



THE CONSEQUENCES OF REVISIONISM ON THE APPLICATION OF CABOTAGE PRINCIPLE IN THE INDONESIAN MARITIME LAW

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Abstract

Historically, the Cabotage Principle is no recent concept in the history of Indonesia, albeit the contemporary re-emergence nuanced a problem for the national maritime industry and the legal system itself. This normative research tries to tackle this problem with a critical theory approach, by not only relying on doctrinal techniques, but also political economy, literary, and ethical concepts to find anomalies before inferring to the best explanation. After studying the four main Acts and several derivate regulations along with their practice in the real world, through conceiving the three modes of moral claim, the research finds various dissonance and irregularities, indicating a non-compliance which may result from preferential institutional praxis of the law. Investigating from multiple cases, the diagnosis is of post-modernism: the value dissonance is symptomatic of a deeper institutional decay and instability which can at least be traced back to the year 2014, purporting of the principle's values, and aided by legal discrepancies resulting in the undeveloped goal of the initiated principle. The effects of the revisionism on the application of cabotage principle in the Indonesian maritime law are diverse and we can at least come into conclusion of a hypothesis on what hinders the principle's goals. The author recommends to reverse several amendments, revitalize the original ontology of the 2008 Shipping Act, and replacement of the 32 Marine Act of 2014, also the re-establishment of DEKIN to ensure the archipelagic outlook of Indonesia is preserved with the utmost importance in the nation's economic, social, cultural, and political life.

Keywords: *Cabotage Principle; Maritime Law; Revisionis.*

A. INTRODUCTION

Firstly, this research aims to not only find the legal consequence solely from the legal acts of revisions done to the maritime law of the earlier generations or that of the later, but also their effects on the praxis of referred laws – Law Number 17 of 2008 on Shipping, being the initiating positive law *in conjunction* with its latest revision 66 Act 2024. Second, the suffix -ism appended to “Revision” seeks to express the non-linear and multi-dimensional nature of revisions, which often involve uncanny legal decisions in the executive domain and inconsistencies in the enforcement of the principle or of the laws themselves.¹ To quote Lieblisch, “It should be emphasized that critical research questions are also normative in the deeper sense: by seeking to expose power relations,

¹ This multi-dimensional problem can be even more apparent by Art. 57 in 6 “Job Creation” Act of 2023 (Indonesia's first major *omnibus* law) as we will find later in the findings of this research.

they imply that something is wrong with law. Some critical research proceeds, after exposing power dynamics, to offer solutions—and some simply conclude that the project of law is a lost cause.”²

Nonetheless, “there’s too much law in law schools” (paraphrased), he argued, and he also speaks to the importance for jurist and legal practitioners to be able to understand a dedicated portion of non-legal knowledge – that would be practical in interpersonal use cases within the legal discourse.³ Under such paradigm, this paper would also insist that in formulating the law and evaluating justice in the maritime domain, and to apply a specialized legal principle that of cabotage, jurists, legal practitioners, and policy makers should have a certain amount of adept in the knowledge of the seafaring, shipping and transportation, and marine life in general in a way that can suffice to provide a ‘prudence’ on the matter at hand. The Cabotage Principle is a principle mainly known to be a principle concerning the maritime right of vessel voyage within a realm of a jurisdiction.

For the last few decades as of the writing this report, there have been quite a growing interest on the usage of cabotage principle in maritime laws among United Nation countries. The most common legal phrase to apply cabotage principle consist of an exclusive right of navigation line for: (1) Vessels of national flag; and (2) Manned by national civilians.⁴ It’s application, implementation and order vary from country to country, not commonly exercised under exclusive autonomy of subordinating states of a union/federation. The principle, in the international context may be seem to be a form of characteristic that would define the identity of an internationally recognized governing body.

Within the maritime domain itself, the principle has demonstrated an undivorceable concept between the subject of maritime law and the law of the sea since its application rely on the jurisdiction, the bilateral and multilateral treaties among them, and the civil conducts, since the principle also exist to present a form of national security interest of a state. The implication can affect various aspects on the sea ranging from commerce, (environmental) responsibilities and protection, injuries and culpability, dispute resolution, and so forth. Approaching the case for law of the sea of the modern age, the legal standard (as the trend mostly set out from the English Channel custom) was that the law of the sea is laid on top of contract law, by which on land the admiral plays a crucial law as a corporation, adept on making legal decisions, by whom on high seas and waters takes full authority of her (the ship).

