

Private Port and Unlawfull Operation In Palu Area Central Sulawesi

Agus Lanini^{1*}

¹ Faculty of Law, Tadulako University, Central Sulawesi, Indonesia

Abstract. This research goals found out the regulation of the private port or terminal as own interests (TUKS) in Palu and described the cause of the owner of the private port un-comply to the port laws/regulation. This research is a normative legal research that trying to describe in general terms the facts which are found including the provisions of law in an abstract. Such observation and interviews conducted to support qualitative analysis. Regulation of the ports have been arranged by the government in the scope of national, however, in the scope of regional and local are still limited. Law number 7 of 2008 about shipping, government regulation number 61 of 2009 concerning port, decision of the minister of communication number 54 the year 2002 concerning special port meanwhile, in the scope regional and local regulation such as urban land use plan as well as coastal management of Palu. Violations of private or specific ports in their operations do they have not get permission from the directorate general of the transportation authorities. The causes occurrence or violations are such as complicated bureaucracy, regulations un-synchronize, omitted by authorities, and the illegal status of the port that was forced to operate. The recommendation that is ought to be fixed the regulation and/or controlling against port laws such special port as well special terminal.

1 Introduction

Port laid in the site of land and/or waters with certain boundaries. Some activities of government and business used it as a place to ship lean, up and down, and/or passenger loading and unloading goods. Such as terminals and berths vessels equipped with the safety and security of shipping and auxiliary activities of the port as well as the place of displacement of intra-and intermodal transport[1].

The Terminal is one of the very important port facilities which include an outdoor recliner and leans against the ship or the docking place, place heaping, where up is down and waiting for passengers, and/or place of unloading the goods[2]. In general, there is two function of the terminals (public and private use). The private terminal is located within the area of the operation and interests scope of the port area which is part of the main port. It is used to serve the owner in accordance with their business[3].

* Corresponding author : aguslanini@gmail.com

The Palu Bay waters are about 189 kilometers per-square on the position coordinates of 36 ' 00 " to 56 ' 00" South latitude and 119^o45 ' 00 " to 121^o1 ' 0" East longitude[4]. As long as Palu Bay for 30 kilometers, in particular businessmen engaged in the mines minerals or sandstone (sirtu), to simplify the process of hauling, they built a private port for transporting commodities of sandstone out from Central Sulawesi such Kalimantan, Batam, and another part archipelago of Indonesia. Almost all of the port is operated for sandstone shipping[5].

In Central Sulawesi, there are about hundreds of private port without permission and done public activities. In the Palu Bay, there is about 42 private port (terminals and terminals for its own interest). They have been in operation long enough and given warnings and persuasively approach, but they are still operated. According to central Sulawesi regional police, they had a little bit constraint to enforce the regulation because this is not a criminal[5].

The private ports, typically minerals-mining material transport activities but in its operational sometime operating as a public port. In Palu Bay private ports in particular, are not licensed yet even used for general port activities. It is a serious violation because of the associated vital aspects such as economic. How large the economic potential that is taken out of the port, and their growth could be higher than the official general ports. Meanwhile, potential insecurity or crimes that may occur in the operation of the ports such as smuggling, trafficking, and terrorism[6]. State agency such as regional police, custom, and regional transportation office of central Sulawesi have not found a significant evidence yet[5].

Consequently, the impact of the illegal private ports operation caused, the economic problem as a whole level. Port as a terminal for self interests that have not permission or have permission but their operation differ with the issued purpose, for instance, it operated as a public port. The problems are how did the private port regulate in the Palu Bay and why could the owner of the private port un-comply the port regulations?

Research methods

This research was descriptive analytical nature that seeks to describe in general terms the facts which are found including the provisions of law in abstract[7], then going be analyzed based on the norms and or legal principles, and theories of law, related port regulation[8].

Library research conducted through references that include primary sources in the form of provision of legislation issued by the legislature (DPR), the state secretariat (Setneg) and the court decision, secondary sources such as textbooks, literature and the writings of scholars, legal materials tertiary and secondary legal materials[8]. Field research exercised to know directly the cause of the owner of private port against port regulation. This can be done through observation and interviews informants or respondent determined.

