

# Monopolistic Port Business Activities

## PostDemonopolization Of PT.Pelindo (Persero) Based On Business Competition Law

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## MONOPOLISTIC PORT BUSINESS ACTIVITIES POST- DEMONOPOLIZATION OF PT.PELINDO (PERSERO) BASED ON BUSINESS COMPETITION LAW

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### ABSTRACT

Since the implementation demonopolization of port business activities in 2008, the condition of Indonesian port business competition still dominates PT. Pelindo (Persero) with a market share of 84%. Even though the state has imposed a demonopolization policy intending to open up opportunities for private port business entities to become competitors for PT.Pelindo (Persero). The monopolistic condition of PT Pelindo (Persero) is the reason for discussing this in the paper. Finding mind problems in normative construction to get some solution is also a purpose of this article. A normative juridical research and a statutory approach were carried out to find legally what was wrong in the port management mechanism. The expected results are in the form of normative improvement efforts that can make in to increase competition in port services, particularly in restoring the role of port authorities and affirming the regulation of the separation of functions between port authorities and port business entities. This improvement is necessary, given the critical role of ports as connectivity and mobility in Indonesia. The state's involvement in port management is to be reduced. Strengthened the state's function in the supervision sector with the primary objective of creating fair competition in the port business, which could increase the role of the private sector, especially in carrying out the construction and development of ports in the eastern region.

**Keywords:** Demonopolization; PT Pelindo (Persero); Port Business Activities; Business Competition Law.

## INTRODUCTION

PT. Pelindo (Persero) is a State-Owned Enterprise (SOE) established to conduct port business activities in Indonesia. Pelindo was founded in 1961 in the form of a State Company divided into eight under the name Regional Port State Company I to VIII (Government Regulations No.115 to No.122 of 1961, concerning the Establishment of Regional Port State Companies I to VIII). Initially, Port State Company I to VIII. Then in its development, in 1964 the port operational aspect was coordinated by a government agency called the Port Authority, while the commercial part of its management was carried out by the Port Concession Agency (PCA) which remained under the management of Port State Company I through VIII. In 1983, changed Port State Company to a Public Company. Another change was downsizing the company from eight to four by dividing the operating area from Sabang to Marauke. Subsequently, it changed its status from a public company to a limited liability company of Indonesia Port I to IV.

The performance mechanism of PT. Pelindo I to IV (Persero) is based on Law No.21 of 1992 concerning Shipping, this regulation grants monopoly rights to PT. Pelindo (Persero) to carry out management in the port sector. The exception to monopoly in terms of port business in Indonesia is justified in Article 51 of Law No.5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. The exception to State-Owned Enterprise (SOE) monopoly is specifically for business activities related to important production branches for the state and controlling many people's lives. The monopoly rights of port business activities carried out by PT. Pelindo (Persero) only lasted until 2008. The Indonesian government issued Law No.17 of 2008 concerning Shipping which revoked the monopoly rights of PT. Pelindo (Persero) and opened opportunities for the private sector to carry out port business activities. The revocation of monopoly rights by issuing new laws is known as the demonopolization policy. The term de-monopolization was first used in Law No.19 of 2003 concerning State-Owned Enterprises, especially in the elucidation of

Article 73 which requires that it be carried out based on regulations. Demonopolization of SOE is a condition in which an SOE that was originally given the right to a monopoly of business activities is carrying out vital business activities is then revoked through statutory regulations (Artur Rodriques and Paulo J Pereira, 2011).

The demonopolization of PT. Pelindo (Persero) is an effort to increase competition in port services in Indonesia. The demonopolizing port business activities by the government is being discussed to see the importance of the policy taken, what is the main reason for the government to de-monopolize business activities, and how urgent the de-monopolization is to be carried out. Another fact is the demonopolization policy of PT. Pelindo (Persero) has been in effect since 2008 but until 2020 the monopolistic condition of the PT. Pelindo (Persero) is still happening. Will discuss this issue in this article to see the effect of the demonopolization of PT.Pelindo (Persero) on port business competition in Indonesia?

