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Topic:
"COMPETITION IN INDONESIAN PORTS AND PORT SERVICES"

INTRODUCTION

As an archipelagic state, seaports are strategic transportation infrastructure points for Indonesia. This is because seaports are not only serving as domestic and international sea transportation points, but they are also related to Indonesian social, politic, security and defence aspects. The products provided by seaport operators are generally related to services used by shipping companies and goods consignors/consignees. In addition to that, seaport operators also interact with terminal operators and also relevant service providers. This paper is aimed at describing briefly the profile of seaport and seaport terminal operations in Indonesia as well as the aspects related to business competition.

THE STRUCTURE OF SEAPORTS IN INDONESIA

Before 2008, seaports in Indonesia were operated by a state-owned enterprise (PELINDO) appointed under the Government Regulation No 1 Year 1969. The operational area of PT. Pelindo was then divided into 4 areas, respectively operating several public seaports commercially. Meanwhile, seaports which had not reach commercial scale, were operated by Technical Units (UPT) under the supervision of the Department of Transportation. Below is the profile of seaports operated by PT. PELINDO:

Type of Seaport	Seaport Management/ Operational Office	Total Number	International (strategic)	Local
A. Public	**1) COMMERCIAL SEAPORT**		85	27
	PELINDO I (Belawan)	27		
	PELINDO II (Tanjung Priok)	29		
	PELINDO III (Tanjung Perak)	32		
	PELINDO IV (Makassar)	24		
	Subtotal	112		
	2) NON-COMMERCIAL SEAPORT		10	513
	Seaport Office (Government)	523		
B. Special	Special Seaports for Industrial, Mining, Fishery, Agricultural, Forestry and Other Purposes	1412	45	1367
Total		2047	140	1907

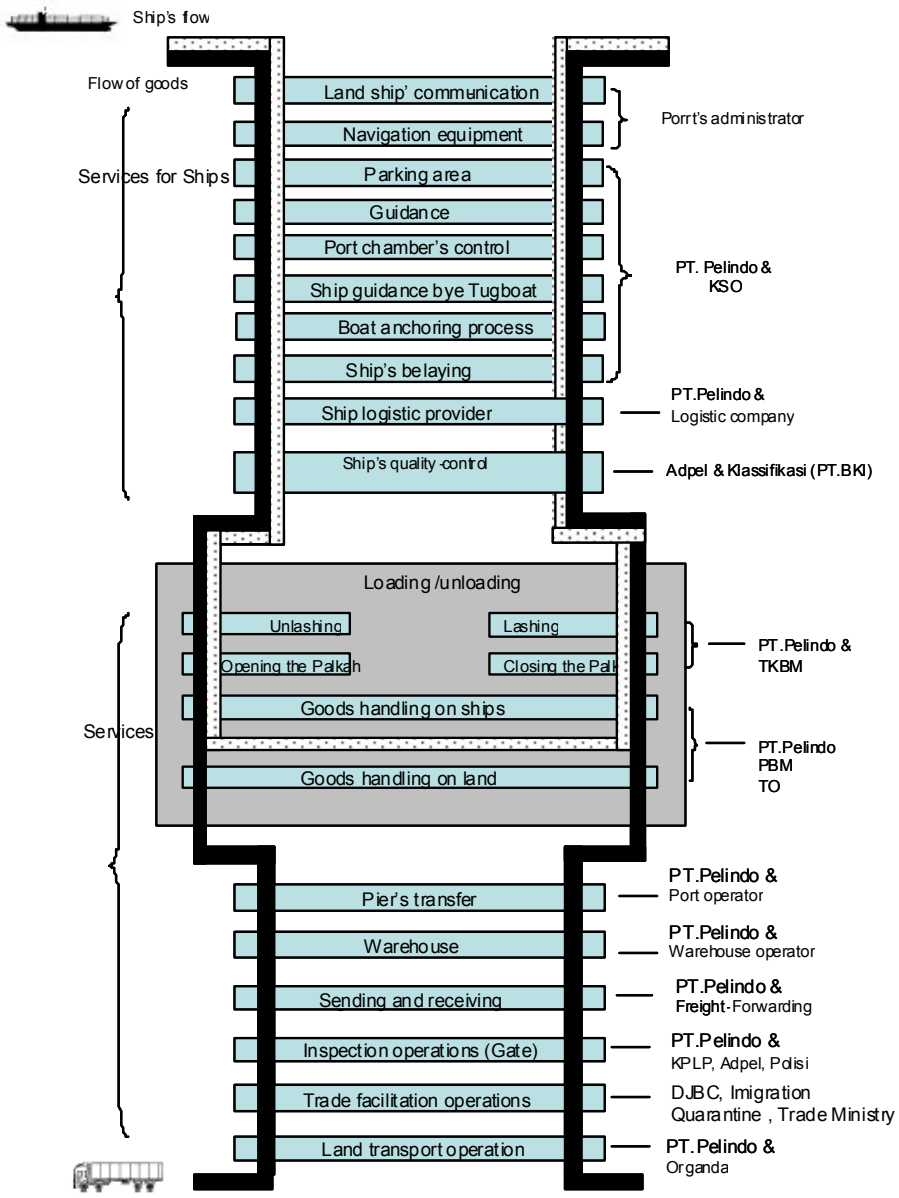
In addition to public seaports, there are also special seaports operated for private interest and are not allowed to serve public interest. Several large-scale companies, such as PT. Krakatau Steel and PT. Indofood, are operating special seaports for supporting their operational activities. Such special seaports are generally located close to the sites of factories or business units of those companies.

