

IMPLEMENTATION OF THE PRINCIPLE OF MARITIME LAW IN A SPECIAL TERMINAL AS THE MAIN SUPPORTER OF THE OIL AND GAS BUSINESS

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Abstract

The Maritime law principles is the principals terms associated with arrangement of conveyance of goods from one port to another port in order to establish trading transaction through the ocean using vessel as carrier instrument. In order to this activity can be implemented properly, supports such as seaworthy vessels, ports which meet the requirement of safety and security for access, adequate terminal infrastructure and operating procedure in accordance with vessels capacity served, and supported by personal worthy and competent on board and in the terminal. Sea voyage (carriage of goods by sea) possesses risk of damage and loss of the vessels, consignments, crews, and maritime environment destructions that demand liability and indemnity for carrier or ship owner, shipper, and consignee, therefore, contract of a freight and compulsory marine insurance are essential to the ships as well as the cargo. Carriage of goods by sea denotes vessels will convey through open oceans, straits state, innocent passage, archipelagic passage depending on the destination and route it chosen. This research utilized normative-juridical method with descriptive-analytical approach and used legal statutes, court decisions, agreements, and other legislations as primary sources of law. Secondary sources including textbooks, magazines, and journal articles related to the research topic which is implementation of maritime law and optimization, as well as the role of particular terminal in the management of vessel accidents were used. The description of the research found that the principle of maritime law has been implemented properly, however, limited areas of implementation only to Indonesian territory and has not reached the exclusive economic zones and continental shelf generate challenges in subsoil exploitation exertion in the sea. Numbers of overlapping rules and law enforcement in the territorial sea requires a serious refinement to determine the constabulary function holders. Optimizing the role of specific terminal through enabling ISPS Code security is necessary to improve the efficiency. In order to manage accident on the sea, lack of competencies became another challenge, therefore, knowledge upgrade and raining to human capital of oil and gas terminal, either mandatory or statutory or voluntary as Oil Companies International Marine Forum are essential.

Keyword: *The Principle of Maritime Law, Special Terminal, Oil and Gas*

INTRODUCTION

Based on Law No. 17 of 2008 concerning Sailing of the Republic of Indonesia State Gazette of 1992 Number 98. Article 1 numbers 20, 21, 22, 23, and 24 states: Terminal is a port facility consisting of berths and berths or berths, place of stockpiling, place of waiting and up and down passengers, and/or loading and unloading places.

The Special Terminal is located outside the Work Environment Area (DLKr) and the Port Interest Area (DLKp) which is part of the nearest port. Self-interest terminals (TUKs) are located within the DLKr and DLKp which are part of the port to serve their own interests in accordance with their main business. The Work Environment Area (DLKr) is a water and land area at a port or special terminal that is used directly for port activities. Regional Environmental Interest (DLKp) is the waters around the working area of the port waters that are used to ensure the safety of shipping.

The scope of Pertamina's Oil and Gas Special Terminal in Indonesia is still referring to the control of the assets of local business units both on land and at sea so that the implementation of maritime law¹ which is the basic reference for managing the Special Terminal is neglected and cannot properly apply the principle of balance, harmony, and harmony.²

Based on the above definition, a special terminal of a company or business entity is built to support its business activities so as to better guarantee the safety and security of shipping and protection of the marine environment with the location of the area outside the Work Environment Area (DLKr) and the Environmental Interest Area (DLKp) of a port while the operation is legally following the main provisions in force at the nearest terminal or port in accordance with the DLKr and DLKp that have been determined by the minister of transportation.

According to Article 103 of the Shipping Law Number 17 of 2008 as a special terminal, it must place government agencies that have shipping safety and security functions, as well as agencies that carry out government functions in accordance with needs such as customs agencies for receiving imports of goods (cargo) on ships which enter the international special terminal.

In terms of fulfilling obligations towards the law to be more effective and economically, technically and operationally more efficient and more secure in the safety and security of shipping, business entities both national and regional must consistently carry out activities in accordance with applicable codes namely ISPS-Code and ISM Code for ships entering the terminal area and other safety provisions as a form of carrying out the duties and responsibilities as well as the authority to manage the special terminal according to the permit based on the decision of the Minister of Transportation of the Republic of Indonesia under the supervision of the local Syahbandar.³

The Special Oil and Gas Terminal⁴ is the place where the shipping contract between Carrier and Shipper owner will be accepted by both domestic and international Consignees whose

¹M. Hussyein Umar, *Hukum Maritim dan Masalah-masalah Pelayaran di Indonesia*, Buku 1, PT. Multazam Mitra Prima, Jakarta, 2001, hal. 2, pada hakekatnya pokok kegiatan hukum maritim adalah pada penyelenggaraan pelayaran dimana digunakan kapal sebagai sarana pengangkutan.

²Lihat Penjelasan UU No. 17 Tahun 2008 tentang Pelayaran Pasal 2 huruf e, pelayaran harus diselenggarakan sedemikian rupa sehingga terdapat keseimbangan, keserasian dan keselarasan antara sarana dan prasarana, kepentingan pengguna dan penyedia jasa, kepentingan individu dan masyarakat, kepentingan nasional dan internasional.

