


Study of The Ruling of The Shipping Court in Burning Boat Accidents That Impact Losses Passenger as Consumers

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Abstract

Introduction: Passenger ship accidents frequently occur in Indonesian waters, resulting in injuries and fatalities. Unfortunately, the affected individuals only receive partial compensation from their travel insurance and are not granted full compensation under their consumer rights as outlined in Act Number 8 year of 1999 about Consumer Protection. This leaves them feeling disheartened about reclaiming their lost possessions.

Purposes of the Research: The article delves into the legal rights of passengers impacted by sea transportation accidents, covering physical injury, loss of life, and property damage. The Shipping Court conducted a thorough investigation into the incident involving KM Express Cantika 77 on October 24, 2022, with a strong focus on uncovering the cause and implications.

Methods of the Research: With normative juridical research methods, and based on literature data and the decision of the Shipping Court in the case of the burning of the Ferry KM Express Cantika 77 on October 24 2022 at 13.20 WITA in Naikliu Waters. By analyzing using a qualitative approach to determine the rights of passengers who got an accident.

Results of the Research: The Indonesian Shipping Court decides on passenger ship accident cases only by examining the causes and impacts of the accident. It is recommended that the Shipping Court become a special court, like other special courts such as the Industrial Relations, Fisheries, and Forestry Courts. These reforms will allow the Court to examine and prosecute based on the criminal, civil, and administrative aspects of shipping incidents.

Keywords: Shipping Court; Passengers; Consumer Losses.


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INTRODUCTION

The KM Express Cantika 77, a ferry or motor boat, serves as a sea transportation mode for residents of East Nusa Tenggara (NTT) who travel between Tenau Kupang Harbor and Kalabahi. However, on November 24, 2022, at precisely 13:20 WITA, a fire broke out in the Naikliu waters, resulting in 359 passengers and crew members (ABK), out of which 20 people died, 17 are still missing, and 322 survived.¹ The Indonesian Shipping Court decided Number H.K.212/10/IX/MP.2023, dated September 26, 2023, regarding this boat fire accident. The court declared that the cause of the fire could not be proven and released Suspect One, who was the boat's captain, and Suspect Two, who was the Head of the Engineering Room (KKM) of the boat, from their responsibilities.² The Shipping Court

¹ <https://www.cnnindonesia.com/nasional/20221102141406-12-868576/kapten-kapal-express-cantika-77-yang-terbakar-di-kupang-jadi-tersangka>

² <https://mahpel.dephub.go.id/web/doc/7f55d0a3-9b76-415f-8877-0ed988e953bb>

considered that the fire occurred due to technical factors, and its cause could not be proven. Therefore, the Captain received a temporary suspension of the Seafarer's Certificate for one month, while KKM received a warning as a sanction. The Captain was sentenced to two years and ten months in prison and a fine of Rp.10,000,000 (ten million rupiah) subsidiary to six months in prison in a criminal case at the Kupang District Court.³

Passengers who were victims of the KM Express Cantika 77 burning boat accident, received compensation and medical expenses from PT. Jasa Rahardja.⁴ However, passengers as users of sea transportation services are based on the provisions of Article 94 letter d of the Act Number 17 years of 2008 about Sailing (the Sailing Act), as amended by the Government Regulation instead of the Act (Perpu) Number 2 year of 2022 about of Job Creation, then revoked by the Act Number 6 year of 2023 (the Job Creation Act), that the shipping company (PT. Dharma Indah as the owner of the Cantika 77 Express boat) must be responsible for the safety of passengers as consumers during the cruise.⁵ In addition, Act Number 8 the year of 1999 about Consumer Protection (the Consumer Protection Act), it is the responsibility of the boat owner to provide compensation, compensation/replacement or losses resulting from the use of transportation services in the form of money, replacing goods, health care, and providing compensation.⁶

Passengers using sea transportation services have rights in case of accidents or losses. These rights include receiving insurance protection and optimal safety and security guarantees on ships. Therefore, shipping companies are responsible for any delay, damage, loss, or destruction of goods being transported, as well as injuries, or death of passengers. These responsibilities are outlined in existing shipping regulations.⁷

