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The Role of Legal Politics in Port Management in Indonesia

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Abstract

The complexity of problems that occur in Indonesian Ports, both Public Ports and Special Ports, from traditional small to large ports on a local, regional, national, and international scale, are problems related to inadequate port infrastructure and facilities, limited facilities, and overlapping port management, hampered intermodal transportation connectivity systems, the quality of Port management is not good, up to port standards that have not referred to International conventions. Legal politics has a vital role in forming Indonesian laws and regulations and national law, considering that the Legal Policy is used as a basic guideline in determining values, determining, forming, and developing national laws in Indonesia. Therefore, through explanatory research using the Normative and Conceptual approach, the author reminds us again that the shapers of laws and regulations should stick to the state goals to be achieved in making a legal product so that the sense of justice, expediency, and legal certainty for the community is always accommodated in every law created.

Keywords

Legal Politics, Governance, Regulation

1. Introduction

Indonesia's constitution has mandated a vision of the national economy within the framework of sovereignty and social welfare. Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia stipulates that the state controls the earth, water, and natural wealth contained therein. The main branches of production and control of the people's livelihood are controlled by the state and used for the welfare of the people, as confirmed in Article 33 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Following the paradigm of national economic development based on Pancasila, Indonesia's national economic system is a people's economic system based on kinship. This economic system is further re-mandated in Article 33 of the 1945 Constitution of the Republic of Indonesia, which is one of the strategies of the founding fathers in setting the basis for Indonesia's national economic development in the future.

The role of national legal politics is vital in achieving state goals. This is because the national law that will be being and has been applicable in the Unitary State of the Republic of Indonesia is used as a basic guideline in the process of determining values, determining, forming, and developing national law in Indonesia (Okprianti, 2018; Wahyudin, Darusman and Wiyono, 2019). The Indonesian nation's legal politics determines the nation's direction, Pancasila and the 1945 Constitution as the state philosophy (Fitriana, 2015). Pancasila philosophy is the view and guideline for the life of the Indonesian nation in accordance with the reality and development of Indonesian society. The direction and goals must be achieved, realizing social justice and community welfare.

One of the sectors that are very important for the lives of many people and vital for the country is the port sector when viewed in the State of Indonesia with its strategic position as a country that is geographically the largest archipelago in the world. This

affirmation is not without reason because physical facts prove that Indonesia was formed from the configuration of islands totaling about 17,508 with a coastline of 81,000 km and a sea area of about 5.8 million km (Patittingi, 2012, pp. 1–2). Indonesia's strategic position, located in the stopover of world trade routes, makes ports in Indonesia have a vital role in encouraging the country's economic growth. Ports are one of the sectors related to many people's lives, so state control of this sector is a constitutional mandate, especially Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. This article has explicitly mandated that the state exercise control over the branches of production that are important to the state for the prosperity of the nation (Hamzah, 2012, p. 3). Therefore, the rules in port governance by the central government are focused on economic objectives (such as economic growth and employment opportunities) through an active port policy (Panjako *et al.*, 2020).

State control in the port sector, in general, carries out 2 (two) functions, namely, Government functions carried out by the Port Authority and business functions carried out by Port Business Entities (BUP), including State-Owned Enterprises. The operation of the commercial port sector in Indonesia is carried out by PT Pelabuhan Indonesia (Persero) as a State-Owned Enterprise, both by PT. Pelabuhan Indonesia (Persero). Pelindo I, II, III and PT. Pelindo IV. Based on PP Number 56 of 1991, PT Pelabuhan Indonesia I (Persero) was formed, which is domiciled at Belawan Port, Medan. PT Pelabuhan Indonesia II (Persero), which is domiciled at Tanjung Priok Port, Jakarta was formed with PP Number 57 of 1991. PT Pelabuhan Indonesia III (Persero) which is domiciled in Tanjung Perak Port Surabaya was formed with PP Number 58 of 1991. Meanwhile, PT Pelabuhan Indonesia IV (Persero), domiciled in the Port of Makassar, was formed with PP Number 59 of 1991.

The establishment of State-Owned Enterprises in the port sector is to carry out business activities by managing 111 public ports categorized as commercial ports throughout the Territory of the Republic of Indonesia. According to PP Number 59 of 1991 concerning the Transfer of the Form of a Public Company (PERUM) port IV into a Company (PERSERO), SOEs is a representation of the state to carry out management functions that are not capable of being pursued directly by the government. Therefore, the presence of SOEs engaged in implementing services and public interests or "public service" and "public utilities" is vital for the state. This is why the state's control of important branches of production and controlling the lives of many people is significant, and its management cannot simply be handed over to private enterprises (Khemavuk & Leenatham, 2020).