³Undang-undang No. 17 Tahun 2008 tentang Pelayaran Pasal 207 Syahbandar melaksanakan fungsi keselamatan dan keamanan pelayaran mencakup pelaksanaan, pengawasan, dan penegakan hukumi bidang angkutan di perairan, kepelabuhanan dan perlindungan lingkungan maritim di pelabuhan. *Safety Management Certificate* harus tersedia di kapal sebagai bukti *compliance ISM-Code dan copy DOC (Document of Compliance)* bagi perusahaan pelayaran. Begitupun ISPS Certificate harus tersedia di kapal dan terminal setelah melalui assessment ISPS Code untuk kapal dan Terminal. Organisasi di terminal sesuai ISPS di kapal terdapat SSO (Ship Security Officer) dan di Terminal terdapat PFSP (Port Facility and Security Officer) dan satu orang PSC (Port Security Committee) yang dijabat oleh Syahbandar (Ka UPP atau KSOP)

⁴M. Huseyn Umar, *Hukum Maritim dan Masalah-masalah Pelayaran di Indonesia*, Buku 2, Pustaka Sinar Harapan, Jakarta, 2001, hal. 98 (Terminal Khusus sebagai bagian dari Pelabuhan (terdekat) merupakan suatu mata rantai dalam penyelenggaraan angkutan ke/dari pedalaman yang menghubungkan berbagai sarana angkutan dengan sarana angkutan laut sehingga terminal khusus disamping mendukung kepentingan bisnis Perusahaan Migas Pertamina dalam hal pengolahan dari *crude*, juga memiliki fungsi transit BBM impor untuk didistribusi ke depot-depot, SPBU dan industri lainnya).

requirements include vessel readiness (seaworthiness)⁵ and port readiness, port and its operational supporting port (Safe Ports) Berth and Facilities).⁶

Balongan Oil and Gas special terminal implements a commitment to implement Maritime law principles in the port that guarantees the safety of ships in the terminal with optimal service while ensuring the interests of the terminal in the transfer and receipt of cargo, preventing demurrage, cargo losses and being aware of accidents at sea that will all incur commercial losses for ships and terminals.

In full can be conveyed, the law of the sea and maritime law has a close and full relationship with activities at sea, which also originated at the 1982 United Nations Conference on the Law of the Sea (UNCLOS) 1982 which had held talks three times as much as 1958, 1960, and 1974. According to Malcolm MacLachlan, Lecturer in Business and Law, Glasgow College of Nautical Studies, UNCLOS:

1. *Attempts to codify the international law of the sea.*
2. *Is a treaty document of 320 articles and 9 annexes, governing all aspects of ocean space, such as delimitation, environmental control, marine scientific research, economic and commercial activities, transfer of technology, and the settlement of dispute relating to ocean matters*
3. *Came into force internationally on 16 November 1994.*⁷

The law of the sea is more like a public law.⁸ Regulates the principles and basic provisions that get the translation in maritime law.⁹ Maritime law tends to be more directed towards commercial law because there are so many provisions regarding the implementation of safety and security requirements and maritime environment protection as prerequisites for contracts and transactions regarding the transport of cargo by sea and port. This is in accordance with the opinion of Charles De

⁵Malcolm MacLachlan, *The Shipmaster's Business Companion*, Nautical Institute, England, 2004, hal. 498. *Warranty of seaworthiness is implied in the contract. Shipowner or Carrier will only exercise due diligence to make the vessel seaworthy before sailing. Due diligence by Shipowner or Carrier must make reasonable and careful inspection and perform maintenance of the vessel in accordance with the custom of the trade da this before commencement the voyage, Class survey, and statutory safety construction, equipment, loadline carried out accordance with requirement (Technically seaworthy); Cargo spaces are fit for reception and carriage of the cargo is properly loaded and stowage taking into account the expected perils of the voyage (The Vessel is Cargo worthy). The Vessel is properly equipped and supplied for the expected duration of the voyage in term of sufficient competent crew, navigational equipment and supplies, store, provisions and spare, bunker fuels, etc. (fittedness for the voyage);*

⁶*Ibid*, *Safe ports and berth* sering diekspresikan di preambule kontrak, dan charterer harus meyakinkan kondisi keselamatan pelabuhan. *Safe port: safe access, free permanent obstruction and can lie safety afloat, adequate facilities for trade, politically safe means no war, embargo, the ship be able safely. If Charterer order on un safe port. Berth: Safe berth is usual Ship's owner liability not charterer, note for Master's action on being ordered to on unsafe port and berth.*

⁷*Ibid*, hal. 12. United Nation Convention on The Law of the Sea (UNCLOS) merupakan kodifikasi hukum internasional tentang laut, terdapat 320 artikel dan 9 *annexes*, mengatur berbagai aspek meliputi permukaan laut, ketidakterbatasan pengawasan lingkungan laut, riset pengetahuan laut, kegiatan ekonomi dan komersial, transfer technology, dan penyelesaian sengketa mengenai masalah kelautan, berlaku secara internasional tanggal 16 November 1994

⁸*Ibid*, hal. 12. UNCLOS *provisions relating to zones of coastal State jurisdiction and the High Sea (territorial sea at 12 nautical miles, Contiguous zone 24 nautical miles from the base line, define innocent passage through the territorial sea and defines transit passage through international straits, it define Archipelagic States and allows for passage to Archipelagic water, interpretation of UNCLOS to competent Courts such as International courts of justice -Hague and Law of the Sea Tribunal-Hamburg), provisions to relating to Port State, Coastal State and Flag State control of Shipping (responsibility enforcement of the regulation flag State, coastal State jurisdiction, port State jurisdiction), provisions relating to pollution prevention (prevent pollution from vessel -article 211 this obligaton is currently met by Marpol 73/78, promulgate and enforce pollution in their own EEZs, in the territorial sea additional restrains e.g Traffic separation scheme and sea lane may be imposed on vessel with dangerous or hazardous cargoes).*

⁹M. Husseyn Umar, *Hukum Maritim dan Masalah-masalah Hukum di Indonesia*, Jilid I, Pustaka Sinar Harapan, Jakarta, 2001, hal 68. (Perangkat peraturan hukum maritim cakupannya sangat luas meliputi keselamatan pelayaran, navigasi, pengawakan kapal, pencegahan pencemaran dari kapal, peraturan ekonomi pelayaran, dan hukum perdata pelayaran-KUHD).