## RESEARCH METHODS

This type of research was normative legal research (Jan M. Smits, 2012). The researcher tried to answer the problem in terms of legal principles and norms, which in nature provide an overview of the monopolistic conditions of PT. Pelindo (Persero) after the enactment of Law No. 17 of 2008 concerning Shipping see the rationalization of demonopolization policies to increase competition Port service business. The statute approach was the key to analysis in addition to the historical legal approach and the legal philosophy approach. The data used was secondary data, which was obtained through documentary research (Soerjono Soekanto and Sri Mamudji, 2006). After having collected the data, the step was to process the data, which begins with classifying the facts, classifying the legal issues under standstill finally conducting a legal analysis. In general, the investigation was carried out by the doctrinal method through prescriptive optics (Kothari, 2004). The results of the analysis emerge a conclusion as a new concept

that answers the problem inductively which provides an understanding that can provide a foundation for finding a solution by looking at the root causes of the monopolistic occurrence of port exploitation by PT.Pelindo (Persero) (Bambang Sunggono, 2007).

## DISCUSSIONS AND ANALYSIS RESULTS

### 1) The Main Reason for The Government to Demonopolizing Port Business Activities and The Urgency of Demonopolization of PT. Pelindo (Persero)

Law No. 17 of 2008 concerning Shipping and Government Regulation No. 64 of 2015 concerning Amendments to Government Regulation No. 61 of 2009 concerning Ports demonstrates the implementation of port services by revoking PT. Pelindo (Persero)'s monopoly rights in carrying out port business activities and separating the role of the state as manager, regulator, supervisor, and controller of ports. In essence, the separation of the role of the state is to place the capacity of the state as the direct manager delegated to PT. Pelindo (Persero) is a state company. In addition, the role of the state in its capacity to provide regulations, conduct supervision, and control is delegated to the Directorate General of Sea Transportation as the port authority. Previously, the position of the regulator and port operator was fully carried out by PT. Pelindo (Persero), after being de-monopolization by PT. Pelindo (Persero), was only positioned as a port business entity which has the same position as other private port business entities. The role of the regulator is carried out by the Port Authority. The legal basis for port business de-monopolization is as follows:

**Table 1: Legal Basis for Demonopolization of Port Business Activities**

Laws and regulations	Description
Law No. 17 of 2008 concerning Shipping	Part considering letter d Whereas the development of the national and international strategic environment demands the provision of services by the development of science and technology, the participation of the private sector and business competition, regional autonomy, and the accountability of state administrators, while still

prioritizing shipping safety and security in the national interest.

General Elucidation part b of Law No. 17 the Year 2008 concerning Shipping.

states that the regulation for the port sector contains provisions regarding **the elimination of monopoly** in port operation, the separation between the regulatory and operator functions as well as providing the participation of local governments and the private sector in a proportional manner in port operation.

In addition, it also regulates port management business activities that can be carried out by State-Owned Enterprises, Region-Owned Enterprises, or individuals, which are detailed in Article 1 number 28, Article 1 number 60, Article 91 paragraph (1), Article 91 paragraph (5), and Art 92.

Government Regulation No.64 of 2015 concerning Amendments to Government Regulation No.61 of 2009 concerning Ports.

The fourth Alenia's General explanation With the enactment of Law No.17 of 2008 concerning Shipping, the regulation for the port sector contains provisions regarding **the elimination of monopoly** in port operation, **separation between regulatory and operator functions** and to provide proportional participation of **local government and private sector** in port administration.

The separation of port functions consists of:

1. A place of government activity, designated for port authorities, harbormaster, customs, immigration, and quarantine (Article 37).
2. The place for exploitation activities is designated for Port Business Entities (PBE) (Article 68).

