JURIDICAL ANALYSIS OF OBSTACLES AND EFFORTS TO CREATE EFFICIENCY OF BELAWAN CONTAINER TERMINAL PORT FROM A LEGAL PERSPECTIVE BUSINESS COMPETITION

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ABSTRACT

The purpose of this study is to identify and analyze indications of inefficiency in business practices at ports and are a form of unfair business competition, examine legal remedies that can be taken to create a climate of healthy business competition at ports as a solution to the implementation of Law Number 17 the Year 2008 which has not been effective in realizing an efficient business structure in ports. Referring to the formulation of the problem that the author has stated above, the author wishes to research the Obstacles and Efforts to Create Efficiency at Belawan Container Terminal Port from the Perspective of Business Competition Law. Such a position certainly results in Pelindo and other companies related to Pelindo having a very dominant position. The Port Business Entity, which previously acted as the operator as well as regulator, is no longer a regulator. There are also problems with Pelindo, which still acts as a regulator. This is certainly contrary to the existing regulations because the OP should be the one carrying out the regulation of functions, control, and supervision of commercially operated port activities. From an economic perspective, the dominant position as the described will of courseise able to cause inefficiency which is also contrary to the principles and objectives of Law Number 5 of 1999. The results of the study explain the factors that become Obstacles in Efforts to Create Efficiency of Belawan Container Terminal Port in the Perspective of Business Competition Law are factors of law enforcement officers, community factors as well as facilities and infrastructure factors, Legal efforts that can be taken to create a fair business competition climate as a form of effort to realize efficiency in business practices at Ports include imposing sanctions on business actors who practice unfair business competition healthy and monopolistic in accordance with Law Number 5 of 1999. In addition, efforts can be made are through improve the management of the Belawan container port terminal.

Keyword: *Juridical Barriers, Efficiency, Business Competition Law*

1. INTRODUCTION

As an archipelagic state whose territory consists of a vast stretch of water and has a distribution of islands up to 17,508, business activities in the shipping sector certainly have a crucial role in Indonesia [1]. One form is the role of increasing the quantity and quality in the national logistics distribution efforts, both logistics available domestically and from abroad [2]. In other words, not only as a support for socio-cultural, political, and security defense interests, commercial activities in ports certainly have the potential to support the country's economic development.

The logistics sector plays an essential role in national development and the improvement of trade competitiveness within a country [3]. A well-run and effective logistics system can cause the distribution of goods, services, and information from the point of departure to the end of consumption to be more efficient [4].

Conversely, a poor logistics system can reduce incentives and trade value. Therefore, all business practices related to unhealthy and monopolistic logistics must be eliminated. This is becoming increasingly urgent, especially after Indonesia ratified the ratification of the World Trade Organization through Law No. 7 of 1994, which is one form of agreement, the GATS (General Agreement on Trade and Services). Within the free market framework, if the shipping service industry is inefficient and cannot compete fairly, then the entire range of activities related to this industry will be ineffective. Law No. 5 of 1999 on the Prohibition of monopolistic practices and unfair business competition was established as a commitment to realize the efficiency goals [5]. Structuring the logistics sector has increasingly become a concern of the government, especially since Indonesia and ASEAN countries signed the ASEAN Sectoral Integration Protocol for the logistics Services Sector in August 2007.

The agreement culminated in ASEAN's integration and liberalization of the logistics services sector [6]. Especially in the shipping business activity, which is one of the supporting logistics distribution in Indonesia, the spirit to create a healthy business competition climate is incorporated into law Number 17 of 2008 concerning shipping [7]. As mentioned in his consideration, one of the considerations for establishing this law is to regulate the participation of local governments and private entrepreneurs to improve performance in the port sector to create a climate of healthy competition that will eliminate the risk of high costs (high-cost economy) [8].

Law No. 17 of 2008 was initially expected to take effect on May 7, 2011. Some of the things that still need to be solved in realizing a climate of healthy competition in its implementation have been efforts, one of which is the separation between operators and regulators. PT. Pelabuhan Indonesia (Pelindo), a port business entity that previously acted as an operator and regulator is no longer a regulator [9].

Pelindo is positioned as a Terminal Operator (TO) and must have a port business entity (BUP) license. At the same time, the regulator is held by the Port Authority (OP), which used to be the port Administrator (Adpel). Port Authority, as regulated under Law No. 17 of 2008 and Government Regulation No. 61 of 2009, is a government institution in the port as an authority that carries out the functions of regulation, control, and supervision of port activities undertaken commercially [10].

