

Authority of State Land Management and Port Business, Problems and Consequences

Muhammad Fauzie¹, Sunarmi², Muhammad Yamin³, Maria⁴

¹²³⁴Universitas Sumatera Utara, Indonesia

Email: muhammadfauzie@student.usu.ac.id¹

ABSTRACT

The Shipping Law Number 17 of 2008 has outwardly returned the authority to manage state land and business activities at the Port to a government agency which is currently called the Port Authority (PA) under the Ministry of Transportation replacing the State-Owned Enterprise (SOEs) PT. Pelindo (Persero) which before the enactment of the Shipping Law Number 17 of 2008 acted as an operator and regulator at the port, but after the birth of the Shipping Law it acted only as an operator while the function of the regulator was the authority of PA. Currently there has been no implementation of the transfer of Management Rights over state land at Belawan Port from PT. Pelindo I (Persero) to the state through the National Land Agency, and the Belawan Port Authority has also not submitted an application for Management Rights over state land in the Port of Belawan to the National Land Agency. This is due to the existence of multiple interpretations of the articles in the Shipping Law relating to the management of state land and business on state land at the port. With the existence of a letter from the minister of transportation which is used as an implementing rule for the articles that regulate state land management activities and businesses in ports. Of course this is not in accordance with the hierarchy of legislation. Port Authority, is a government institution at the port as an authority that carries out the function of regulating, controlling and supervising port activities that are commercially managed and also acts as a government representative to provide concessions or other forms to Port Business Entities to carry out business activities at ports as outlined in the agreement. in accordance with the rules in the Shipping Law Number 17 of 2008 Articles 90-92. This problem causes legal uncertainty, thus affecting matters relating to time in handling problems in the field and optimizing facilities, businesses and investments in ports. The management of state land and businesses on state land in ports should have clear and firm rules and the management of state land and businesses on state land in ports should be under the authority of government agencies as public institutions.

Keywords: Port of Belawan, Management of State Land and Business in Port, Port Authority, PT. Pelindo (Persero)

1. INTRODUCTION

The port is a means that supports trade and the distribution of goods needed by the community. The port is a determining element for trade activities. Therefore, efficient port management will also affect the progress of trade and industry, even those in underdeveloped areas will also advance. [1] The work activity in the port is very complex. The sea port is the entrance and exit for various currents. The flow of goods, the flow of services, the flow of ships, the flow of passengers, the flow of crew members, the flow of foreign exchange, the flow of animals, the flow of plants, the flow of viruses and bacteria, the flow of fleas and insects, ship logistics flows including fuel and clean water, and others can all go through the port.[2] From the social aspect, the port becomes a public facility for the community in carrying out interactions including economic activities. In addition, the port is a means that

supports the process of transporting and moving people from one place to another.[3] The port is also one of the strategic places of national defense from attacks by other countries, and the port is also a place that is prone to the entry of dangerous goods and prohibited goods and is also prone to the smuggling of goods and people that cause harm and danger to the state.

Belawan Port is located in Medan Belawan District, Medan City, North Sumatra Province which is the 3rd largest port in the Republic of Indonesia after Tanjung Priok Port in Jakarta and Tanjung Perak Port in Surabaya. Malaysian ports and Malaysian ports.

The history of the management rights on state land at the Belawan Port is based on the Joint Decree of the Minister of Home Affairs and the Minister of Transportation concerning the Provision and Use of Land for Port purposes No. 191 of 1969/Sk. 83/0/1969 dated 27 December 1969, granted Management Rights to PT. Pelabuhan Indonesia II which at that time was

still called the Port Concession Agency. The Minister of Transportation issued Decree No.186/P/1970 dated June 12, 1970, stipulating the Director General of Sea Transportation as the holder of the Management Rights, then the Director General of Sea Transportation issued Decree No. DPP 30/4/19 dated November 23, 1981 concerning the delegation of authority of Management Rights. to the Administrator of Belawan Port as the Board of Directors of the Regional Port Control Agency I. Belawan Port Management Rights Certificate was issued on March 3, 1993 consisting of 4 (four) certificates with a total land area of 289.36 hectares of management rights under the name of PT. Pelabuhan Indonesia I (Persero) Belawan Branch. Based on government regulation No. 64 of 2001, the position, duties and authority of the Minister of Finance as a shareholder in PT. Pelindo I was transferred to the Minister of SOEs, while technical operational guidance was in the hands of the Ministry of Transportation.