Currently, in Indonesia, there are around 1,700 ports, both public ports and particular ports. Of these, there are around 111 public ports categorized as commercial ports and managed by four State-Owned Enterprises (SOEs), namely Port of Indonesia I, PT Pelabuhan Indonesia II, PT Pelabuhan Indonesia III, and PT Pelabuhan Indonesia IV; in addition, there are around 614 non-commercial ports managed by the Technical Implementation Unit (UPT) under the Ministry of Transportation (Lembaga Kajian Persaingan dan Kebijakan Usaha Fakultas Hukum Universitas Indonesia, 2015). Of the number of ports, both commercial ports and non-commercial ports, from the point of view of business actors, ports in Indonesia have not been managed and produced a good performance, even though ports in Indonesia have the opportunity to develop dynamically

and can provide growth to the Indonesian economy (Hidayati *et al.*, 2021), So that to improve performance in the port sector, Indonesia has made various efforts to regulate ports and reform regulations, including changes in Law Number 21 of 1992 concerning Shipping which was repealed and replaced by Law Number 17 of 2008 concerning Shipping, because there have been changes in conditions and the strategic environment, both in the Indonesian constitutional system such as the application of regional autonomy or advances in the fields of science and technology. Its implementation allows port authorities to develop into real digital hubs and neutral data managers, ultimately leading to the optimization of port processes and more efficient use of transportation infrastructure (Tijan *et al.*, 2021).

Based on the description in the General Explanation of Law Number 17 of 2008, one of the primary materials regulated in this law is the elimination of monopolies in the operation of ports, the separation between the functions of regulators and operators, and providing the role of local and private governments in proportion in the implementation of ports. This is expected to be able to solve problems that occur in the shipping sector, especially port activities. Furthermore, the main goal is that the port has its laws so that the element of certainty and fairness in the port business can be guaranteed through the constitution (Tentowi, 2019). This shows that the shipping law has introduced new policies in port administration, the separation of regulatory and operator functions, and the proportional role of local and private governments in port administration (Koul, Samantaray, & Atul, 2021).

Based on the explanation of Article 24 paragraph (1) of Law Number 17 of 2008, which states that transportation to and from remote and undeveloped areas with areas that have developed or developed is organized by the Government by involving implementers of transportation in the waters, both private and cooperative. This is the basis or foundation for reforming the port system in Indonesia as a whole by abolishing the state monopoly on the port sector and opening up opportunities for a new participation in the private sector and cooperatives. However, this will undoubtedly cause competition in the port sector, which can suppress or reduce prices and, in general, will improve port services. The government then issued an implementing regulation of the Shipping Law, namely PP Number 61 of 2009 as amended by PP Number 64 of 2015 concerning Amendments to PP Number 61 of 2009 concerning Port, as well as several Regulations of the Minister of Transportation. This regulation is intended as a basis for creating a framework in port management so that investors do not face policy vacancies and can know exactly what processes to follow and what should be obtained, as well as from which institutions such permits were obtained (Magnaye *et al.*, 2020).

Based on PP Number 64 of 2015, SOEs in the Port sector, in this case, PT Pelindo I, II, III, and IV, still have governance authority over other ports (which are likely to compete) in their respective geographical control areas. Following the Law on Shipping, most of the governance authority at the port level will rest with the newly formed port authority. Pelindo's role, at least on paper, was subsequently relegated to port operator. However, in reality (dass seen), various problems in the field still cause these regulations not to be implemented optimally. Among these problems are differences in interpretation

related to the provisions regarding concession authority between the government, in this case, the Ministry of Transportation as the Port Authority, and state-owned enterprises in the port sector, which in this case include PT Pelindo I, II, III and PT Pelindo IV as port operators.

Based on the provisions of Article 74 PP Number 61 of 2009 concerning Port which states that concessions are given to port business entities that carry out activities of providing and servicing ships, passengers, and goods as referred to in Article 69 paragraph (1) of PP Number 61 of 2009 concerning Port. The granting of concessions to port business entities is carried out through an auction mechanism, which is then stated as an agreement. Based on the provisions of Article 74 PP Number 61 of 2009, it can be interpreted that SOEs that carry out port business activities should get concessions for port operations that have been carried out so far. However, in other provisions, it is stipulated that the SOEs in question still organize business activities at ports that SOEs have organized. This follows the transitional provisions of Article 344 paragraph (3) of the Law on Shipping. Therefore, port SOEs no longer need to get concessions in implementing port business activities that have been carried out.