The Port Authority also acts as a government representative to provide concessions or other forms to the port business entity (BUP) to conduct business activities as outlined in the agreement. The problem arises because, until 2012, the aspects that have been regulated have yet to be implemented. Among them, the Port Authority still needs to carry out its role as an authoritative body representing the state in providing concessions to BUP, both in the form of local governments and state-owned and private companies, to carry out business in the Port [11].

In addition, the problem also exists in Pelindo, which still acts as a regulator. This is certainly contrary to existing regulations because it should be the OP who performs the functions of regulation, control, and supervision of port activities that are commercially cultivated. The position held by Pelindo in the period before the enactment of Law No. 17 of 2008 as the only operator, regulator, and business actor until now in practice has remained the same as regulated by Law No. 17 of 2008. In addition, Pelindo also has subsidiaries formed to conduct business in ports, such as BJTI13 in Belawan port and JICT14 in Belawan Port.

Such a position would result in Pelindo and other companies associated with Pelindo having a dominant position. From an economic perspective, the dominant role, as described, will undoubtedly lead to inefficiency, which is also contrary to the principles and objectives of Law No. 5 of 1999. In terms of the lack of concessions, Paul Kent considered that until now, Law No. 17 of 2008 still needs to be clarified. The law still maintains the status quo of BUP, which became the regulator and the sole operator in the period before the promulgation of Law Number 17 of 2008, and there is no precise time limit. Although this law expressly allows the involvement of local governments and the private sector to manage the port [12].

However, this factor was also caused by the letter of the Minister of Transportation number HK 003/1/11 Phb 2011, which appointed PT Pelabuhan Indonesia I, II, III, and IV (Persero) as a temporary executor but was not given a time limit. Another indicator that illustrates the occurrence of unhealthy business practices that cause inefficiency is that in addition to being an operator, Pelindo also acts as a business actor who competes with other companies that do not work as operators. The practice of loading and unloading business is one of them.

Pelindo is a land provider of loading and unloading activities. It also practices loading and unloading business while unloading companies outside Pelindo also use pelindo terminal Services to carry out their business activities. From here, the potential conflict of interest arises, so the potential for unfair business competition, which is inefficiency according to an economic perspective, is very likely to occur [13].

The problems mentioned above are some facts that require resolution. One discussion considered appropriate reference is the economic and legal approaches as a blend of goals and tools to achieve goals. Even though it has exceeded the predetermined time limit related to its implementation, Law Number 17 of 2008, in which some rules still need to be implemented, is still considered transitional. This is due to the complexity of existing shipping business activities, one of which is a port problem. Efficiency in the structure of business people in the port is a necessity. Therefore, this thesis will examine the obstacles in realizing efficiency in the harbor, such as the difficulty of implementing Law No. 17 of 2008, which makes it difficult to create efficiency to create a healthy business climate in the port sector. In addition, it will also be examined related to legal and non-legal mechanisms that can be taken to overcome the problem. This effort is essential to increase the role of ports as one of the supports for logistics distribution which certainly has a significant influence on the country's economy. So on this basis, the author intends to conduct research entitled "juridical analysis of barriers and efforts to create efficiency of Belawan container port in the perspective of business competition law."

1.1 Research Benefits

Referring to the formulation of the problem that the author has raised above, the main issue in this study examines and knows the role of the Office of the harbormaster related to the Navy when viewed from Law No. 17 of 2008 on shipping. The benefits of research conducted by the authors are as follows [15]:

1. **Theoretically**
   This research is expected to be used as a reference or additional reading material to promote the discipline of law theoretically. Furthermore, it can contribute to general thoughts in the field of marine law shipping law and can be a reference for stakeholders to carry out the duties and authorities of the harbor in the port and, especially port implementers, and most importantly to add to the treasure of legal knowledge for law faculty students and the wider community and future needs.
2. **Practically**
   The results of this study will be expected to provide an accurate, practical solution to the problems studied. In addition, an input for practitioners who are directly involved and can uncover new theories to develop existing approaches in carrying out a policy.