The purpose of this research is to analyse the *raison d’être* of the cabotage principle and find implications from these consequences coming from the revisionism on the application of principle in the Indonesian maritime law by simultaneously looking at the vertical and horizontal dimensions of its rule (of law) and can successfully imagine the lack thereof. By aiming on such goals, jurist and policy-makers can better understand the nature of the maritime domain and their best practices. From this research too readers can consider the values and virtues exercised by the Indonesian government as a

2 Lieblich, E. (2020). How to Do Research in International Law? A Basic Guide for Beginners. *Harvard International Law Journal Online*, 62. <https://doi.org/10.2139/ssrn.3704776>

3 Richard Posner, *Empirical Legal Studies Conference keynote*. (2014, November 14). [Lunch time keynote]. Empirical Legal Studies Conference, University of Chicago Law School. <https://www.youtube.com/watch?v=18i5yUNJq30>

4 At the very minimum of structure of cabotage.

dynamic International Legal Subject, and consider the position of the cabotage principle relative to Customary International Law. From this can we account Indonesia in its cellular scale in the ‘horizontal’⁵ dimension of her exercise of the rule of law.

B. METHODOLOGY

The research falls under the category of normative legal research – also known as ‘black letter law’ or DLR in some circles – which studies the normativity of the laws at question. Specifically, the thesis will take on critical normative study of the law and revisions at play, which not necessarily forces non-doctrinal theories into legal research but are open to/and their terms.

C. RESULT AND DISCUSSION

1. Ontology Leading to Revisionisms of the Cabotage Principle: Indonesian Maritime Law

1.1 General Ontology of Cabotage Principle and the Rule of Law of 17 Shipping Act of 2008

The principle usually correlates to legal objects such as: Ports; Goods; Nationality; Vessels; and Borders. Also, legal subjects such as: Crews; National & Foreign Passengers; Port Authorities; Shipping Businesses and; Governments; and so on. It is important to point out that for a defined feature to hold value, it has to be supported by a defined normative value and criteria. The normative here contains the ‘ought’ value, which are the moral, prudential, and epistemic.⁶ Also, the cabotage principle is exercised by the Indonesian government, through the Ministry of Transportation, KPLP, Port Authority, eventually the police, and so forth. On an important note, it is important to draw ontological inquiry with categorical value of facts. I propose the distinction between the descriptive, auto-normative⁷, and normative. Depending on the context, cabotage can exist as a principle or a right. Standing alone, cabotage performs as a principle. When a country gives it to another, it performs as a right, which requires an agreed bilateral, multi-lateral, or supranational⁸ convention or treaty. From a seafaring perspective, cabotage means to report our voyage on restricted waters.

To see the principle from an internal perspective means to see the discourse analysis of the original law/act in which the principle is instructed, and the underlying notions that lead to the reasoning that propagated the law and, in this case, the subsequent revisions that follows. On Robert Ginsberg’s 4 (four) points of legal reasoning, points out that there are 4 (four) points where ethical principle is embedded in legal reasoning. Principles as recognizable ground laws of the corpus, insertion of ethical principle in application or revision of, to fulfil the well-being of citizens, and that “laws ought to be

⁵ Tamanaha, B. Z. (2024). Vertical and Horizontal Dimensions of the Rule of Law. *EMORY LAW JOURNAL*, 73. Pg. 1223

⁶ Shafer-Landau, R. (2012). *The fundamentals of ethics* (2nd ed). Oxford University Press.

⁷ These terms serve to distinguish the operational normativity of law from the general normativity of law and that the auto-normative internally inspects and regulate the discourse of the law itself and the governing body that will operate it. This is useful as a tool when conducting legal discourse analysis (*analisis wacana*).

⁸ A reference to the European Union which will be discussed on the last paragraph of this section.

introduced into some areas of human activity, for the sake of the general well-being...⁹ and Amaliya Amaya proposal of "...a shift of focus: from arguments and the decisions they support, which are the main target of standard theories of legal reasoning, to the legal decision-maker and her traits of character."¹⁰ – that is to say the legitimacy of law can be seen by the character of the person.¹² John M. Finnis makes the case that ethical considerations are no different from reason.¹³ That is to say that the descriptive and normative cannot be separated, which in most case of ethical study, to make a moral claim, whether it be general or normative, one has to have a set of ontological facts that they believe to be true.