Batista¹⁰ which states that maritime law is commercial law and in line with Purwosutjipto opinion that the law of the sea which is civilian for companies is commercial law or trading law, which also means commercial law. The importance of the utilization and management of marine potential as a means of trade for the strength and prosperity of the country was stated by Philosopher Alfred T. Mahan (1660 - 1783) "The profound influence of sea commerce upon wealth and strength of countries its growth and prosperity were detected".¹¹ Another Alfred T Mahan statement "The key to being dominant over one country lies in its ability to control the ocean."¹²

Research on the implementation of the principle of maritime law in the special terminal as the main supporter of the oil and gas business, will answer the research question is how is the application of maritime legal principles regarding the operation of the Oil and Gas Special Terminal to ensure operational safety at the port and at the same time safeguard the interests of the business environment? How to optimize the role of the Special Oil and Gas Terminal in maintaining business interests and the interests of the state integrated into it? and how is the role of the Special Oil and Gas Terminal in the event of a sea accident such as a collision and a ship fire from the perspective of the Oil and Gas Business that supports non-tax state revenue (PNBP)?

METHOD

This type of research used in this dissertation research is juridical-normative and is analytical descriptive using secondary data both primary, secondary and tertiary legal material as the main data, while the primary data obtained through interview techniques, only constitutes supporting data on secondary data. Data analysis was carried out qualitatively with a theoretical abstract approach.¹³ The approach used in this study was the statutory approach and the conceptual approach. The statute approach is carried out by examining all laws and regulations relating to the legal issues being addressed. While the conceptual approach (conceptual approach) is an approach that moves from the views and doctrines that develop in the science of law.¹⁴

The data used in accordance with normative juridical research is secondary data obtained from library research and supported by data from interviews with sources. The method used in this study is a qualitative analysis method that will be directed at the aspects and aspects of development by analyzing and delivering conclusions based on arguments sourced from data that has been obtained during the research.

RESEARCH RESULTS AND DISCUSSION

Application of Maritime Legal Principles in the Operations of Special Oil and Gas Terminals

Indonesia as one of the IMO member countries that have ratified the ISPS Code has the same obligation to implement its provisions. The Government of the Republic of Indonesia intensively prepares some initial basic activities since mid-2003. Holds socialization with the maritime community, selects port facilities in an effort to implement the provisions of the ISPS Code, prepares a security organization or a recognized security organization, declares ISPS Code implementation.¹⁵

¹⁰Charles De Batista *English Commercial Law and Shipping World 3, Session 3, Institute of Maritime Law, Southampton University, Southampton, 2004. (English Commercial Law have pervasive impact across a wide area or work day shipping practice).*

¹¹Alfred T. Mahan, *The Influence of Sea Power Upon History 1660-1783*, Dover Publication, Inc, New York, 1987, hal. 10. (Pemanfaatan laut untuk kepentingan perdagangan sangat besar mempengaruhi terciptanya kekayaan dan kekuatan negara yang akan menentukan pertumbuhan dan kemakmuran). Yonvitner menulis dalam Kompas 5 September 2016, Ideologi Maritim, mengutip Alfred T. Mahan menyatakan "*the sea power is vital to national growth, prosperity and security*" yang berarti laut merupakan kekuatan pendorong pertumbuhan suatu bangsa, kesejahteraan dan keamanan).

¹²*Ibid*, Quizlet.com. pernyataan Captain Alfred Thayer Mahan "*The Influence of Sea Power upon History, which argued that control of the sea was the key to world dominance, it stimulated the naval race among the great powers*"

¹³Salim HS, dan Erlies Septiana Nurbani, *Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi*, Raja Grafindo Persada, Jakarta, 2014, hal 125 (Penerapan Prinsip-prinsip Pembaruan Agraria Menurut Ketetapan MPR No. IX/MPR/2001 tentang Pembaruan Agraria dan Pengelolaan Sumber Daya Alam dalam Kebijakan Pertanahan Nasional).

¹⁴Peter Mahmud Marzuki, *Penelitian Hukum*, Prenada Media Grup, Jakarta, 2011, hal. 93-95.

¹⁵Panduan Implementasi ISPS Code, Departemen Perhubungan RI, Dirjenhubla, Dit Penjagaan dan Penyelamatan: Amandemen SOLAS 74, Bab V Keselamatan Pelayaran (Safety

In the National Port Order contains the roles, functions, and hierarchy of the port. In-Law No. 17 of 2008 concerning Shipping, the port has a role as:

1. Nodes in the transportation network according to their hierarchy;
2. The gate of economic activity;
3. The place of transfer of mode of transportation activities;
4. Supporting industrial and/or trade activities;
5. Place of distribution, production, and consolidation of cargo or goods; and
6. Realizing the Insight of the Archipelago and State Sovereignty.¹⁶

Of the 134 countries, according to the Global Competitiveness Report 2009-2010, the competitiveness of ports in Indonesia is ranked 95th, a slight increase from the 2008 position which ranked 104th. However, Indonesia's position was inferior to Singapore, Malaysia, and Thailand. The weakness of ports in Indonesia lies in the quality of infrastructure and superstructure.

Indonesia also lost productivity in loading and unloading, severe congestion conditions, and maintaining old customs documents. The 2010-2011 Global Competitiveness Report states, the quality of ports in Indonesia is only 3.6, far below Singapore which has a value of 6.8 and Malaysia 5.6. Businessmen have long complained about the poor port facilities in Indonesia. To lean back and drop, a ship must queue for days waiting for their turn.

From the above understanding, we can see that in the harbor there is a terminal and a berth to carry out activities at the port. The term "terminal" refers to port facilities consisting of berths and berths or berths, piling up places, waiting and moving places for passengers, and/or loading and unloading places. To support certain business activities for one's own interests, a terminal can be constructed as follows:

1. Special Terminals, i.e. terminals located outside the Work Environment Area and the Port Interest Interest Area which are part of the nearest port to serve their own interests in accordance with their main business.
2. Terminals for Self-interest, namely terminals located within the Work Environment Area and the Interest Interest Area of the port which is part of the port to serve its own interests in accordance with its principal business.¹⁷

The existence of the Balongan Oil and Gas Special Terminal, which is part of the nearest seaport, has an important position as an infrastructure that also confirms the sovereignty of the Republic of Indonesia based on Article 25A of the 1945 Constitution¹⁸ as an island nation whose history began with the birth of the Declaration of the Government of Indonesia on December 13, 1957, called the Djuanda Declaration.