*Source: Processed from various regulations relating to port management services, September 2018*

The demonstration of port services is intended to emphasize the role of PT. Pelindo (Persero) is a port business entity that allows it to get competitors in carrying out its business activities. The presence of these competitors is expected to be able to increase the competitiveness of PT. Pelindo (Persero) to survive and run the company. The policy of demonopolization of SOE has implications that the government hopes can help stabilize the country's economy. In general, the implications regarding the demonopolization were expressed by Thomas S. Friedland, who stated that there were at least 5 impacts of the enactment of the de-

monopolization on policy by the government, namely (Thomas S. Friedland, 1978). The existence of a transfer of profits, initially consumers do not have a choice of a product because it is monopolized, changes to the existence of access to voting rights over a more diverse product good services); 2) Cheaper product prices; 3) Competitive product quality and price; 4) Increased income for entrepreneurs due to opening business access; and 5) Increase income for the government, starting from creating jobs, tax revenue, and other possible income.

The business opportunities that are open to Private-Owned Enterprises (POEs) are an effort to create an atmosphere of business competition in the sector of providing port infrastructure. Based on the mandate of the 1945 Constitution of the Indonesian Republic, requires the national economy to be oriented toward <sup>4</sup> the prosperity of the community, not the prosperity of individuals. The national economic system contains the principles of balance, and harmony, and provides the same business opportunity, fairness, equal for every citizen. Fair business competition is a demand in the market mechanism which requires national efficiency and productivity to create business opportunities that are open to everyone fairly. Increased efficiency and productivity in all production factors, the allocation, and proper use of all types of economic resources will ensure the continuity of economic activities so that a high balance of growth can be achieved and an even distribution of the results of economic activity for the welfare of the people is realized (Paul Kent, 2012).

The geographical condition of Indonesia which is in the form of an archipelago requires a port as an infrastructure for connectivity between regions. The existence of ports is very important for equitable development in Indonesia. Ports not only have strategic value in the economic field but also in the social, political, and state security fields. Based on the economic aspect, a port is a means to encourage trade both domestically and abroad. The social aspect of ports is a means that can facilitate cultural exchanges between regions and between nations, to foster mutual understanding among community members, especially the Indonesian people (Derakhshan, 2005). Based on the political aspect, the port is a

means that can connect the interests of the community and the central and regional governments, thereby strengthening national unity. Based on a security point of view, the port can become a facility for Indonesia Police and Indonesian Army to carry out national security and defense tasks (Indrayanto, 2005).

The Important role of ports for Indonesia, making ports one of the government's work programs. The development and improvement of port infrastructure and supra-structure are carried out by the government by issuing Presidential Regulation Number 16 of 2017 concerning the Indonesian Maritime Policy. The Presidential Regulation officially states the vision of Indonesia as a World Maritime Axis, namely Indonesia as a maritime country that is sovereign, advanced, independent, strong, and capable of making a positive contribution to regional and world security and peace through national interests. This Presidential Regulation is an instrument that synergies the movements and steps of all stakeholders in realizing Indonesia as a World Maritime Axis. The government's efforts to make Indonesia become a maritime axis, one of which is carried out by building and developing infrastructure and connectivity with the maritime highway scheme. The maritime highway development program is an effort to reduce regional disparities between western and eastern Indonesia which have resulted in imbalances in economic growth and infrastructure development. The sea highway is expected to be a solution to smooth the flow of commodity exchange, increase community mobility, and equitable economic development.

The need for port development and improvement is also based on several studies showing that over the next 20 years, the flow of containers in Indonesia will increase, from 8.8 million TEU<sup>1</sup> in 2009, it is expected to 30 million TEU by 2020, and will increase to 40 million TEU in 2030. Dry and liquid bulk cargoes are expected to increase by 50% by 2020 and are expected to increase by another 50% from 2020 to 2030. This means that this condition requires the construction and development of container terminals at major ports in Indonesia. The real steps

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<sup>1</sup>TEU is a unit of measure volume equivalent to 20 feet, which stands for 'Twenty-foot Equivalent Unit' which is used as a unit of measure for cargo capacity.



taken by the government are to carry out the construction and development of several ports throughout Indonesia, including:

- 1) Revitalizing the Port of Bitung in North Sulawesi and the Port of Kuala Tanjung in North Sumatra so that they can act as new international ports (International Hub Ports / IHP) for the Eastern and Western regions of Indonesia. The revitalization is expected to make these two ports able to provide scheduled services for large ships (up to 3,000 TEU) so that they can reduce logistics costs to a lower price.
- 2) Accelerated development and improvement of the Port of North Kalibaru (Tanjung Priok), Telukan Lamong (Tanjung Perak), and Belawan Baru (Belawan). The three ports in the fast track program are currently experiencing over capacity not only to serve export-import trade but also inter-island trade. For example, currently, the Port of Tanjung Priok handles more than 6 million TEU of containers, whereas the ideal capacity of the port is only up to 5 million TEU of containers (Salcedo, 2012).
- 3) To strengthen maritime connectivity nationally, the government also plans to develop 19 ports as feeders for Hub ports. The ports included in this program are Malahayati-Aceh Port, Batam Port, Jambi/Talang Duku Port, Palembang Port, Panjang-Lampung Port, Teluk Bayur-West Sumatra Port, Tanjung Emas Port-Central Java, Pontianak Port, Banjarmasin Port, Port Sampit-Central Kalimantan, Balikpapan / Kanangau Port, Samarinda / Palaran Port, Tanau / Kupang Port, Pantoloan Port-Central Sulawesi, Ternate Port, Kendari Port, Sorong-West Papua Port, Ambon Port, and Jayapura Port.
- 4) In addition, the Directorate General of Sea Transportation of the Ministry of Transportation has also prepared a Public-Private Partnership (PPP) scheme for the construction of 14 new ports that will cooperate with port business entities. The fourteen ports are Bau-Bau Port, Wanci Port, Gorontalo Anggrek Port, Belang-belang Port, Tahuna Port, Banggai Port, Tobelo Port, Saumlaki Port, Dobo Port, Namlea Port, Labuan Bajo Port, Serui Port, Pomako Timika

Port, and Port of Kaimana. Port construction begin in 2019 and start with the construction of Bau-Bau Port and Gorontalo Orchid. Meanwhile, the other 9 ports will continue to be pursued by opening up opportunities for port business entities that are willing to become operators of these ports through an auction mechanism.

The acceleration of port infrastructure development in Indonesia is still constrained by huge business capital. The government has not been able to fulfill the availability of funds for the need to build and manage port infrastructure throughout Indonesia. The government budget in the state expenditure budget is only able to meet 20% to 40% of the planned funding needs, so the issue of port infrastructure development and improvement is adjusted to the state expenditure budget capacity. As for the prediction of funds needed for the development and improvement of the port infrastructure of Rp. 2,058 trillion and the state expenditure budget capacity of only Rp. 623 trillion (Tim Peneliti INDEF, 2019). The limited funding capacity for the development and improvement of port infrastructure by the government requires private contributions, in other words, port operators need additional entrepreneurs because it is estimated that PT. Pelindo (Persero) will not be able to provide these services if they become a single fighter, therefore the government must be able to policies that have led to changes in improvements by improving port management and regulations to attract private interest (Sudarmo, 2012).

## 2) The Effect of Business Competition on Port Business Activities Post-Demonopolization of PT.Pelindo (Persero)

Port service providers are carried out by port business entities that have the status of State-Owned Enterprises, Region-Owned Enterprises, or Private Business Entities. Based on the records of the Directorate General of Sea Transportation of the Ministry of Transportation of Indonesia, there are 223 port business entities spread across Indonesia, of which only 15 port business entities have obtained port management concessions in Indonesia. Concession rights are

important for a port business entity in carrying out business activities as a port operator in Indonesia. The 15 port business entities have a wide working area coverage which is listed in the following table:

**Table 2: List of Indonesian Commercial Port Business Entities**

No	Port Business Entity	Number and Area of Ports
1	PT.Pelindo I (Persero)	14 <sup>46</sup> with the working areas of Nanggroe Aceh Darussalam, North Sumatra, Riau, and the Riau Islands.
2	PT. Pelindo II (Persero) <sup>31</sup>	12 <sup>26</sup> with the working areas of Sumatera Barat, Jambi, Sumatera Selatan, Bengkulu, Bangka Belitung, Lampung, Banten, DKI Jakarta, Jawa Barat, dan Kalimantan Barat.
3	PT.Pelindo III (Persero)	28 with the working areas <sup>38</sup> of Kalimantan Tengah, Kalimantan Selatan, Jawa Timur, Jawa Tengah, Bali, Nusa Tenggara Barat, dan Nusa Tenggara Timur.
4	PT. Pelindo IV (Persero)	26 <sup>37</sup> with the working areas of Sulawesi, Kalimantan Timur, Kalimantan Utara, Maluku, Maluku Utara, Papua, and dan Papua Barat.
5	PT. Karya Citra Nusantara (KCN) <sup>47</sup>	1 Terminal Marunda Pelabuhan Tanjung Priok Jakarta
6	PT. Alur Pelayaran Barat Surabaya (PT.APBS) <sup>49</sup>	1 Alur Pelayaran Barat Surabaya
7	PT. Berlian Jasa Terminal Indonesia (PT.BJTI)	1 Pelabuhan Berlian
8	PT.New Priok Container Terminal One (PT.NPCT1)	1 Terminal Kalibaru Pelabuhan Tanjung Priok
9	PT. Wahyu Samudera Indah (PT.WSI) <sup>48</sup>	1 Pelabuhan Muaro Jambi
10	PT.Delta Artha Bahari Nusantara (PT.DABN)	1 Pelabuhan Tanjung Tembaga Probolinggo
11	PT.Terminal Teluk Lamong (PT.TLL)	1 Terminal Teluk Lamong
12	PT. Nugra Santana (PT.NS)	1 Pelabuhan Bojonegara
13	PT.Inti Sentosa Alam Bahtera	1 Terminal Lampung

	(PT.ISAB)	
14	PT. Krakatau Bandar Samudera (PT.KBS)	1 Terminal Cigading
15	PT. Berlian Manyar Sejahtera (PT.BMS)	1 Terminal Manyar di Pelabuhan Gersik

Based on the table above, it is clear that the distribution of port business activities is still fully controlled by PT Pelindo (Persero) which divides its business into 4 companies, namely PT Pelindo I, PT. Pelindo II or IPC, PT Pelindo III, and PT Pelindo IV with the division of 4 working areas spread from Sabang to Marauke, with a total port control of 80 major ports in Indonesia.

The condition of port ownership by private port entities only has one port, it is clear that the dominance is still held by PT Pelindo (Persero) which reaches 87.91%. Control of the market share of commercial ports in Indonesia will be correlated with the amount of business income earned by port business entities. A comparison of the amount of port business entity income can be seen in the following table:

**Table 3: List of Business Revenues of Indonesian Port Business Entity**

No	Port Business Entity	Income (in Million Rupiah)			
		The year 2017	%	The year 2018	%
1	PT. Pelindo I, (Persero)	2,751,107	9.36	3,113,533	9.41
2	PT. Pelindo II (Persero)	10,655,574	36.24	11,436,700	34.56
3	PT. Pelindo III (Persero)	8,849,406	30.10	10,174,932	30.74
4	PT. Pelindo IV (Persero)	3,003,623	10.22	3,305,799	9.99
5	PT.New Priok Container Terminal One (PT.NPCT1)	880,201	2.99	809,528	2.45
6	PT. Alur Pelayaran Barat Surabaya (PT.APBS)	566,748	1.93	605,398	1.83
7	PT. Terminal Teluk Lamong (PT.TTL)	412,483	1.40	581,601	1.76
8	PT. Berlian Jasa Terminal Indonesia (PT.BJTI)	932,252	3.17	1,059,149	3.20
9	PT. Karya Citra Nusantara	0	0.00	0	0.00