For shipping lines focused on *merchant-shipping* services, the types of cargo transported generally include break-bulk cargo, general cargo, dry-bulk cargo, liquid-bulk cargo, and containerized cargo, which is divided into dry-container and reefer container. Such cargo

handling operations stimulate the production of ships specifically based on the aforementioned groups of commodities. Such special ships ultimately lead to derivative orientation of the existing seaports. In other words, the type of a seaport will be determined based on the criteria of cargo to be transported. The aforementioned five typical types of cargo will always become references for the traffic in seaports, especially commercial seaports in Indonesia. Several docks with focus on similar commodities are then localized in an area, which is called a terminal. Large-scale seaports (Classes I and II), which constitute the business units of PT. Pelindo I up to IV, have five types of terminals, namely general cargo terminal, dry-bulk terminal, liquid-bulk terminal, break-bulk terminal, and container terminal. Meanwhile, industrial seaports usually have the same functions as the aforementioned five terminals.

The criteria of seaport service coverage are generally determined based on the movement of cargos the chain of trades. The position and the scale of traffic of a seaport may determine whether the seaport is within a local, national or international circulation. Seaports functioning as hubs usually obtain inputs of cargo and ships from the surrounding seaports, which serve as feeders for those seaports, either with local (province/district), national or international orientation. Such spatial roles are not determined based on regulations, but they are rather driven by the logics of trade which have the dimension of SCM (Supply-Chain Management). In general, Indonesian seaports serve as feeders for hub ports in Singapore and Tg. Pelepas, Malaysia. At the aforementioned hub ports, cargos or containers are then transferred to larger vessels (mother vessels) for the purpose of cross-ocean transportation. It is also the case with imports, where cargos will be unloaded at the hub ports to be further transported using smaller ports in Indonesian territory. Such condition is caused by several factors, including the limited capacity of seaports in Indonesia, the low volume of cargo traffic, as well as technical aspects, namely the depth of sea which does not allow mother vessels to come to international public seaports in Indonesia.

The following is the structure of seaport industry in Indonesia in general, including description of the available products and relevant services.



