, and losses suffered by third parties. However, the carrier's liability is not absolute. Pursuant to Article 41(2), the carrier may be wholly or partially released from liability where it can establish that the loss was not attributable to its fault.³⁸ Normatively, this framework reflects the principle of presumption of liability, under which the carrier is presumed responsible for cargo damage occurring within its period of responsibility but retains the opportunity to rebut that presumption by proving the existence of circumstances excluding its fault. In the context of an SOC, this provision becomes particularly significant where the damage originates from the container's pre-existing condition, structural defect, or other circumstances falling within the shipper's sphere of responsibility.³⁹

Allocation of Liability for Cargo Damage during Carriage by Sea Using Shipper-Owned Containers

The law of carriage recognizes several principles governing carrier liability. Such liability attaches to the carrier as a legal obligation arising from the contract of carriage, whether the subject of transportation is passengers or goods.⁴⁰ In line with this principle, Article 468(1) of the Indonesian Commercial Code (Kitab Undang-Undang Hukum Dagang or "KUHD") provides that the carrier's principal obligations are to perform the carriage and to safeguard the goods from the time they are received from the shipper until they are delivered to the consignee.⁴¹

Article 468(1) of the Indonesian Commercial Code (Kitab Undang-Undang Hukum Dagang or "KUHD") establishes the carrier's fundamental obligation to perform the carriage and to safeguard the goods from the moment they are received from the shipper until their delivery to the consignee. This general obligation is further specified in Article 180(2) of Government Regulation Number 20 of 2010 concerning Water Transportation, which provides that a water transportation company is responsible for vessel cargo according to the type and quantity stated in the cargo documents and/or the agreed contract of carriage. Read systematically,

³⁷ Rizky Imam Muda, Yursal Yursal, and Irma Handayani, "Sistem Informasi Manajemen Operasional Bongkar Muat Container Berbasis Web pada PT. Prima Indonesia Logistik Belawan," *Jurnal Inovasi Manajemen, Kewirausahaan, Bisnis dan Digital* 1, no. 4 (2024): 71–81, <https://doi.org/10.61132/jimakebidi.v1i4.377>.

³⁸ Hadi, Luthfil. "Resume: Container Shortage di Indonesia." *Indonesia Shipping Gazette*, 2021. Accessed November 10, 2022. <https://indoshippinggazette.com/2021/resume-container-shortage-di-indonesia/>

³⁹ Fitriangraeni, Setyawati, Reynalda Basya Ilyas, and Tiyan Sigi Pertiwi. "Snapshot: Carriage of Goods by Sea in Indonesia." *Lexology*, June 17, 2025. <https://www.lexology.com/library/detail.aspx?g=27689cc7-a8ef-4e19-9563-604bc1cc6c55>

⁴⁰ Djafar Al Bram, *Pengantar Hukum Pengangkutan Laut (Buku II): Tanggung Jawab Pengangkut, Asuransi, dan Incoterm* (Jakarta: Pusat Kajian Ilmu Hukum, Fakultas Hukum Universitas Pancasila, 2011), 3.

⁴¹ Wuri Adriyani and H. Samzari Boentoro, *Buku Ajar Hukum Pengangkutan* (Surabaya: Fakultas Hukum Universitas Airlangga, 2007), 41.

these provisions establish the carrier's period of responsibility over cargo once it has been accepted for carriage. However, neither provision should be construed as imposing absolute liability upon the carrier for every loss occurring during that period, particularly where the source of the loss originates from an object, condition, or obligation legally attributable to the shipper.

This distinction becomes particularly significant in a Shipper-Owned Container (SOC) arrangement. Although the SOC enters the carrier's operational custody for the purpose of transportation, ownership of the container remains with the shipper. Government Regulation Number 31 of 2021 expressly recognizes the legal consequences of container ownership. Article 120(1) requires the container owner to maintain the container so that it continues to satisfy applicable fitness requirements, while Article 122(1) places responsibility upon the owner to guarantee that the container remains fit both during storage and use. Accordingly, the shipper in an SOC arrangement possesses a dual legal capacity: first, as a party to the contract of carriage that delivers cargo to the carrier; and second, as the container owner upon whom an independent statutory duty concerning container fitness is imposed. The transfer of factual custody to the carrier therefore does not extinguish the shipper's pre-existing responsibility for the structural condition and fitness of the SOC.

