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The 5th PROCEEDING

“Legal Reconstruction in Indonesia Based on Human Right”

IMAM AS SYAFEI BUILDING

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Prof. Dr. H. Gunarto, S.H., S.E., Akt., M.Hum

Dr. Hj. Anis Mashdurohatun, S.H., M.Hum

Prof. Henning Glaser

Prof. Dr. I Gusti Ayu Ketut Rachmi Handayani, MM

Prof. Shimada Yuzuru

Prof. Associate Dr. Dr. Ahmad Zaharudin Sani

Editor:

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Dr. Hj. Widayati., S.H., M.H

Dr. Hj. Sri Endah Wahyuningsih, S.H., M.Hum

Dr. H. Ahmad Khisni., S.H., M.H

M. Abdul Hadi., SE

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PREFACE

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegnan, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.

This was our fourth International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner in the concerned field to be discussed as guidelines to exchange and talk about views on the most important recent on Legal Construction and Development focusing on The Role of Indigenous and Global Community in Constructing National Law happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

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The 5th International Conference and Call for Paper Faculty of Law 2019 Legal Reconstruction in Indonesia Based on Human Right

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Reconstruction Of Transport Regulatory On Marine Toll To Support Sea Connectivity Based On Pancasila Justice

Hartanto, Gunarto¹¹⁰, Anis Mashdurohatur¹¹¹
Director of Poltektrans SDP Palembang and Student Doctor of Law,
Sultan Agung Islamic University in Semarang,
hartantosatya@gmail.com

ABSTRACT

The idea of marine toll is an attempt to realize the first Nawacita that is strengthening Indonesian identity as a maritime country and the third of Nawacita, that is to develop Indonesia from the periphery to strengthen these areas and villages within the framework of a unitary state, in addition to the marine toll is also a confirmation that the country is actually present to all areas through ships that visited the region. Accelerating infrastructure development in particular the implementation of toll expressway connectivity of sea or ocean (sea connectivity) if it can be done well it will be able to unite the archipelago by sea, especially to unite Indonesian islands in one national connectivity. Based on the documents of the National Medium Term Development Plan (RPJMN) 2015-2019, in the framework of the development of national connectivity to achieve a balance of development, the government has set a target increase of 24 strategic ports to support marine toll program¹¹². The marine toll presence is expected to drive the wheels of the economy efficiently and equitably so that Pancasila justice can be realized.

Keywords: Reconstruction; Marine Toll; Connectivity; Pancasila Justice.

A. INTRODUCTION

The idea of marine toll is not a mere discourse to overcome the problems of price disparities occur in Indonesia, marine toll has been successfully carried out by Japan and the Philippines, the islands both countries managed to reduce the cost of logistics so that it becomes cheaper and managed to push the price disparity with sea connectivity¹¹³.

Understanding marine toll emphasized by President Joko Widodo is a con-

cept of strengthening the cruise line focused on the eastern part of Indonesia. The concept is in addition to connecting cruise lines from west to east Indonesia will also facilitate trade access of Pacific countries to the southern part of the East Asian countries. The idea of the Marine toll concept will open a regional access by making a large-scale two-port hub that can serve international ships of big trade above 3,000 TEUs¹¹⁴ or class Panamax vessels of 6000 TEUs. Through the realization of the plan is expected to Indonesia may have a significant role in supporting the international logistics distribution¹¹⁵.

¹¹⁰ Professor in law and the Promoter, Sultan Agung Islamic University in Semarang.

¹¹¹ Head Department of Doctoral Program in Law and Co-Promoter, Sultan Agung Islamic University in Semarang.

¹¹² Prihartono, Bambang. 2015. Pengembangan Tol Laut dalam RPJMN 2015-2019 dan Implementasi 2015. Badan Perencanaan Pembangunan Nasional Republik Indonesia

¹¹³ <https://philippines//finance.detik.com/ekonomi-bisnis/2591177/jepang-dan--success-apply-toll-sea-ala-jokowi> accessed on February 6, 2019 at. 08.30

¹¹⁴ TEUs or TEU: twenty foot equivalent unit is the smallest unit in the size of the container. container size 20 feet could be called 1 box, 1 teus. container size 40 feet could be called two boxes, one teus.

¹¹⁵ Results Fields, the Directorate General of Sea Transportation, Interview with Marine Toll Section, Ms. Magdalena Laily, Jakarta, 4 July 2018

B. RESEARCH METHODS

This type of research is a qualitative research and the approach that used is juridical-sociological normative law from the standpoint of sociology as an *Interpretation Understanding*. While collecting data with literature and interview¹¹⁶.

C. RESULTS AND DISCUSSION

1. Marine Toll Concept

Open access to the region through the implementation of the concept of Marine Toll can provide industrial opportunities cargo/logistics nationwide to participate in international distribution, which is currently 40% through the territory of Indonesia. To become players in their own country as well as the support of cabotage and cabotage beyond, so this time the government has set two ports located in front of the region as an international connectivity on the port of Kuala Tanjung and Bitung port¹¹⁷.