2 Results and discussion

2.1. Regulation on Private Port in the jurisdiction of the Pantoloan Harbour

Based on the Joint decision of Domestic and Transportation Minister the Republic of Indonesia Number 24 of 1993 and Number K.M. 44 of 1993 concerning the boundaries area of the jurisdiction waters and inland of the port Pantoloan/ Donggala. Special Terminal (Tersus) located outside the area of operation scope (DLKr) and the interests area of port (DLKp), which is part of the nearest port to serve their own business[9].

Special terminal (Tersus) and private terminal built and operated, only a principal supporting the activities of the company that built it. The construction of the port only aims to support the efforts of the company. Principal business activities include; mining, energy, forestry, agriculture, fisheries, industry, tourism, and the docks and shipyards[10].

Article 36 of the minister of transportation decisions number PM. 51 of 2011 about seaports organization stated that in order to support specific activities in the area of the operation scope and the interests area of the seaports, it could be built and operated harbours for the benefit of its own in order to (a) support the activities of a particular field: mining; industry; Agriculture; fisheries; forestry; tourism; and other activities related to it purposes and need a port facilities., (b) support the activities of the government, research, education, and training as well as social[11].

While Article 37 mentioned that the management of harbours for the benefit of themselves can only be done on the basis of cooperation with the organizers of seaport and after obtaining the consent of the management of harbours for the benefit of its own, minister for international port, governor for regional port[12], and major/head[13] of district for local port[11]. Local government as an authority holder in related to local scope or operation on the base of regulation.

Then they shall apply with fulfilling: (a) evidence of cooperation at least of minimum for us2e the land and waters of the harbour with the port administrator; (b). picture of the layout of the location private port with an adequate scale, image construction docks and layout for geographical coordinates; (c). has proof of land ownership, for the construction of seaports concerned; (d). company data that includes a company certificate number principal taxpayers, and principal business license; (e). proposal of activity port plan; (f). recommendations of the official holder of the function of salvation sailing on seaports concerned; (g). news events results own site by the technical team integrated; and (h). environmental studies that have been authorized by the authority according to applicable legislation[11].

According to the article 139 of the Republic of Indonesia Government Regulation Number 61 of 2009 concerning Port, stated terminal as private port may only be operated for activities: (a) ship traffic or ride down passengers or loading and unloading of goods in the form of raw material, production, and supporting the production of equipment for his own interests; and (b) governance, research, education and training, and social[10]. Activities, as referred to in paragraph, should be evidenced by documents of passengers and/or freight charge documents. So far businessmen who have built and operates the terminal to its private allegedly had committed violations, mean their legal behavior close related to the attitude and motivation[14].

2.2. Violations of the Private Port Licensing in The Territory of Palu Bay

Regulation on the private port in the territory of Palu included the operation of port office Pantoloan as port authority as was arranged in a joint decision of the Minister of the Domestic and the Minister of transportation that laid in the boundaries of the area of the waters and the mainland Pantoloan/Donggala port operation. The boundaries of the area of the waters operation of the port are approximately 681.90 hectares[15]. Pantoloan as the port authority with boundaries of jurisdiction scope as the base of the ship ocean and archipelago for about 105,330-meter per-square wide.

The minister of transportation as port authority Pantoloan had an authority in planning the allocation and use of the land concerned, land use purposes of the implementation of its business, delivery parts of the land to a third party, which includes the sites designation, term time and financials provided that the grant of rights over the land to third parties is exercised by officials of the national agrarian regional offices which are authorized in accordance with the regulation[16].

For third parties who use the land located in the area of the jurisdiction of the port authority, subject to appropriate rent conditions. The area will be provided as the rights of use under consideration of the minister of communication. In issuing that rights with

certificate should be allocated by the fourth state port enterprise as well as local government and regional agrarian office on the base of regulation.

The license can be given by the regional government to build outside of the area of the port affected the sustainability port area, sea line, the security services and navigation, that is considerate or approval the Directorate General of Sea Transportation or designated officials.

Mainly, in Palu Bay, the problem arises while mining product shipping activities due to their private port (terminal) indicate operated without an official license[17]. Although the private port has operated for 5 to 7 years ago, according to the minister of transportation the private ports are illegal if they have not issued a license[5].