According to the trial in case Number H.K.212/10/IX/MP.2023 held by the Shipping Court, the burning of the Express Cantika 77 boat was caused by the General Service Pump emergency fire extinguishing pump not functioning properly. As a result, the fire hydrant was damaged, and the fire detection alarm on board the boat did not work. The Shipping Company, as the owner of the boat, is responsible for the accident and must maintain and preserve the boat's equipment, as stated in Point 26 Article 124 of the Job Creation Act. In the future, the authority of the Shipping Court needs to be taken into consideration in its decisions as supervisory and punitive verdicts regarding the ship's seaworthiness, as this has implications for control and supervision so that it can be optimized.⁸

Passengers who become victims of accidents while traveling by boat can take legal action against the ship owner through a consumer dispute resolution institution established at the consumer's place of residence. This can be done either individually or by joining forces with other affected passengers. Legal action can be taken in the form of a class action lawsuit for

³ <https://regional.kompas.com/read/2023/02/21/115745378/nakhoda-kapal-express-cantika-77-divonis-2-tahun-10-bulan-penjara>

⁴ Puspa, Anita Widya, 2023, *Kapal Cantika Express 77 Terbakar, Jasa Raharja Jamin Santunan Korban*, <https://finansial.bisnis.com/read/20221026/215/1591667/kapal-cantika-express-77-terbakar-jasa-raharja-jamin-santunan-korban>

⁵ Aditya Prayoga and Indri Fogar Susilowati, "Perlindungan Hukum Atas Keselamatan Penumpang Km. Kirana Ix Dalam Hal Terjadi Kecelakaan Kapal (Studi Di PT Dharma Lautan Utama Surabaya)," *Jurnal Novum* 2, no. 1 (2018): 1-13.

⁶ Asep Hakim Ariandi, Nandiny Pratiwi; Imaniyati, Neni Sri; Zakiran, "Pemenuhan Hak-Hak Konsumen Terhadap Insiden Kecelakaan Kapal Laut Yang Menimbulkan Kerugian Bagi Konsumen Dikatkan Dengan Undang-Undang No 8 Tahun 1999 Tentang Perlindungan Konsumen Jo. Undang-Undang No 10 Tahun 2009 Tentang Kepariwisataaan," *Bandung Conference Series: Law Studies* 3, no. 1 (n.d.): 436-42

⁷ Sandy, Noverian, 2019, *Perlindungan Konsumen Penumpang Jasa Angkutan Kapal Laut Yang Mengalami Kerugian Akibat Kecelakaan Di Laut*, <http://repository.unej.ac.id/handle/123456789/100062>

⁸ <https://www.uui.ac.id/mengenal-lebih-dekat-tentang-mahkamah-pelayaran-nasional/>

claims to district courts and bodies established to resolve consumer disputes.⁹ However, this process can be time-consuming as there are legal remedies available for parties who do not accept the decisions of these institutions. The Shipping Court's decision can serve as initial evidence for subsequent legal proceedings and may impose fines on the boat owners as compensation for the passengers' losses as consumer legal protection preventive and repressive protection.¹⁰ As per the Consumer Protection Act, the authority for other administrative sanctions must also be given to the Shipping Court.

METHODS OF THE RESEARCH

This paper uses normative juridical research methodology by collecting data through literature research and analyzing the Shipping Court's decision on the motor boat (KM) Express Cantika 77 that caught fire in Naikliu waters. The study will be descriptive and analytical with a qualitative approach, without using numerical data. The aim is to determine the role of the Service Court in providing legal certainty regarding the accountability of the parties involved in the boat accident. The accident resulted in losses for the passengers who were consumers of shipping services.

RESULTS AND DISCUSSION

A. Examination And Consideration Of The Decision Made By The Shipping Court In The Case Of The Burning Of The Motorboat KM Express Cantika 77

The Shipping Court under the Ministry of Transportation has decided with case number HK.212/10/IX/MP.2023, on September 26, 2023, regarding the ship accident that occurred on October 24, 2022. The accident involved the KM Express Cantika 77, which caught fire at 13:20 WITA in Naikliu Waters, located 6 nautical miles west of Naikliu Harbor, Kupang, East Nusa Tenggara.¹¹ Based on the examination and research done by the Shipping Court Panel Team, using files, documents, and information from the Preliminary Investigation Minutes (BAPP), as well as information and facts obtained from the Court trial, including the boat, boat documents, boat crew, weather conditions, cargo, boat stability, navigation and maneuvering boat, the Panel was able to determine the cause of the accident. They were also able to determine whether there was any error, negligence, or rescue effort made when the boat caught fire. This information can be used as a mitigating or burdensome factor for the Captain and Head of the Engineering Room.¹²