(PT.KCN)					
10	PT. Nugra Santana (PT.NS)	0	0.00	0	0.00
11	PT. Inti Sentosa Alam Bahtera (PT.ISAB)	420,991	1.43	681,078	2.06
12	PT. Krakatau Bandar Samudera (PT.KBS)	704,527	2.40	982,796	2.97
13	PT. Berlian Manyar Sejahtera (PT.BMS)	223,085	0.76	344,255	1.04
14	PT. Wahyu Samudra Indah (PT.WSI)	0	0.00	0	0.00
15	PT.Delta Artha Bahari Nusantara (PT.DABN)	0	0.00	0	0.00
<b>Total</b>		<b>29,399,997</b>	<b>100</b>	<b>33,094,769</b>	<b>100</b>

Source: Annual Report of Each Port Business Entity, September 2019

Based on the table above, the largest operating income is obtained by PT Pelindo II (Persero), while PT. Karya Citra Nusantara (PT.KCN), PT.Nugra Santana (PT.NS), and PT.Wahyu Samudra Indah (PT.WSI) has not received operating income.

The three port business entities are still in the port infrastructure development stage, so they have not yet carried out port business activities. PT.KCN is expected to only complete the construction of the Marunda Port infrastructure by the end of 2022 and will start operating in 2023 (Idris, 2019). The same thing also happened to Muaro Jambi Port, which is managed by PT.WSI is planned to be operational in 2020 (Desfika, 2019). In contrast to the problems that occurred at Bojonegara Port in Puloampel Serang Banten, for 25 years, Bojonegara Port, which was originally under the concession of PT Pelindo II (Persero), experienced land conflict problems so that it was not yet operational. Only in 2019, PT. Pelindo (Persero) in collaboration with PT.SN will start developing the construction of the Bojonegara port. The signing of a memorandum of understanding on the operation of the Bojonegara port will be carried out in early 2020 (Iqbal, 2019). Especially for the operating income of PT.

Delta Artha Bahari Nusantara (PT.DABN) which just signed the concession agreement on December 21, 2017, has not been able to publish the amount of business revenue for the exploitation of Tanjung Tembaga Port of Probolinggo.

The difference in the range of revenue between PT. Pelindo (Persero) and other port business entities show that the percentage of the market share controlled is huge. The total percentage of PT. Pelindo (Persero)'s market share in 2017 reached 85.92% and in 2018 it reached 84.70%. The huge range difference between the market share of PT.Pelindo (Persero) and other port business entities. This condition proves that port services in Indonesia are still largely controlled by SOE, in this case, PT. Pelindo (Persero). The impression of monopoly by SOE in port business activities in Indonesia can be seen from the control of market share by PT.Pelindo (Persero) of up to 80% more. This reinforces the argument that business competition in the provision of port services has not been created as expected by the Anti-Monopoly Law and Unfair Business Competition because there are business entities that still have a dominant position with more than 50% market share.

The amount of this market share percentage will be correlated with the type of market structure according to the percentage. Mastery of a market share of more than 50% indicates that the market structure created is monopolistic. The monopolistic market structure of port exploitation shows that the market share of up to 84% by PT. Pelindo (Persero) is certainly correlated with market behavior and market performance. The market will be heavily influenced by policies issued by PT. Pelindo (Persero) and this will have an impact on monopolistic practice patterns that violate the rules in business competition law. There are at least 5 cases of violations of PT. Pelindo (Persero) against port business competition that has been submitted to the Business Competition Supervisory Commission (BCSC).