2. Theoretical Framework

Legal politics in Indonesia is the basic policy of state organizers in the field of law that will be, is, or has been in force. The basic policy is derived from the values that prevail in society to achieve the goals of the country to which it aspires. Government is defined as "The authoritative. The concept of good governance or better known as good corporate governance, has provided much inspiration, especially among developing countries in the Asian Region, South Africa, and Latin America, in reforming state institutions in general and reforming the government system in particular, in order to realize the promised development goals and democratic ideals (Hidayat, 2018; Mote, 2020). However, as Grindle points out, the main challenge for the concept of good governance is whether one size fits all? Grindle further explains, "a universal standard is essential in setting international development agendas, but it has also proved to be unrealistic and frustrating, especially for countries with the farthest (Grindle, 2011; Łukasz Hard, 2012; Xiuling Zhan, 2019). The proposition put forward by Grindle is very relevant to be considered in responding to the existence of policy concepts and applications good governance is in the process of reforming the system of government and development in the country today.

Pierre and Peters, in a theoretical review of *The New Emerging way of thinking about government*, very explicitly signal that the basic concept of governance lies in two main issues, namely the change in the role of society in the implementation of government on the one hand, and changes in the capacity of government to respond to and fight for the collective interests of society based on the existing corridors of institutions, on the other hand. In the complete formulation of the language, Pierre and Peters mention (Pierre, J. and Peters, 2000)" the heart of democratic government or good governance concept are the government changing role in society and its changing capacity to pursue collective interest under severe external and internal constrains." The micro level, the notion of governance is related to how the four arenas, political institutions-civil society-economic communities,

relate to each other to solve various problems faced to achieve state goals (Hidayat, 2018, p. 152). Furthermore, according to UNDP (United Nations Development Program), the characteristics or principles that must be adopted and developed in the practice of implementing good governance, such as; participation, rule of law, transparency, responsiveness, consensus orientation, equity, effectiveness and efficiency, accountability, strategic vision (strategic holders) (Nurcholis, 2005, pp. 300–301).

In addition to the concept of Good Corporate Governance, one of the objects in this study is PT. Pelindo is included in the category of State-Owned Enterprises (SOEs), so port management activities must also be subject to rules on the implementation of good governance in SOEs based on the provisions of Article 5 paragraph (3) of Law Number 19 of 2003 concerning SOEs, which states that "in carrying out their duties, members of the Board of Directors must comply with the articles of association of SOEs and laws and regulations and are obliged to implement the principles of professionalism, efficiency, transparency, independence, accountability, accountability, and fairness." Similarly, the commissioners and supervisory boards, as stipulated in the provisions of Article 6 paragraph (3) of Law Number 19 of 2003 (Article 6 paragraph (3) of Law Number 19 of 2003 concerning SOEs, states that, "In carrying out their duties, the Commissioner and the Supervisory Board must comply with the Articles of Association of SOEs and the provisions of laws and regulations and are obliged to implement the principles of professionalism, efficiency, transparency, independence, accountability, accountability, and fairness).

3. Methodology

This research is research in the field of law. This type of research is normative research, namely legal research, whose study includes statutory provisions (in the abstract), especially those related to government policies in the management of commercial ports, which are then connected with their application in the field (In concreto). The type of research is descriptive; that is, it explains clearly and systematically. The legal research in this study uses a statute approach to conduct a systematic review of the norms in all laws and regulations, doctrines, and legal principles related to the regulation of port management in positive Indonesian law. The following approach is through a historical approach carried out by tracking and examining the background of regulatory formulation and the history of port management to reveal the philosophy and direction of legal politics and its relevance in realizing Indonesia as a maritime axis. This research also uses a comparative approach by comparing one or more countries' regulation and management concepts regarding port governance. The *last approach* is a conceptual approach used to carry out legal constructions that move from the doctrines, theories, and views that develop in legal science to find the ideal concept of commercial port governance arrangements in the development paradigm maritime axis.

Legal materials and data sources used in normative legal research include primary data obtained from the first source, namely respondents, and direct observations in the field, especially from PT Pelindo IV, the Ministry of Transportation, and the DPR. This study uses primary data from positive legal norms in the form of laws and regulations following the *stufenbau* theory from Hans Kelsen. *Secondary data* is data obtained in the form of

doctrines and legal opinions obtained from legal literature. For example, literature books, court decisions, magazines, scientific journals, papers, research results, opinions of legal scholars, legal practitioners, and legal views related to the concept of port governance; and Data collection techniques used in this study are interviews and documentation. The data obtained in the field will be analyzed according to the characteristics of the data concerned. Data in the form of numbers will be made in the form of a table and then explained descriptively. Data analysis is carried out qualitatively; that is, the data collected, both secondary and primary data, are compiled and analyzed qualitatively by interpreting, describing, describing, and compiling them systematically following the research objectives.

