

STUDY OF THE CABOTAGE PRINCIPLES IN LAW NUMBER 11 OF 2020 CONCERNING WORK CREATION AND AMENDMENTS TO LAW NUMBER 17 OF 2008 CONCERNING SHIPPING

Benny Hutahayan, Brawijaya University

ABSTRACT

This study aims to analyze and describe the changes that have occurred in the Job Creation Law against the Shipping Law, particularly how the cabotage principle is applied. The research method used is normative legal research by analyzing primary legal materials in the form of related regulations. The result of the research is that there are 67 provisions in the Shipping Law which are amended in the Job Creation Law. There are 3 main things that have changed: (1) returning the authority to the central government which has been given to regional governments, (2) providing opportunities for foreigners to invest in shipping, especially oil and gas, (3) relaxation of the cabotage principle. On the other hand, it is found that the Job Creation Law provides legal certainty for business actors as well as provides legal protection for parties in the shipping industry. However, it does not provide a sense of justice to domestic entrepreneurs. This research examines changes in the Job Creation Law against the Shipping Law in relation to the Theory of Justice, Theory of Legal Certainty, and The Theory of Legal Protection. This study also examines the cabotage principle specifically in the Job Creation Act by using these three theories.

Keywords: Law, Cabotage Principles, Job Creation, Shipping, Legal Protection.

INTRODUCTION

Indonesia is an archipelago that has tens of thousands of islands and very wide sea waters. Indonesia is also known as the largest maritime country in the world because the sea is four times larger than land area. Therefore, sea transportation, especially ships, plays an important role in connecting between islands in Indonesia. Therefore, it is necessary to establish regulations that can protect the sovereignty of the state in Indonesian marine waters.

The government enacted Law Number 17 of 2008 concerning Shipping (hereinafter abbreviated as Shipping Law) which was the beginning of the existence of the cabotage principle in Indonesia. The cabotage principle is the exclusive right of a country to implement its own laws and regulations in the land, water and air sectors within the territory under the control of the state.

The principle of cabotage is considered important and beneficial so that it has been applied in various countries (Hohlfelder & Vann, 2000; Giannopoulos & Aifandopoulou-Klimis, 2004; Prentice et al., 2009; Zheng et al., 2014; Park & Medda, 2016; Religion & Alisigwe, 2018; Sternberg & Hofmann, 2018; Casaca & Lyridis, 2020; Bello-Olowookere, 2011). This is evidenced by several studies which also state that the existence of the cabotage principle is

considered an important element in the development of the domestic shipping industry which protects the shipping industry from foreign competition which can become a trade barrier (Glisson & Jones, 1999; Hodgson & Brooks, 2007; Suffian et al., 2015; Casaca & Lyridis, 2018).

Currently, there are still several obstacles in implementing the cabotage principle due to certain circumstances. One of these conditions is that the application of the cabotage principle creates problems in the oil and gas industry. The Shipping Law states that starting from January 2010; ships with foreign flags are not allowed to carry passengers and/or goods between islands or between ports in Indonesian territory. Meanwhile, ships operating in the oil and gas sector are special vessels, generally with foreign flags. This contradicts what has been stated in the Shipping Law.

Based on this, the Government issued a new policy, namely Government Regulation Number 22 Year 2011 concerning Transportation in Waters which is a response to obstacles that occur due to the implementation of the Shipping Law. In Government Regulation (PP) Number 22 of 2011 Chapter XIII Article 206a paragraphs (1) and (2) it is stated that *"Foreign ships can carry out other activities which do not include activities carrying passengers and / or goods in activities carrying passengers and/or goods. In domestic sea transportation activities in Indonesian territorial waters as long as ships with Indonesian flags are not yet available or not sufficiently available, they must have permission from the Minister."*

The government then issued a new policy, namely Law Number 11 of 2020 concerning Job Creation (hereinafter abbreviated to the Job Creation Law) which was passed by the House of Representatives (DPR) on October 5, 2020. This policy affects the shipping industry in Indonesia. The shipping industry, through the Indonesian Shipowners' Association (INSA) and the Indonesian Offshore Industry and Shipbuilding Company Association (Iperindo), hopes that the creation of the Job Creation Law can encourage the strengthening of domestic shipping investment. The application of the Shipping Law to the Job Creation Law has resulted in changes to several contents of the Shipping Law.

Several changes, such as the mention of *"permits"* in the Sector Law are changed to *"Business Licensing from the Central Government"*. Meanwhile, in the administrative authority of the government, the term *"Minister"* is changed to *"Central Government"*. These changes result in legal uncertainty because the changed administrative authority is not clearly stated who is in charge. So that further analysis is needed by using the theory of legal certainty as a knife of analysis.

The existing changes also refer to the aspect of legal certainty; one of the theories of legal certainty which is the reference in this research is Ultretch's theory of legal certainty, where general rules make individuals know what actions are allowed or not to be done. For this reason, the Job Creation Law must further examine how the cabotage principle is still maintained in order to provide legal certainty for foreign investment to do business in Indonesia.

In the Job Creation Law, permits for foreign ships granted by the Government to shipping business sectors in Indonesia, especially the oil and gas sector, have created injustice against the non-oil and gas shipping sectors in Indonesia. The analysis carried out this time refers to John Rawls's theory of justice which says that upholding justice with a populist dimension must pay attention to the principles of justice (Rawls, 2006).

In addition, there is also a principle of legal protection that cannot be ignored. Phillipus M. Hadjon said that legal protection for the people is a government action that is preventive and repressive in nature. This aims to prevent disputes, which directs government action to be careful

in making decisions based on discretion, and to resolve disputes, including their handling in the judiciary.

Previous research has discussed the cabotage principle from various sides. Not only in terms of national transportation (Crawford, 1992; Kim, 2015), but also from an economic point of view (Okeke & Aniche, 2012; Ajiye, 2013; Yoshizaki et al., 2013; Onyemehi, 2015; Sternberg et al., 2015; Ruslan et al., 2019). However, until now no research has been found that discusses the cabotage principle in Indonesia based on the new law from the perspective of justice, protection and legal certainty. Therefore, novelty in this research lies in the study of the cabotage principle based on the Job Creation Law associated with the theory of justice, legal certainty, and legal protection.