2. RESEARCH METHODS

This study only analyzes up to the level of detests, which analyzes and presents the facts systematically so that they can be more easily understood and concluded. Specifications and types of research this thesis is normative legal research as well as combining with sociological (Empirical) Legal Research using secondary data obtained directly as the first source through field research through interviews and primary data as sources/information materials in the form of primary legal materials, secondary legal materials and tertiary legal materials. The method of approach in this study is a combination of methods between normative approach "legal research "with empirical approach method" juridical sociologies." The location of this study is in the Port of Belawan Container Terminal. Researchers use informant retrieval techniques with purposive sampling method. As for the informants used by the author is a random technique that is with details of 1 (One) The Leader, 2 (two) people at the level of section head, 2 (Two) the institution of the sea and coast guard, 2 (two) porter, and 2 (two) people. This type of research is included in the group of joint research between normative legal research (library research) with observational research (observational research). As the data and data sources used in this study are primary data and secondary data. Data analysis is done qualitatively by describing the research, then comparing the data with legal theories, legal experts, and legislation. The analysis starts with data collection, processing, and the last presentation of data. While the conclusions will be used deductive method, the author takes the data, information, and opinions, which are general, and then draws explicitly conclusions.

3. RESULTS AND DISCUSSION

The role of law in development in third-world countries has been of great concern to the educated and politically influential. We're in America, says Leonard J. Therbege, an advocate of District Colombia United States, has reason to assess the predictability (can be estimated) and stability that the law should be predictable consequences and has a function to balance and accommodate competing interests and do not change (stability); like competing interests between workers and employers, between consumers and producers [17].

Democracy in the economy requires equal opportunities for every citizen to participate in producing and marketing goods and or services in a healthy, effective and efficient business to encourage economic growth and the work of a reasonable market economy. The relationship between law and economic development is that law can be a guide and reference in conducting financial activities and can create norms or legal regulations that support economic activities in the context of economic development. Law becomes a tool to achieve social welfare as an economic goal aspired by society [18].

Business competition law generally aims to maintain a "competitive climate" between businesses and make competition between companies healthy. In addition, business competition law aims to avoid the exploitation of consumers by certain businesses and support the market economic system adopted by a country.
Business competition law was created to support establishing a market economic system so that competition between business actors can survive and healthily occur so that the community (consumers) can be protected from business exploitation. Business competition is between business actors where the government does not need to interfere. Still, to be able to create rules in business competition, the government needs to intervene to protect consumers. This is done to avoid cooperation or conspiracy between businesses that will make economic inefficiency so that eventually, the community will bear the burden of the availability of funds in smaller amounts than they should or buy goods or services at a higher price and less adequate quality [19].

Monopolistic practices and unfair business competition can cause interference with the regular operation of market mechanisms, inhibiting trade. Therefore, a tool is needed to avoid the arbitrariness of actors with wealth and power in a competing Market. One of them is by imposing sanctions on Business actors who violate the provisions of business competition law. The act of competition between business actors often encourages fraudulent competition, both in the form of price or not price competition.

Business competition law itself has become an area of law that attracts the attention of many people because the field of study is multifaceted. Business competition motivates entrepreneurs to produce goods with the best possible quality at the lowest possible cost to ensure that the company can profit and still exist. The competition involves a large number of sellers and buyers working independently of each other in the same process and the freedom for sellers and buyers to enter or leave.

The government seeks to prevent monopolistic practices and unfair business competition by issuing Law No. 5 of 1999 on the Prohibition of monopolistic practices and unfair business competition. Article 1 of Law No. 5 of 1999 stated that a monopoly controls the production and marketing of certain goods and or services by one business actor or a group of business actors. From the definition given above, we can know that there are 4 (four) important things that we can say about the practice of monopoly, namely [20]:
1. The concentration of economic power;
2. Concentration of power is in one or more economic actors;
3. The concentration of economic power creates unfair business competition; and
4. The centralization of economic power is detrimental to the public interest.

Competition in Indonesia is designated under Law No. 5 of 1999, prohibiting monopolistic practices and unfair business competition. This law applies in general to all sectors of the industry. This law reflects the spirit of developing an efficient, open, fair market economic system.
In doing business in Indonesia, business actors must be based on economic democracy by paying attention to the balance between public interests and business actors. Meanwhile, the purpose of Law No. 5 of 1999 is as follows [21]:
1. Maintaining the public interest and improving the efficiency of the national economy is one of the efforts to improve the welfare of the people.
2. Realizing a conducive business climate through the regulation of fair business competition to ensure the certainty of equal business opportunities for large, medium, and small businesses.
3. Prevent monopolistic practices and unfair business competition caused by business actors.
4. Creating effectiveness and efficiency in business activities.