The Shipping Law No. 17 of 2008 concerning Shipping has returned the management rights to state land at the Port of Belawan to the Port Authority (OP) formerly known as the Port Administrator as the regulator at the Port and PT. Pelindo I (BUMN) which was previously the regulator and operator. at the port change its function to become an operator only or a Port Business Entity.

Until now, the implementation of Management Rights (HPL) on land at Belawan Port is based on the Basic Agrarian Law Number 5 of 1960 and the authority of the Port Authority (OP) as a government agency (public) based on Law no. 17 of 2008 concerning Shipping to manage state land in the Port of Belawan with Management Rights (HPL) has not yet been implemented. This is due to the disharmony of the laws and regulations governing the management of state land at the port. This has resulted in the management of Belawan Port being inefficient, ineffective and causing legal uncertainty that makes Belawan Port in the current era of globalization, especially economic and trade globalization, unable to compete with neighboring ports such as Malaysia and Singapore.

2. RESEARCH METHOD

This type of research is normative legal research. The approach used in this research is normative juridical approach. This research uses secondary data, which includes primary legal materials, secondary legal materials and tertiary legal materials. To add to the legal materials, several informants were interviewed. The analysis used includes descriptive-analytical, normative-qualitative analysis which is used to provide alternatives for updating the management of Belawan Port so that it can be more effective, efficient and able to compete.

3. FINDING AND ANALYSIS

The Limited Liability Company (PT) Pelindo I since obtaining the Management Rights on state land at the Belawan Port has not fully carried out the obligations stipulated in the Agrarian Regulations concerning Management Rights and also the regulations contained in the Joint Decree of the Minister of Home Affairs and the Minister of Transportation concerning the Provision and Use of Land for the purposes of port No. 191 of 1969/Sk.83/0/1969 dated December 27, 1969, one of which is to give the lands with usufructuary rights and building rights to third parties. The government, BUMN, private sector and individuals who use the land with the right to manage Pelindo 1 are still only a few who have the right to use, the rest only with a Letter of Agreement on Land Utilization or land leases, the provisions of which are determined by the President Director of Pelindo I. After PT. Pelindo 1 became SOEs, in managing state land at Belawan Port, PT. Pelindo I implemented the rules based on Law No. 19 of 2003 concerning State-Owned Enterprises (BUMN) and Law No. 1 of 2004 concerning State Treasury. along with the implementing regulations whose rules also regulate the utilization of fixed assets such as land. Management Rights. Whereas State land does not mean state-owned land, but the state only controls. Management of state land with Management Rights should be subject to the Basic Agrarian Law Number 5 of 1960 along with its implementing rules governing Management Rights.

After the enactment of Law no. 17 of 2008 concerning Shipping with Implementing Regulations Government Regulation Number 61 of 2009 which has been amended by Government Regulation Number 64 of 2015 concerning Ports and Minister of Transportation Regulation Number PM 51 of 2015 which has been amended by Regulation of the Minister of Transportation Number PM 146 of 2016 concerning Port Operations has returned the management of state land at the port to the Ministry of Transportation whose implementation was delegated to the Port Authority (OP), which previously when receiving the power to manage Belawan Port Management Rights was still the Belawan Port Administrator as the Board of Directors of the Belawan Port I State Enterprise. Prior to the enactment of Law Number 17 of 2008 concerning Shipping PT. Pelindo serves as a regulator and operator at the port. After the enactment of the Act, PT. Pelindo is only an operator while the regulator at the port is the Port Authority (OP) which is an institution under the Ministry of Transportation whose series of duties are to regulate and supervise the use of land and port waters, supervise the use of the port work environment area and port interest environmental areas, regulate ship traffic. at the port as well as setting operational performance standards for port services. This is in accordance with Article 1 points 26 and 27, Article 81 paragraphs (2) and (3) of Law Number 17 of 2008 and Article 38 paragraph (2) of Government Regulation Number 61 of 2009