Based on the description above, this study aims to examine changes in the Job Creation Law against the Shipping Law in relation to the Theory of Justice, Theory of Legal Certainty, and The Theory of Legal Protection. This research also seeks to examine the cabotage principle specifically in the Job Creation Act by using these three theories.

LITERATURE REVIEW

Theoretical Framework

This research refers to few theories:

1. Legislative Theory.
2. The term legislation (legislation, wetgeving or Gesetzgebung) has a different meaning. The term of legislation can be interpreted as legislation and legislators. The term wetgeving is translated to mean forming a whole law rather than state law. Meanwhile, the term Gesetzgebung is translated into the meaning of legislation (Soeprapto, 2007).
3. Legal Protection Theory.
4. The theory of legal protection is one that focuses on the legal protection provided to the public (Salim, 2013). According to Hadjon (1987) legal protection can be divided into two, namely:
5. Comparative preventive law, which aims to prevent problems or disputes, this legal protection effort, is carried out to reduce and minimize acts of lawlessness.
6. Repressive legal protection, which aims to resolve problems or disputes that arise.
7. Justice Theory.

Rawls (2005) emphasizes that justice enforcement programs with a democratic dimension must pay attention to two principles of justice, namely:

1. Giving equal rights and opportunities to the broadest basic freedoms as broad as the same freedoms for everyone.
2. Able to rearrange socio-economic disparities that occur so that they can provide reciprocal benefits for everyone, both those from lucky and disadvantaged groups.

Legal Certainty Theory

The idea of the principle of legal certainty was originally introduced by Radbruch (1919) in his book entitled "*einführung in die rechtswissenschaften*". The existence of the principle of legal certainty is a form of protection for justisiabel (justice seekers) against arbitrary action, which means that a person will and can get something that is expected in certain circumstances (Mertokusumo, 1993).

The flow of the research framework is presented in Figure 1 below.

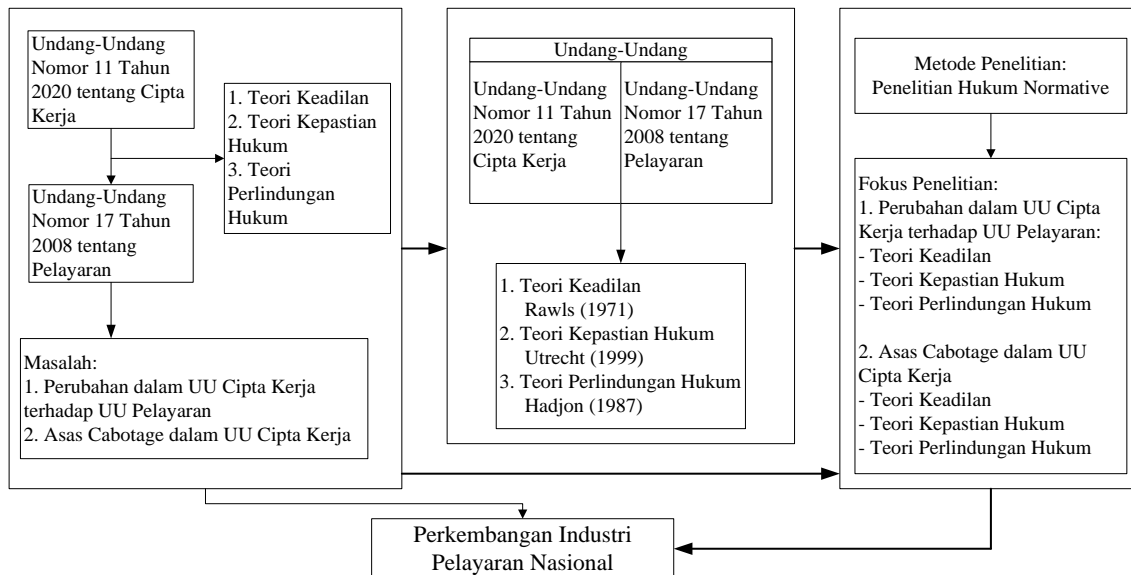


FIGURE 1
FLOW OF RESEARCH FRAMEWORK

Conceptual Framework

Cabotage principle: According to the Directorate General of Sea Transportation, quoted from the "*Socialization of the 2013 Ministerial Regulation*" in Balikpapan on 4-5 September 2013, the birth of the Cabotage Principle was based on the issuance of Presidential Instruction No. 5 of 2005 concerning Empowerment of the National Shipping Industry and Law No. 17 of 2008 concerning Shipping.

The cabotage principle means the sovereignty of the state which is related to the role of the marine transportation sector in maintaining national security and defense from foreign countries. The aim of the Government to implement the Cabotage Principle is to make Indonesian-flagged vessels the kings of their own seas (Kim, 2015).

The Cabotage principle consists of several points, namely:

1. Domestic transportation activities are carried out by:
 1. National sea transportation company
 2. Using ships with Indonesian flags
 3. Manned by an Indonesian national crew member
2. Foreign ships are prohibited from carrying passengers and / or goods to every island or every port in Indonesian territorial waters.
3. Foreign ships that are currently still serving domestic sea transportation activities can continue to carry out their activities no later than three years since this Law comes into force.
4. Every person operating a foreign ship to transport passengers and / or goods to every island or every port in Indonesian territorial waters shall be punished with a maximum imprisonment of five years and a maximum fine of Rp. 600,000,000.

Shipping Law

The Law on Shipping which contains four main elements, namely transportation in waters, ports, shipping safety and security, and protection of the maritime environment can be described as follows:

1. Regulations for the transportation sector in waters contain the principle of implementing the cabotage principle by empowering national sea transportation which provides a conducive climate for advancing the marine transportation industry.
2. Regulations for the port sector contain provisions regarding the elimination of monopolies in port management, separation between regulatory and operator functions and provide the proportional participation of local governments and the private sector in port management.
3. Regulations for the field of shipping safety and security contain provisions that anticipate technological advances by referring to international conventions that tend to use the latest equipment in shipping safety facilities and infrastructure.
4. The regulation for the protection of the maritime environment contains provisions on the prevention and overcoming of marine environment pollution originating from the operation of ships and similar facilities.

Job Creation Act

The Job Creation Act or Law Number 11 of 2020 concerning Job Creation is a law in Indonesia which was passed on 5 October 2020 by the Indonesian Parliament and promulgated on 2 November 2020 with the aim of creating jobs and increasing foreign investment and domestically by reducing regulatory requirements for business permits and land acquisition. Because it is 1,187 pages long and covers many sectors, this law is also referred to as the omnibus law.