1.2. Key Articles in the Indonesian Maritime Law

The research found that are several ministerial-level sets of regulation from at least the year 2011.¹⁴ The reality is this, although theoretically ministerial or other governmental regulations lower than Acts cannot over-step the acts, the argument is that these exemptions are made for the need of national interest for the lack of ships. For reference, the following is a statistical table from 2019 of foreign and national shipping production in tonnage:

Produksi Angkutan Dalam Negeri (Ton)										
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
NASIONAL	258.359.686	303.119.578	316.489.377	350.930.184	386.297.016	408.552.545	450.239.087	621.011.908	965.129.753	1.386.609.508
ASING	28.007.688	5.870.818	3.779.169	4.093.544	1.249.509	53.730	45.028	-	-	-
% ASING	9,78%	1,90%	1,18%	1,15%	0,32%	0,01%	0,01%	0%	0%	0%
Produksi Angkutan Luar Negeri (Ton)										
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
NASIONAL	49.293.953	51.182.187	55.183.410	59.766.537	67.511.611	71.943.419	75.597.148	67.237.840	32.827.422	31.386.549
ASING	501.661.150	516.046.091	525.694.587	537.898.834	551.576.580	581.327.245	610.402.377	976.201.743	817.366.911	799.900.741

Figure 1 Shipping Production in Tonnage (credit: Buku Statistik Perhubungan, 2019)

To further understand the problem in context, I recommend to look at the 15 (fifteen) subjects defined by the original Shipping Act.¹⁵ As indicated in the research proposal hearing session of this paper, The Board mentioned and highlighted Art.5

9 Ginsberg, R. (1971). LEGAL REASONING AND ETHICAL PRINCIPLES. *Logique et Analyse*, 14(53/54), 495–500. JSTOR. Op.Cit

10 Amaya, A. (2023). Reasoning in Character: Virtue, Legal Argumentation, and Judicial Ethics. *Ethical Theory and Moral Practice*. <https://doi.org/10.1007/s10677-023-10414-z> in her "Abstract".

11 My analysis of this opinion is actually as a 'revisit' of an older view of the law, before the rise of legal interpretation dulled the legal order and its relation to the people.

12 Ibid.

13 Finnis, J. M. (1990). Natural Law and Legal Reasoning. *CLEVELAND STATE LAW REVIEW*, 38(1), 13. Legal History Commons, Natural Law Commons.

14 • "Peraturan Menteri Perhubungan Republik Indonesia Nomor 2 Tahun 2021 tentang Tata Cara dan Persyaratan Pemberian Persetujuan Penggunaan Kapal Asing untuk Kegiatan Lain di Wilayah Perairan Indonesia yang Tidak Termasuk Kegiatan Mengangkut Penumpang dan Barang."

• "Peraturan Menteri Perhubungan Nomor 46 Tahun 2019 tentang Perubahan atas Peraturan Menteri Perhubungan Nomor 92 Tahun 2018 tentang Tata Cara dan Persyaratan Pemberian Persetujuan Penggunaan Kapal Asing untuk Kegiatan Lain Yang Tidak Termasuk Kegiatan Mengangkut Penumpang Dan/atau Barang Dalam Kegiatan Angkutan Laut Dalam Negeri."

• "Peraturan Menteri Perhubungan Nomor 48 Tahun 2011 tentang Tata Cara dan Persyaratan Pemberian Izin Penggunaan Kapal Asing untuk Kegiatan Lain yang Tidak Termasuk Kegiatan Mengangkut Penumpang dan/atau Barang dalam Kegiatan Angkutan Laut Dalam Negeri."

• "Peraturan Menteri Perhubungan nomor PM 200 Tahun 2015 tentang Perubahan Ketiga Atas PM 10 Tahun 2014 tentang Tata Cara dan Persyaratan Pemberian Izin Penggunaan Kapal Asing."

• "Peraturan Menteri Perhubungan Nomor 121 Tahun 2015 tentang Pemberian Kemudahan bagi Wisatawan dengan Menggunakan Kapal Pesiar."

15 Indonesia, 'Undang-undang (UU) Nomor 17 Tahun 2008 tentang Pelayaran', Pub. L. No. LN.2008/NO.64, TLN NO.4849, LL SETNEG: 132 HLM, LN.2008/NO.64, TLN NO.4849 LN.2008/NO.64, TLN NO.4849, 2008 (2008), <https://peraturan.bpk.go.id/Details/39060>. Art.1

that has been revised by the Art.57 of the Omnibus Law¹⁶. This Article ontologically describes the government with how it should operate and defines the jurisdictional nature of the operation of the ROL, notated by the verb “is” in verse 1. A key note to be made in this ontological finding is that the original Art.5 is profoundly dialectic. As an auto-normative piece, this article engages the subject¹⁷ that produces the ROL, in this sense, the government as an integrated subject sublimed with the law operation, with the material condition of her own people.