During the examination process, it was found that the cause of the burn was a combination of management factors, technical factors, and human error factors. This was proven based on the facts presented during the trial, including the Preliminary Investigation Minutes (BAPP), statements from the Captain and Head of the Engineering Room, witnesses, expert statements, and testimonies of witness First Boat Pilot and Electrical

⁹ Bobby Asmarinanda, "Pertanggungjawaban Pengusaha Pengangkutan Laut Ketika Mengalami Kebocoran Kapal," *Badamai Law Journal* 5, no. 1 (2021): 150, <https://doi.org/10.32801/damai.v5i1.10744>.

¹⁰ Putra, I Wayan Partama, Widastra, I Gede Agus Uji, Widyasrama, 2022, *Perlindungan Hukum Terhadap Penumpang Transportasi Laut Dari Sanur Menuju Nusa Penida Ditinjau Berdasarkan Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen*, *Majalah Ilmiah Universitas Dwijendra Denpasar*, Agustus 2022 (Accessed: 9 November, 9, 2023, at 09.13 PM)

¹¹ Kementerian Perhubungan, Mahkamah Pelayaran, 2023, "Sidang Pembacaan Keputusan Mahkamah Pelayaran tentang kecelakaan kapal terbakarnya Kapal Motor (KM) Express Cantika 77 di perairan Naikliu di posisi 6 Mil sebelah Barat Pelabuhan Naikliu pada hari Senin tanggal 24 Oktober 2022 sekitar pukul 13.20 WITA Kupang - NTT", <https://mahpel.dephub.go.id/web/doc/7f55d0a3-9b76-415f-8877-0ed988e953bb> (Accessed November, 7, 2023)

¹² Mahpel. *Op. Cit*

Expert from the Indonesian Classification Bureau (BKI). The trial sessions were held at the Harbor Master's Office of the Class III Port Authority, Kupang, on August 8, 9, and 10, 2023, and the Jakarta Shipping Court Office on August 24, 2023. Therefore, it cannot be fully charged to the Captain and Head of Engineering Room.¹³

According to the panel's examination results, it has been concluded that the KM Express Cantika 77 boat caught fire on October 24, 2022, at around 13.20 WITA in Naikliu waters, which is located at a distance of 6 nautical miles to the west of Kupang Harbor, NTT. The panel has found no evidence of technical factors being the cause of the boat fire, which means that the fault cannot be entirely attributed to the Captain and Head of the Engineering Room (the suspects). As a result, the suspects have been given a temporary suspension of the Seaman's Certificate for 1 (one) month and a warning.

On September 26, 2023, the Shipping Council Panel Team held a deliberation meeting to decide the KM Express Cantika 77 burnt incident that occurred on October 24, 2022. The decision was read openly to the public and is as follows: 1) The team declared that the cause of the fire cannot be proven legally and convincingly; 2) The team declared that there is no proof of error or negligence on the part of the Captain and the Head of the Engineering Room. Therefore, they are released from responsibility as stated in Article 249 of Law Number 17 of 2008 concerning Shipping (Sailing Law), which states that "Ship accident as intended in Article 245 (the ship caught fire) is the responsibility of the Master unless it can be proven otherwise."; 3) The Captain and the Head of the Engineering Room are declared as Suspect One and Suspect Two, respectively, due to their lack of carrying out an emergency response on board the boat for the Boat's Crew (ABK) and burnt extinguishing maintenance. This is considered a breach of the provisions of Article 342 of the Commercial Code (KUHD), which mandates that "the captain is obliged to act with intelligence, thoroughness, and sufficient wisdom to carry out his duties properly."; 4) The Captain, as Suspect One, is sentenced to temporarily revoke the Certificate of Seafaring Expertise issued by the Directorate of Shipping and Maritime Affairs, Directorate of Sea Transportation, for 1 (one) month; 5) The Head of the Engineering Room, Suspect Two, is imposed with an administrative sanction in the form of a Warning. He has an ATT-IV Seafaring Expertise Certificate issued by the Surabaya Shipping Polytechnic (POLTEKPEL).