Seaport-related services can be classified into 2 groups, namely services for ships, which in this matter are the responsibility of the Seaport Authority and PELINDO, as well as terminal operators. The second one is services for cargo, which in principal comprise warehouse rental, stevedoring, inspection and trucking. The provision of those services involves PELINDO and other service providers, such as terminal operators, stevedorers, as well as land transportation business actors. The inspection and quarantine functions are the responsibility of the Customs and Excise as well as the Department of Trade.

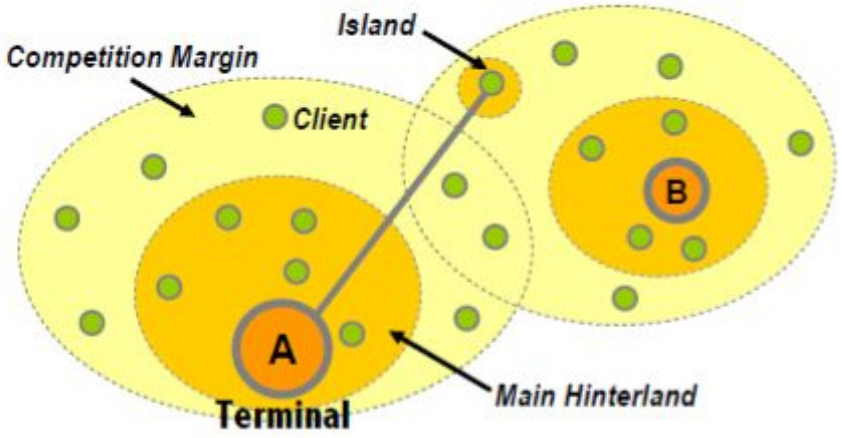
RELEVANT MARKET FOR SEAPORT SERVICES

In the perspective of product market, public seaports do not have significant competitors, especially for the modes of land and air transportation. The specifications and characteristics of sea transportation, which can accommodate large volume of cargo and have integrated domestic and international routes, are the main considerations for the consignors/consignees. The use of land and air transportation is limited to specific characteristics of goods and is generally in small volume and the shipment must be conducted within relatively tight schedule/short time. The mode of land transportation can be a substitute for inter-city and inter-insular domestic routes, despite the significant

obstacles, namely the availability of ferry transportation, land infrastructure and sub-standard bridges.

From the aspect of the types of commodity being transported, sea transportation is more reliable because it can transport various types of cargo in containers, including general cargo, liquid cargo as well as mining and petrochemical products. Almost all shipping lines provide vessels that can transport such various cargos. The mode of land transportation also provides transportation services which are relatively similar to those provided by the mode of sea transportation, especially for containers and general cargo. However, for the transportation of petrochemical and other liquid products, transportation service providers other than sea transportation provide relatively limited choices. Mining products, especially coal, are generally transported by using trucks and railway network which are integrated with break bulk ships. With regard to railway, mine operators are generally cooperating with the railway operator, namely PT. Kereta Api Indonesia, by using the existing railway network and or developing their own railway networks in cooperation with PT. KAI. Several types of special commodities, such as documents, packages and other light cargos, are generally transported by using railways and airplanes. Airplanes are usually used for light products which require short delivery time in the form of business documents.

From the geographical aspect, coverage areas of seaports are defined as hinterland and foreland (Rodrigue and Noteboom, 2000). Such concept is explained in the following illustration:

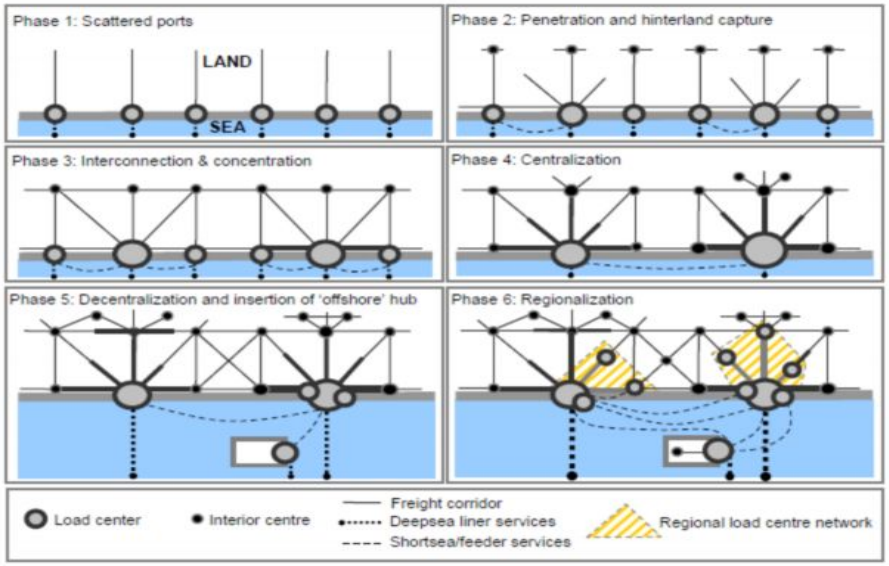


In the coverage areas or hinterland of two seaport terminals, there is an overlapping area. Such area is the area where clients or shippers can choose to use the services provided by either terminal A or B. In such competition margin area, there is no significant difference in the transportation and logistic costs as well as the level of quality of the services provided by the two seaport operators. However, there is a possibility that a shipper in a certain location chooses a terminal which is relatively far from the closest hinterland terminal, due to very significant difference in the quality of services.

Seaports in Indonesia are generally located close to business cities. There is no condition where two or more public and international seaports are located in the same hinterland. The location of a consignor or consignee determines the selection of a loading or unloading seaport. The shipment of goods through a seaport, which is then combined with land transportation until the goods arrive at the location of the consignee, will be far more expensive than conducting the unloading activity at the closest seaport to the location of the consignee. As an illustration, for an importer located in East Java, it will be more economical and efficient if the shipment and the unloading activities are conducted at Tg Perak seaport (SBY) than at Tg Priok or Tg Perak and subsequently use trucks/trains for delivering the goods to the importer's location. This has not taken into

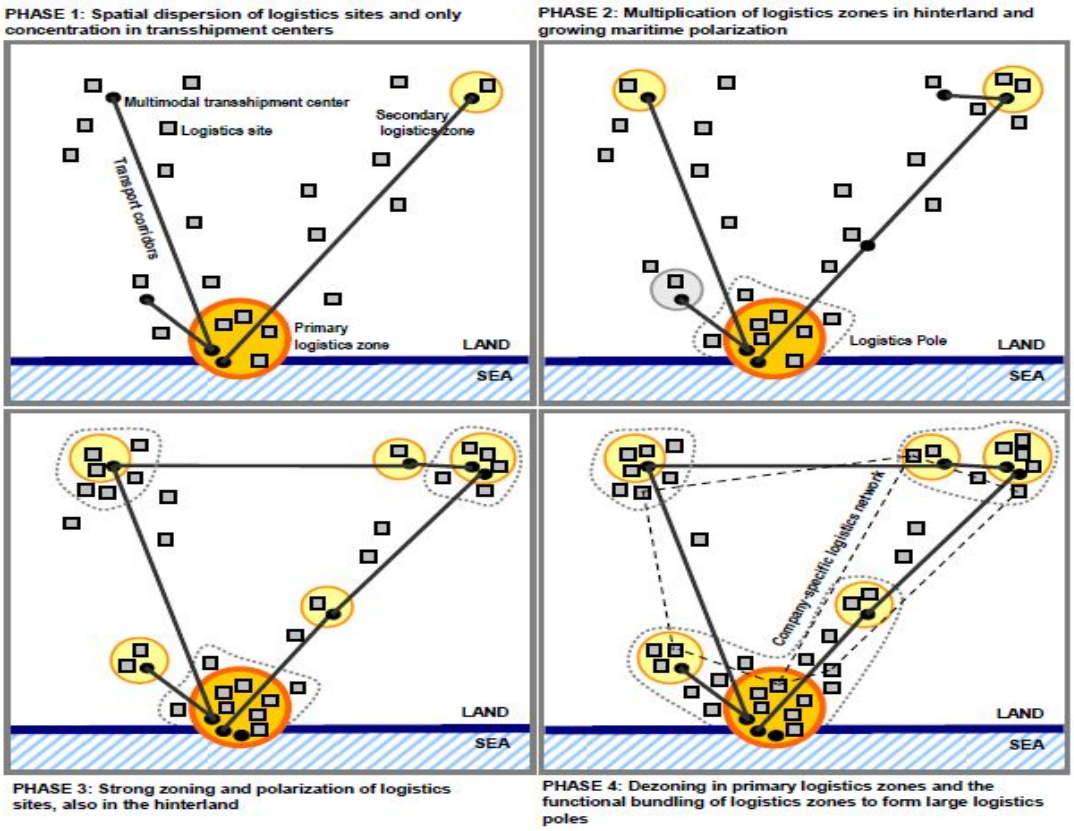
account the factors of time and schedule, as shipment by using land transportation will certainly add more time for the importer. In such condition, the high costs of land transportation, uncertain schedules as well as various risks related to land transportation make it difficult for the margin competition area of two hinterlands to develop. In other words, seaports having different hinterlands are competing with each other.