The cabotage principle of the Indonesian Maritime Law lies in Art.8 of this Act.¹⁸ Referring to the triad that I use as the tool, this article consists of 2 (two) categories; the descriptive (verse 1) and normative (verse 2). This format of legal linguistic implies at least 2 (two) things: 1. That the shipping voyage/activity that is recognized by Indonesia as a legal subject in her own waters is exclusively for Indonesian nationals; 2. That the second verse surfaces the value explicitly, meaning the Indonesian subject clearly forbids shipping of people and/or cargos between ports in the archipelagic waters of Indonesia. Articles are mostly followed by another article that elaborates the norm of the article *a quo*. This is where Art.9 fits that category; Art.9 is also connected to the immediate next article (Art.10). this is where we can see how the ROL is rigorously written with multi-layer level of sensitivity, to bring about justice in the Indonesian ethical standard.¹⁹

Firstly, the research finds the importance of Art.83 of the Shipping Act to be vital for the enforcement of cabotage principle. This Article is a normative piece directed toward the Port Authority that would create the ideal environment for the cabotage principle to flourish and the efficiency & order of goods & people transport.²⁰ I would like to emphasize the importance of verse 2, point b to e. With the existence of these points, it further ensures the performance of cabotage principle with this normative piece and exhibits Indonesia’s compliance with the international law of the sea. Second, the research also finds the importance of the existence of KPLP throughout this Act, presenting necessary supports for cabotage as a system.²¹ In fact, the whole chapter and the subsequent is crucial for law enforcement and the upholding of the cabotage principle.²²

I should address these findings that Maritime and Marine often intersect some value of the same word in the Indonesian word ‘kelautan’. “*Undang-Undang Nomor 32 Tahun 2014 tentang Kelautan*”, first of all, both these Acts addressed the problem of marine pollution, whereas the Shipping Act addressed the problem and possibility of marine pollutions caused by humans and vessels from shipping activity. Second, there are many instances that scenarios that are already been regulated in the Shipping Act, such as port systems, security, and safety, on vessels, are readdressed in this Act without

16 Indonesia, ‘Undang-undang (UU) Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja menjadi Undang-Undang’, Pub. L. No. LN.2023/No.41, TLN No.6856, jdih.setneg.go.id: 4 hlm., § CIPTA KERJA, 6 UU 6/2023 4 (2023), <http://peraturan.bpk.go.id/Details/246523/uu-no-6-tahun-2023>. Art.57, number 1.

17 i.e. Indonesia as a legal subject herself.

18 Undang-undang (UU) Nomor 17 Tahun 2008 tentang Pelayaran, Pub. L. No. LN.2008/NO.64, TLN NO.4849, LL SETNEG : 132 HLM, LN.2008/NO.64, TLN NO.4849 LN.2008/NO.64, TLN NO.4849 (2008 and 2008). <https://peraturan.bpk.go.id/Details/39060> Art.8

19 Ibid. Art.9

20 Ibid. Art.83

21 Ibid. Art.277

22 Loc.Cit

amending any articles of the Shipping Act. thus, we can expect the Act to address issues of the marine environment. 11 (eleven) out of 74 (seventy-four) articles – that is roughly 14 % (fourteen percent) – in this Act addresses specifically the creation of Bakamla. As the name suggest, how it is presented, and how the definition and terms are laid out in Art.1, we are promised with an Act that would focus more on natural aspect of the sea and a more ecological-sensitive Law.²³ Compared to the Shipping Act of 2008, this particular Act lacks the sophistication that it was expected.

In many instances, the central government changed many normative functions, and definitions even, to the Central Government as the actor/legal subject. This is the amending Act that erases or degrades the most penalty and government function, substituting explicit intent with autocratic unexpressed intent. Such is the case when we see how the sophistication of the original Art.5 to a central government undescribed norm.²⁴ there are so many other instances that presented similar spectacle. The research finds that first, the Omnibus Law/Job Creation Act created significant structure of the overall Indonesian law, further creating missing link between an already scattered organization of law.

In comparison to the original shipping act, the research found that the following 3 (three) subjects that are absent from the Third Revision:²⁵ Port Authority; Port Operator Unit; and Sea & Coast Guard. To summarize, in contrast, it is clear that law enforcement function at sea is done by the sea and coast guard as defined in the original Act and that the sea and coast guard answers directly to the President while their technicalities is operated by the minister. The nominal impact by this ontology is that *das Solen* of the cabotage principle is further away from the everyday shipping livelihood, where the generalization of these new amendments would contribute to the complication further. One novelty that is actually progressive is the addition of Article 15A to 15E which explicate government incentive on the maritime industry sufficiently extensive.²⁶

2. Legal Analysis Across the Acts

2.1 Vertical Dissonance of the Cabotage Principle and the Consequential Legal Implication through Its Consequences

To quote from Tamanaha, he presented the verticality of ROL by 2 (two) principles; the enhancing of individual liberty; and restraining arbitrary power.²⁷ This is precisely why I proposed the category of auto-normativity in analysing the law since it helps to animate the performer of norm with a line of thinking in and of itself by the law.