3.1 Overview Of Business Competition Law

Competition law is a legal instrument that determines how competition should be conducted. Although it explicitly emphasizes the "competition "aspect, competition law is concerned with regulating competition so that it does not become a means of obtaining a monopoly. The purpose of business competition law is regulated in Article 3 of Law Number 5 of 1999 concerning the Prohibition of monopolistic practices and unfair business competition, namely [22]:

a. Maintain the public interest and improve the efficiency of the national economy as one of the efforts to improve the welfare of the people
b. Creating a conducive business climate through the same business competition arrangements for large businesses, medium businesses, and small businesses
c. Prevent monopolistic practices and unfair business competition caused by business actors
d. Creation of effectiveness and efficiency in business activities

Law No. 5 of 1999 on the Prohibition of monopolistic practices and unfair business competition aims to create efficiency in the market economy for the improvement of public welfare by preventing monopolies, regulating fair and accessible business competition, and providing administrative sanctions against violators. Indonesian society, especially business people, has long longed for a law that comprehensively regulates healthy competition. The desire was driven by the emergence of unhealthy trade practices, primarily because the rulers often provided protection or privileges to certain business people as part of the practices of collusion, corruption, cronyism, and nepotism [23].

Monopolistic practices and unfair business competition can cause interference with the regular operation of market mechanisms, inhibiting trade. Therefore, a tool is needed to avoid the arbitrariness of actors with wealth and power in a competing Market. One of them is by imposing sanctions on Business actors who violate the provisions of business competition law. The act of competition between business actors often encourages fraudulent competition, both in the form of price or not price competition [24].

3.2 Prohibited Agreements In Unfair Business Competition

Article 1 Number 7 of Law Number 5 of 1999 concerning the Prohibition of monopolistic practices and unfair business competition states that the definition of an agreement is an act of one or more business actors to bind themselves to one or more other business actors with any name, whether written or unwritten. Article 1313 of the Civil Code states that an agreement or agreement is an act by which one or more persons bind to one or more persons. This understanding is not much different from the understanding of the agreement is an agreement (written or oral) made by two or more parties, each agreeing to comply with what is in the agreement [25]. Law No. 5 of 1999, concerning the Prohibition of monopolistic practices and unfair business competition, can be seen that the agreement can be written or unwritten, both recognized or used as evidence in business competition cases. Previously, verbal agreements were considered not as strong as evidence in court because the current civil procedure law emphasizes and considers written and authentic evidence as solid evidence.

3.3 Activities prohibited under Competition Law

1. Monopoly

The Prohibition of monopolistic activities is regulated in Article 17 of the law of the Republic of Indonesia number 5 of 1999 concerning the Prohibition of monopolistic practices and unfair business competition, which states that business actors are prohibited from exercising control over the production and or marketing of goods and or services that may result in monopolistic practices and or unfair business competition. Business actors should be suspected or considered to exercise control over the production and or marketing of goods and or services if [26]:

a. The Goods and services concerned have no substance
b. resulting in other businesses cannot enter into competition for the same goods or services
c. One business actor or a group of business actors control more than 50% (fifty percent) of a particular type of goods or services market share.

2. Monopsony

Law of the Republic of Indonesia number 5 of 1999 concerning the Prohibition of monopolistic practices and unfair business competition, which states that business actors are prohibited from controlling the receipt of supplies or being the sole buyer of goods and or services in the relevant market that may result in monopolistic practices and or unfair business competition. Business actors should be suspected or considered to control the receipt of supplies or to be the sole buyer if one business actor or a group of business actors controls more than 50% (fifty percent) of the market share of a particular type of goods or services.

3. Market Control

The Prohibition of market control activities is regulated in Article 19 of the law of the Republic of Indonesia number 5 of 1999 concerning the Prohibition of monopolistic practices and unfair business competition, which states that business actors are prohibited from carrying out one or several activities, either alone or with other business actors, which may result in monopolistic practices and or unfair business competition.

4. Loss Selling Activities

The Prohibition of loss-selling activities is regulated in Article 20 of the law of the Republic of Indonesia number 5 of 1999 concerning the Prohibition of monopolistic practices and unfair business competition, which states that business actors are prohibited from supplying goods and or services by selling at a loss or setting meager prices with the intention of eliminating or shutting down competitors ' businesses in the relevant market so that it can result in monopolistic practices and or unfair business competition.