4. Result

Law is a political product so that political circumstances will birth laws of a particular character following the direction of political policy. The basic assumption of the thought is that any legal product will be primarily determined by the political configuration that gave birth to it. This is based on the fact that every legal product is a political decision, so the law can be seen as the crystallization of political thought that interacts with each other among politicians in giving birth to the legal product in question. Although from the point of view of "das sollen," there is a view that politics should be subject to the provisions of the law, from the point of view of "das Sein," it is the law that, in reality, is determined by the political configuration that gave birth to it, So that in general, among legal experts, there are at least two groups of opinions regarding the causality relationship between politics and law, namely:

- a. The opinion of idealists who adhere more to the side of "das sollen" by saying that the law must be able to control and engineer the development of society, including its political life. The legal experts who hold this view include Roscoe Pound's opinion that "law is a tool of social engineering." In this case, it is natural that there is a desire to lay down the law as a determinant of the direction of travel of society since it is relevant to the legal function of guaranteeing and protecting the interests of its people.
- b. The opinion of realists who see that the law always develops following the development of its society. This is following the opinion of Von Savigny. This means that the law will be an independent variable over the circumstances outside it, especially its political state.
- c. The general criticism leveled at law practice in Indonesia, especially by 'deterministic' people, lays down the law as a tool of power. The law is given a function, mainly as an instrument of development programs. Thus, it appears that the law is produced to facilitate and support politics. As a result, any regulations and legal products judged to be unable to realize political stability and economic growth must be changed or abolished.

Port issues regulated by Law Number 17 of 2008 concerning Shipping contain provisions regarding the abolition of monopolies in port operations, the separation between regulatory and operator functions, and the participation of local and private governments in the implementation of the port. If you pay attention, Law Number 17 of 2008 concerning Shipping, in general, consists of 4 (four) different substances, namely:

- a. Transportation in waters regulated in Government Regulation Number 20 of 2009 as amended by government regulation Number 22 of 2011.
- b. Port as stipulated in Government Regulation Number 61 of 2009 as amended by Government Regulation Number 64 of 2015
- c. Shipping Security and Safety as stipulated in Government Regulation Number 5 of 2010.
- d. Maritime environmental protection is regulated in Government Regulation Number 21 of 2010

From the content material of Law Number 17 of 2008 concerning Shipping, especially port ones starting from article 1 paragraph (28) and (60) (BUP definition), article 69 (port function), article 79, and article 80 (government activities), article 93 (BUP operates) terminals and other port facilities) and article 94 (obligations of port business entities), the direction of commercial port management can be described that after the enactment of Law Number 17 of 2008 concerning Shipping, then the organizer of port activities that are commercially cultivated, especially in the field of government (regulation and guidance, control, supervision of port activities are carried out by the Port Authority (article 81 paragraph 2, article 83 paragraph 1 and article 1 number 26), Thus the port authority also acts as a representative of the Government to provide concessions or other forms as stated in the form of written agreements to port business entities and PT Pelindo (Persero), which is specially formed based on Government Regulations as the organizer of port business activities must compete with other Indonesian legal entities (Private BUPs). Since Law Number 17 of 2008 was promulgated on May 07, 2008, the Government, through the Ministry of Transportation, has issued BUP Permits to PT Pelindo and Private BUPs registered in the membership of ABUPI (association of Indonesian Port business entities) with the following details:

From the data in table 1, it appears that the government, in this case, the Ministry of Transportation, has issued 65 BUP permits to Indonesian Legal Entities (Private BUPs) registered with ABUPI, which will have an impact on the high competitors of PT Pelindo as representatives of the state to carry out the business function in the Port sector, which will also have an impact on reducing state income through dividends that PT Pelindo will deposit as a company that achieves the title of 'healthy' and wrong one SOE (State-Owned Enterprise) that can make a significant contribution to the state in the form of dividends, taxes and non-tax state revenues (PNBP) as a form of implementation of the functions mandated in Law Number 19 of 2003 concerning SOEs, namely providing income to the state. The data obtained from PT Pelindo IV's financial statements in 2016-2020 showed that the contribution of state income over the last five years experienced growth. This contribution will align with the change in Pelindo's role from 'Port Authority' to Terminal Operator (TO), in port terms called 'reorganization of port management arrangements.' The reorganization of management in Pelindo has a reasonably long history. Initially, port management was carried out by port companies (haven bedvijen), and the financial system was guided by IBW (Indische Bedrijvenwet). From 1991 until now, the status of port operations has changed to a Persero Company (PT), with the intention that bureaucratic nuances can be eliminated and the company pattern can be more effective so that port services can be further improved.