METHODS

Legal research is a scientific activity, which is based on methods, systematics and certain thoughts, which aim to study something or some symptoms of certain laws, by analyzing them (Soekanto, 2010). In this study, the type of research used is normative legal research. Normative juridical legal research is legal research carried out by examining mere library materials or secondary data (Soekanto & Mamudji, 2018). This research was conducted on primary and secondary legal materials which contain legal norms. Normative legal research includes:

1. Research on legal principles.
2. Research on legal systematics.
3. Research on the level of vertical and horizontal synchronization.
4. Comparative law.
5. Legal history.

Legal research has an approach that can be used to obtain information from various aspects of the issue being tried to find answers to. In this research, it is important to read and understand each article in the related law (statue approach). Because the approach taken will use more than one applicable law and related regulations in the discussion of problem formulations.

The source used in normative research is literature as secondary data, which includes:

Primary Legal Materials

Binding materials, in this case are laws and regulations related to this writing.

Secondary Legal Materials

Materials that provide explanations of primary legal materials come from all publications on law including text books, law journals and comments on court decisions and others.

Non-Legal Materials

Materials that provide an explanation of primary legal materials come from all publications on law including text books, legal journals and comments on court decisions and others (Soekanto, 2010).

RESULTS AND DISCUSSION

Amendments in Law Number 11 of 2020 concerning Job Creation against Law Number 17 of 2008 concerning Shipping

Law Number 11 of 2020 concerning Job Creation was ratified by the DPR into law on October 5, 2020. In it there are more than 60 articles of the Shipping Law which are put in order. Some of these articles were amended, added and deleted. When observed there are several changes to the Job Creation Law against the Shipping Law. A total of 67 provisions in the Shipping Law were amended in the Job Creation Law. Among them, 63 articles have been changed, 1 additional article, 3 articles deleted, and 6 explanations of articles. These changes cover the topic of transportation in waters, ports, safety and security, as well as administrative and criminal sanctions provisions.

With the amendment of the Shipping Law which was amended in the Work Creation Law, the *lex posterior derogate lex priori* principle applies, namely the law that was in effect later annulled the law that was in effect first (*lex posterior derogate lex priori*). The Job Creation Law is a law that has been passed more recently than the Shipping Law, so that several contents containing the same rules in the Shipping Law can be said to be invalid.

Based on the analysis results obtained 19 themes of rule change. These changes are then analyzed from the point of view of the principles of justice, legal certainty and legal protection. Further reviews of the 19 themes are presented below.

Coaching

There are several articles related to guidance, one of which is the provision of Article 5 of the Shipping Law which states that shipping is controlled by the state and its guidance is carried out by the government. Then it was changed in the Job Creation Law to become shipping controlled by the state and its guidance to be carried out by the central government. The reason for the addition of this article is to support national shipping by providing flexibility for the central government in making policies. When viewed from the principle of legal certainty, it is clear that the full responsibility lies with the central government.

Article 8 of the Shipping Law states that domestic sea transportation activities are carried out by national sea transportation companies using Indonesian-flagged vessels and manned by Indonesian crews, foreign ships are prohibited from carrying passengers and / or goods between ports in Indonesian territorial waters. However, in the Job Creation Law, Article 8A is inserted which is a new norm which states that foreign ships can carry out other activities which do not include the activities of carrying passengers and/or goods in domestic sea transportation activities in Indonesian waters as long as ships with Indonesian flags are not yet available. However, it will be very important if there is protection such as time restrictions. Onyemechi (2015) states that cabotage policies in maritime developing countries have an effect on increasing the number of ships operating in lakes, river canals, inland waters and coastal waters of maritime countries.

Domestic Sea Transportation

In Article 9 of the Shipping Law there are 9 points regarding domestic transportation. However, in the Job Creation Law, points regarding domestic sea transportation only consist of 5 points, and 4 points in the Shipping Law are deleted in the Job Creation Law. Viewed from the point of view of the principle of forming laws, these changes reflect the principle of openness where the rules that have been established do not rule out the possibility of changing according to the development of the global community. The changes above are also considered to be in accordance with the principle of legal justice, because Rawls's theory of legal justice states that legal justice can occur if there is a balance. The balance referred to in the above changes can be seen from the consideration of following the dynamics of society when decisions are made.

In article 13 of the Shipping Law, there is a special sea transportation activity using Indonesian flagged ships with the conditions and requirements of the ship according to the type of main business activity, special sea transportation activities are prohibited from carrying cargo or goods belonging to other parties and/or carrying general cargo or goods except in the case of certain conditions based on government permits, certain conditions in the form of unavailability of ships and the absence of a transportation company capable of serving part or all of the existing demand for transportation services. However, the Job Creation Law changes the provisions regarding sea transportation, especially as stated. Previously, there were 7 points regarding special sea transportation. However, in the Job Creation Act, points regarding special sea transportation only consist of 2 points and 5 points.

Work Ships

The Shipping Law does not yet regulate special activities for working ships. The Job Creation Law inserts article 14A which regulates the use of foreign vessels. Where the use of foreign ships is allowed only for non-cabotage shipping and as long as national ships is not yet available. The meaning of "*not yet available*" relates to the number and schedule when the type of vessel in question is needed. Previously, the provisions for the use of foreign ships were regulated in PP No. 22 of 2011 concerning Transportation in Waters and the Permenhub IPKA (Permit to Use Foreign Ships). Through the Omnibus Law, the provisions for the use of foreign vessels have now been raised to the level of the Law. However, these special activities do not include carrying passengers and/or goods. This is in line with what the researchers stated in the

first point that the importance of protection by providing time limits. By promoting the cabotage policy, it will affect the increase in domestic fleets.

Transport Licensing

There are several articles related to transportation licensing, including the provisions of article 27, article 28, and article 30. Article 27 of the Shipping Law states that to carry out transportation activities in waters, an individual Indonesian citizen or business entity is required to have a business license, but the terms of the business license are changed. In the Job Creation Law it becomes a business license. The reason for this change is for transportation activities in the waters, individual Indonesian citizens or business entities are obliged to fulfill business licenses by reason of adjusting the licensing nomenclature with a general formula. The addition of this article was made to support the simplification of business licensing activities.