Support it, then also developed a fleet of ships/cruise port hub that connects both international as well as through national hub port of the eastern region to the western region of Indonesia. Cargo/logistics of a national hub port will be distributed to feeder ports using different vessels. Above sea connectivity concept then served by a fleet of regular and scheduled from west to east Indonesia later referred to as the marine toll concept¹¹⁸.

Marine toll transport concept is suitable for Indonesia, which is mostly cov-

ered are aquatic and have 17,500 large and small islands¹¹⁹. However, realizing the sea motorway concept not only build ports, but also must be accompanied by improvement of the national marine transportation system as a whole. If only build ports, without fixing the existing transportation system, the marine toll system launched by President Jokowi¹²⁰ will be difficult to realize. Implementation marine toll should be supported by increased capacity and productivity of existing ports to speed up the flow of goods in and out of the harbor. The low productivity of the port in Indonesia can be seen from the length of time loading and unloading goods (*dwelling time*) at Tanjung Priok port which last year reached 5.2 days or longer than dwelling time in the port of Malaysia and Singapore¹²¹.

2. Regulations Pertaining to the Marine Toll

Government Regulation No. 20 of 2010 on Transport in the waters (Article 65-69), and the Regulation of the Minister of Transportation No. AM 104 of 2017 on the Implementation of Transport Crossing (Article 23-25), regulates the placement of Ferryboat transport ship. Things were set up, covering¹²²:

- 1) Placement of the ship at each trail crossing must comply with the technical specifications of traffic and port facilities used to serve Transport Crossing¹²³;
- 2) Placement of the number of ships on each trail crossing must consider the balance between the needs of service users and providers of transport ser-

116 Arikunto, S (2002). *Prosedur Penelitian, Suatu Pendekatan Praktek*. Jakarta: PT Rineka Cipta, p. 67

117 Dedi Darmawan. 2015. "Perusahaan Pelayaran Nasional Diimbau Aktif Mengembangkan Tenaga Pelaut, *Suara Karya*, January 20, p. 35

118 Directorate General of Sea and INSA (Voyage Around Indonesia Employers Association) in 2005.

119 Abdul Kadir Muhammad, *Hukum Pengangkutan Darat, Laut, dan Udara*, Bandung: 1991, p. 46

120 Elfrida Gultom, *Hukum Pengangkutan Laut*, Jakarta: Literata Lintas Media, 2009, p. 97

121 Eka Wijaya, *The program "Marine Highway" The President has been run, Disparity Price Omitted*, <http://setkab.go.id/program-tol-laut-presiden-telah-dijalankan-disparitas-price-removed>, accessed on 4 July 2019.

122 Rifdy Fachry, Imam Muchlas, Sutrisno, Department of Mathematics, Mathematics and Natural Sciences, Pattern Determination Movement Network Logistics Optimal On Sea Transportation using the minimum Spanning Tree-Based Genetic Algorithm, *Journal of Science and Arts of ITS*

123 <http://www.transformasi.org/id/pusat-kajian/berita/umum/112-infrastruktur/520-perjelas-toll-sea-concept>, accessed on 7 July 2019.

vices;

3) Placement of the vessel to be operated at the crosswalk is done by considering:

- a) The need for ferry transport; and
- b) The availability of port facilities used to serve the ferry transport / ferry terminals.

4) Placement of the vessel to be operated

at every crosswalk must meet the requirements that have been set.

3. Reconstruction Of Transport Regulatory On Marine Toll To Support Sea Connectivity Based On Pancasila Justice

There are some rules that are likely still need to be reconstructed as Act No. 17 of 2008 on the voyage as follows:

	<p><u>Article 27:</u></p> <p>To carry out transport activities in the waters of the Indonesian citizens or business entities shall have a business license.</p>	<p><u>Article 287:</u></p> <p>Each person operating the vessel in transit in waters without a license as referred to in Article 27 shall be punished with imprisonment for a period of 1 (one) year or a maximum fine of Rp 200,000,000.00 (two hundred million rupiah).</p>
	<p><u>Article 28 (4):</u></p> <p>In addition to having a business license for river transport and lake vessels operated shall have route permits given by:</p> <ul style="list-style-type: none"> a. regent / mayor is concerned for ships serving the route in the district / city; b. governor of the province in question for vessels serving the route between districts / cities within the province; or c. Minister for ships serving the route between provinces and / or between countries. 	<p><u>Article 59:</u></p> <p>administrative sanctions such as:</p> <ul style="list-style-type: none"> a. warning; b. administrative fines; c. license suspension or freezing of the certificate; or d. revocation of license or revocation of the certificate. <p><u>Article 288:</u></p> <p>Each person operating the vessel in transport streams and lakes without route permits as referred to in Article 28 paragraph (4) shall be punished with imprisonment for a period of 1 (one) year or a maximum fine of Rp 200,000,000.00 (two hundred million rupiah).</p>