Table 1. Issuance of BUP Permits to BUP SOEs and Private BUP

| Cluster | No | BUP name | No | BUP name |
|---------|----|--|----|--------------------------------------|
| SOEs | 1 | PT Pelabuhan Indonesia (Persero) I,II,III & IV | | |
| Private | 1 | PT Pelabuhan Tegar Indonesia | 36 | PT Pelabuhan Samudera Palaran |
| | 2 | PT Terminal Borneo Indonesia | 37 | PT Mitra Rama Samudera |
| | 3 | PT Krakatau Bandar Samudera | 38 | PT Apol Parama Jaya |
| | 4 | PT Lamongan Integratde ShoreBase | 39 | PT Pelabuhan Swangi Indah |
| | 5 | PT Cikarang Inland Port | 40 | PT Ambang Barito Nusa Persada |
| | 6 | PT World Terminalindo | 41 | PT Kapuas Prima Coal TBK |
| | 7 | PT Pelabuhan Rembang Kencana | 42 | PT Dermaga Emas Nusantara |
| | 8 | PT Titian labuan Anugrah | 43 | PT Pelabuhan Tiga Bersaudara |
| | 9 | PT Indonesia Multi Purpose Terminal | 44 | PT Sendy Jaya Putra |
| | 10 | PT Bandar Bakau jaya | 45 | PT Samudera Siak |
| | 11 | PT Bandar Teguh Abadi | 46 | PT Indonesian Air dan Marine Supplay |
| | 12 | PT Samarinda Terminal Multi Guna | 47 | PT Pelabuhan Cilegon Mandiri |
| | 13 | PT Pelabuhan Penajam Banua Taka | 48 | PT Berlian Manyar Sejahtera |
| | 14 | PT Bias Delta Pratama | 49 | PT Binda Indo raya |
| | 15 | PT Sarana Abadi Lestari | 50 | PT Semambang Terminal Umum |
| | 16 | PT Siam Maspian Terminal | 51 | PT Cipta Ecoenergi |
| | 17 | PT Tunas Inti Abadi | 52 | PT Chandra Asri Petrochemichal TBK |
| | 18 | PT Peteka Karya Samudera | 53 | PT Pelayaran Indoprof setia |
| | 19 | PT Berkat Borneo Coal | 54 | PT Jabal Nor |
| | 20 | PT Hasnur Resources Terminal | 55 | PT Berlian PemanduanIndonesia |
| | 21 | PT Karya Citra Nusantara | 56 | PT Gema Samudera Sarana |
| | 22 | PT Delta Artha Bahari Nusantara | 57 | PT Sarana Citranusa Kabil |
| | 23 | PT Indika Logistic & Support Service | 58 | PT Pelabuhan Lembar sejahtera |
| | 24 | PT Intipratama Bandar Kariangau | 59 | PT Wahana Multi Terminal |
| | 25 | PT Dire Pratama | 60 | PT Pelabuhan Buana Reja |
| | 26 | PT Jakarat International Container | 61 | PT Varia Usaha Bahari |
| | 27 | PT Batu Alam Makmur | 62 | PT Surya Mentaya Gemilang |
| | 28 | PT Indo Kontainer Sarana | 63 | Eka Nuri |
| | 29 | PT Bosowa Bandar Indonesia | 64 | Adhiguna Global Mandiri |
| | 30 | PT Satria Baruna Ocean | 65 | PT Aquila Transindo |
| | 31 | PT Jaya Investama Terminal | 66 | PT Mitra Samudera Bekasi |
| | 32 | PT Andika Andalan Tama | | |
| | 33 | PT Agung Prima Nusantara | | |
| | 34 | PT Anugrah Dondang Bersaudara | | |
| | 35 | PT Adhiguna Putra | | |

Source: (Association of Indonesian Port Business Entities)

In 2008, the revision of the Shipping Law by the Ministry of Transportation changed the port operation back to the Port Organizing Agency, which means it must be 'set back' to 1969-1983 when the Port State Company (PN) was replaced with the Port Management Agency (PN Port in liquidation) led by the Port Administrator who also concurrently serves as the head of the port government who is appointed as the person in charge and the general leadership of the port. This concept hints that government interference is substantial where the government seeks to take two roles at once, namely as an operator and regulator, which is described in several policies of the Ministry of Transportation as follows:

Table 3. Regulation on the Implementation of the Shipping Law at the level of Ministerial Regulations

| No | Regulatory Forms | Setting Source | Description |
|-----------|--|--|---|
| 1 | PM 23 of 2015 concerning Improving the Function of Port Operators at Commercially Cultivated Ports | None | Applicable |
| 2 | PM 15 of 2015 concerning Concessions and Other Forms of Cooperation between the Government and Port Business Entities in the Port Sector | Implementation of Article 78 PP 61 of 2009 concerning Port as amended by PP 64 of 2015 | Changed with PM 166 of 2015 |
| 3 | PM 51 of 2015 concerning the Implementation of Sea Ports | Implementation of articles 19,29,36,67,86,93,104,109,153 and 161 PP 61 of 2009 concerning Port as amended by PP 64 of 2015 | Changed with PM 146 of 2016 |
| 4 | PM 6 of 2013 concerning Types, Structures and Classes of Port Service Tariffs | Implementation of Article 148 PP No.61 of 2009 concerning Port as amended by PP 64 of 2015 | Amended by PM 15 of 2014 repealed by PM 72 of 2017 and amended by PM 121 of 2018. |
| 5 | PM 51 of 2011 Concerning Special Terminals and Terminals for Self-Interest | Implementation of Articles 134 144 and 153 pp No.61 of 2009 concerning port as amended by PP 64 of 2015 | Amended by PM 73 of 2014 and repealed by PM 20 of 2017 |
| 6 | PM 95 of 2015 concerning Guidelines for Determining the Selling Price (Charge) of Port Services Cultivated by Port Business | None | Applicable |

| No | Regulatory Forms | Setting Source | Description |
|-----------|---|---|---|
| | Entities | | |
| 7 | PM 45 of 2015 concerning Requirements for Capital Ownership of Business Entities in the Transportation Sector | None | Repealed by Pm 24 of 2017 concerning the Revocation of Capital Ownership Requirements of Business Entities in the Field of Sea Transportation Business, Ship Freshness, Loading and Unloading Business And Port Business Entities |
| 8 | PM 53 of 2011 concerning Guiding | Implementation of article 118 of Government Regulation Number.5 of 2010 concerning Kenavigasian | Amended by PM 75 of 2015 and repealed with 57 of 2015 |
| 9 | PM 93 of 2014 concerning Auxiliary Facilities and Ship Guiding Infrastructure | Implementation of articles 115 and 118 of PP No.5 of 2010 concerning Kenavigasian | Applicable |
| 10 | PM 52 of 2011 On Dredging and Reclamation | Implementation of Article 102 and Article 107 pp No.5 of 2010 concerning Kenavigasian | Changed with PM 74 of 2014 and PM 136 of 2015, last repealed with PM 125 of 2018 |
| 11 | PM 60 of 2014 concerning the Implementation and Operation of Loading and Unloading from and to Ships | Implementation of article 116 pp No.20 of 2010 concerning water transportation | Amended by PM 53 of 2015, amended again by PM 93 of 2015 and has been repealed by PM 152 of 2016 |
| 12 | PM 69 of 2015 concerning Guidelines for the Implementation of Types and Tariffs on Types of Non-Tax State Revenues Applicable to the Directorate General of Sea Transportation. | PM 69 of 2015 concerning Guidelines for the Implementation of Types and Tariffs on Types of Non-Tax State Revenues Applicable to the Ministry of Transportation | Applicable |
| 13 | PM 58 of 2018 concerning Procedures for implementing | Article 46 of Presidential Regulation 38 of 2015 concerning Government Cooperation with Port Business | Applicable |

| No | Regulatory Forms | Setting Source | Description |
|----|--|----------------|-------------|
| | Government Cooperation with Business Entities in the Provision of Transportation Infrastructure within the Ministry of Transportation. | Entities. | |

Source: processed from JDIH data of the Ministry of Transportation

From the data in table 4, it appears that of the 13 regulations issued by the Ministry of Transportation at the level of ministerial regulations governing the port sector, only 5 (five) ministerial regulations are the implementation in PP Number 61 of 2009 concerning ports, 2 (two) Ministerial regulations that do not have a reference source for implementation and 6 (six) Ministerial Regulations that are sourced from regulations outside the port sector but regulate the port sector. This impacts the misalignment of the regulations governing the management of commercial ports. In order to determine the direction of the political policy of the law to which it has aspired, it is necessary to repeal the particular chapter regulating the Port issue of the Shipping Law because the substance provided for in the Act is too broad and unfocused. Furthermore, considering the complexity of the problems in the port, a separate law is needed to regulate port issues. Then, the TO (Terminal Operator) concept is ideally applied to the new port and not to the Port Sector SOEs (PT Pelindo). This means that the political policy of the upcoming Law is to separate the regulations governing ports from the Law governing shipping. This is aimed at focusing more on the issue of port regulation (making port laws) specifically.