Article 28 of the Shipping Law contains business permits for sea transportation, public shipping, river and lake transportation, ferry transportation, granted by the regent/mayor concerned for a business entity that is domiciled in a regency / city area and operates across ports within a regency/city area. The provincial governor is concerned, for a business entity that is domiciled in a provincial area and operates across ports between regencies/cities within the province or the Minister for business entities that carry out activities at inter-provincial and international cross-port. However, in the Job Creation Law the minister's authority to issue business permits was changed to the central government granting business licenses. The reason for the amendment of this article is to restructure government authority based on the principle of risk-based business licensing and to apply the use of information technology.

Article 30 of the Shipping Law contains procedures and requirements for licensing for transportation in waters which are regulated by Government Regulations; however in the Job Creation Law this provision is deleted. The reasons for the removal of this article were matters of a detailed and technical nature which were further regulated by Government Regulations to provide flexibility for the Central Government in making policies.

Service Business Related to Water Transportation

There are several articles related to service businesses related to transportation in waters, one of which is the provisions of article 31, article 32, article 33 and article 34. Article 31 of the Shipping Law states that transportation activities in waters can be carried out by service businesses related to transportation in waters. However, the Job Creation Law adds a paragraph regarding further provisions regarding service businesses related to transportation in waters which is regulated by a Government Regulation. The reason for the removal of this article is that matters of a detailed and technical nature are further regulated by a Government Regulation.

Article 32 of the Shipping Law states that service businesses are carried out by business entities that are specially established for that purpose. Apart from a business entity that is specifically established for that purpose, loading and unloading activities can be carried out by the national sea transportation company only for loading and unloading activities for certain ships it operates. However, the Job Creation Law is changed to a service business carried out by a Business Entity that is specially established for the operation of service businesses related to water transportation, the provisions concerning the operation of service businesses in accordance with statutory regulations in the field of investment, other than Business Entities that are

specifically established for this purpose. Port water transportation activities can be carried out by national sea transportation companies, and eliminates tally activities. The reason for the removal of this article is that matters of a detailed and technical nature are further regulated by Government Regulations to provide flexibility for the Central Government in making policies.

Article 33 of the Shipping Law states that every business entity established specifically for related service businesses is required to have a business license. However, in the Job Creation Law, this provision is changed to a Business Entity that is specially established for service businesses related to transportation in waters which is obliged to fulfill the Business License from the Central Government or Regional Government according to its authority based on the norms, standards, procedures and criteria set by the Central Government. The reason for the amendment of this article is because government authorities need to be restructured based on the principle of risk-based business licensing and applying the use of information technology in licensing to provide flexibility in making policies.

Article 34 of the Shipping Law contains further provisions regarding the procedures and requirements for service business licensing related to transportation in waters regulated by a Government Regulation. However, the work creation is amended to become further provisions regarding the procedures and requirements for business licensing related to transportation in waters regulated by a government regulation. The reason for the amendment of the article is to adjust the licensing nomenclature in the Law with a general formula, thus giving the government flexibility in anticipating the dynamics of the global community.

Multi Mode Transport

There are several articles related to multi-mode transportation, one of which is the provisions of article 51, article 52 and article 59. Article 51 of the Shipping Law states that multimodal transportation is carried out by business entities that have received special permits to carry out multimodal transportation from the Government. However, the Job Creation Law changed obtaining a special permit to fulfill business licensing and the government to the central government. The reason for the amendment of this article is to provide flexibility for the Central Government in making policies to follow the dynamics of society and the increasingly fast global.

Article 52 of the Shipping Law contains the implementation of multimodal transportation based on 1 (one) document issued by a multimodal transportation service provider. However, the Job Creation Law encourages the use of electronic documents in multimodal transport contracts. This is of course in line with the development of integrated modes of transportation by taking advantage of advances in science and technology, this policy is a simplification of business licensing that provides flexibility for the central government in making policies to follow the dynamics of an increasingly fast society.

Article 59 of the Shipping Law contains administrative sanctions that violate the provisions of Article 8 paragraph (2), Article 9 paragraph (8), Article 28 paragraph (4) or paragraph (6), or Article 33. However, Law Number 11 Year 2020 adds several administrative sanctions provisions that violate Article 8 paragraph (2), Article 9 paragraph (5), Article 11 paragraph (4), Article 13 paragraph (2), Article 19 paragraph (2), Article 27, Article 28 paragraph (4) or paragraph (6), Article 33, Article 38 paragraph (1), Article 41 paragraph (3), Article 42 paragraph (1), Article 46, Article 47, or Article 54 shall be subject to sanctions and

delete several contents that violate the provisions of Article 11 paragraph (4) or Article 13 paragraph (6) may be subject to administrative sanctions in the form of not providing port services.

Business Activities in the Field

There are several articles related to business activities in the field, one of which is the provisions of article 90, article 91, article 96, article 97, article 98 and article 99. Article 90 of the previous Shipping Law has not regulated the implementing regulations set by the Government; however the Job Creation Law delegates to a Government Regulation to further regulate business activities at ports.

Article 91 in the Shipping Law states that the activities of providing and/or port services undertaken commercially are carried out by Port Business Entities in accordance with the type of business license they have. However, this article is amended in article 91 in the Job Creation Law to become a commercial port service provision and/or service undertaken by a Port Business Entity after fulfilling the Business License from the Central Government or Regional Government according to its authority based on norms, standards, procedures and criteria. Determined by the Central Government. The addition of this article is made to support the simplification of business licensing activities, adjusting the licensing nomenclature in each law with a general formula.

Article 96 of the Shipping Law states that the construction of sea ports is carried out based on a permit from the Minister for main ports and collecting ports and the Governor or regents/mayors for feeder ports. The construction of a sea port must meet the technical requirements of ports, environmental sustainability, and pay attention to the integration of intra and intermodal transportation. Whereas in the Job Creation Law there is a change from a license to a business license and the Governor or regent / mayor for feeder ports to become governors or regents/mayors for feeder ports, based on the norms, standards, procedures and criteria set by the Central Government.

Article 97 of the Shipping Law states that sea ports can only be operated after they have been built and meet operational requirements and obtain permits. Where article 97 in the Job Creation Law has been abolished. In the academic paper, it explains the reasons for the elimination of this article because this regulation is no longer relevant, considering that in practice the construction of sea ports is carried out through a procurement scheme carried out by the Government/Regional Government.