In order to avoid accumulation of activities and cargo traffic through one or two seaports in a certain hinterland, the concept of port regionalization may be the solution. Below is an illustration of the development of port regionalization:



For the case of Indonesia, the most feasible development of port regionalization may be between public and special seaports located in the same hinterlands, such as the combination of Tanjung Priok seaport and Cigading seaport in Serang which are designed specifically for the loading and unloading activities of PT. Krakatau Steel. However, there are regulations and policies that must be addressed first, especially provisions on special seaports which are not allowed to serve public interest.

In addition to that, seaport locations are also integrated with railway networks and trucks for facilitating the traffic of goods to the locations of consignees/consignors. Below is an illustration of multi-mode logistic service provision that can be developed:



Referring to the aforementioned illustration, the form of interaction between the mode of sea transportation through seaports and the mode of land transportation, such as trains and trucks, is complementary rather than substitution. Considering the condition in Indonesia where several container terminals (dry ports) and line 2 warehouses are still in the phases of development, several seaports in Indonesia are still in phase 1.

There are significant constraints to the enhancement of the capacity of the existing international seaports, such as Tanjung Priok in Jakarta. Limited land and shallow water make things difficult for the seaport operators to improve the performance of the seaports. For the purpose of development, the regional government in cooperation with the central government will construct a new terminal in Tg Priok located on reclaimed land on the north coast. The terminal is still within the hinterland of Tg Priok and close to the existing terminal. In addition to that, the increasing trend of container stacking leads to the development of dry ports or container yards outside seaport area (line 2). Those container yards are managed by private operators, while the rates are determined by seaport authority based on types, structures and rate classes as set forth by the Minister based on the GR No. 61 of 2009.

POTENTIAL ABUSE OF MARKET POWER

It can be concluded that seaport and terminal operators have market power, due to the characteristic of natural monopoly in relation to the coverage of hinterland and foreland. In Indonesia, PELINDO is practically controlling and operating all seaport terminals in Indonesia, which is conducted by dividing them into 4 groups (Pelindo 1-4). Therefore, the potential abuse of market power and collusion among seaport and terminal operators in Indonesia is relatively large. The development of new seaports and terminals is believed to be able to reduce the accumulation of goods and slow operational performance of the existing seaports. In the perspective of competition, the development of new seaports can be an alternative for shipping lines and or consignors/consignees insofar as they share the same hinterland with the existing seaports. Indonesia is

currently in the process of developing several new public seaports and terminals which are located adjacent to or share the same hinterland with the existing seaports/terminals.