Minister of transportation had asked that why the company's as the owner of private port did not obey the regulation even its has not a permit from the government. According to regional office transportation there are about 42 private port unlicensed but still operated in the area of Palu Bay, government confirms that warning illegal port hard to immediately stop their operation, however persuasive warning quietly disregarded. It is due to the regional police (Polda) Central Sulawesi has been asked to take an account related enacted toward violation[5].

The behavior occurs because of the law through a process of internalization of public awareness. Started at a time when the process of internalization of facing new patterns of behavior as expected by the law in a particular situation. The indicator of the awareness of the community according to Kutschinsky consists of; (a) knowledge of the rules of law (law awareness), (b). Knowledge of the contents of the regulations of the law., (c). Attitude toward the legal regulations, (d). Patterns of legal behavior[18].

3 Conclusion

Regulation of the private port as its own interests (TUKS) has been arranged by the government in the scope of national, however, in the scope of regional and local, there is limited related regulation concerning private port. Law number 7 of 2008 about shipping, Government Regulation Number 61 of 2009 concerning Port, Decision of the Minister of transportation Number 51 of 2011 Concerning Special Port meanwhile, in the scope regional and local regulation such Regional and Local Urban Land Use Plan as well as coastal management of Palu.

Violations of private or specific ports in their operations do they have not get permission from the Directorate General of Sea Transportation as the authorities. The causes occurrence or violations are such as complicated bureaucracy, regulations un-synchronize, omitted by authorities, and the illegal status of the port that was forced to operate. The recommendation that is ought to be fixed the regulation and/or controlling against port laws such special port as well special terminal.

References

- [1] S. Nugraha, "Kewangan Pengelolaan Pelabuhan di Daerah," Jakarta, 2005.
- [2] E. Bratteland and J. E. N. Netter, "Port and Transportation Development," *Journal of Coastal Research*, pp. 159–178, 2005.
- [3] L. Barker, "Global Challenges for Ports and Terminals in the New Era," *World Bank*, p. 12, 1999.
- [4] "Palu Municipality in Figures 2017," Statistician of Palu Municipality, Palu, 72710.1702, 2017.

- [5] S. F. Lembah, "The Rapid Assesment Report on Mining Problematics in Palu City and District of Donggala Central Sulawesi," The Ombudsman Republic of Indonesia Central Sulawesi, Palu, 2018.
- [6] B. M. Conner, "The Dangers of 'Safe Harbor' Laws for Youth in the Sex Trades," p. 55, 2016.
- [7] S. Mertokusumo, *Penemuan Hukum, Sebuah Pengantar*. Yogyakarta: Liberty, 1996.
- [8] S. Soekanto and S. Mamudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*. Jakarta: Raja Grafindo Persada, 1994.
- [9] *Law of the Republic of Indonesia Number 17 of 2008 About Shipping*. 2008, p. 122.
- [10] *Government Regulation Republic Indonesia Number 64 of 2015 about Amandement of GR No. 61 of 2009 concerning Ports*. 2015.
- [11] "The Ministry Regulation of Transportation the Republic Indonesia Number PM 51 of 2011 About The Private Terminal for Self Operation," 2011.
- [12] *Peraturan Daerah Propinsi Sulawesi Tengah Rencana Tata Ruang Wilayah 2013-2033*. 2013, p. 49.
- [13] *Peraturan Daerah Kota Palu Nomor 16 Tahun 2011 tentang Rencana Tata Ruang wilayah 2010-2030*. 2011.
- [14] M. Gultom, "Budaya Hukum Indonesia," *Jurnal Pro Justitia Universitas Parahiyangan*, vol. 19, no. 2, 2001.
- [15] "The Statistic of Transportation of Central Sulawesi," The Statistician of Central Sulawesi, Palu, 2017.
- [16] *The Ministry Regulation of Transportation the Republic Indonesianomor: PM 51 of 2015 About The Management of the Seaport*. 2015.
- [17] A. Nurcahya, "The legal aspect relating to the offer of port service business by state owned companies outside the territory Indonesia," *World Maritime University*, 2015.
- [18] R. H. Soemitro, *Hubungan antara Kesadaran Hukum dengan Tingkat Pendidikan, Ringkasan Penelitian*. Semarang: Universitas Diponegoro, 1994.