Article 98 of the Shipping Law states that the construction of river and lake ports must obtain a permit from the regent / mayor. The construction of river and lake ports is carried out based on port technical requirements, environmental sustainability, by taking into account the integration of intra- and intermodal transportation. River and lake ports can only be operated after they are completed and meet operational requirements and obtain permits. Permits to operate river and lake ports are granted by the Regent/Mayor. However, in the Job Creation Law, several provisions have been changed to the construction of river and lake ports, which are required to fulfill the Business License from the regent/mayor in accordance with the norms, standards, procedures and criteria, set by the Central Government.

Article 99 of the Shipping Law regulates further provisions regarding port development and operation licensing regulated by a Government Regulation. However, this provision is

amended in the Job Creation Law to become further provisions regarding types of exploitation activities at ports, as well as Undertaking Licensing related to port development and operation regulated by a Government Regulation.

Dedicated Terminals and Individual Terminals

There are several articles related to special terminals and terminals for themselves, including the provisions of article 103, article 104, article 106, and article 107. Article 103 of the Shipping Law states that special terminals are designated as part of the closest port, are required to have a Work Environment Area and Area of interest for certain and placed Government agencies that carry out the function of safety and security of shipping, as well as agencies that carry out government functions as needed. Whereas in the Job Creation Law this provision is deleted.

Article 104 of the Shipping Law states that, in order to build and operate a special terminal, port technical requirements, shipping safety and security, and environmental sustainability must be met with permission from the Minister. Where the article is amended in Article 104 in the Job Creation Law to be To build and operate a special terminal is obliged to fulfill the Business Licensing of the Central Government. When viewed in detail, there are changes in the fulfillment of business licenses in that article, from previously being required to meet the requirements as well as a permit from the Minister?

Article 106 of the Shipping Law regulates that special terminals that are no longer operated in accordance with the permits that have been granted can be handed over to the Government or returned to their original state or proposed to change their status to a special terminal to support other main businesses or become a port. Whereas the Job Creation Law is changed to a special terminal that is no longer operated in accordance with the Business Permit that has been granted, it can be submitted to the Central Government or returned to its original state or proposed for a change in status to a special terminal to support other main businesses or become a port.

Article 107 of the Shipping Law regulates that special terminals submitted to the Government can change their status to ports after fulfilling the requirements according to the National Port Master Plan, are economically and technically operational, establish or establish a Port Business Entity, obtain concessions from the Port Authority, security, order, and shipping safety and environmental sustainability. In the event that a special terminal changes its status to a port, land and / or waters, wave-holding facilities, port pool, shipping lanes, and Sailing-Navigation Supporting Facilities which are controlled and owned by the special terminal manager, it will be transferred to and controlled by the state. However, in the Job Creation Law this rule is deleted.

Ports that are Open to Foreign Trade

There are several articles related to ports open to foreign trade, namely the provisions of article 111. Article 111 of the Shipping Law contains ports and special terminals open to foreign trade stipulated by the Minister. However, the Work Creation Law was changed to a special port and terminal open to foreign trade stipulated by the Central Government. When viewed in detail, there are changes in stipulating foreign trade in this article, from previously stipulating foreign trade stipulated by the Minister. Amendments to this article were made to support the

simplification of business licensing activities, in accordance with the legal politics of drafting a bill, by providing flexibility for the central government in making policies according to the dynamics.

Ship Safety

There are several articles related to ship safety, including the provisions of article 124, article 125, article 126, article 127, article 129, article 130, and article 133. Article 124 of the Shipping Law contains every procurement, construction and workmanship of ships including their equipment and operation of ships in Indonesian waters must meet ship safety requirements. However, the Job Creation Law is changed to Every procurement, construction and workmanship of ships including their equipment and operation of ships in Indonesian waters must meet ship safety requirements in accordance with international standard provisions and remove provisions for ship safety requirements covering materials, construction, buildings, machinery and electricity, stability, arrangement and equipment including auxiliary equipment and radio and ship electronics. This article is a form of fulfilling ship safety for shipping in Indonesia, where ship safety is carried out in every procurement, construction, workmanship and operation.

Article 125 of the Shipping Law states that the construction or work of a ship which is an overhaul must be in accordance with the design drawings and data that have been approved by the Minister. Supervision of the construction and overhaul work is carried out by the Minister. However, in the Job Creation Law the approval of the minister and supervision by the minister was changed to the Central Government. When viewed in detail, there is a change in the supervision of this article, from the one previously carried out by the minister?

Article 126 of the Shipping Law states that ships declared to meet the safety requirements of ships are given a safety certificate by the Minister. However, the Shipping Law was changed to a safety certificate provided by the Central Government and removing provisions for ship safety was determined through inspection and testing. For ships that have obtained a certificate, surveillance is carried out continuously until the ship is no longer used. Inspection and testing as well as surveillance must be carried out by authorized and competent government officials. If seen in detail, there are changes in the provision of the article's ship safety certificate, from the previous one, if the ship meets the requirements, a safety certificate will be given by the minister.

Article 127 of the Shipping Law states that further provisions regarding the procedure for cancellation of certificates are regulated in a Ministerial Regulation. However, the Job Creation Law regulates that ship certificate requirements can be adjusted based on international standard provisions. Further provisions regarding the procedure for cancellation of a certificate are regulated by a Government Regulation. When viewed in detail, there is a change in the supervision of this article, from the one previously carried out by the minister?

Article 129 of the Shipping Law states that the Minister will recognize and appoint a classification body. The designated classification body is obliged to report its activities to the Minister. However, in the Job Creation Law the ministerial classification and activity reporting to the minister are changed to the Central Government. When viewed in detail, there is a change in the supervision of this article, from the one previously carried out by the minister? The addition of this article was made to support the simplification of business licensing activities, in

accordance with the direction of the president and legal politics in the drafting of the bill, by providing flexibility for the central government in making policies according to the dynamics.

Article 130 of the Shipping Law regulates that in certain circumstances the Minister may grant partial exemption from the stipulated conditions while still paying attention to ship safety. However, in the Job Creation Law the authority given by the minister was changed to the Central Government. When viewed in detail, there is a change in the supervision of this article, from the one previously carried out by the minister? The addition of this article was made to support the simplification of business licensing activities, in accordance with the direction of the president and legal politics in the drafting of the bill, by providing flexibility for the central government in making policies according to the dynamics.