5. Cheating In Setting Production Prices

According to the elucidation of Article 21 of the law of the Republic of Indonesia, number 5 of 1999, concerning the Prohibition of monopolistic practices and unfair business competition, fraud in determining the cost of production and other expenses is a violation of the laws and regulations that apply to obtain the price of production factors that are lower than they should be. The Prohibition of fraud in determining production costs is regulated in Article 21 of the law of the Republic of Indonesia number 5 of 1999 concerning the Prohibition of monopolistic practices and unfair business competition.

6. Conspiracy

The definition of business conspiracy is regulated in Article 1 point 8 of the law of the Republic of Indonesia number 5 of 1999 concerning the Prohibition of monopolistic practices and unfair business competition, which is a form of cooperation carried out by business actors with other business actors to control the market concerned for the interests of business actors who are in cahoots.

7. Dominant Position and its abuse

The definition of dominant position is regulated in Article 1 Number 4 of the law of the Republic of Indonesia number 5 of 1999 concerning the Prohibition of monopolistic practices and unfair business competition, which is a situation where business actors do not have significant competitors in the market concerned about market share control, or business actors have the highest position among competitors in the market concerned about financial capacity, access to supply or sales, and the ability to adjust the supply or demand of certain goods or services.

3.4 Business Competition Policy

Competition law contains substantial provisions on prohibited acts (and their legal consequences) and procedural requirements for enforcing competition law. In essence, competition law is intended to regulate competition and monopoly for profit. Suppose business competition law is given a broad meaning. In that case, it includes not only the regulation of competition but also the question of whether or not a monopoly can be used as a public policy suggestion to regulate which power can be managed by the private sectorb[27].

In developing the Indonesian economic system, business competition law is one of the instruments of financial regulation.

This is shown through the issuance of Law No. 5 of 1999, prohibiting monopolistic practices and unfair business competition. Before the birth of Law No. 5 of 1999, the regulation on Business competition law was regulated in several previous rules and regulations, including Law No. 5 of 1984 on industry Article 7 Paragraph (2), Criminal Code Article 382, and Law No. 1 of 1995 on Limited Liability Companies Article 104. Law No. 5 of 1999 concerning the Prohibition of monopolistic practices and unfair business competition is one of the products of

legislation that was born at the insistence of the International Monetary Fund (IMF) as one of the conditions so that the Indonesian government can obtain assistance from the IMF to overcome the economic crisis that hit Indonesia.

The establishment of Law No. 5 of 1999 on Monopoly and unfair business competition is a strong foundation for creating an efficient economy free from all kinds of distortions. Especially at the time of the economic crisis is now momentum to restructure the economy from a financial system with a monopoly-oligopoly and protective market structure towards a market-friendly economic system [28].

The purpose of making law No. 5 of 1999 is to maintain the continuity of competition. Competition needs to maintain its existence to achieve efficiency for consumers and each company. The competition will encourage every company to conduct its business activities as efficiently as possible to sell products in the form of goods and services at prices as low as possible if every company does its business as efficiently by selling low prices as possible to compete with other companies then that situation will allow every consumer to buy cheap goods offered in the market concerned. With the creation of efficiency for each company, then, in turn, the efficiency will also create efficiency for the consumer society [29].

In principle, the purpose of Law No. 5 of 1999, as contained in Article 3 there, are two, namely, the goals in the economic field and goals outside the financial area. If the economic goals are achieved, namely increasing the national economy, then the goals outside the economy will also be performed, namely improving the welfare of the people. In implementing the antitrust law by legal practitioners, business actors, especially the business competition Supervisory Commission need to pay attention to these two goals, namely to improve the social economy and the welfare of all Indonesian people [30]. Barriers that cause inefficiency in Port business practices and legal remedies that can be taken to create a climate of healthy business competition as an effort to realize efficiency in Port business practices, among others, due to [31]

1. **Factors Law Enforcement Officers**
   The weak law enforcement conducted by law enforcement officers at the Port of Belawan container terminal causes unfair business competition that drives inefficiency in business practices at the Port of Belawan container terminal.
2. **Community Factors**
   Community factors in the context of this study are represented by the entrepreneurs who do business in the Port of Belawan container terminal that is still not obedient and obedient in carrying out any applicable laws and regulations to realize healthy business practices in the Port of Belawan container terminal.
   High business competition among existing entrepreneurs causes there are still some entrepreneurs who play an eye to outsmart the legislation. So that efforts to realize healthy business competition become a little disturbed.
3. **Facilities And Infrastructure Factors**
   Factors infrastructure in the Port of Belawan container terminal, in general, is excellent and optimal. Still, according to the author, in the future, facilities and infrastructure in the Port of Belawan container terminal should be improved to support the realization of better management of the Port of Belawan container terminal.