The decision passed by Shipping Court Number HK.212/10/IX/MP.2023 on September 26, 2023, is an administrative sanction that only applies to seafaring professionals and nautical engineers. It does not involve any civil or criminal implications for the property loss and casualties caused by the burning boat accident, as stated by Etty R. Agoes.¹⁴ Upon examining the considerations of the Shipping Council Panel Team, it is evident that the boat caught fire due to technical factors, and the cause cannot be proven. By the Shipping Act's safety and security provisions, shipping companies and operators must anticipate technological advancements, adhere to international conventions, and utilize the latest safety equipment and infrastructure.¹⁵

¹³ *Ibid*

¹⁴ Agoes, Etty R., 2005, *Laporan Akhir Tim Analisis Evaluasi Peraturan Perundang-Undangan Tentang Yurisdiksi dan Kompetensi Mahkamah Pelayaran*, Badan Pembinaan Hukum Nasional (BPHN), p. 42, dari https://www.bphn.go.id/data/documents/yurisdiksi_mahkamah_pelayaran.pdf

¹⁵ <https://peraturan.bpk.go.id/Details/39060>, (Accessed November, 7, 2023 at 01.49 AM).

The Shipping Court was considering the emergency response readiness in the event of unsuccessful fire extinguishing efforts. The court found that the General Service pump emergency fire extinguishing pump is not functioning optimally, which means the fire hydrant cannot be operated because the emergency fire pump is damaged. Additionally, the fire detection alarm on board the boat is also not functioning properly.¹⁶ The responsibility for ensuring the proper maintenance and periodic checks of boats lies with boat owners and operators. This is necessary to maintain shipping safety and security and should be done in collaboration with the Master as the general manager, and the Head of the Engineering Room as the engine leader. According to Article 1 number 34 of Act Number 17 of 2008 about Shipping, certification after inspection and testing is required to prove boat safety.¹⁷

It is important to note that in case of an accident such as a fire on the KM Express Cantika 77 boat, the Captain and Head of the Engineering Room cannot be directly held responsible. However, it is crucial to ensure that proper maintenance standards are adhered to for all aspects related to shipping. This is to prevent any negligence on the part of the ship mechanic while providing sea transportation services that prioritize the safety and comfort of passengers. Additionally, it is important to uphold passengers' right to receive compensation in the event of any losses incurred.¹⁸ Actions of business actors (producers) can result in a loss for consumers when done on acts that have a criminal dimension with violations of norms-criminal law norms that have been regulated and designated as an act of resistance law.¹⁹

B. Legal Analysis Of The KM Express Cantika 77 Boat Accident, And Its Impact On Consumers

The Shipping Court decided the burning boat accident case of KM Express Cantika 77. This decision was based on executive authority, which is a quasi-court in the maritime sector. The court gave administrative sanctions to the Captain and the Head of the Engineering Room. The Kupang District Court followed up on this decision and conducted a criminal trial, which resulted in a conviction for the Captain (Edwin Pareda). He was found guilty of negligently sailing an unseaworthy vessel, which resulted in death. He was sentenced to imprisonment for 2 years and 10 months and was ordered to pay a fine of Rp. 10,000,000 (ten million rupiah) subsidiary to six months in prison. The verdict was delivered on Tuesday, February 21, 2023.

As per the ruling of the Kupang District Court, the Captain was aware that the boat was not seaworthy, which led to the loss of lives and property. This act of the Captain violated Article 302 Paragraph (3) of the Shipping Act, as amended by the Copyright Law Work.²⁰ In the case of the KM Express Cantika 77 boat fire incident, the Shipping Court found the Captain guilty of negligence in carrying out emergency procedures for the crew, and the maintenance of fire extinguishing equipment was not done properly. This was considered

¹⁶ Mahpel. *Op. Cit*

¹⁷ Hari Utomo et al., "Siapa Yang Bertanggung Jawab Menurut Hukum," 2017, 57-76.