²³ Indonesia, 'Undang-undang (UU) Nomor 32 Tahun 2014 tentang Kelautan', Peraturan Perundang-undangan, Pub. L. No. LN.2014/No. 294, TLN No. 5603, LL SETNEG: 38 HLM, LN.2014/No. 294, TLN No. 5603 LN.2014/No. 294, TLN No. 5603, 2014 (2014), <https://peraturan.bpk.go.id/Details/38710>.

²⁴ Indonesia, Undang-undang (UU) Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja menjadi Undang-Undang. Art.57, no.1.

²⁵ Indonesia, 'Undang-undang (UU) Nomor 66 Tahun 2024 tentang Perubahan Ketiga atas Undang-Undang Nomor 17 Tahun 2008 tentang Pelayaran', Peraturan Perundang-undangan, Pub. L. No. LN 2024 (252), TLN (7003) : 40 hlm.; jdih.setneg.go.id, LN 2024 (252), TLN (7003) LN 2024 (252), TLN (7003) 40, 2024 (2024), <https://peraturan.bpk.go.id/Details/306526/uu-no-66-tahun-2024>. Amendemen no.1 (Art.1)

²⁶ Ibid. Art.15A-E

²⁷ Tamanaha, B. Z. (2024). Vertical and Horizontal Dimensions of the Rule of Law. *EMORY LAW JOURNAL*, 73. Pp.1223

Dualism of Institution leads to the disorganization of the performance of the ROL for Indonesia in the Solen sense.

The establishment of KPLP shows to be critical for the enactment of cabotage principle in Indonesia. To quote from Mr. Ponto, "... Every law has the same legal force", and "... In addition, the Indonesian Coast Guard and the US Coast Guard are already considered compatible through the formation regulated by the Shipping Law..."²⁸ The logic from the original Act's principle pertains as "...the Directorate General of Sea Transportation are designated as the person in charge of the implementation of government activities and administration at international maritime organizations (IMO)..." per 23 Presidential Decree of 2022.²⁹ Siswanto Rusdi³⁰ suggested that "...Bakamla is only (good for) a coordinator of other authorized institutions at sea..."³¹ since existing institution needs to maintain their effectiveness. Carmelita Hartoto stated that "...the KPLP from the Ministry of Transportation may report directly to the President, so that there is no more dualism...", showing that KPLP has been more favourable as the Indonesian sea & coast guard, since "... we have often been laid off so that the *cost of logistics* such as fuel needs more." ³²

The Central Government's calculated disregard, evidenced by chronically underfunded inspections, un-investigated casualties, and the tolerance of flagrant labour violations, actively engineers a distortion of auto-normativity. If the Indonesian Government continues this vagueness, there's a great chance that the political influence over the Rule of Law is greater. This poses legal instability.

2.2 Internal & Horizontal Irregularities that Undermine the Virtues of Cabotage Principle

As we can see on the previous sub-chapter, there are some notable removals of legal subjects, objects, and activities over the revisions. These removals are coupled with a substantial amount of omission and an 'ontological' reduction of some articles. This poses an existential threat in the legal sense; the law is not 'blind'. I animated the law – or the ROL in that matter – because the reality is that 'laymen'³³ tends to vindicate a distance from the Law, as the process is deemed to be elitist and out of their control. I would add in argument, leaving almost no ground for contrarian positions towards a common virtue. ³⁴

I struggle to deny the fact, as Tamanaha has come to realise, "...that in several distinct ways an instrumental view of law has a powerful tendency to corrode the rule of law ideal."³⁵ In a world where law is reduced to an instrument, far from the vicinity of the public, how would there be stability in upholding any principles for that

28 Novianti. (2024). Persoalan Dualisme Coast Guard di Indonesia dan Solusinya dalam Revisi UU Kelautan. *Parliamentary Review*, VI(3), 101–149. Op.cit

29 Op.cit. Pg.105

30 Director of National Maritime Institute (Namarin)

31 VALIDNEWS.id. (2019, December 2). *INSA Keluhkan Banyaknya Instansi Penegak Hukum Di Laut* [News outlet]. INSA Keluhkan Banyaknya Instansi Penegak Hukum Di Laut. <https://validnews.id/ekonomi/INSA-Keluhkan-Banyaknya-Instansi-Penegak-Hukum-Di-Laut-qpG> Op.cit