Factors that cause unfair business competition can occur due to a situation that benefits businesses and take advantage of the interests and benefits of these businesses. However, it will ultimately harm other businesses. Port as a means of supporting trade and distribution of goods needed by the community. Ports become the determining element of trading activities. Therefore, efficient port management will also affect trade progress, and industry in underdeveloped areas will also come forward.

3.5 Solution Efforts To Create Efficiency Of Belawan Container Terminal Port In The Perspective Of Business Competition Law

The effort to obtain maximum profits in the business world is reasonable. However, the steps to achieve these objectives must remain in line with the applicable laws and regulations. On the one hand, private business development manifests unfair or fraudulent competition conditions. The uncontrolled business competition will foster monopolistic practices as a system that is contrary to the principles of the business competition itself. The existence of a monopoly in economic activity can occur in various types, some are harmful, and some are beneficial to the community's economy. Therefore, unfair business competition will give birth to a monopoly. Unfair business competition is a form that can generally be interpreted as any act of dishonesty or eliminating competition in any form of transaction or arrangement of trade and commercial. The existence of such competition resulted in the birth of companies that have a high desire to beat their competitors to become the largest and most wealthy companies.

Based on Article 36 of the law of the Republic of Indonesia number 5 of 1999 concerning the Prohibition of monopolistic practices and unfair business competition, KPPU also has the authority to include the following [32]:

a. receive reports from the public and business actors regarding allegations of monopolistic practices and unfair business competition;
b. research the alleged existence of business activities and actions of business actors that may result in monopolistic practices and unfair business competition;
c. to investigate and examine cases of alleged monopolistic practices and unfair business competition reported by the public or by business actors or discovered by KPPU as a result of its research;
d. summing up the results of the investigation and or examination of the presence or absence of monopolistic practices and or unfair business competition;
e. summoning business actors suspected of having committed violations of the law of the Republic of Indonesia number 5 of 1999.
f. summoning and presenting witnesses, expert witnesses, and any person deemed to be aware of violations of the law of the Republic of Indonesia number 5 of 1999;
g. request the assistance of investigators to present business actors, witnesses, expert witnesses, or any person who is not willing to comply with the KPPU's summons
h. request information from government agencies about the investigation and or examination of business actors who violate the law of the Republic of Indonesia number 5 of 1999
i. obtain, examine, and or evaluate letters, documents, or other evidence for research and examination;
j. decide and determine the presence or absence of losses on the part of other business actors or the community;
k. notifying the decision of KPPU to business actors suspected of monopolistic practices and unfair business competition;
l. impose sanctions in the form of administrative action on business actors who violate the law of the Republic of Indonesia number 5 of 1999.

Another effort that can be made to create a climate of healthy business competition to realize efficiency in business practices at the port is the improvement of Port governance. The market situation with the characteristics or categories of monopoly markets as described is certainly not desired by many parties, especially consumers as people in a country. Therefore, every effort must be made by the state (in this case, the government) to realize a situation of healthy competition and protect the interests of consumers. A market with fair competition is also known as a perfectly competitive market. A perfectly competitive market is one in which no buyer or seller has significant enough power to influence the price of the goods being exchanged so that consumers can be protected.
Can make another effort in the process of law enforcement or law enforcement against business competition and anti-monopoly in the Port. As a legal institution in business competition, KPPU has the authority to maintain the effectiveness of enforcing the business competition law to create healthy business competition and eliminate monopolies in Indonesia. Violation of the competition law by business actors will lead to sanctions imposed by the KPPU. The sanctions imposed are administrative, as stipulated in Article 47 of the UULPM. Article 47 states that [33]:

1. The commission is authorized to impose sanctions in the form of administrative measures against business actors who violate the provisions of this law.
2. The administrative action as meant in Paragraph (1) may be:
   a. Determination of cancellation of the agreement as meant in Article 4 to Article 13, Article 15, and Article 16 and or
   b. Orders to business actors to stop vertical integration as referred to in Article 14; and or
   c. Orders to business actors to stop activities that are proven to cause monopolistic practices and or cause unfair business competition and or harm the community; and or
   d. Orders to business actors to stop the abuse of dominant position; and
   e. Determination of cancellation of the merger or consolidation of a business entity and acquisition of shares as meant in Article 28; and or
   f. Determination of payment of damages; and or
   g. Imposition of fines as low as Rp 1,000,000,000.00 (one billion) and as high as Rp 25,000,000,000. 000 (twenty-five billion).