which has been amended by Government Regulation Number 64 of 2008 2015 concerning Ports. The Port Authority is granted Management Rights in accordance with Article 85 of Law Number 17 of 2008 concerning Shipping which states that the Port Authority and Port Operational Units as referred to in Article 81 paragraph (1) are given Management Rights over land and use of waters in accordance with the provisions of laws and regulations. Meanwhile, the function of port operator or exploitation is given to BUMN, namely PT. Indonesian ports and private companies. This means that the Management Rights of PT. Pelindo over land in ports must be released back to the state through the National Land Agency and Port Operators apply for Management Rights over port land to the state through the National Land Agency because Management Rights may not be released to other parties but can only be returned to the state. Based on what is mandated by Law Number 17 of 2008 concerning Shipping in Article 92 and Government Regulation Number 61 of 2009 which has been amended by Government Regulation Number 64 of 2015 concerning Ports in Article 74-75 applying port concession provisions to the Port Business Entity PT. Pelindo (BUMN) and private companies from the Ministry of Transportation through the Port Authority as outlined in an agreement within a certain period of time and when the concession period ends the land and port concession facilities are handed over to the Port Operator or Port Authority. Port Authority or Port Operator unit. The two institutions are government representatives at ports that carry out the functions of regulating, controlling and supervising port activities in Indonesia. These institutions are technical implementing units from the Ministry of Transportation which are under and responsible to the Director General of Sea Transportation. [4].

The Shipping Law explicitly separates the role of regulator back into the hands of the government and PT. Pelindo only becomes an operator at the port for one purpose, namely to create a competitive port business climate and have more conducive business competitiveness. The Shipping Law has transformed the national port governance system by clearly separating operators and regulators, namely the existence of Port Authorities and Port Operators. [5]

This will automatically eliminate PT. Pelindo's monopoly on commercial ports while opening the sector to the participation of other operators, including the private sector. [6]

The Port Authority as regulated by Law Number 17 of 2008 and Government Regulation Number 61 of 2009, is a government institution at the port as an authority that carries out the functions of regulating, controlling and supervising commercially managed port activities.

The Port Authority also acts as a representative of the government to provide concessions or other forms to the Port Business Entity to carry out business activities at the port as outlined in the agreement as regulated in Articles 90-92 of the Shipping Law.

Government Regulation Number 64 of 2015 concerning Amendments to Government Regulation Number 61 of 2009 concerning Ports in Article 74 Paragraph (3) states that the granting of Port Concessions to port Business Entities is carried out through an auction mechanism and subsequently the provision of certain port services and/or services provided to the selected port Business Entity (the awarding rights) will be stated in the Concession Agreement which contains the main substance, namely "the amount of concession revenue" and "the period of expiration of the concession". the implementation of terminal exploitation activities at the port during the concession. The provisions of the concession at the port also require that all assets, both land and port facilities that are invested, built, provided and used during the concession period, be handed over to the Port Operator at the end of the concession period. concession period. All of these assets will become the control of the Port Authority. In principle, the concession agreement is an agreement with a public dimension because the object being concessioned is in the form of state land and infrastructure on state land at the port. This concession agreement takes the form of a Handover Agreement.

Until now, the functions and authorities of the Port Authority (OP) have not been carried out in accordance with the mandate of the Shipping Law No. 17 of 2008. The management of State Land in the Port has not yet been released by PT Pelindo to the state through the National Land Agency and there has been no application for Management Rights by Port Authority to manage land in ports to the state through the National Land Agency.