**Table 4: Decision of BCSC Concerning Violation of Business Competition by PT.Pelindo (Persero)**

No	Number of Decision	Form of Violation	Article of Alleged Violation	Decision of BCSC
1	No.01/KPPU-L/2004 concerning loading services for oil palm and Copex are required to use Dry Bulk Terminal.	PT. Pelindo I (Persero) As the operator of the port of Belawan Medan, stipulates the requirements for all companies exporting palm oil and complex to use the Dry Bulk Terminal operated by PT. Musim Mas is the sole loading and unloading company.	Article 17 Article 19 letters a and b Article 25 paragraph (1) Law No.5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition.	PT. Pelindo I (Persero) was legally and convincingly proven to have violated Article 17, Article 19 letter a, and Article 25 paragraph (1).  PT. Pelindo I (Persero) was not legally and convincingly proven to have violated Article 19 letter b.  Instructed PT. Pelindo I (Persero) to open equal opportunities for loading and unloading companies to be able to load and unload at the dry bulk terminal.
2	No.05/KPPU-L/2007 Regarding the Tender for the 2006 Belawan Port Service Flow Dredging Work	PT. Pelindo I (Persero) determines the winner of the tender for the dredging work for the Belawan Port service flow to PT.Pengerukan Indonesia (Persero).	Article 22 of Law No.5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition.	PT. Pelindo I (Persero) was legally and convincingly proven to have violated Article 22 of Law No.5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition.  Sentenced PT. Pelindo I (Persero) will pay an Rp. 2 billion fine.
3	No.02/KPPU-I/2013 concerning Loading and Unloading Services at Teluk Bayur Port	PT Pelindo II (Persero), as the port operator, stipulates the terms of the land lease agreement at Teluk Bayur Port by requiring	Article 15 paragraph (2) and Article 19 letters a and b of Law No.5 of 1999.	PT. Pelindo II (Persero) was legally and convincingly proven to have violated Article 15 paragraph (2) of Law No.5 of 1999 concerning the Prohibition of

		land tenants to use loading and unloading services owned by PT.Pelindo II (Persero).		Monopolistic Practices and Unfair Business Competition. PT. Pelindo II (Persero) was legally and convincingly proven to have violated Article 18 letters a and b of Law No.5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. Instructs PT. Pelindo II (Persero) to revoke any clauses regulating the delivery of loading and unloading activities to PT.Pelindo II (Persero) in land lease agreements at Teluk Bayur Port that links land leasing with the use of loading and unloading services. Ordered PT. Pelindo II (Persero) to pay a fine of IDR 4.7 billion
4	No.12/KPPU-I /2014 concerning the mandatory use of a Gantry Luffing Crane for loading and unloading activities at Tanjung Priok port, Jakarta.	PT. Pelindo II (Persero) and its subsidiary, PT. Multi Terminal Indonesia, as the terminal operator, issue a notification letter requiring that all port service users who use dock services to dock their ships at Tanjung Priok Port are required to use Gantry Luffing Crane (GLC) which	Article 17 and Article 15 paragraph (2) of Law No.5 of 1999.	PT. Pelindo II (Persero) was legally and convincingly proven to have violated Article 15 paragraph (2) of Law No.5 of 1999 at the relevant markets at wharves 101, 101 north, and 102 at Tanjung Priok Port. PT. Pelindo II (Persero) was legally and convincingly proven to have violated Article 15 paragraph (2) of Law No. 5 of 1999 at the relevant market at pier 114 and 115 Tanjung



		has been provided by PT. Indonesia and it's subsidiary PT.Multi Terminal Indonesia.		Priok Port. PT. Pelindo II (Persero) was not proven to have violated Article 17 of Law No.5 of 1999. Canceling the Letter of the Directors of PT.Pelindo II (Persero) No.TM.15/ 3/15/PI.II-11, November 8, 2011, regarding the use of new loading and unloading tools, Letter of the Board of Directors of PT.Pelindo II (Persero) No. TM.15/2/7/ PI.II-12, May 9, 2012, regarding Gantry Luffing Crane Operation, Letter No.FP.003/103/10/CPT K-12, September 21, 2012, regarding Notification Letter, and other letters or agreements that regulate the mandatory use of Gantry Luffing Crane ground crane loading and unloading tools at docks 101, 101 north and 102. Sentenced PT.Pelindo II (Persero) to pay a fine of Rp. 5.3 billion
5	No.15/KPPU-L /2018 concerning Container Loading and Unloading Services at Multipurpose/ Conventional/ General Terminals at L. Say Maumere	PT. Pelindo III (Peraero) stipulates that the handling of containers at the Port of L. Say Maumere is enforced by the mandatory 100% stack at the container yard for container	Article 17 paragraph (1) and paragraph (2) letter b Article 19 letters (a) and (b) Law No.5 of 1999 concerning the Prohibition of Monopolistic Practices and	PT. Pelindo III (Persero) was legally and convincingly proven to have violated Article 17 paragraphs (1) and (2) PT. Pelindo III (Persero) was not legally and convincingly proven to have violated Article 19 letters a and b Ordered PT. Pelindo III