The Djuanda Declaration of 13 December 1957 gave rise to the concept of archipelago waters with resource aspects covering two marine resources, namely living resources which are a source of fishing business, tourism industry, and mineral wealth (nonliving resources) which results in the exploration, exploitation and production of oil and gas earth offshore by foreign companies through production sharing contracts¹⁹

The rights of exploration and exploitation of natural resources on the continental shelf²⁰ bordering the coast of Indonesia are exclusive rights based on customary international law related to

Navigation) dan Bab XI menjadi XI-1 mengenai Langkah-langkah khusus Peningkatan Keselamatan Pelayaran (Special Measures to enhance Maritime Safety) dan Bab XI-2 mengenai Langkah-langkah khusus Keamanan Pelayaran (Special

¹⁶Lihat Pasal 68 Undang-undang No. 17 Tahun 2008 tentang Pelayaran.

¹⁷*Ibid*, Lihat Pasal 102. Kegiatan tertentu adalah kegiatan untuk menunjang usaha pokok badan usaha yang bersangkutan.

¹⁸Pasal 25 A UUD 1945 "Negara Kesatuan Republik Indonesia adalah sebuah negara kepulauan yang berciri Nusantara dengan wilayah dan batas-batas dan hak-haknya ditetapkan dengan Undang-undang"

¹⁹Bartlett, Barton, C.Bartlett, Flower, Hays, *Pertamina, Perusahaan Minyak Nasional*, Inti Idayu Press, Jakarta, 1986, Dekrit Presiden No.476 tanggal 28 Agustus 1960: pembagian pendapatan adalah 60% pemerintah, 40% Maskapai.

²⁰Mochtar Kusumaatmaja, *Konsep-konsep Hukum Dalam Pembangunan*, Alumni 2013, hal 138. Merupakan konsep baru yg dikemukakan oleh Presiden Truman tanggal 28 September 1945 untuk menjaga kepentingan Amerika setelah diyakini di landas kontinen (seabed & subsoil) seluas 760.000 Mil persegi erdapat kandungan minyak bumi yang harus diatur eksploitasinya. Namun perairan di atasnya tetap sebagai laut lepas tidak terganggu bagi kepentingan navigasi (*The Character of high sea of the water above continental shelf and the right to their free and unimpeded navigation are in no way thus affected*).

the Continental Shelf and strengthened by the 1958 Continental Shelf Convention²¹ and *United Nation Convention on The Law of The Sea* (UNCLOS) 1982.²²

Exploration, exploitation and production activities are Oil and Gas business fields that require rig (jack rig, dynamic positioning) in carrying out offshore drilling and require storage tankers that can process the separation of oil liquids with residues or FPSO (Floating Production and Storage Offshore) as well as oil-producing tankers production for crude oil cargo lifting activities.

The entire set of activities above is carried out in a place called the Special Oil and Gas Terminal. In special oil and gas terminals equipped with mooring berths in the form of docks or single point mooring (SPM) equipped with work safety equipment and environmental protection. The special terminal itself is not only for exploration, exploitation and (upstream) production activities but also for fuel supply and distribution activities or for un-loading tankers to refineries.

In a special terminal, a Manager is placed who is responsible for the administration and operation of operations including mooring and un-mooring arrangements, un-loading or lifting cargo and handling agency and customs activities. To be able to carry out these activities requires cooperation with the Marine Vessel and Services business entity and the Port Business Entity (BUP) as well as other business entities.²³

The Pertamina Balongan Oil and Gas special terminal is an inseparable part of the Pertamina Processing Business Unit or called the Balongan Refinery Unit VI, Indramayu, West Java and is an integral part of Pertamina's corporations whose core business is Oil and Gas Earth (Oil and Gas). So the formation of the Balongan oil and gas special terminal is in the interests of Pertamina's corporation.

As Pertamina's Refinery Unit, it must run Crude processing business into fuel oil products that are needed by the community such as Premium, Solar (Gasoil) and HOMC (High Oil Mogas Compound) superior products for the manufacture of Pertamax 92/95 and LPG gas with the amount already determined by the Pertamina corporation. Have a maintenance schedule according to manufacturing industry standards and refining oil and gas industry standards which are terminated per five-year period with large Turn-Around or overhaul activities.

Special Terminals must be able to compensate for the processing of fuel oil by maintaining and continuously maintaining the proper operating conditions of all existing infrastructure, facilities and infrastructure through regular maintenance such as mooring facilities in the form of Propelyne Wharf for shipbuilding and LPG loading activities, Single Point Mooring (SPM) totaling five units of various sizes with independently separated lanes. Of the five SPM units, two of them are for the distribution of imported BBM products whose assets and budget holders are Balongan BBM Transit Terminals. Furthermore, related to the difficulty in getting Crude Oil or raw material for making BBM Product, SPM will be built with a capacity of 165,000 Tons or 950 MB, which of course requires a deeper water depth than the current one by calculating the squat of the ship.

In addition to the mooring facilities which must be maintained, the depth of the waters into the flow of traffic in and out of gas-carrying vessels at the Propelyne pier and the water area around the SPM and the anchor anchorage. As one of the special international terminals, Pertamina already has a permit to dredge in the special seaport area of Pertamina RU-VI Balongan based on the Minister of Transportation Decree Number: SK.49 / AL.003 / PHB-98 dated 16 September 1998, with a target depth of -6.5 MLWS, dumping area 06 deg18 '30 "LS / 108 deg 28'-00" BT with the person in charge of Pertamina's Shipping, Standardization and Communication Director (now Deputy Director of Shipping).

The obligation that must be carried out is to obey the laws and regulations in the field of shipping and environmental sustainability, take full responsibility for the impacts caused by dredging activities carried out, report dredging activities periodically to the Director-General of Sea Transportation with a copy of the Head of Regional Office X Department Transportation of West Java

²¹*Opcit*, Mochtar Kusumaatmadja, hal 120. Konvensi Landas Kontinen 1958 merupakan kodifikasi daripada hukum yang berlaku di bidang ini (hak eksklusif adalah hak mutlak suatu negara pantai. Namun, dapat mengizinkan dipakai negara lain atas ijin negara yang bersangkutan).