Article 133 of the Shipping Law regulates further provisions regarding the procedures for legalizing drawings and supervision of ship building, as well as inspection and certification of ship safety is regulated by a Ministerial Regulation. However, the Job Creation Law changes the delegation in a Ministerial Regulation to a Government Regulation. When viewed in detail, there is a change in the supervision of this article, from the one previously carried out by the minister? The addition of this article was made to support the simplification of business licensing activities, in accordance with the direction of the president and legal politics in drafting the bill, by providing flexibility for the government.

Legal Status of the Ship

There are several articles related to the legal status of ships, including the provisions of article 154, article 155, article 157, article 158, article 159, article 163, and article 168. In Article 154 the Shipping Law regulates that the legal status of ships can be determined after going through the measurement process. Ship, registration of ships, and determination of the nationality of the ship. However, the Job Creation Law changes the Elucidation of Article 154 is amended so that it reads as in the Explanation In order to accelerate the ease of doing business, the process of measuring, registering, and determining the nationality of ships on fishing vessels is carried out in an integrated manner through 1 (one) roof service. The Central Government provides facilities and infrastructure for implementing the 1 (one) roof system.

Article 155 of the Shipping Law regulates that prior to operation, a government official who is authorized to measure must be measured and a measuring letter issued by the Minister and can be delegated to an appointed official. Meanwhile, the Job Creation Law changes the minister's authority to the Central Government. If seen in detail, there is a change in the granting of authority before operating the ship in this article, from the previous provision of authority before operating the ship by the minister.

Article 157 of the Shipping Law regulates that if there is a change in data, the ship's re-measurement must be carried out immediately. However, in the Job Creation Law the provision is changed to Reporting can be done electronically. This article is a certainty from the government for shipping in Indonesia, where reporting can be done electronically. The policy encourages the use of electronic documents in multimodal freight contracts. This is of course in line with the development of integrated modes of transportation by taking advantage of advances in science and technology.

Article 158 of the Shipping Law regulates that a ship that has been measured and has received a Measurement Letter can be registered in Indonesia by the owner to the Registrar and

Recording Officer for Ship Names determined by the Minister. Whereas in the Job Creation Law the authority given to the minister is changed to the central government. When viewed in detail, there is a change in the supervision of this article, from the one previously carried out by the minister?

Article 159 of the Shipping Law contains that the registration of ships is carried out at a place determined by the Minister. However, the Job Creation Law is changed to Ship registration is carried out at a place determined by the Central Government. When viewed in detail, there is a change in the supervision of this article, from the one previously carried out by the minister?

Article 163 of the Shipping Law containing Ships registered in Indonesia and sailing in the sea is issued with the Indonesian Ship Nationality Certificate by the Minister. However, in the Ship Work Creation Law registered in Indonesia and sailing in the sea, the National Government of Indonesia is given a National Identity Certificate for Ships. When viewed in detail, there is a change in the supervision of this article, from the one previously carried out by the minister?

Article 168 of the Shipping Law contains further provisions regarding the procedures for measuring and issuing measuring letters, procedures, requirements and documentation of vessel registration, as well as procedures and requirements for issuing Ship Nationality Certificates as regulated by a Ministerial Regulation. However, in the Job Creation Law the delegation in a Ministerial Regulation is changed to a Government Regulation. When viewed in detail, there is a change in the supervision of this article, from the one previously carried out by the minister? Amendments to these articles were made to support the simplification of business licensing activities, in accordance with the direction of the president and the politics of law in drafting laws, by providing flexibility for the central government in making policies according to the dynamics.

Safety Management and Pollution Prevention from Ships

There are articles related to safety management and prevention of pollution from ships, including the provisions of article 169 and article 170. Article 169 of the Shipping Law contains certificates issued after an external audit by competent government officials or institutions authorized by the Government. However, the Job Creation Law changed the government's authority to the central government.

Article 170 of the Shipping Law contains certificates issued after an external audit by competent government officials or institutions authorized by the Government. Ship Safety Management Certificate issued by authorized official appointed by the Minister. Further provisions regarding procedures for auditing and issuing ship safety management certificates are regulated by a Ministerial Regulation. However, the Job Creation Law changed the government's authority to the central government and changed the delegation of Ministerial Regulations into Government Regulations.

Administrative Sanctions

There are several articles related to administrative sanctions, namely the provisions of article 171. In article 171 Sailing contains Everyone who violates the provisions referred to in Article 125 paragraph (1), Article 129 paragraph (1) or paragraph (4), Article 130 paragraph (1) , Article 132 paragraph (1) or paragraph (2), Article 137 paragraph (1) or paragraph (2), Article

138 paragraph (1) or paragraph (2), Article 141 paragraph (1) or paragraph (2), Article 152 paragraph (1), Article 156 paragraph (1), Article 160 paragraph (1), Article 162 paragraph (1), or Article 165 paragraph (1) shall be subject to administrative sanctions, in the form of warnings, administrative fines, license suspension or certificate suspension, revocation of license or revocation of certificate, not given certificate or not given Sailing Approval Letter. However, the Job Creation Law adds and deletes several articles, becoming Article 96 paragraph (1), Article 97 paragraph (1), Article 98 paragraph (1), Article 100 paragraph (3), Article 104 paragraph (2), Article 106, Article 125 paragraph (1), Article 130 paragraph (1), 131 paragraph (2), Article 132 paragraph (1) or paragraph (2), Article 135, Article 137 paragraph (1) or paragraph (2), Article 138 paragraph (1) or paragraph (2), Article 141 paragraph (1) or paragraph (2), Article 149 paragraph (1), Article 152 paragraph (1), Article 156 paragraph (1), Article 158 paragraph (5), Article 160 paragraph (1), Article 162 paragraph (1), or Article 165 paragraph (1) is subject to administrative sanctions. This article is justice, certainty and legal protection from the government for shipping in Indonesia, where the government provides justice in the form of sanctions for violators, provides certainty on every action that is subject to sanctions, and provides protection to people whose rights are harmed due to violation of several provisions.

Dredging and Reclamation

Article 197 of the Shipping Law states that in the interests of shipping safety and security, the design and work of dredging shipping lanes and port pools, as well as reclamation, must obtain a Government permit. Whereas in the Job Creation Law it is changed to For the sake of safety and security of shipping, design and work of dredging shipping lanes and port pools, as well as reclamation must fulfill Business Licensing from the Central Government or Regional Governments according to their authority based on norms, standards, procedures, criteria This article is justice, certainty and legal protection from the government for shipping in Indonesia, where the government provides justice in the form of sanctions for violators, provides certainty for any action that is subject to sanctions, and provides protection for people whose rights are injured due to violation of several provisions.