Port, Regency, Province	Sikka NTT	loading and unloading activities starting April 1, 2018, this will increase logistics costs up to Rp.624,000 / 20 feet container charged to consumers	Unfair Business Competition.	(Persero) wants a 100% mandatory stack policy at the NTT L. Say Maumere port.  Sentenced PT.Pelindo III (Persero) to pay a fine of Rp.4.2 billion
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Sumber: Decision of BCSC, 2019

The case submitted to the BCSC above is one of the impacts of the monopolistic behavior held by PT. Pelindo (Persero), starting from demands for market control, conspiracy in tenders, until making closed agreements.

The occurrence of monopolistic practices on port business activities carried out by PT. Pelindo (Persero) is also influenced by the inability of the port authority to play a regulatory role in port management. The Port Authority, the highest government institution at the port, should have full authority to regulate, control, and supervise the process of utilizing port land and waters. The port authority must also have the authority to monitor and evaluate several strategic issues, such as port capacity, performance standards, and ship entry and exit rules. There are no regulations to support the implementation of Law No.17 of 2008 (implementing regulation) resulting in the port authority being unable to carry out its role as the highest regulator at ports. For example, the preparation of a port master plan is carried out by the port operator, whereas this authority should be carried out by the port authority. Another thing is that the port authority cannot be involved in the management of port land use because there is an assumption that Law No.17 of 2008 only regulates port water areas. Port authorities have also not been able to be involved in determining tariff standards because tariffs are still considered as the business area of PT.Pelindo (Persero) (Sujarwanto, 2016). No implementing regulation separates the role of Port authorities and the role of port business entity, then the monopolistic condition of PT. Pelindo (Persero) will be maintained, in other words, Law No. 17 of 2008 has not been able to fully improve efficiency and strengthen competitive and fair port management. The

biggest challenge for the government is to open investment opportunities through incentive policies that can motivate the private sector to develop port businesses. Particularly for developing and constructing ports in the eastern region, the government can provide term subsidies for business actors who will develop port businesses. Reducing the management function and strengthening the supervisory function will create a climate of port business competition in Indonesia.

## CONCLUSIONS

PT. Pelindo (Persero)'s monopoly on port business activities in Indonesia is based on the exception of monopoly based on laws that were carried out from 1961 to 2008. The demonopolization of PT. Pelindo (Persero) in port business activities was urgent to be carried out by the government because the government need a huge fund to develop and improve port infrastructure and supra-structure. Besides that demonopolization of port activities is needed to realize Indonesia's program as the world's maritime axis to face economic globalization. After the demonopolization of PT. Pelindo (Persero) through Law No.17 of 2008 concerning Shipping, the presence of private port business entities has also not been able to compete with the existence of PT. Pelindo (Persero). Mastery of the market share which reaches 85% proves that PT. Pelindo (Persero) is still strong for other port business entities. The effect of Monopolistic PT. Pelindo (Persero) is prone to monopolistic practices that can cause harm to other port business entities or consumers using port services. PT. Pelindo (Persero)'s monopoly occurs as a result of the inability of the port authority to enforce strict boundaries on the dominant business entity. Port authorities are created to ensure that companies act competitively in carrying out port business activities. A competitive market can be seen by paying attention to the relevant market structure which is determined by threshold. The same conditions can be applied to port operators in Indonesia. The market structure in Indonesia has a minimum threshold of 51%. If a port operator company violates the threshold, it will make the company dominant. Port authorities should be vigilant because this company

has the potential to behave in monopolistic behavior. By monitoring the factors that determine the way operators compete, ports in Indonesia can be structured to avoid price fixing by port authorities, on the other hand, strengthening the role of port authorities stipulated in the law or regulation will provide policies requiring port operators to submit tariffs, report operational indicators and submit annual financial reports and other financial information. by upholding the principle of confidentiality to ensure that no discriminatory behavior is imposed by the authority on port business entities.

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