The imposition of sanctions on Business actors who practice unfair and monopolistic business competition has a specific purpose, theoretically, according to Herbert. L. Packer, there are two conceptual views about the meaning of imposing sanctions on the right person. Each picture will have different moral implications from one another, namely the retributive view (retributive view) and utilitarian view (utilitarian view).

Criminal liability can only occur if someone has previously committed a criminal offense. Moeljatno said " a person cannot be held accountable if he does not commit a criminal act. Thus, criminal liability depends, first of all, on the commission of a criminal offense. Criminal liability will occur only if there has previously been a person who committed a criminal offense. On the contrary, the existence of a criminal offense does not depend on whether there are people who committed the crime.

Through the application of strict sanctions, it is expected that there will be a change in the economic system in Indonesia, which initially many economic activities were based on corruption, collusion, and nepotism, so many economic activities were monopolized by certain groups, turning into financial system based on the principles of fair competition. Vicarious liability is often defined as "the legal responsibility of a person for wrongdoing committed by another person." Criminal liability is applied with punishment, which aims to prevent the commission of criminal acts by enforcing legal norms for the protection of society, resolve conflicts caused by criminal acts, restore balance and bring a sense of peace in society, and popularize the convicted by conducting coaching so that they become good people and release guilt on the convicted. The error consists of two types: intentional and negligence. One of the main points of concern in the regulation is the number of fines for business actors. The rule states that the business competition Supervisory Commission (KPPU) has the authority to impose sanctions in the form of administrative action on Business actors who violate the provisions of laws and regulations [34].

4. CONCLUSIONS

a. Factors that become obstacles to creating efficiency of Belawan Container Terminal Port in the perspective of Business Competition Law are factors of law enforcement officers, community factors, and infrastructure factors.
b. Legal efforts that can be taken to create a climate of fair competition to realize efficiency in business practices at the Port include the imposition of sanctions on businesses that practice unfair and monopolistic business competition in accordance with Law Number 5 of 1999. In addition, efforts can be made to improve the governance of the Belawan Container Terminal Port.

5. REFERENCES

1. Andi Prastowo, *Memahami Metode-Metode Penelitian: Suatu Tinjauan Teoristis Dan Praksis* ar-Ruzz Media Jogjakarta, 2011.
2. Asikin Zainal, *Pengantar Tata Hukum Indonesia*, Jakarta: Rajawali Pers, 2012.
3. Bahder Johan Nasution, *Negara Hukum Dan Hak Asasi Manusia. Bandung: CV. Mandar Maju*, 2017.
4. Bambang Sugono, *Metoda Penelitian Hukum,* Raja Grafindo Persada, Jakarta, 2001.
5. Bisnis Indonesia, "*Masukan Soal Liberalisme Logistik Segera Disampaikan*," Artikel, 22 Oktober 2007.
6. Herman Budi Sasono, *Manajemen Pelabuhan & Realisasi Ekspor Impor*, Yogyakarta: Penerbit ANDI, 2012.
7. Herbert L. Packer, *The Limits of the Criminal Sanction,* Stanford University Press 1968.
8. Jujun S. Soeryasumantri. *Filsafat Ilmu Sebuah Pengantar Populer*, Jakarta: Sinar Harapan, 1978.
9. Irawan Suhartono, *Metode Penelitian Sosial suatu Teknik Penelitian Bidang Kesejahteraan Sosial lainnya*: Remaja Rosda Karya, Bandung; 1999.
10. Kodrat Wibowo, Chandra Setiawan, (ed), *Dua Dekade Penegakan Hukum Persaingan: Perdebatan dan Isu yang Belum Terselesaikan*, Komisi Pengawas Persaingan Usaha (KPPU) Republik Indonesia, Jakarta, 2021.
11. Lasse, D.A, *Manajemen Kepelabuhanan*, Jakarta: Rajawali Pers, 2014.
12. Lexy J. Moleong, *Metodologi Penelitian Kualitatif*, Bandung: PT Remaja Rosdakarya, 1998.
13. Munir Fuady, *Teori-Teori Besar (Grand Theory) Dalam Hukum*, Jakarta: Kencana, 2003.
14. Mochtar Kusumaatmadja, *Pengantar Ilmu Hukum, Suatu Pengenalan Perrtama Ruang Lingkup Berlakunya Ilmu Hukum*, Bandung: Alumni, 2000.
15. M. Yamin Jinca, *Transportasi Laut Indonesia Analisis Sistem dan Studi Kasus*, Cetakan Pertama, Surabaya: Brilian Internasional, 2011.
16. Munir Fuady, Hukum Anti Monopoli Menyongsong Era Persaingan Sehat, PT. Citra Aditya Bakti, Bnadung 2003.
17. N. Gregory Mankiw, Pengantar Ekonomi, Edisi Kedua, Jakarta: Erlangga, 2003.