Underwater Work Salvage

Article 204 of the Shipping Law states that every salvage activity and underwater work must obtain a permit and meet the technical requirements of shipping safety and security from the Minister. However, there is a change in Article 204 in the Job Creation Law so that every salvage activity and underwater work must fulfill a business license from the Central Government. If examined, there is a change in the supervisory authority in that article, from the one previously carried out by the minister. This article is justice, certainty and legal protection from the government for shipping in Indonesia, where the government provides protection for salvage activities and underwater work.

Storage Inspection and Letters, Documents and Vessels

There are several articles related to the inspection of storage and letters, documents and shipments as stipulated in article 213. Article 213 of the Shipping Law states that every ship entering the port is required to submit letters, documents and ship information to the

harbormaster immediately when the ship arrives at the port to be carried out Examination. However, there is a change in Article 213 in the Job Creation Law so that every ship entering the port is required to submit letters, documents and shipments to the harbormaster immediately when the ship arrives at the port and/or submit it online before the ship arrives for inspection.

Administrative Sanctions

There are several articles related to administrative sanctions, including the provisions of article 225 and article 243. Article 225 of the Shipping Law states that every person who violates the provisions in Article 213 paragraph (1) or paragraph (2), Article 214, or Article 215 is subject to administrative sanctions, in the form of warnings, license suspension or certificate suspension, or license revocation. Further provisions regarding the procedures and procedures for imposition of sanctions shall be regulated in a Government Regulation. However, in the Job Creation Law there are several additional articles that can be subject to administrative sanctions if they violate the provisions of Article 203 paragraph (1), Article 204 paragraph (2), Article 213 paragraph (1) or paragraph (2), Article 214, Article 215, or Article 216 paragraph (1).

Article 243 of the Shipping Law contains every person who violates the provisions in Article 230 paragraph (2), Article 233 paragraph (3), Article 234, Article 235, or Article 239 paragraph (2) is subject to administrative sanctions in the form of warnings, license suspension or certificate suspension, or revocation of license. Further provisions regarding the procedures and procedures for imposition of sanctions shall be regulated in a Government Regulation. However, the Job Creation Law contains every person who violates the provisions referred to in Article 230 paragraph (2), Article 233 paragraph (3), Article 234, Article 235, or Article 239 paragraph (2) is subject to administrative sanctions.

Service Information System

There are several articles related to service information systems, namely the provisions of article 273. Article 273 of the Shipping Law states that every person who violates the provisions of Article 272 paragraph (1) can be subject to administrative sanctions, in the form of warnings, license suspension, or license revocation. However, the Work Creation Law removes in the form of warnings, license suspension, or license revocation. This article is justice, certainty, and protection provided by the government, where the government provides justice for every right that is injured as a result of a violation, provides certainty that each violation will be subject to sanctions and protection for several actions that can lead to violations.

Criminal Provisions

There are several articles related to administrative sanctions, namely the provisions of article 288, article 289, article 290, article 291, article 292, article 293, article 294, article 295, article 296, article 297, article 298, article 299, article 307, article 308, article 310, article 313, article 314, article 321, and article 322. These articles add information that causes ship accidents, human casualties or property loss, as well as additional fines. This article is justice, certainty, and protection provided by the government, where the government provides justice for every right that is injured as a result of a violation, provides certainty that each violation will be subject to sanctions and protection for several actions that can lead to violations.

In the last few decades, the main problem faced by business actors in starting a business in Indonesia is regarding the difficulty in arranging permits to do business. Therefore, the government has changed some of the policies in the Shipping Law against the Job Creation Law due to the simplification of business licensing. With some of these changes, legal certainty was created according to Utrecht, which allowed individuals or the community to know what actions could and should not be done.

However, the change in rules that occurred in the Job Creation Law which regulates shipping changed the authority of the government to the central government. Based on the theory of justice by Jhon Rawls, justice enforcement must provide the same rights, while the government provides a policy that the authority of the Minister or head of institutions, governors and / or regents / mayors needs to be reorganized based on the principle of risk-based business licensing and applying the use of information technology in licensing. The return of authority from the government back to the central government causes several rights owned by the government to not be implemented. So it can be concluded that the shipping law against the Job Creation Law still does not apply the principle of justice.

Based on this, it is necessary to further study the theory of legal protection by Phillipus M.Hadjon, this protection is needed to provide protection to the rights of the government which are harmed by the existence of policies in the Job Creation Law which regulates shipping, and therefore it is necessary preventive and responsive.

Cabotage Principle Analysis in Job Creation Law

In Law No. 17/2008 concerning Shipping in Article 8 paragraph (1) it is stated that domestic sea transportation activities are carried out by national sea transportation companies using Indonesian-flagged vessels and manned by Indonesian crews. Meanwhile, paragraph (2) two of the same article states, foreign ships are prohibited from carrying passengers and / or goods between islands or between ports in Indonesian territorial waters.

After the enactment of the Job Creation Law on October 5, 2020, the Cabotage Principle is maintained in this regulation, the policy is contained in article 8 and inserts article 8A between articles 8 and 9 in the Job Creation Law which regulates the use of foreign ships. The reason for the change is to support domestic marine transportation activities, given the limited availability of Indonesian-flagged vessels for certain activities. The potential implications of the addition of this article are claimed to be able to realize inter-island connectivity, as well as the anticipation of resistance from business actors.

With the existence of the rules in article 8A of the Job Creation Law, it creates legal certainty for foreign ships in Indonesian waters, this is in line with Utrecht's theory of legal certainty, where general rules make individuals know what actions can or should not be done, by stipulating Article 8A provides legal certainty for foreign ships in the oil and gas sector sailing in Indonesia.

Referring to John Rawls's theory of justice, based on the analysis by the author, in article 8A of the Job Creation Law regarding permits for foreign ships granted by the Government to shipping business sectors in Indonesia, especially the oil and gas sector, this causes injustice to the shipping sector non-oil and gas in Indonesia, because shipping in Indonesia has become dominated by foreign vessels, this can hamper the economy of national ships in Indonesia for the national shipping sectors for non-oil and gas vessels, because the non-oil and gas shipping

sectors are a weak position both economically and juridical to prevent the domination of foreign ships in Indonesian territory.