In relation to the provision or seaport and terminal-related services, such as stevedoring, loading/unloading and forwarder, important factors which constitute the main attention are the arrangement for business licenses, determination of tariff and service quality standards. Limited availability of land makes the mechanism of competition in the market unfeasible to be applied in seaport and terminal services. In this regard, the technical ministry in Indonesia applies the mechanism of limited licensing for business actors to become terminal service providers. Meanwhile, the supervision and coordination functions are assumed by terminal operator, which is currently still controlled by PELINDO. In several cases, PELINDO conducts the revocation of business license and re-selection of stevedoring service providers, which are related to the improvement of performance and service quality.

The rates are generally regulated by the technical ministry, namely the Department of Transportation. Regulations of the aforementioned ministry are further elaborated in the form of operations implemented by PELINDO and relevant business actors by referring to the company regulations. The basic principle of the rate regulations is the determination of rates based on negotiations and agreements between service providers and customers. Whereas the government's function as the regulator is to determine the classifications of rates based on types, structures and classes. The mechanism applied in the field is negotiation between the association of customers and the association of service providers and or PELINDO.

The process of negotiation between service providers and customers always becomes a headline in mass media. The determination and or changes of rates for seaport and terminal services often become the subjects of debates. Based on such matters, it can be concluded that the rate determination process will always become a difficult negotiation process. The negotiation power of seaport business entities is certainly stronger than the negotiation power of the seaport service users, because of various factors explained above. In this regard, there is a potential abuse of market power by seaport business entities.

The position of seaport service users generally depends on the policy of shippers, namely the consignors and consignees. In a condition where the rates increase, there is a big possibility that such increase will be charged to shippers, either directly or indirectly. In Indonesia, regulations on new rates are merely in the forms of rate structures and classes, and there are not yet regulations on the maximum limits of rates. KPPU has given recommendations to the government on the application of the maximum limits of rates which is combined with the minimum service quality standards. The government has not made any significant response on the aforementioned recommendations.

THE ISSUE OF COMPETITION (CONDUCT)

In the provision of seaport and terminal services, there is an issue of competition which is in the form of vertical constraint. Currently, PELINDO as seaport operator, which function has also been transformed into terminal operator, is practically controlling, either directly or indirectly, the majority of terminals existing in public seaports in Indonesia. In general, the control is in the forms of shareholding by PELINDO in subsidiaries operating the terminals and direct management by PELINDO.

Vertical integration also exists between shipping companies and forwarding agents, which is aimed at efficiency in the management and handling of cargos or goods of shippers. In seaport business, the handling and delivery of cargos are closely related to the process of goods loading and unloading from ships to warehouses in seaports and shippers. They form an integral unit in order to ensure efficiency, security and delivery

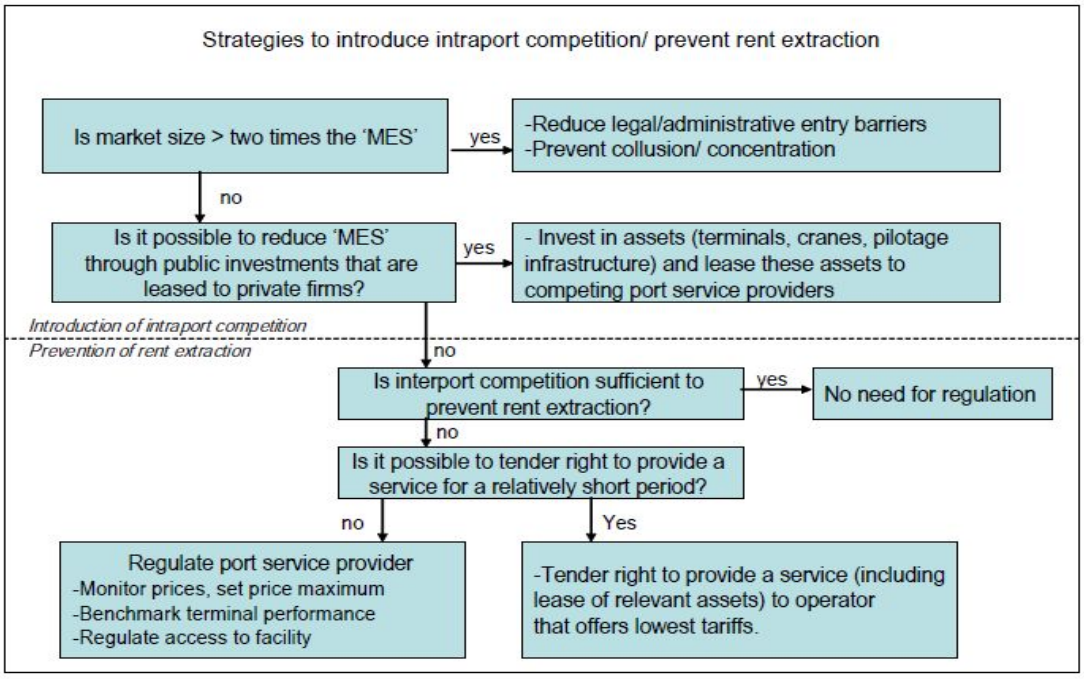
time. In the actual practice, several shipping companies engage in agency cooperation with forwarders which are connected in a global shipping business network. This facilitates the traffic of information and shipping documents between the relevant business actors. Some shipping companies also have cooperation with more than one or two forwarders considering the extensive coverage of the shipping network and the high traffic of goods.