Law Number 17 of 2008 concerning Shipping provides the foundation for a comprehensive reform of the port system in Indonesia. The shipping law abolished the government's monopoly on the port sector and opened up opportunities for private sector participation. Therefore, the importance of substantive laws governing this matter so that legal regulation of the relationship between the private sector and the government is important (Juzikienė, 2018), So it is necessary to formulate policies in a balanced manner to reach rational and logical decisions, not only prioritizing personal and group interests (Tumonis, Šavelskis and Žalyt, 2013). This could lead to an influx of indispensable competition in the port sector, create pressure to lower prices and improve port services. However, opening opportunities for private parties to become port managers is an entry point for foreign parties to participate in port management in Indonesia. This can endanger the sovereignty of the nation and the state. This opportunity will be a way for foreign parties to be able to control state assets that are important and strategic, which in the end can affect the sovereignty of the nation and state as one of the principles of the formation of Law Number 17 of 2008 concerning Shipping article 2 letter K which states that "the principle of state sovereignty is that the implementation of shipping must be able to maintain the territorial integrity of the Republic of Indonesia."

5. Conclusion

Based on the provisions of Articles 81 and 82 of Law No.17 of 2008 concerning Shipping and Article 42 of Government Regulation Number 61 of 2009 concerning Port, it is stipulated that the Port Authority agency is formed as an institution representing the government to carry out port activities at ports that are commercially cultivated. Under the Shipping Act, the Port Authority is then granted the privilege of acting on behalf of the government to exercise its rights as a concession holder or agreement with the Port Business Entity. This is regulated in the provisions of Article 82 paragraphs (4) and (5) and Article 85 of Law Number 17 of 2008 concerning Shipping. The port authority is also granted the right to manage land and water following the provisions of the laws and regulations. Furthermore, Article 43 of Government Regulation Number 61 of 2009 concerning Port stipulates that port authorities finance operational activities following the provisions of laws and regulations. Meanwhile, based on Article 92 of Law Number 17 of 2008, it is regulated regarding Port Business Entities or Terminal Operators. Based on these provisions, it is stated that the provision and port services carried out by the Port Business Entity, as referred to in Article 91 paragraph (1), are carried out based on concessions or other forms of the Port Authority, which are stated in the agreement. This is what then reduces part of PT. The Port of Indonesia (Persero), because it was taken over by the Port Authority, among others, before the Shipping Law, became the authority of PT Pelindo with the obligation to maintain shipping lanes.

The port, as one of the elements in the implementation of shipping, has a vital and strategic role so that the state discusses its implementation, and its guidance is carried out by the Government to support, mobilize, and encourage the achievement of national goals, and strengthen national resilience. Port development carried out by the Government includes regulation, control, and supervision aspects. Regulatory aspects include the formulation and determination of general and technical operational policies. Aspects of control include briefing guidance in construction and operation of the port. Port development is carried out in a unified National Port Order aimed at realizing the smoothness, order, security, and safety of shipping in port services, ensuring legal certainty and business certainty, encouraging the professionalism of economic actors at ports, accommodating transportation technology, and improving service quality and competitiveness while still prioritizing public interest services. The enactment of Law Number 17 Of 2008 concerning Shipping, the regulation for the port sector contains provisions regarding the abolition of monopolies in the operation of ports, the separation between the functions of regulators and operators, and provides proportional participation of local and private governments in the implementation of ports. The legal and economic aspects of port management have a very close relationship. Therefore, the direction of port management policy must pay attention to these two aspects. From the aspect of economic interests, one of the objectives

of port management is to realize the welfare of the people in general. In particular, port management is undoubtedly intended to make a profit. Meanwhile, from the legal aspect, port management must be regulated based on applicable legal provisions so that its management can run orderly and orderly, and all parties' rights and interests can be protected and fulfilled correctly.