18. Noeng Muhajir, *Metodologi Penelitian Kualitatif*, Roke Sarasin, Jakarta: 1990.
19. Paul Kent, *"Persaingan Pelabuhan dan Kebutuhan untuk Mengatur Perilaku anti Persaingan,* Jurnal Prakarsa Infrastruktur Indonesia, April 2012.
20. Peter Mahmud Marzuki, 2008, *Pengantar Ilmu Hukum*, Jakarta: Kencana Pranada Media Group.
21. Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum*, Ghalia Indonesia, Cetakan Kedua, 1985.
22. Sadono Sukirno, Mikro Ekonomi Teori Pengantar, Jakarta, PT. Raja Grafindo Persada, 1994.
23. Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat, PT* Raja Grafindo Persada, Jakarta, Cetakan Ketujuh, 2003.
24. Satjipto Raharjo, *Ilmu Hukum*, Bandung : Citra Aditya Bakti, 2000.
25. Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif, dan R&D*, Bandung: IKAPI, 2011.
26. Suharsimi Arikunto, *Prosedur Penelitian Suatu Pendekatan Praktik.* PT Rineka Cipta:Jakarta; 2010.
27. Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, PT. Raja Grafindo Persada, Jakarta, 1995.
28. Wiwoho Soedjono. *Hukum Dagang. Suatu Tinjauan tentang Ruang Lingkup dan Masalah yang Berkembang dalam Hukum Pengangkutan di Laut Bagi Indonesia*. Bina Aksara, Jakarta, 1982.
29. Undang-Undang Nomor 5 Tahun 1999 *Tentang Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat dibentuk sebagai komitmen untuk mewujudkan tujuan efisiensi tersebut.*
30. Undang-Undang Nomor 17 Tahun 2008 *Tentang Pelayaran*
31. Putusan Mahkamah Konstitusi Nomor 74/PUU-VIII/2010 *dalam perkara yang diajukan oleh Asosiasi Perusahaan Bongkar Muat Indonesia (APBMI). Meskipun akhirnya putusan ini ditolak, namun dalam aspek persaingan usaha masih dapat dikaji ulang.*
32. Abdul Latif, Etika Persaingan Dalam Usaha Menurut Pandangan Islam, *Jurnal UNIDA*, Vol. 3, No. 2 Desember 2017.
33. Amanda Ayu RizkiaSuci Rahmawati, Faktor-Faktor Yang Mempengaruhi Anti Monopoli Dan Persaiangan Bisnis Tidak Sehat: Globalisasi Ekonomi, Persaingan Usaha, Dan Pelaku Usaha. (Literature Review Etika), *Jurnal Ilmu Manajemen Terapan*, Volume 2, Issue 5, Mei 2021.
34. Andos Rewindo Sirait, Faktor-Faktor Penyebab Terjadinya Persaingan Usaha Tidak Sehat Di Indonesia, *Jurnal Justiqa*, Volume 1 Nomor 1 Tahun 2019.
35. Buku Pedoman, *Penyusunan Proposal dan Tesis Program Magister Ilmu Hukum Pascasarjan (S2)*, Universitas Batam, 2014.
36. Daniel Agustino, Faktor Penentu Dampak Aktivitas Antipersaingan Dan Pengecualian UU No.5/1999 Pasal 50 Huruf g, *Jurnal Persaingan Usaha*, Edisi 1, 2009.