In the management of seaports and terminals, there is an issue of market control and limitation. In 2003, KPPU handled the case of JICT where in the cooperation agreement on the establishment of joint venture for the operation of container terminal, PT JICT, between PELINDO and Hutchinson, there was a clause on the limitation of competition (**DECISION OF CASE NO. 04/KPPU-I/2003 JAKARTA INTERNATIONAL CARGO TERMINAL).** The aforementioned clause explicitly required no issuance of new license for the development and construction of new terminal/seaport insofar as the turnover of the existing terminal was still below a certain amount from the existing total capacity. The panel of the Commission was of the opinion that the aforementioned clause was against business competition because it was hampering the market and also led to the abuse of dominant position. After the appeal and cassation processes, KPPU decision finally had a permanent legal force after being confirmed by the Supreme Court in 2004.

In 2004, KPPU also handled a case related to market control by the operator of BELAWAN seaport in Medan specifically for dry bulk terminal (**DECISION OF CASE NO. 01/KPPU-L/2004 STEVEDORING SERVICES FOR OIL PALM KERNELS IN BELAWAN SEAPORT).** In the aforementioned terminal, PELINDO applied the latest technology using conveyor belt operated only by a subsidiary of PELINDO engaging in stevedoring services. The vertical integration applied by PELINDO and its subsidiary as stevedoring service provider had been proved to hamper the entry of other business actors to provide stevedoring services for oil palm kernels by using manual handling process or other alternative processes. Such behavior also limited the choices for exporters of oil palm kernels in using stevedoring services in the dry bulk terminal of BELAWAN seaport. The panel of the Commission considered the behavior demonstrated by PELINDO and its subsidiary as violating the principles of business competition as set forth in the business competition law.
In addition to the aforementioned two cases, some aspects of seaport and terminal service provision often come into the attention of KPPU. One of them is related to the potential tacit collusion in the provision of stevedoring and forwarder services in several seaport terminals. KPPU will continuously monitor the development and dynamics of business competition in the provision of the aforementioned services, and at the same time intensify preventive advocacy to the relevant business actors.

REMEDIES: REGULATIONS AND POLICIES

By adopting the scheme proposed by Langen and Palis, the following is the analysis phase for the strategy to introduce intraport competition in order to prevent abuse of market power:



Based on the aforementioned scheme, the factor of minimum efficient to scale plays a role in the selection of the correct alternative policy. The alternatives for government intervention, namely through tender and or price regulation, access to facilities as well as service quality standards, can be taken in a condition where the market mechanism, especially interport competition, fails to provide the best alternative.