The relationship between Article 180(2) of Government Regulation Number 20 of 2010 and Articles 120 and 122 of Government Regulation Number 31 of 2021 should therefore not be understood as creating competing or mutually exclusive liability regimes. Rather, the provisions establish different but complementary spheres of legal responsibility. The carrier bears responsibility for cargo care and risks arising from the performance of carriage within its custody and operational control, whereas the container owner bears responsibility for risks arising from the container's fitness, maintenance, and pre-existing structural condition. More detailed standards under Minister of Transportation Regulation Number PM 25 of 2022, including container fitness, the CSC Safety Approval Plate, and Verified Gross Mass (VGM), further provide normative benchmarks for assessing whether the shipper has fulfilled its statutory obligations as the owner or provider of the SOC.

Consequently, the use of an SOC gives rise to a legal separation between ownership, custody, and liability. Ownership determines the party upon whom the statutory duty of container fitness primarily rests, while custody identifies the party exercising factual control over the container during a particular stage of carriage. Neither factor, however, is independently determinative of liability.⁴² Where cargo damage results from a structural defect, inadequate maintenance, improper stuffing, inaccurate VGM, or another condition existing within the shipper's sphere of responsibility, the carrier may invoke such circumstances to demonstrate that the loss was not attributable to its fault. Conversely, where an SOC was fit when delivered but the damage resulted from improper handling, lifting, stowage, lashing, securing, or other negligent conduct after the container entered the carrier's

⁴² Girvin, Stephen. *Carriage of Goods by Sea*. 3rd ed. Oxford: Oxford University Press, 2022. <https://doi.org/10.1093/law/9780198811947.001.0001>

custody, liability remains attributable to the carrier notwithstanding the shipper's ownership of the container.⁴³

Accordingly, the allocation of liability in an SOC arrangement must be determined through the interaction of four normative elements: legal duty, custody and control, breach, and causation. The decisive legal question is therefore not simply who owns the container or who possessed it when the damage was discovered, but whose legally imposed obligation was breached and whether that breach constituted the effective cause of the cargo loss. This construction prevents SOC ownership from becoming a blanket exemption for the carrier while simultaneously preventing the carrier from being held liable for risks that legally and factually originated within the shipper's sphere of control.⁴⁴

Container fitness is further regulated under Government Regulation Number 31 of 2021 concerning the Administration of the Shipping Sector. Article 120(1) requires the container owner to carry out maintenance so that the container continuously satisfies applicable fitness requirements. Article 122(1) further provides that the container owner is responsible for ensuring that the container remains fit both during storage and use. These provisions have direct relevance to SOC arrangements because the shipper, as the party providing and owning the container, does not merely act as the party delivering goods for carriage but also assumes an independent legal obligation to ensure the fitness of the container. Such responsibility arises from the shipper's status as container owner and is therefore distinct from its position as a contractual party to the carriage agreement.⁴⁵ More detailed requirements concerning container fitness are provided under Regulation of the Minister of Transportation Number PM 25 of 2022 concerning Container Fitness and Verified Gross Mass. The Regulation governs the fitness requirements applicable to containers used in transportation, including compliance with the Safety Approval Plate requirements derived from the International Convention for Safe Containers 1972 (CSC 1972), as well as requirements concerning the Verified Gross Mass (VGM).⁴⁶

Accordingly, the use of a shipper-owned container remains subject to mandatory container-fitness standards. Before an SOC is accepted for carriage aboard a vessel, the shipper, as container owner, must ensure that the container satisfies the applicable safety requirements, including the requirements associated with the CSC Safety Approval Plate. Such a plate serves as evidence that the container has satisfied internationally recognized safety standards established

⁴³ Yilmaz, Mustafa. "The Impact of Containerisation on Carrier Liability." NUS Law Working Paper No. 2025/001, NUS Centre for Maritime Law Working Paper 25/01. Singapore: National University of Singapore, 2025. <https://doi.org/10.2139/ssrn.5122116>.

⁴⁴ Marbun, Christian Dody Diori. "Corporate Criminal Liability For Environmental Crimes in Indonesia: A Normative Legal Analysis." *International Journal of Sociology and Law* 3, no. 2 (2026): 34–41. <https://doi.org/10.62951/ijsl.v3i2.919>

⁴⁵ Hukumonline Pro. "Government Introduces New Provisions on Inspection, Testing and Certification Procedures in Order to Ensure Vessel Safety." Accessed September 9, 2026. <https://pro.hukumonline.com/a/lt613f069312bb9/government-introduces-new-provisions-on-inspection--testing-and-certification-procedures-in-order-to-ensure-vessel-safety/>