²²Lihat UNCLOS 82. Secara tegas ketentuan mengenai Landas Kontinen (*Continental Shelf*) sudah diatur dalam *Chapter* 76 dan 77.

²³Undang-undang No.17 Tahun 2008 tentang Pelayaran mengatur kewenangan Otoritas Pelabuhan memberi persetujuan kepada BUP untuk melaksanakan kewenangan dalam pemanduan di perairan wajib pandu. Sedangkan untuk kegiatan operasionalnya menggunakan ketentuan yang biasa berlaku dalam dunia maritim seperti SOLAS 74, Marpol 73/82, ISGOTT, ICS, LNG Handling Code, ISM Code, ISPS Code, dan lain-lain termasuk ketentuan perundang-undangan tentang lingkungan hidup.

Province.²⁴

Following are the instruments for applying the principles of maritime law in the operation of oil and gas special terminals, namely:

1. License

According to the Deputy for Management of the State Ministry of Administrative Reform and Bureaucratic Reform, in the era of reform, the paradigm of thinking the government in carrying out the obligation to serve the community must change fundamentally from a powerful approach to a new public service. Communities are subjects served on an equal footing with subjects serving (the government) based on the principle of popular sovereignty and the rule of law in accordance with Article 1 paragraph (2) and (3) of the 1945 Constitution of the Republic of Indonesia.²⁵

For this reason, the government has taken the following important steps:²⁶

- a. Deregulation and bureaucratization of business licensing as a policy taken to renew the process of providing business services to the public by the government which so far has been perceived as hampering or stalling, to be perfected through the process of accelerating services by cutting off the chain of service arrangements and related organizational units.
 - b. The factor of a long and expensive business licensing procedure
 - c. Factors of Low Legal Certainty
 - d. Other factors such as the adoption of local regulations (perda) of levies are driven more by the desire to increase regional own-source revenues (PAD), which is excessive, which is feared to be detrimental to regional development.
 - e. Low-quality human resources and limited infrastructure
2. Application of Maritime Law

In addition to licensing issues, another important problem in carrying out an activity or business is Supervision that will determine whether or not the objectives of an activity or business are achieved.

Optimizing the Role of the Special Oil and Gas Terminal in Maintaining Business Interests and Integrated State Interests

The main key to a successful transition to a new policy is consistency, transparency and the common perception of stakeholders. In addition, every effort must be made by taking "lessons" from past failures, and implementing pilot projects that will produce successful models for the future.

Re-empowering the port aims to ensure that the entire nation enjoys its benefits.

This emphasizes the need for shared perceptions among stakeholders. All parties must agree on and follow the roadmap outlined in the integrated action plan in the Final Draft of the 2012-2030 National Port Master Plan (RIPN), which is currently being distributed throughout Indonesia. The Action Plan in the NRMP includes a strategy that highlights, in a measurable manner, improvements to legal processes, operations, human resources and the use of technology. In addition, the Action Plan also highlights planning and integration, set development priorities, and secures private investment and Public-Private Partnership (PPP). The common perception of criteria, norms, and standards is very important if stakeholders want to succeed in optimizing existing ports or building new ports, making master plans for each port, building a road network from ports to industrial zones and complying with national spatial plans.

The synchronization of special terminal maintenance programs and activities with the refinery unit activities will determine the overall refinery work results. Therefore, each other organizational functions in Refinery Unit VI must support each other. The main support for special oil and gas

²⁴Diktum kedua Keputusan Menteri Perhubungan Nomor : SK.49/AL.003/PHB-98. SK ini berlaku setiap kali dilakukan pengerukan sepanjang tidak melanggar ketentuan perundang-undangan yang berlaku.

²⁵http://www.perizinan.info/frm_index.php?pg=informasi/info_umum.php. Asdep Sisdur -01/02/2011 reformasi perizinan bertujuan meningkatkan efisiensi perekonomian nasional, kemampuan pemerintah mengadopsi perubahan untuk memperkuat daya saing nasional sektor ekonomi. Instansi harus memiliki Pedoman, SOP agar tercapai birokrasi yang kuat, efektif dan bersih, perlu diubah Inpres no 5 Tahun 1984 tentang pedoman penyederhanaan dan pengendalian perizinan bidang usaha dan memperkuat Instruksi Presiden No. 3 Tahun 2006 tentang Paket kebijakan perbaikan iklim investasi untuk menjadi dasar penataan system tata laksana perizinan pada instansi pemerintah pusat dan daerah.

²⁶Kementerian PAN RI, tanggal 19 April 2014, Sistim Informasi Tata Laksana Perizinan, Pokok-pokok Pikiran Deregulasi dan Debirokratisasi Perizinan, Asdep Tata Laksana 14/6/2007.

terminals is on the aspects of safety, security and protection of the marine environment through the implementation of ISPS Code for special terminals, by placing General Manager Refinery Unit VI as the person in charge of special terminals, implementing the ISPS Code exercise every 18 months accompanied by countermeasures water pollution and the appointment of a Port Facility and Security Officer (PFSO) from the Marine Terminal Safety Inspector (MTSI) with their approval.²⁷

Special terminals are required to maintain and maintain Sailing Navigation Assistance Facilities (SBNP), guarantee the reliability of SBNP with established standards and report to the minister of transportation. To ensure the reliability of SBNP operations, it must be carried out by officers who meet health requirements, and skills are proven by certificates. Safeguards must also be strengthened to maintain the integrity of SBNP functions and hold accountability to terminal service users who have enjoyed or committed violations or destruction of SBNP.

Service users who have enjoyed SBNP in special terminal waters or in the area heading to the special terminal will be charged Light dues (SBNP sign fees) and those who damage SBNP are required to replace new or repair SBNP until it functions normally again.²⁸ However, the reality will be difficult to carry out prosecution of the ship concerned if there is no strong evidence of violations that have been carried out due to weak supervision by the special terminal manager and inadequacy in seeking further information on the perpetrators.