In addition, ADB (2000) provided strategic phases for the reform and restructuring of the seaport industry. Most of those phases have been applied in Indonesia. As mandated in Law No 28 of 2008 concerning Shipping, the transformation of the seaport structure, by establishing a seaport authority and the transformation of PELINDO to become a terminal operator are the initial steps for the reform of seaports in Indonesia. Seaport authority functions more as a regulator and supervisor and it ensure the availability of seaport standard facilities in accordance with the ISPS standards.

It seems that the models of structural separation and divestment of terminal operators cannot be adopted in Indonesia at present. All seaports as well as terminals operating commercially are under de facto and de jure control of PELINDO and or its subsidiaries. The emergence of new business actors can be expected only for the development of new terminals and or seaports. However, considering that almost all points for seaports in every hinterland have already been taken, there is a little possibility that new investors would emerge. The biggest opportunity is the development of the existing seaports or terminals, where new investors can enter through tender process. However, on paper, PELINDO has relatively bigger possibility to participate in and win the aforementioned tenders for the operation of new terminals considering the supports of its experience and relation to the existing seaport network.

Furthermore, it is expected that in the near future regulations will be issued on the principles for the granting of concessions and the appointment of business actors as the providers of terminal services and other relevant services. Regulations on the granting of licenses and concessions must be in line with the basic principles of competition, namely transparency, non-discriminatory and efficient. In addition, regulations are also required on the stipulation of the minimum service standards that must be complied with as terminal operators and providers of relevant services. The introduction of such standards should be related to evaluation and supervision of the implementation of the concession system. In addition, it is also necessary to provide confirmation regarding price cap for

the provision of terminal services and relevant shipping services. This is to anticipate potential abuse of market power owned by terminal operators.

Regulations on vertical integration are also required. There are facts in the field that PELINDO has de facto involvement in activities as terminal operator and in the provision of supporting shipping services. Conceptually, vertical integration intended for efficient and effective business activities may be allowed insofar as they do not have substantial negative impacts on competition. In this regard, vertical integration in shipping and seaport services is expected to minimize transactions costs, reduce operational time for goods/cargo handling, ensure security and service quality standards which will certainly be beneficial for shippers.

In order to prevent substantial constraints to competition, especially vertical restraint, regulations are required on access to essential facilities, especially for the use of seaport facilities and terminals, which are strategic and vital for shipping companies, relevant seaport and shipping service providers, such as stevedoring, trucking and forwarder as well as for shippers. Transparent regulations on access to important facilities in seaports are expected to be able to ensure equal business opportunities for shipping and seaport services, which are not integrated to terminals.

WHAT NEXT?

As an archipelagic state, seaports have an important role for Indonesian economy. As explained above, the development of competition model, such as interport, in Indonesia is relatively difficult. In this regard, regulatory reform and seaport institutional restructuring have higher priorities for Indonesia, like what has been implemented recently, namely the formation of seaport authority which will supervise shipping companies and seaport operators, as well as the transformation of PELINDO as one of seaport operators in Indonesia. After achieving clear regulatory and institutional systems with regard to seaports, seaports in Indonesia are expected to be able to evolve towards the next phase, namely port regionalization with a combination of transportation modes in order to support the goods logistic system.

The main theme related to competition is how to anticipate the abuse of market power and potential occurrence of vertical constraints to competition. The potential for the abuse of market power is large because of the hinterland factor, and it is of an economic scale. In addition, the actual facts in the field indicate a trend of the provision of integrated services, from the arrangement for documents up to the handling of cargo and shipment. In this regard, the strengthening of regulations on pricing, quality standards and assurance of access to key seaport facilities combined with the supervisory function are absolutely required. KPPU has conducted intervention on various market failures and also behaviors which hamper competition in the seaport and terminal industry. In the future, the synergy between the supervisory function in seaports as well as the supervision conducted by KPPU will be able to contribute to the improvement of the performance of seaport services and will also have positive impacts on the national economy.

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