⁴⁶ Hanum, Paujiah, Rani Ika Pratiwi, Iqbal Doly Indra Utama, Yasir Muslim, and Mella Ismelina Farma Rahayu. "The Principle of Strict Liability in Legal Responsibility for Environmental Pollution: A Conceptual Analysis." *International Journal of Educational Research & Social Sciences* 6, no. 3 (2025): 259–261. <https://doi.org/10.51601/ijersc.v6i2.943>

under the CSC framework. However, the container owner's obligation to ensure container fitness must be distinguished from liability for damage to the cargo contained within it. Ownership of an SOC determines which party bears responsibility for the container's condition, maintenance, and initial fitness, but it does not automatically determine responsibility for every instance of cargo damage. Liability for damaged cargo must instead be assessed by reference to the respective legal obligations of the parties and the actual cause of the damage.⁴⁷

The container owner's obligation to ensure the fitness of the container must be distinguished from liability for the cargo contained therein. Ownership of an SOC primarily determines the party responsible for the condition, maintenance, and fitness of the container itself, but it does not automatically determine liability for every instance of cargo damage. Responsibility for cargo damage must instead be assessed on the basis of the respective legal obligations of the parties and the actual cause of the loss. In transport law, carrier liability is generally discussed through several liability principles, including:

1. liability based on fault;
2. presumption of liability;
3. limitation of liability;
4. absolute or strict liability; and
5. presumption of non-liability.

With respect to liability for cargo, Article 40(1) of Law Number 17 of 2008 concerning Shipping provides that water transportation companies are responsible for the safety and security of passengers and/or goods carried by them. This responsibility is further reinforced by Article 41(1), which provides that water transportation companies are liable for vessel cargo, including the destruction, loss, or damage of the goods carried, as stipulated in point (b). Accordingly, the use of a Shipper-Owned Container (SOC) does not, in itself, transfer the carrier's responsibility for the cargo to the shipper.

However, such liability is not absolute. Pursuant to Article 41(2) of the Shipping Law, a water transportation company may be wholly or partially relieved from liability where it is able to prove that the loss was not caused by its fault. In the context of a Shipper-Owned Container (SOC) arrangement, this provision must be read in conjunction with the shipper's responsibility as the container owner and its obligations in relation to the goods delivered for carriage.⁴⁸ Article 178 of Government Regulation Number 20 of 2010 concerning Water Transportation further requires the owner or shipper of the goods to provide information regarding the general characteristics of the cargo and the manner in which it should be handled, while also placing responsibility upon that party for the accuracy of such information. Accordingly, where cargo damage is attributable to inaccurate information, improper handling instructions, or circumstances falling within the

⁴⁷ BCI Editor. "Panduan Lengkap Membaca & Memahami Plat CSC (Container Safety Convention)." *PT BCI*, May 28, 2026. <https://pt-bci.com/panduan-membaca-plat-csc-container/>

⁴⁸ Siahaan, Richa Yohana Rusli, Martono Anggusti, and Fadillah Haryono. "Responsibility of the Expedition Company to Sea Freight Service Users Who Experience Loss and Damage to Goods in the Port Area." *Golden Ratio of Data in Summary* 5, no. 1 (2025): 23–31. <https://doi.org/10.52970/grdis.v5i1.818>

shipper's sphere of responsibility, such factors may constitute a basis for the carrier to rebut the presumption of liability.⁴⁹

Accordingly, where cargo damage originates from the unfitness of an SOC, a pre-existing structural defect, improper stuffing, inaccurate cargo information, or another circumstance legally attributable to the shipper, such facts may constitute grounds for the carrier to rebut the presumption of liability. This construction is consistent with Article 468 of the Indonesian Commercial Code and Article 41(2) of the Shipping Law, both of which allow the carrier to avoid or reduce liability where it can establish that the loss did not result from its legally attributable fault. In an SOC arrangement, however, the carrier's exoneration cannot be based merely on the fact that the container is owned by the shipper. The decisive inquiry must concern the source of the relevant legal duty, the party exercising control over the risk when the damaging condition arose, and the causal connection between the alleged breach and the resulting cargo loss. Conversely, where an SOC was fit when delivered but the cargo was damaged as a result of negligent handling, lifting, stowage, lashing, securing, supervision, or other conduct occurring within the carrier's operational custody, the carrier remains liable notwithstanding the shipper's ownership of the container.