The SPM-damage event ever occurred in Cengkareng waters in 2012, when SPM-II was 35,000 DWT, the SKH was crushed by hard objects suspected of coal-carrying barges for the Muara Karang PLTU during bad weather and not monitored by terminal officers. This incident has caused loss to the business entity (Pertamina) which must bear all costs incurred for the improvement of this SPM of more than Rp. 20 billion.²⁹

Synchronizing the interests and work procedures of the organization between the Aviation function and the Marine function which is a part directly involved in activities at the Pertamina Cengkareng Oil and Gas special terminal is an important matter that will be able to determine the degree of safety, security and protection of the shipping environment at the special terminal pool.

Infrastructure readiness, Jetty, SPM, loading and unloading equipment, Subsea hose, Floating hose and automatic stop valve, manifold reducer, SBNP, water depth and others absolutely must be maintained the conditions of proper operation of special terminals so as to be able to serve efficiently ships carrying crude cargo as well as products that are the main source of life of the Pertamina Balongan refinery and can meet the fuel needs of the community, including industry in West Java and its surroundings.

Related to the interests of Pertamina's business entity as the operator of the special terminal, it has the interest to maintain the cargo received or unloaded from ships to land tanks or vice versa, no losses or losses can be minimized as much as possible to avoid company losses.

Operationally, Pertamina's management in Balongan has made efforts/initiatives to reduce losses including by forming a loss team that involves all functions to contribute, adding, repairing and calibrating tank certification, Automatic Tank Gauging (ATG) metering measurement and refining the work system (STK).³⁰

The role of the special terminal in this problem is to ensure that all facilities for loading-unloading, docks, and accessories such as dolphin fender, SPM, Mooring hawser, floating hose and subsea hose to the PLEM including waterways to enter, rotate and exit the dock at the dock or SPM is bound in SPM in a proper operating condition and has been well controlled and the piping system from the ship's manifold to the storage tank or vice versa is available with the specified standards. This will cover one of the causes of claim from the carrier because the unsafe condition terminal makes the reason the carrier is not willing to carry out operational activities at the terminal.

The role of other special terminals is in maintaining the efficiency of shipping must understand exactly the conditions and situation of the waters to be headed and traversed. So that it can provide corrections and information to the programmer. In sea transportation activities, the operations of

²⁷ Lihat Surat Penunjukan Pejabat Pengganti PFSO Sdr Torie Adi Prasetyanto -752282 / MTSI sebagai PFSO Tersus Balongan dengan kewajiban melapor ke Marine Region Manager III dan dapat direct to GM RU VI selaku Incident Coordinator (Surat No. 144/E16000/2015-S0 Tanggal 5 Juni 2015)

²⁸Lihat Pasal 172 ayat (4) dan (6), Pasal 173 s/d Pasal 176 ayat (1) UU RI No. 17 Tahun 20018 tentang Pelayaran.

²⁹Presentasi Accident: Collided SPM II SHAFTI by Hard Object. 12 April 2012.

³⁰Lihat Laporan Hasil Audit atas transaksi arus minyak dan pengendalian losses di Refinery Unit Balongan, No R-11/J00100/2015-S0/17 April 2015.

ships are moved by the programmer according to the route determined by the corporate master program. Erroneous arrangement by the programmer ordered the departure of the ship to Plaju from Balongan with a load of 100 MB which apparently exceeded the draft required to enter the Musi river waters. This results in commercial losses in the form of time, more cargo transportation opportunities, fuel consumption, crew costs, and port services.³¹

The implementation of the principles of transparency and accountability in principle includes the following indicators:

1. The simplicity of Service Procedure, which consists of fixed procedure variables/service operational standards and service requirements
2. Disclosure of service information consisting of service information variables, media or officers as well as media complaints and suggestions
3. The certainty of service implementation, including the variable time of service implementation and service costs
4. Service product quality, including administrative service product variables, goods, and services as well as complaints about service product quality
5. Professional level of officers, including leadership and control practices (supervision) and the attitude of officers in providing services
6. The orderly administration of management and service management, including orderly administration of services, use of service arrangements for work, vision and mission and motto/tips, division of tasks, authority, and responsibility, a policy of developing the apparatus of Human Resources of the apparatus
7. Completeness of service facilities and facilities including service support facilities and environmental support facilities as well as service workspace
8. Other outstanding achievements and innovative steps in the framework of efficiency that are beneficial to society

Good Corporate Governance provides the following benefits:

improvement in communication; minimization of potential collisions; focus on key strategies; increase in productivity and efficiency; sustainability of benefits; promotion of corporate image; increase customer satisfaction; gain investor confidence.

The Role of the Special Oil and Gas Terminal in the Case of a Sea Accident (Collision, Fire, Sink) Against the Ship in the Oil and Gas Business Perspective

The SOLAS Convention contains a number of complex rules by setting standards relating to ship construction, vessel security measures and all contents from fire-safety measures, requests for assistance for people and or ships that will sink (life-saving appliances), navigational equipment that must be carried on board and other aspects of navigation safety, dangerous goods that can be carried along with special rules regarding nuclear ships or nuclear powered vessels.

Standards regarding various aspects of navigation safety that apply on the ship itself (internal aspects of navigation safety) must be determined by each participating country of the SOLAS Convention and because RI has ratified the 1960 SOLAS Convention (now the 1974 SOLAS Convention) based on a Presidential Decree No. 203 of 1966, Indonesia is obliged to set various safety navigation standards applicable on Indonesian-flagged vessels.

The implementation of navigation safety standards as regulated in the SOLAS Convention in principle rests with Indonesia as a flag state. However, there are times when a coastal country or a port state, a country whose port is visited or visited by Indonesian ships, can also implement navigation safety standards in the sense that a port country can monitor the extent to which Indonesian-flagged vessels comply with the navigation safety standards specified in Convention on the Safety of Life at Sea. The 1966 International Convention on Cargo Lines which regulates the safe limit of carrying cargo so that the ship is in a position of positive stability.