Concession Agreement between Port Operators (Belawan Main Port Authority, Tanjung Priok Main Port Authority, Tanjung Perak Main Port Authority and Makassar Main Port Authority) and PT. Pelindo (Persero) I, II, III and IV related to business activities and control of existing assets in the end agreed on the clauses of the agreement using the approach of Article 344 Paragraph (3) of the Shipping Law Number 17 of 2008 compared to the approach of Articles 90-92, where in terms of determining the clause for the expiration of the concession, it implicitly indicated that there was no time limit as long as PT. Pelindo was still operating. standing as a BUMN and also the absence of transfer of assets to the Port Operator at the end of the concession period. The approach of Article 344 paragraph (3) in the formulation of the agreement clauses in the port concession agreement PT. Pelindo (Persero) I, II, III and IV has been considered to reduce the authority of the Port Operator as the main Port Authority in terms of Control of Port Land Management Rights and asset control -Other port assets. Whereas the concept of the Port Authority in the Shipping Law is as the landlord port and control of port assets generated during the concession period. Position of PT. Pelabuhan Indonesia (Persero) as SOEs in the port sector provides many exceptions to the mandate of port concession provisions in the Shipping Law, Government Regulation Number

61 of 2009 concerning Ports and other laws and regulations. The concession agreement for port operations that has been managed by PT. Pelindo (Persero) I, II, III and IV as signed by Belawan Main Port Authority, Tanjung Priok Main Port Authority, Tanjung Perak Main Port Authority and Makassar Main Port Authority with the President Director of PT. Pelindo I (Persero) I,II,III and IV on 9 and 11 November 2015 essentially only to give birth to obligations that have created uncertainty and in the end the provisions of port concessions as mandated in the Shipping Law cannot be fulfilled. [7]

However, this factor was also caused by the Letter of the Minister of Transportation Number HK 003/1/11 Phb 2011 which appointed PT Pelabuhan Indonesia I, II, III and IV (Persero) as temporary implementers but was not given a time limit.

If we look at and trace the Letter of the Minister of Transportation HK/003/1/11/phb/2011, it cannot be used as a basis by a Limited Liability Company. Indonesian ports to maintain a monopoly on the port sector. The letter from the Minister of Transportation contradicts Law Number 17 of 2008.. [8]

According to Adolf Merkl, legal norms have two faces where an upward legal norm originates from the above legal norm and downwards becomes the source and basis for the lower legal norm. [9]

In the Stufen theory proposed by Hans Kelsen, a lower norm applies, originates and is based on a higher norm. [10]

Hierarchically the laws and regulations based on Article 7 paragraph (1) of Law No. 12 of 2011 the position of Law No. 17 of 2008 is higher than the ministerial letter, so the monopoly carried out by PT. Indonesian ports are not allowed. Articles 7 and 8 of Law Number 12 of 2011 along with explanations related to this matter. 2011 The Minister's Letter is not even listed in the hierarchy of legislation even though the explanation says there are other forms of regulations that are recognized outside of the things regulated in Article 7 which are binding.

4. CONCLUSION

Nowadays, the implementation of Management Rights over land at Belawan Port is based on the Basic Agrarian Law Number 5 of 1960 and the authority of the Port Authority as a government agency (public) based on Law no. 17 of 2008 concerning Shipping to manage state land in Belawan Port with Management Rights has not yet been implemented. This is due to the disharmony of the laws and regulations governing the management of state land in ports. This can create legal uncertainty and hinder development and investment, especially in ports and result in being left behind and unable to compete with ports of other countries in the current era of globalization. Regulations regarding state land and its management should be included in the port in one law along with the implementation rules and authority in one state institution, namely the National

Land Agency and the management of state land in ports should also be managed by a purely public institution, namely the Port Authority. As a solution to these problems, there are several efforts that can be taken that aim to create efficiency at the port, namely law enforcement of regulations that are deemed adequate but not yet effectively implemented followed by optimizing the role of institutions that have the authority to carry out regulation and supervision. Another effort is to conduct a material review to the Supreme Court on ministerial regulations that are contrary to the law and also so that the Government of the Republic of Indonesia together with the House of Representatives of the Republic of Indonesia immediately revise the law which contains the contents of regulating the management of state land and business in ports whose articles are: not in harmony between one law and another.

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