	<p><u>Article 28 (6):</u></p> <p>In addition to having a business license for ferry transport, vessels operated vessel operations are required to have approval given by:</p> <ol style="list-style-type: none"> regent / mayor is concerned for vessels serving the port traffic in the district / city; governor of the province in question for vessels serving the port traffic between districts / cities in the province; and Minister for vessels serving the port traffic between provinces and / or inter-state 	<p><u>Article 59:</u></p> <p>administrative sanctions such as:</p> <ol style="list-style-type: none"> warning; administrative fines; license suspension or freezing of the certificate; or revocation of license or revocation of the certificate. <p><u>Article 289:</u></p> <p>Each person operating the vessel in ferry transport without having the approval of the operation</p> <p>Ships referred to in Article 28 paragraph (6) shall be punished with imprisonment for a period of 1 (one) year or a maximum fine of Rp 200,000,000.00 (two hundred million rupiah).</p>
	<p><u>Article 38 Paragraph (1):</u></p> <p>Freight company in the waters shall transport passengers and / or goods transport especially post agreed in the transport agreement.</p>	<p><u>Article 291:</u></p> <p>Everyone who does not carry out its obligations to transport passengers and / or goods transport especially post as referred to in Article 38 paragraph (1) in criminal imprisonment for a period of 1 (one) year or a maximum fine of Rp 200,000,000.00 (two hundred million).</p>
	<p><u>Article 41 Paragraph (3):</u></p> <p>Freight company in the waters must insure liability as referred to in paragraph (1) and carry out basic public passenger protection insurance in accordance with the provisions of the legislation</p>	<p><u>Article 292:</u></p> <p>Anyone who did not insure its liability as referred to in Article 41 paragraph (3) shall be punished with imprisonment of six (6) months and a fine of Rp 100,000,000.00 (one hundred million rupiah).</p>
	<p><u>Article 42 Paragraph (1):</u></p> <p>Freight company in waters is obliged to provide special facilities and services for the disabled, pregnant women, children under the age of five (5) years old, the sick, and the elderly</p>	<p><u>Article 293:</u></p> <p>Anyone who does not provide special facilities and services referred to in Article 42 paragraph (1) in criminal imprisonment of 6 (six) months and a fine of Rp 100,000,000.00 (one hundred million rupiah).</p>

	<p><u>Article 46:</u></p> <p>The transport of dangerous goods and special items referred to in Article 44 shall meet the following requirements:</p> <ol style="list-style-type: none"> a. packaging, stacking, and storage at the port, handling loading and unloading, and stacking and storage while in the boat; b. accordance with the regulations and safety standards, both nationally and internationally for specialized vessels transporting dangerous goods; and c. certain signaling in accordance with the dangerous goods being transported 	<p><u>Article 294:</u></p> <ol style="list-style-type: none"> a. Every person who transports hazardous goods and special items are not in accordance with the requirements referred to in Article 46 shall be punished with imprisonment of three (3) years or a fine of not more Rp400.000.000,00 (four hundred million). b. If the act referred to in paragraph (1) resulting in loss of property shall be punished with imprisonment for a period of 4 (four) years and a maximum fine of Rp 500,000,000.00 (five hundred million rupiah). c. If the act referred to in paragraph (1) resulted in the death of a person and property loss shall be punished with imprisonment of ten (10) years and a maximum fine Rp1.500.000.000,00 (one billion five hundred million rupiah).
	<p><u>Article 122:</u></p> <p>Each operation of ships and ports shall meet the requirements of safety and security and maritime environmental protection.</p>	<p><u>Article 303:</u></p> <p>Each person operating the ship and the port without fulfilling the requirements of safety and security of shipping and the protection of the maritime environment as referred to in Article 122 in the penal with imprisonment of 2 (two) years and a fine of Rp300,000,000.00 (three hundred million rupiah),</p>

4. CONCLUSION

Reconstruction of the support connectivity marine toll transport regulatory had to be done to remember a few things related to operational systems and policies that are not appropriate as mandated by law and not lead to the achievement of *Nawacita* president Joko Widodo which basically program the toll the sea is used as a means of acceleration infrastructure development to equalize wealth and economic inequality

in Indonesia. Marine toll is also used as a platform to show to the eyes of the world that Indonesia is a great nation and fit into the shaft maritime world. Therefore needed a proper legal construction in every policy and regulations related to marine toll and implement in full responsibility and the spirit of Pancasila nationalism so that justice can be realized.

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Rifdy Fachry, Imam Muchlas, Soetrisno, *Jurusan Matematika, Matematika dan Ilmu Pengetahuan Alam, Penentuan Pola Jaringan Pergerakan Logistik yang Optimal Pada Transportasi Laut menggunakan minimum Spanning Tree Berbasis Algoritma Genetika*, *Jurnal Sains dan Seni ITS*

Teus atau TEU : *twenty foot equivalent unit* yang merupakan satuan terkecil dalam ukuran peti kemas. peti kemas ukuran 20 feet bisa di sebut 1 box, 1 teus. peti kemas ukuran 40 feet bisa di sebut 2 box, 1 teus.

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