In addition to the problem of the feasibility of ships to sail at sea, the guarantee of shipping safety is also determined by the problem of collision prevention and determination of the route or route of the ship (Collision avoidance and ships' routing). As is the case with SOLAS conventions, there are various regulations to prevent collisions at sea. The rules attached to the International Regulations for Preventing Collisions at Sea in 1972 are principally related to the behavior or actions and movements of a ship in relation to other ships, especially when the ability of the ship to look or see has decreased in order to avoid the occurrence collision with another ship.

However, prosecutions for violations are rarely carried out because in many cases the policy to

³¹Surat Pernyataan Officer Shipping Agency & Tanker Program Marine Region III PT.Pertamina (Persero) tanggal 6 April 2015.

prosecute or not demand is in the hands of the ship's captain. Under the provisions of Article 21 paragraph (4) and Article 39 paragraph (2) of the 1982 UNCLOS (KHL) ships exercising the right to peacefully pass through territorial sea or the right to transit through the strait used for international shipping must comply with these regulations without regard to whether the flag state or the coastal nation is a country participating in the 1972 Convention.

Several marine accidents that occurred in Indonesian waters, among others:

1. Pertamina Ship Collision with Elixir Ship
2. Ship Fire MT.PENDOPO / Pertamina 1020,
3. Imodco RU-VI's Single Point Mooring (SPM) sink
4. Pollution of the marine environment from the King Fisher ship
5. Oil Spills in Tersus Lawe-lawe
6. The occurrence of Oil Spill at the Balongan Special Terminal due to the tearing of the Single Carcas Floating Hose, on September 14, 2008, Cargo Duri Crude amounted to 3000 KL and on October 3, 2008, the tearing of the Single Carcas Cargo Nile Brend Crude Floating Hose was as much as 300 KL with oil spills reaching Balongan, Indramayu, Pasekan and Cantigi.

The effectiveness of maritime law in the port sector in its implementation is influenced by the interests of the relevant legal entities. These interests are various, including compliance, identification, internalization, and others. Obedience that is compliance is the lowest degree of obedience, so it must be carried out continuously in more stringent and regular supervision. Whereas the highest value is the obedience which is internalization because the obedience that is owned is integrated with the intrinsic values held by him.³²

The conclusions that can be drawn from the description above are the implementation of maritime law and port regulations must be carried out professionally, that is supported by competence, creative and innovative, do not have a personal or group interest in decision making, accompanied by a willingness to implement optimally the implementation, the role, authority and function of law enforcers both in conducting socialization and in law enforcement.

So it becomes very important to master the substance of the rule of law and legislation that will be implemented in the community either by government agencies or business entities in carrying out their activities in a professional manner, focusing on a strong teamwork framework or high synergy and implemented effectively and efficiently as well as with full awareness of obeying the laws and regulations to get the maximum business profit and can be used for social welfare of the community and the economic progress of the region and country.

The obligations of the management of the Special Terminal to the state consist of:

1. Maritime Environmental Protection includes:
 - a. Meet the requirements to prevent pollution from sources at the port.
 - b. Meet the requirements to prevent pollution from port activities.
 - c. Meet the equipment requirements, oil dispersant according to the magnitude and type of activity.
 - d. Managing waste is by preparing a waste container from the ship with the Port Authority or Port Operator Unit, managing waste in accordance with statutory regulations and collecting, processing and destroying in accordance with the provisions of the Ministry of Environment.
 - e. Tackling pollution caused by port operations with port authorities or port operating units.
 - f. Use standard operating procedures and emergency response procedures for pollution control.
 - g. Own and carry out waste management in accordance with statutory provisions
2. Terminal safety and security include:
 - a. Meet the requirements of administrative aspects, economic aspects, safety and security aspects of shipping, technical aspects of port facilities, office facilities and supporting equipment for agencies holding cruise safety and security functions, customs, immigration and quarantine agencies and special types of commodities.
 - b. Paying attention to the safety and security of ships operating at the port, loading-unloading activities, passenger ups and downs, and port safety and security.
 - c. Meet the safety management and security system of port facilities.
3. Payment of Non-Tax State Revenue (PNBP)

Based on RI Law Number 20 of 1997 concerning Non-Tax State Revenue (PNBP), one source of PNBP comes from service activities by the Government. Strictly regulated in Government Regulation No. 11 of 2015 concerning Types of Non-Tax State Revenues at the Ministry of

³²Ahmad Ali, *Menguak Teori Hukum dan Teori Keadilan*, Kencana Prenada Media Group, Jakarta, 2010, hal. 375.

Transportation states that PNBP originates from Sea Transportation Services in the form of concessions and/or compensation for port services at the Port.

In detail, the services provided by the Government in the Minister of Transportation Regulation No. 69 of 2015 concerning Implementation Guidelines for Non-Tax State Revenues that apply at the Directorate General of Sea Transportation are port services, navigation services, shipping receipts, shipping services, sea transportation services and administrative fines.

Port services at the Special Terminal include:

1. Vessel Services include lending services, scouting services, delaying services, the contribution of scouting and delaying services delegated to Port Business Entities or Special Terminals, Mooring Services.
2. Freight Services include dock services, storage services, ship to ship transfer services (transfer of cargo from ship to ship)
3. Service Facilities and Infrastructure includes the use of means of loading and unloading equipment owned or not owned by the government.
4. Water Use Services and Clean Water Services.
5. Foreign and domestic transport vessel services that carry out activities in Special Terminals and/or terminals for their own interests.
6. Shipping Telecommunications Services.
7. Services for the use of navigation aids (SBNP).
8. Health assessment services in the Sailing work environment and Evaluation services for the authority of companies that carry out repairs and maintenance of shipping safety equipment.
9. Provide reports on Special Terminal activities periodically once a month.

CONCLUSION

Based on the description in the previous chapters, the following conclusions are presented which are answers to the problems in this study, namely:

1. The regulation of maritime legal principles regarding the operation of the Special Oil and Gas Terminal has taken its place in Law Number 17 of 2008 concerning Shipping which basically contains the regulation of shipping, port, safety and security of shipping and complete environmental protection.