References

- Fitriana, M. K. (2015) 'Peranan Politik Hukum Dalam Pembentukan Peraturan Perundang-Undangan Di Indonesia Sebagai Sarana Mewujudkan Tujuan Negara (Laws and Regulations in Indonesia As the Means of Realizing the Country ' S Goal)', *Jurnal Legislasi Indonesia*, 12(02), pp. 1–27.
- Grindle, M. S. (2011) 'Good Enough Governance Revisited', *Development Policy Review*, 29(SUPPL. 1), pp. s199–s221. doi: 10.1111/j.1467-7679.2011.00526.x.
- Hamzah, F. (2012) *Negara BUMN dan Kesejahteraan Rakyat*. Jakarta: Yayasan Faham Indonesia.
- Hidayat, S. (2018) 'Menimbang Ulang Konsep Good Governance: Diskursus Teoretis', *Masyarakat Indonesia*, 42(2), pp. 151–165. Available at: <http://jmi.ipusk.lipi.go.id/index.php/jmiipusk/article/view/724>.
- Hidayati, F. W. et al. (2021) 'Disharmoni Politik Hukum Pengelolaan Pelabihan dalam Peraturan Perundang-Undangan Pelayaran', *Jurnal Indonesia Sosial Sains*, 2(2), pp. 230–240.
- Juzikiené, R. (2018) 'Peculiarities of enterprise mortgage as a new form of commercial charge', *Baltic Journal of Law and Politics*, 11(1), pp. 85–107. doi: 10.2478/bjlp-2018-0004.
- Khemavuk, P., & Leenatham, A. (2020). A Conceptual Model for Uncertainty Demand Forecasting by Artificial Neural Network and Adaptive Neuro–Fuzzy Inference System Based on Quantitative and Qualitative Data. *International Journal of Operations and Quantitative Management*, 26(4), 285-302. <https://doi.org/10.46970/2020.26.4.3>
- Koul, S., Samantaray, P., & Atul, V. (2021). Reductions in the prime stock for sales generation in steel industry: A lean approach using DMAIC tools. *International Journal of Operations and Quantitative Management*, 27(1), 23-44. <https://doi.org/10.46970/2021.27.1.2>
- Lembaga Kajian Persaingan dan Kebijakan Usaha Fakultas Hukum Universitas Indonesia (2015) *Sinkronisasi Pengaturan di Sektor Pelabuhan Dalam Rangka Meningkatkan Daya Saing Indonesia di Dunia International*. Jakarta.
- Łukasz Hard (2012) 'he Idea of Good (Enough) Governance. A Look from Complexity Economics', *Economic Sciences*, 2012(5).
- Magnaye, R. B., Chaudhry, S. S., Sauser, B. J., & Varma, N. (2020). Bridging the Gap between Practice and Undergraduate Teaching of Operations Management: The Case of Public Liberal Arts Colleges. *International Journal of Operations and Quantitative Management*, 26(1), 59-64. <https://doi.org/10.46970/2020.26.1.3>

- Mote, S. (2020) 'Diskursus Teoretis Penerapan Good Governance Dalam Formulasi Kebijakan Daerah', *Jurnal Pemerintahan Dan Keamanan Publik (JP dan KP)*, pp. 1–10. doi: 10.33701/jpkp.v2i1.953.
- Nurcholis, H. (2005) *Teori dan Praktik Pemerintahan dan Otonomi daerah*. Jakarta: Grasindo.
- Okprianti, R. (2018) 'Peranan Politik Hukum Pidana dalam Pembentukan Aturan Hukum Pidana', *Varia Hukum*, XXX(Xxxix), pp. 458–464.
- Panjako, A. et al. (2020) 'The role of Port Authority in seaport governance', *International Academic Institute (IAI) Academic Conference Proceedings*, (March 2021), pp. 80–85.
- Patittingi, F. (2012) *Dimensi Hukum Pulau-Pulau Kecil Di Indonesia*, cet.1. Yogyakarta: Rangkang Education.
- Pierre, J. and Peters, B. . (2000) *Governance, Politics and Public Policy*. Basingstoke: Palgrave Macmillan.
- Tentowi, A. R. (2019) 'Maritime Law Development On Special Department On Sea Transportation', *Journal of Law, Policy and Globalization*, 84, pp. 115–119. doi: 10.7176/jlpg/84-14.
- Tijan, E. et al. (2021) 'The role of port authority in port governance and port community system implementation', *Sustainability (Switzerland)*, 13(5), pp. 1–14. doi: 10.3390/su13052795.
- Tumonis, V., Šavelskis, M. and Žalyt, I. (2013) 'Judicial decision-making from an empirical perspective', *Baltic Journal of Law and Politics*, 6(1), pp. 163–180. doi: 10.2478/bjlp-2013-0007.
- Wahyudin, Darusman, Y. M. and Wiyono, B. (2019) 'Politik Hukum Dalam Pembentukan Peraturan Perundang- Undangan Ditinjau Dari Undang-Undang No 15 Tahun 2019 Tentang Perubahan Atas Undang-Undang No 12 Tahun 2011', *Jurnal Lex Specialis*, 1(2), pp. 279–290.
- Xiuling Zhan (2019) *Good Governance, Good Enough Governance*. African Studies. Available at: <https://escholarship.org/uc/item/0th2s0ss>.