¹⁸ Anonim, 2017, *Memahami Hak Konsumen dalam Kecelakaan Transportasi Laut*, <https://www.hukumonline.com/berita/a/memahami-hak-konsumen-dalam-kecelakaan-transportasi-laut-lt589975c814fbd/> (Accessed November, 7, 2023 at 02.30 AM).

¹⁹ Jopie Gilalo, J. (2023). Penerapan Sanksi Tindak Pidana Konsumen Dalam Kasus Kejahatan Bisnis. *Jurnal Ilmiah Living Law*, 15(2), 119-128.

²⁰ <https://www.katantt.com/artikel/46663/nakhoda-km-express-cantika-77-divonis-2-tahun-10-bulan-penjara-lebih-ringan-dari-tuntutan-jpu/> (Accessed November, 12, 2023 at 11.24 AM).

as non-good seamanship. Consequently, the Captain's Seafarer's Expertise Certificate was temporarily revoked for one month.

It has been observed that there is an error in the imposition of sanctions on the Master, as per the provisions of the Minister of Transportation Regulation Number 30 of the year 2022. This regulation amends the Regulation of the Minister of Transportation Number 6 of the year 2020, which defines the Procedures for the Examination of Ship Accidents. According to Article 48 paragraph (3) letter b of this Regulation, the sanctions for ship accidents resulting in casualties and loss of property range from 7 to 12 months. However, the sanctions imposed by the Shipping Court against the Captain only temporarily revoked the Seaman's Expertise Certificate issued by the Directorate of Shipping and Maritime Affairs. This certificate allows the Captain to serve on Indonesian-flagged commercial vessels for 1 month.

The KM Express Cantika 77 boat burning incident cannot exclude the responsibility of the boat owner (company) as a business entity providing shipping transportation services that led to the loss of passengers as consumers.²¹ Business actors have a responsibility to maintain passenger safety, but this responsibility has not been optimally fulfilled in this case. As a result, the emergency fire extinguishing pump GS (general service pump) was not functioning optimally, which led to the alarm fire detector malfunctioning.²²

Passengers who experience accidents or loss of life are only compensated by PT. Jasa Raharja is an accident insurance provider. However, business actors are not fully meeting their obligations as per Article 7 and Article 8 of the Consumer Protection Act. These obligations include consumers' right to obtain shipping transportation services. Consumers also face other losses such as maintenance, damage, and loss of property, as well as losses in the form of profits that they were expected to obtain from their lost or damaged property. Moreover, the lack of comfort, condition, and service of ships is not being given due consideration.²³

According to the legal perspective of consumer protection, responsibility refers to the availability of goods and/or services produced by business actors (producers). In case of an error or negligence in the product/service, resulting in a loss, the consumer can file a claim against the business actor for compensation within the scope of civil law. This is known as taking responsibility.²⁴ Concerning the KM Express Cantika 77 boat, there was an error or negligence on the part of the ship owner and the ship operator for not maintaining their general service pump. This resulted in the burnt boat incident not being immediately identified from the start. Therefore, the principle of responsibility based on the element of fault (fault liability or liability based on fault) applies generally in criminal and civil lawsuits.²⁵

In Indonesia, businesses are responsible for the products and services they sell. If consumers suffer losses or even loss of life, they can file a lawsuit for breach of contract or unlawful act (tort) as a legal action to obtain their rights. If consumers suffer losses due to

²¹ <https://mediaindonesia.com/nusantara/534765/pemilik-diminta-bertanggung-jawab-atas-kebakaran-kapal-express-cantika-77> (Accessed November, 7, 2023 at 10.56 PM)

²² Mahpel. *Op. Cit*

²³ Shofie, Yusuf, 2009, *Perlindungan Konsumen & Instrumen-Instrumen Hukumnya*, Bandung: PT. Citra Aditya Bakti, p. 229.

²⁴ Khoidin, M., 2022, *Tanggung Gugat dalam Hukum Perdata*, Yogyakarta: LaksBang Justitia, p. 17.