To regulate the principles of maritime law in the Special Terminal in the Exclusive Economic Zone or Continental Shelf where the government has an interest in dealing with the possibility of exploitation of Petroleum on the seabed and the subsoil (sea bed and subsoil) in order to cope with increasingly depletion of oil reserves on land. If there is an activity at the Special Oil and Gas Terminal, besides using Law Number 17 the Year 2008 on Shipping, a Government Announcement on the Continental Shelf on 17 February 1969 must be used, complete with the establishment of an authorized and responsible official in terms of safety, shipping security and protection. environment. As for security outside the boundaries of the coordinates of work platforms or artificial islands, the authority of the Indonesian Navy is the holder of defense functions.

On the other hand, in carrying out the functions of safety and security of waters in the Indonesian territorial (Constabulary function at sea), there is overlapping legislation that provides the same duties and authority and is responsible to the President, namely the Indonesia Sea and Coast Guard and BAKAMLA formed based on Presidential Regulation No. 178 of 2015 and other agencies such as Polair (AIRUD), Customs (Customs & Excise), Office of Maritime Affairs and Fisheries (KKP) which in carrying out their duties use ships

2. Optimizing the role of the Special Oil and Gas Terminal in the context of Oil and Gas business interests and the interests of the state-supported by starting to use the ISPS Code to further empower security activities on shipping sovereignty throughout Indonesia, specifically can be used as a reminder in the Oil and Gas Special Terminals at ports so that it can be prevented from avoiding the unsolicited rise of persons on board for terrorism and other criminal purposes requiring order at the Special Terminal.

In addition, the Special Oil and Gas Terminal has functions for managing navigation activities in DLKp, loading, unloading, ballasting and deballasting simultaneously in segregated tanks related to safety, operational and commercial functions related to the commencement or termination of the contract of a freight or the contract of carriage of good by sea which in its series is demanded to be able to guarantee the safety of shipping for the ships that visit it..

Professional operational support of professional Oil and Gas special terminal workers who meet personal worthy and competence requirements is required, able to apply Maritime legal principles and the principles of Good Corporate Governance and support of Port Regulators (Port

Authority and Syahbandar) to implement all provisions of the laws and regulations in the maritime sector consistently by applying the principles of Good Governance (good governance).

3. The role of the Oil and Gas Special Terminal in the event of a sea accident (Collision, Fire, Sink) is very important to ensure the safety and security of access to and out of the Oil and Gas Special Terminal area or the area of interest of the port and the work area of the Oil and Gas Special Terminal in order to take action including embarkation and evacuation of victims (if any), investigations by stakeholders related to the function of safety, security and environmental protection so that business processes that include oil and gas manufacturing, supply and distribution activities are not disrupted.

SUGGESTION

From the conclusions above the authors propose a number of suggestions:

1. Law Number 17 of 2008 concerning Shipping needs to be refined further with a new Shipping Law that includes provisions relating to exploration, exploitation and production activities in the deep sea which require a Platform (Rig) with high technology (Dynamic Positioning System), submarine cable installation and other equipment including navigation navigation aids and vessels that will carry out storage and transport to other places.

Related agencies that need to be involved for the formulation of a the new Shipping Laws are the Ministry of Energy and Mineral Resources, Ministry of Law and Human Rights, SKK Migas, Ministry of Transportation, Ministry of Finance, Ministry of Defense, Ministry of Environment, PT. Pertamina (Persero), and other relevant agencies and NGOs concerned with environmental problems.

There is a need to immediately issue a Government Regulation on the Indonesia Sea and Coast Guard (ISCG) which regulates the duties and authority in accordance with Law Number 17 of 2008 concerning Shipping and the workings of the ISCG organization. A single authority needs to be given to ISCG to avoid overlapping arrangements and implementation of the enforcement of Indonesian territorial sea law.

2. To be able to ensure the security of the Special Oil and Gas Terminal in maintaining business interests and integrated state interests from terrorist disturbances or other undesirable disturbances, access must be put into work areas and port environment areas through one door and followed up with patrols and hot pursuit (what if there is anything suspicious) by the Indonesian Sea and Coast Guard (ISCG) at the behest of Syahbandar as the Port Security Committee. (PSC). For this violation, the law enforcement process must be carried out in accordance with Law No. 17 of 2008 concerning Sailing by Syahbandar as an investigator regulated by the Act.

To maintain business interests in the Oil and Gas Terminal, it is necessary to have Port Information, Port Entry, and Out Guide and other information that is always up to date to ensure that it supports the effective and efficient operation of the Special Oil and Gas Terminal and avoid high-cost economy such as demurage.

3. So that the Special Terminal can ensure that the handling of accidents at sea can take place quickly should be equipped with operator personnel who have competence (knowledge, skills and experience) in the maritime field so that they are able to evaluate, analyze and make decisions that benefit the interests of the terminal, the ship and related parties others in the Special Oil and Gas Terminal, and are able to carry out coordination functions with stakeholders of the Oil and Gas Special Terminal such as the Syahbandar, the National Accident Transportation Committee (KNKT) and the Indonesian Police (Forensic Laboratory Center), the Office or Ministry of Environment, H / M Insurance, Protection and Indemnity Club, Salvor, Supply logistic dispersant and equipment, Hyperbaric Chamber and its operators to achieve safe conditions for the terminal and the continuation of oil and gas business operations.

In the case of ship accidents that cause pollution at sea, to safeguard the interests of the state against indemnity and recovery of the maritime environment, prosecutions of ships or perpetrators must be made in accordance with the International Convention on Civil Liability for Oil Pollution Damage, 1992 (CLC) Protocol 1992) and the International Convention on the Establishment of an International Fund for Oil Pollution Damage, 1971 / -1992 (Fund Convention 1992 which would determine the amount of compensation as state income. Both conventions above have been ratified based on KEPPRES No. 18 of 1978 and KEPPRES No. 55 of 1999.

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