32 Ibid. Op.cit

33 As in those who are not in the proximity of policy-making.

34 Tamanaha, B. Z. (2024). Loc.Cit, Pg.1233

35 Tamanaha, B. Z. (2006). *Law as a Means to an End: Threat to the Rule of Law*. Cambridge University Press. <https://doi.org/10.1017/CBO9780511511073> Op.cit

matter? There are many instances where in the ‘normative articles’³⁶ that is revised, the function of Sea & Coast Guard is either changed or outright deleted. In practice, this creates jurisdictional voids that invite regulatory overlap, operational delays, and legal ambiguity – each chipping away at Indonesia’s capacity to project a unified, deterrent presence at sea.

As the “Central Government” gain over-piling power, is the case since law excerpts its power through literary means. Where the original Shipping Act bound the state through precise imperatives³⁷ (e.g., “Angkutan laut dalam negeri wajib menggunakan kapal berbendera Indonesia”)³⁸, subsequent amendments replace obligation with discretion. This linguistic restructuring transforms law from a constraining framework into an enabling ‘toolkit’. When ministers exempt foreign vessels via decree without parliamentary scrutiny – voiding 2008 Shipping Act’s requirement for legislative consultation – the ‘Central Government’ becomes the author rather than subject of legal norms. Consequently, the state exists not ‘under the law’ but above its lexicon – wielding ambiguity as sovereignty.³⁹ When ‘pertimbangan pemerintah’ (government considerations) supersedes ‘ketentuan pidana’ (criminal provisions), rule of law collapses into rule by vocabulary. Interests of internal actors’ impact much of the law that governs the Legal Entity⁴⁰ as a system. this translates the condition as a phenomenon of ‘shift of interest’ as power consolidates within the government’s structure.⁴¹ Its deletion via the two revisions transfers exemption authority solely to ministers – a shift that serves bureaucratic interests by at least: Expanding discretionary power;⁴² Reducing accountability;⁴³ and Creation patronage networks.⁴⁴ Such amendments reflect a broader psychology of institutional self-interest: where legal texts become tools to cement control rather than constrain it.

On this arbitrariness, the omnipotence of bureaucracy eliminates checks against abuse, when legality itself institutionalizes the power of those governing bodies. “Thus does the bureaucrat shun every general law handling every situation by decree...” Arendt tries to convey; Legality is inconsistent within a totalitarian government as in these circumstances could also be a possibility to diagnose a political governance as such^{45, 46}. In the thesis, I wrote about how Arendt expose the basics of totalitarianism, speaking in her public lecture on “Lying in Politics, that “the moment everybody says the same sentence that he has forgotten the truth that is hidden, then you no longer know the

36 Including ones that contains penal value.

37 e.g., “Angkutan laut dalam negeri wajib menggunakan kapal berbendera Indonesia” – Art. 8(1) (cabotage principle article) from Undang-undang (UU) Nomor 17 Tahun 2008 tentang Pelayaran, Pub. L. No. LN.2008/NO.64, TLN NO.4849, LL SETNEG : 132 HLM, LN.2008/NO.64, TLN NO.4849 LN.2008/NO.64, TLN NO.4849 (2008 and 2008). <https://peraturan.bpk.go.id/Details/39060>

38 Indonesia, Ibid, Art.8 verse1.

39 Indonesia, Undang-undang (UU) Nomor 66 Tahun 2024 tentang Perubahan Ketiga atas Undang-Undang Nomor 17 Tahun 2008 tentang Pelayaran.

40 As we see Indonesia as a legal subject recognized by the international community.

41 van Zwieten, K. (2023, November 27). Doctrinal Legal Method | Frontiers of Sociolegal Studies [Radio broadcast; Podcast]. In *Talking about Methods*. CSLS. <https://frontiers.cslls.ox.ac.uk/doctrinal-legal-method/#continue>

42 The possibility of executive unchecked ‘detour’ by ministers gain license to broker exemptions.

43 Since the legislative loses power of authority in exempting foreign vessels.

44 As exemptions risks tradability for political/financial capital.

45 That is a totalitarian government.

46 Arendt, H. (1973). *The origins of totalitarianism* (New edition with added prefaces.). Harcourt Brace Jovanovich., <https://search.library.wisc.edu/catalog/999614613202121>

truth behind your own lie...”⁴⁷ With the loss of Port Authority from the latest revision, the viability of cabotage principle is at stake. This is the case since Port Authority plays a crucial role in upholding the cabotage principle and seafaring life in general. The existence of Port Authority ensures the ideal state of maritime life is well preserved, conducted, and organized. Between Port Authority & KPLP also present a strong line of law enforcement.