Based on this, legal protection is needed according to the theory of Philipus M. Hadjon, namely by carrying out legal protection both preventively and repressively, preventive legal protection which aims to prevent problems or disputes, this legal protection effort is carried out to reduce and minimize acts of legal violations committed. By foreign ships along with certain elements. A repressive legal protection that aims to resolve problems or disputes that arise.

CONCLUSION

Based on the discussion that has been described, the conclusions obtained in this study are:

1. Amendments to Law Number 11 of 2020 concerning Job Creation against Law Number 17 of 2008 concerning shipping there are 67 provisions in the Shipping Law amended in the Job Creation Law.
2. The cabotage principle is quite effective and has a significant impact on the national shipping industry. The cabotage principle is very important to be included in the law because the cabotage principle is a form of state sovereignty and is mandatory or mandatory for the state. Besides having a significant impact on investment in shipping and other related sectors, the cabotage principle is also the guardian of the country's sovereignty.

REFERENCES

- Ajiye, S. (2013). Nigerian Cabotage: Its policy, prospects and challenges. *Journal of Economics and Sustainable Development*, 4(14), 11-19.
- Bello-Olowookere, G.B. (2011). *The effects of cabotage regime on indigenous shipping in Nigeria*.
- Casaca, A.C.P., & Lyridis, D.V. (2018). *Protectionist vs liberalised maritime cabotage policies: A review*.
- Casaca, A.C.P., & Lyridis, D.V. (2020). The reasons and the policy instruments behind *cabotage* policies. *Maritime Policy & Management*, 20(2), 1-28.
- Crawford, K.A.J. (1992). Introduction of road *cabotage* in the European community. In *Developments in European Land Use and Transport. Proceedings of seminar a held at the 20th ptrc European transport, highways and planning summer annual meeting, (september 14-18 1992), UMIST*.
- Giannopoulos, G.A., & Aifandopoulou-Klimis, G. (2004). Inland maritime transport in Greece after the lifting of the cabotage and full liberalization: A review. Part 1: The situation beforeand expected impacts. *Transport Reviews*, 24(4), 465-483.
- Glisson, L.M., & Jones, M.K. (1999). The origin, evolution and current status of cabotage. In *Going Beyond: Moving into the New Millennium Canadian Transportation Research Forum*.
- Hadjon, P.M. (1987). *Legal protection for the Indonesian people*. Surabaya: PT. Bina Ilmu.
- Hodgson, J.R.F., & Brooks, M.R. (2007). Towards a North American cabotage regime: A Canadian perspective. *Canadian Journal of Transportation*, 1(1), 1-9.
- Hohlfelder, R.L., & Vann, R.L. (2000). Cabotage at Aperlae in ancient Lycia. *International Journal of Nautical Archaeology*, 29(1), 126-135.
- Kim, S.K. (2015). A study on the seafarer's education for cabotage in KOREA. *Journal of the Korean Society of Marine Environment & Safety*, 21(6), 712-720.
- Mertokusumo, M.S., & Pitlo, A. (1993). *Chapters on legal discovery*. Bandung: Citra Aditya Bakti.
- Okeke, B.V., & Aniche, E. (2012). An evaluation of the effectiveness of the Cabotage Act 2003 on Nigerian maritime administration. *Sacha Journal of Policy and Strategic Studies*, 2(1), 1-9.
- Onyemechi, C. (2015). Benefit maximizing criteria from the Nigerian Coastal and Inland Shipping Cabotage Policy. *Revista de Gestão Costeira Integrada-Journal of Integrated Coastal Zone Management*, 15(3), 409-416.
- Park, Y.A., & Medda, F.R. (2016). Cabotage policy and development of short sea shipping in korea, China and Japan. In *International Forum on Shipping, Ports and Airports (IFSPA) 2015: Empowering Excellence in Maritime and Air Logistics: Innovation Management and Technology* Hong Kong Polytechnic University.

- Prentice, B.E., Vido, E., & Kosior, J. (2009). Creating lean, green and agile supply chains: The benefits of cabotage liberalization. *Canadian Journal of Transportation*, 3(1), 19.
- Radbruch, G. (1919). *Einführung in die rechtswissenschaft*. Quelle & Meyer.
- Rawls, J. (2005). *A theory of justice: Original edition*. Harvard University Press.
- Rawls, J. (2006). *Justice theory: Basics of political philosophy to achieve social welfare in the state*. Yogyakarta: Pustaka Pelajar.
- Ruslan, S.M.M., Ghani, G.M., & Khalid, H. (2019). The influence of cabotage policy on price disparity between peninsular Malaysia and Sabah. *Institutions and Economies*, 20(1), 65-91.
- Salim, H.S. (2013). *Application of legal theory in thesis and dissertation research*. Jakarta: Raja Grafindo Persada.
- Soekanto S., & Mamudji, S. (2018). *Normative legal research: A brief overview*. Jakarta: PT. Raja Grafindo Persada.
- Soekanto, S. (2010). *Introduction to legal studies research*. Depok: UI Press.
- Soeprapto, M.F.I. (2007). *Legislative science 1: Types, functions, and content of materials*. Yogyakarta: PT Kanisius.
- Sternberg, H., & Hofmann, E. (2018). Impact of the European road transport market deregulation: The case of cabotage in Germany. In *Symposium on Logistics (ISL 2018) Big Data Enabled Supply Chain Innovations*.
- Sternberg, H., Filipiak, M., Hofmann, E., & Hellström, D. (2015). *A study on trucking deregulation and cabotage in Scandinavia and beyond*.
- Suffian, F., Rosline, A.K., & Karim, M.R.S.A. (2015). The cabotage policy: Is it still relevant in Malaysia? In *Proceedings of the Colloquium on Administrative Science and Technology* (pp. 19-28). Springer, Singapore.
- Yoshizaki, H.T.Y., Hino, C.M., & Chebat, D. (2013). Integration of international and *cabotage* container shipping in Brazil. In *Handbook of Global Logistics* (pp. 117-138). Springer, New York, NY.
- Zheng, J., Meng, Q., & Sun, Z. (2014). Impact analysis of maritime *cabotage* legislations on liner hub-and-spoke shipping network design. *European Journal of Operational Research*, 234(3), 874-884.