²⁵ Shidarta, 2006, *Hukum Perlindungan Konsumen Indonesia*, Jakarta: Gramedia Widiasarana Indonesia, p. 74.

negligence in maintaining the condition of the boat, they can file a claim for physical or property damages. This includes losses to the consumer and their family, as well as compensation for any loss of profit from the value of the property. As development of the law of competition, law enforcement of competition is not only subject to civil law but also contained criminal and administrative elements.²⁶

Consumers who wish to seek compensation from business actors can do so through consumer dispute resolution institutions or judicial institutions. This is based on regulations related to consumer protection, which state that business actors can be subject to administrative sanctions as outlined in Articles 60 to 63 of the Consumer Protection Act.²⁷ However, this process can be lengthy due to legal measures taken by both parties involved in the dispute. For instance, if a consumer files a claim against the owner of KM Express Cantika 77 boat for negligence in maintaining the general service pump, which caused the alarm detector to malfunction, it would be considered an unlawful act and subject to compensation.

Legal protection for passengers as consumers should not solely rely on the carrier's responsibility, such as providing life insurance for the families of deceased victims. The Shipping Law requires ships to be in good condition before sailing, and both the boat and its cargo must be insured in case of accidents. This is a consumer right regulated by other statutory provisions. Therefore, compensation for passengers involved in boat accidents should not only cover healthcare and life insurance but also compensate the families left behind and property losses.²⁸

It is important to grant the Shipping Court the authority to impose administrative sanctions and fines to expedite the resolution of compensation for boat accident victims. This can be achieved by expanding the jurisdictional authority of the Shipping Court, similar to the Admiralty Court or Tribunal Maritime established in other countries. This will enable the Court to not only investigate and prosecute the Captain and Ship Officers in case of accidents, but also handle administrative, civil, economic, criminal, and environmental issues.²⁹

With the expansion of the duties and authority of the Shipping Court, legal certainty can be provided by the Admiralty Court or Tribunal Maritime in cases of losses caused by boat accidents. This will enable compensation or reimbursement to be given to those parties who have suffered losses due to the impact of boat accidents at sea. Losses may not only include damage to the boat's cargo, but also economic losses for passengers. Furthermore, it may also be related to environmental damage due to marine pollution caused by fuel and materials originating from floating or sinking boats.³⁰

Indonesia's judicial system recognizes five special courts, which are the Human Rights Court, Corruption Court, Fisheries Court, Industrial Relations Dispute Settlement Court (PHI), and Forestry Court. These courts are still recruiting judges and are all under the

²⁶ "Problematika penegakan hukum persaingan usaha di Indonesia.Pdf," n.d.

²⁷ I Wayan Partama Putra, "Transportasi Laut Dari Sanur Menuju Nusa Penida Ditinjau Berdasarkan Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen Indonesia Adalah Negara Yang Mempunyai Jumlah Penduduk Yang Dapat Dikatakan Cukup Besar Serta Berpotensi Dalam Bidang SDM (" no. 0852 (2022): 55-67.

²⁸ Ariandi, *et. al*, *Op. Cit*

²⁹ Agoes, *Op. Cit.*, p. 33.

³⁰ *Ibid.*, p. 44.

Supreme Court.³¹ As a result, the Shipping Court's decision on Nautis is based on expert information on the causes of the accident. This information can be used for legal considerations in criminal cases and can serve as the basis for lawsuits or claims for civil compensation for the injured party.

CONCLUSION

The case of the burning ship Motor Boat (KM) Express Cantika 77, with Case Number: HK.212/10/IX/MP.2023, was decided by the Shipping Court on September 26, 2023. The decision found that the ship operator, specifically the Captain and Engine Officer (KKM), was negligent in carrying out regular maintenance and emergency response on board the boat, as well as fire extinguishing maintenance. This failure to carry out their profession as good sailors (good seamanship) was a contributing factor to the accident. However, despite the court's decision, it has not yet been able to provide a comprehensive resolution to those who were harmed by the accident, particularly the passengers who were consumers and had not received full compensation for their lost property and expected profits. To address this issue, the Shipping Court could expand its duties and authority, similar to special courts that handle human rights, corruption, industrial relations, PHI, and forestry cases. This expansion would enable the Shipping Court to examine and adjudicate criminal, civil, and administrative aspects, thereby providing a more comprehensive resolution to accidents like this in the future.

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³¹ <https://www.mkri.id/index.php?page=web.Berita&id=10227> (Accessed Desember, 5, 2023 at 09.42 P³¹ Agoes, *Op. Cit.*, p. 33.

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