The applicable liability regime should therefore be characterized as a rebuttable presumption of liability rather than strict or absolute liability. Once cargo has been accepted into the carrier's period of responsibility and is subsequently lost or damaged, the statutory framework places the carrier in the position of having to establish circumstances capable of excluding or reducing its liability. Nevertheless, SOC arrangements introduce an additional normative dimension because the shipper simultaneously bears statutory obligations arising from its status as container owner, particularly in relation to container fitness and maintenance. Liability must therefore be determined through the interaction of duty, breach, custody and control, causation, and burden of proof. Container ownership constitutes only an initial indicator of responsibility; it cannot operate either as a blanket exemption for the carrier or as a sufficient basis for imposing all cargo-related losses upon the shipper. Where both an unfit SOC and negligent conduct by the carrier contribute materially to the damage, the legal analysis should further accommodate the possibility of concurrent causation, rather than forcing liability into an exclusively shipper-or-carrier framework.⁵⁰

This analysis demonstrates that the principal normative problem concerning SOC's is not a complete absence of regulation, but rather normative fragmentation and a liability-allocation gap. Indonesian law already regulates the carrier's responsibility for cargo, the container owner's duty to maintain container fitness, the shipper's informational obligations, and technical requirements concerning container safety. What remains insufficiently articulated is the legal mechanism

⁴⁹ Igrisa, Ridwanto, Budi Santoso, Ery Agus Priyono, and Yono Sugi Anom Darmawan. "Rekonstruksi Keadilan Kontraktual dalam Perjanjian Kemitraan BUMDesa Sebagai Instrumen Penguatan Ketahanan Pangan." *Private Law* 6, no. 2 (2026): 794–825. <https://doi.org/10.29303/5mh74s63>

⁵⁰ Letourneau, Keith B. "Maritime Transportation: Whose Responsibility Is It When Produce Arrives in Damaged Condition?" *Mainbrace*, September 2023. Blank Rome LLP. <https://www.blankrome.com/news-and-events/maritime-transportation-whose-responsibility-it-when-produce-arrives-damaged-0/>

connecting those separate obligations when cargo damage arises from overlapping sources of risk. A more specific regulatory framework should therefore clarify, at minimum, the point at which custody transfers to the carrier, the scope of the carrier's duty to inspect an SOC upon acceptance, the evidentiary consequences of latent container defects, the allocation of the burden of proof, the legal treatment of concurrent causation, and the permissible scope of contractual clauses reallocating SOC-related risks. Such clarification would provide greater legal certainty while preserving the distinction between the shipper's responsibility for container fitness and the carrier's responsibility for cargo care within its sphere of custody and control.

A workable decision rule is therefore sequential: identify the party that controlled the relevant risk; identify the contractual or statutory duty attached to that control; determine whether the duty was breached; establish causation between the breach and the cargo damage; and only then apply any statutory or contractual limitation, exemption, or indemnity. SOC ownership is an evidentiary starting point for some duties, not an automatic allocation of all cargo risk. The normative study does not reconstruct the technical cause of a particular casualty and therefore cannot determine liability without case-specific evidence.

CONCLUSION

A Shipper-Owned Container (SOC) constitutes a particular arrangement in the carriage of goods by sea in which the container is owned or provided by the shipper rather than by the shipping company. Although neither the Indonesian Commercial Code (Kitab Undang-Undang Hukum Dagang or "KUHD") nor the Shipping Law specifically regulates SOC as a distinct legal category, their use is generally governed in practice by contractual arrangements between the parties, established maritime practices, and the broader statutory framework governing carriage of goods and container fitness.

As in maritime carriage generally, the carrier remains principally responsible for the performance of the carriage from the time the goods are accepted for transportation until they are delivered to the consignee. However, in an SOC arrangement, the allocation of liability between the carrier and the shipper for cargo damage cannot be determined solely by reference to ownership of the container. Rather, liability must be assessed on the basis of the source of the damage, the respective legal obligations of the parties, the party exercising control over the relevant risk, and the causal relationship between the breach of those obligations and the resulting loss.

Accordingly, the carrier may be wholly or partially relieved from liability where it is able to establish that the cargo loss resulted from the inherent nature or condition of the goods, a pre-existing defect or unfitness of the SOC, or another circumstance attributable to the shipper as the container owner. This reflects the principle of presumption of liability, under which the carrier is initially presumed responsible for cargo damage occurring within its period of responsibility but may rebut that presumption by proving that the loss was not attributable to its fault. Conversely, where the damage results from the carrier's fault or negligence in handling, stowage, securing, carriage, or supervision of the cargo, liability remains with the carrier notwithstanding the fact that the container is owned by the shipper.

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