The research found that The Regional Representative Council (DPD) served as one of the institutional actors that contribute to this Revisionism, as they proposed the 2 (two) core articles of the original Shipping Act, “...namely article 8 and article 276 which contain provisions on Domestic Sea Transportation and Sea and Coast Guard”.⁴⁸ Capt. Zaenal A. Hasibuan elaborated the consequence of this abnormality greatly affects the original Shipping Act, “...that is Minimization of KPLP (Indonesian Sea & Coast Guard) that influence made no.17 Shipping Act itself become a Law that its contents contradict between articles, including their explanatory articles...”⁴⁹ In finding the culprit, the research draws on Król’s Thesis, saying that one variation of non-compliance with the purpose of law, “Action contrary to the general interest, where the public administration acts in the interest of others other than the public interest: in the political, personal and particular interest...”⁵⁰

2.3 External Perspective on the Application of the Principle and Its Potential Consequences

The most likely opposing position relative to cabotage is the liberalization of economy. After Fukuyama’s thesis on “The End of History and The Last Man” (1992), Clinton and more & more countries submit to this philosophical claim and revisit their own interest.⁵¹ He stated that Neo-Liberalism as a viable economic principle is dead by the 2008 financial crisis, and that it led too several downgrade of ‘value’ for the economic floor of the working people.⁵² President Prabowo’s recent speech on SPIEF stated that the dominance of neoliberal capitalist “...in my opinion we have not managed to create a level playing field for all our people.”⁵³

In a conversation with the late Capt. H.M.J. Lumentah, he went on about how even though the cabotage principle have made it through to the Indonesian Law Structure, regulations on domestic maritime industry have yet been for the prosperity of national businesses.⁵⁴ The problem is exactly what the national expenditure institute have laid out above, that the taxation against national produced scarcity in national maritime

47 Arendt, H. & Philosophy Overdose (Directors). (1972). *Lying in Politics: Reflections on the Pentagon Papers*. <https://www.youtube.com/watch?v=E1MhvQijKSo>

48 Aida, A. N., & Nasution, M. (Eds.). (2019). Polemik Pencabutan Asas Cabotage dalam Revisi UU Pelayaran. *Buletin APBN, IV*, 8–11. Pg.8

49 Redaktur Utama. (2024, October 2). DPR RI Resmi Mengesahkan Revisi Ketiga UU Tentang Pelayaran. *ISL News*. <https://www.islnewstv.com/2024/10/dpr-ri-resmi-mengesahkan-revisi-ketiga.html> ISL News

50 Król, P. (2017). *The Concept of Détournement de Pouvoir* [Thesis Summary, Uniwersytet Jagielloński]. WPiA UJ. <https://wpia.uj.edu.pl/documents/41601/138070319/Streszczenie.Krol.WA.pdf> Op.cit.

51 *The end of history and the last man* (First Free Press paperback edition) (with Fukuyama, F.). (2006). Free Press, a division of Simon & Schuster.

52 Cosa, & Citarella, J. (Directors). (2025). *Francis Fukuyama: History and Democracy | Doomscroll*. <https://www.youtube.com/watch?v=pc7O7qSBzM8>

53 Adobe Creative Cloud Media & Sekretariat Presiden (Directors). (2025). *LIVE: Presiden Prabowo Hadiri SPIEF’25 Sebagai Tamu Kehormatan, St. Petersburg, 20 Juni 2025*. <https://www.youtube.com/watch?v=RBp5phvoz6U>

54 See: Aida, A. N., & Nasution, M. (Eds.). (2019). Polemik Pencabutan Asas Cabotage dalam Revisi UU Pelayaran. *Buletin APBN, IV*, 8–11. Op.Cit

power.⁵⁵ If we blindly see globalization as the states' trend to liberalize the economy bypassing borders, then we fail to see the political reality of 'imperium' and 'dominium' and how they interact with one another in contemporary economics.⁵⁶

Aida and Nasution concluded and recommended that "... The principle of cabotage is a final decision and does not need to be revised."⁵⁷ In a conversation with the late Capt. H.M.J. Lumentah, choosing a foreign-made ship for Indonesia should be done with caution. He recalled the times when the Indonesian Navy imports ships from the Soviet Union, the ships did not last very long. This is due to the build of Soviet Ships that were very Russia-centric, hence the emphasis of resilience from colder waters and lower salinity. To have a safe seafaring life, Indonesian ships should be made with the concern for Indonesia's (natural) climate.⁵⁸ The late captain's last work was as senior consultant for the IMO's Particularly Sensitive Sea Area.

2.4 Ethical Considerations on the Principle and the Indonesian Maritime Law

The importance of ethics' complexity, in that there's also intrinsic and instrumental values that may exist. Fairness as a condition can only be achieved when every scale exercise their power and authority that would allow a dialectic that contributes not to the degradation of the other's integrity. the liberal consensus of market magic is non-objective and that government intervention is crucial for the prosperity of the maritime industry. Historically, the virtue pre-Indonesia Nusantara Civilizations strived from both maritime activities and agricultural activities – both on land and at sea. In what point in history did these activities fall short?

From the discourse analysis, the research recovers the issues as anomalies, given the legal ontology on the subject. The following is the hypothesis with their required assumptions and explanation.

Hypothesis 1 (H1): Political spectacular-ization

Requisite: (1) Elite incentives | $x = 1$

Explanation: (1) rhetoric-praxis incoherency, (2) legal loopholes, (3) institutional decay. | $y = 3$

By the logic of Occam's Razor, Inference to the Best Explanation goes to the hypothesis with the least assumption or requisite (x) while explaining the most (y). Before I explain what that is, I should admit that the term in quote is a form of euphemising to not draw much attention from strong words but also to convey the concept of a 'spectacle-d society'.^{59,60} But what I'm interested here is not in the fact that the politics of the principle a quo is also based in the representationalism thereof, but how the ROL is simply not represented.⁶¹ If H_1 is true, we should observe:

- Exemptions clustered in the maritime industry and its tying underlying notion;

55 Lumentah, H. M. J. (2014–2018). *In Conversation with H.M.J. Lumentah* (M. B. Lumentah, Interviewer) [Personal communication].

56 See: Quinn Slobodian, *Hayek's Bastards: The Neoliberal Roots of the Populist Right*. (Zone Books, 2025), <https://www.penguin.co.uk/books/472194/hayeks-bastards-by-slobodian-quinn/9780241774984>.

57 Aida, A. N., & Nasution, M. (Eds.). (2019). Polemik Pencabutan Asas Cabotage dalam Revisi UU Pelayaran. *Buletin APBN*, IV, 8–11. Pg.11

58 Lumentah, H. M. J. (2014–2018). *In Conversation with H.M.J. Lumentah* (M. B. Lumentah, Interviewer) [Personal communication]. Ibid

59 Although, in French, he may refer it as something else.

60 Guy Debord, *The Society of the Spectacle*, English Edition by Ron Adams (Massachusetts: Unredacted Word, 2021).

61 Ibid. a consequential converse, reads Debord, "'tis the hegemonic social culture, a model for the prevailing way of life. The spectacle self-validates its continued existence with the continual affirmation of its mode of production."

- Revolving doors between regulators and exempted firms/companies; and
- Indonesia horizontal near inadequacy caused by ambiguity of integrity.

This process requires circumference of the problems laid out in this paper and analyse it critically. This means analysis and investigation from multiple lenses, that with the basis of the fact that all of these factors contribute to policy making process. The author by this invites the reader to contribute by expanding this case study to other jurisprudential domains, such as analytical jurisprudence and socio-legal studies, notwithstanding other non-doctrinal studies.

D. CONCLUSION

To conclude, there are several potential reasons why the revisionism on the application of cabotage principle in the Indonesian maritime law happen. As we can see, the first institutional decay we can at least find within the ‘sistem perundang-undangan’ is the parallel enactment of the 32 Marine Act of 2014, which created legal uncertainties at sea, worsening the existing decline of the principle in the maritime industry. Legal loopholes was a growing issue since at least 1 (one) year after the enactment of the original 17 Shipping Act of 2008 where the executive branch was supposedly forced to give exemptions for the Efficiency and Energy office for offshore activities, which over time piled and bled into other domains of shipping, including but not limited to tourism and special economic activities.

The effects of the revisionism on the application of cabotage principle in the Indonesian maritime law are diverse, to say the least, although, through this paper, we can at least come into conclusion of 1 (one) particular hypothesis on what notion underlies within Indonesia’s legal structure. As an ILE/ILS, the research observes exemptions clustered in the maritime industry and its tying underlying notion that hinders the nation to express her autonomy in the real sense. This hindrance can also be seen through the revolving doors between regulators and exempted firms/companies, especially foreign companies which may now be obscured under the umbrella of Special Economic Zones (SEZ) and their related regulations.

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