

# Falsification of Regulations and Contracts to Ensure Legal Protection for Container Terminal Operators in Container Loading and Unloading Services in Indonesia

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## ABSTRACT

Container terminal operators play a strategic role in supporting the smooth operation of container loading and unloading services as part of the national logistics system. However, in practice, terminal operators often face various legal disputes related to damage to or loss of containers. This study aims to analyze the legal protection afforded to container terminal operators under Indonesian positive law, identify the factors causing disputes related to container damage during loading and unloading operations, and formulate a model for reconstructing legal protection capable of providing legal certainty for container terminal operators. This study employs a normative legal method using legislative, conceptual, and comparative approaches. Primary, secondary, and tertiary legal sources were obtained through a literature review and analyzed qualitatively using the theory of legal certainty and the theory of legal liability. The results of the study indicate that legal protection for container terminal operators is not yet optimal because there is still an overlap in regulations and a lack of specific regulations governing the legal protection of container terminal operators. Disputes related to container damage are influenced by unclear allocation of liability, high operational risks during loading and unloading, ineffective claim mechanisms, and contractual imbalances characterized by exculpatory clauses, an imbalance of rights and obligations, and the weak bargaining position of terminal operators. The proposed restructuring model includes the harmonization of port regulations, specific provisions regarding terminal operators' liability, the standardization of container terminal operating contracts, proportional risk allocation, strengthened oversight, and the optimization of dispute resolution mechanisms. Legal protection for container terminal operators has not yet provided adequate legal certainty; therefore, an integrated restructuring of regulations, contracts, and institutional frameworks is necessary to achieve legal certainty in container loading and unloading services.

**Keywords:** legal protection, container terminals, container loading and unloading, legal certainty, legal liability.

## INTRODUCTION

Maritime transportation plays a highly strategic role in supporting trade and the distribution of goods in Indonesia (Wiryawan, 2024). As the world's largest archipelago, Indonesia's maritime territory is larger than its land area, so national economic activity is heavily dependent on the smooth operation of the maritime transportation system. Indonesia's geographical position, situated between two oceans and two continents, makes the shipping and port sectors crucial elements in supporting interregional connectivity and international trade (Royani & Siahaan, 2022). In this context, ports serve not only as stopping points for ships but also as hubs for logistics activities that determine the efficiency of the national supply chain. One of the main components of a modern port system is the container terminal, which serves as a hub for the rapid, safe, and efficient loading and unloading of large volumes of goods (Djamaluddin, 2023). The growth of global trade has driven an increase in the use of containers as the primary means of transporting goods. The container system offers various advantages, such as time efficiency, ease of handling, reduced risk of cargo damage, and intermodal transportation integration. Consequently, container traffic at various Indonesian ports has seen a significant increase year over year. This situation requires container terminal operators to provide reliable, effective loading and unloading services that comply with international standards. On the other hand, the increasing intensity of loading and

unloading activities also implies a higher potential for operational risks, including container damage, loss of cargo, service delays, and disputes among parties involved in port operations (Danilwan et al., 2025). In practice, container loading and unloading activities involve various parties with differing interests, such as container terminal operators, shipping companies, cargo owners, stevedoring companies, and other logistics service providers. The legal relationships among these parties are generally based on statutory provisions and cooperation agreements that govern the rights, obligations, and responsibilities of each party (Baughen, 2023). However, the complexity of these legal relationships often gives rise to various problems, particularly when damage to or loss of containers occurs during the loading and unloading process. In many cases, differences in interpretation arise regarding which party should be held liable for the losses incurred, leading to protracted legal disputes (Munafri & Suleman, 2023).

This issue is further complicated by the fact that provisions regarding the liability of container terminal operators remain scattered across various laws and regulations that are not yet fully harmonized. Law No. 17 of 2008 on Shipping, Government Regulation No. 61 of 2009 on Ports, and various other implementing regulations do indeed govern the conduct of port operations in general. However, regulations that specifically provide legal protection to container terminal operators against the risk of claims for damage to or loss of containers remain relatively limited. This situation creates uncertainty regarding the scope of liability, the burden of proof, and the form of legal protection available to terminal operators when facing claims from service users (Djamiluddin, 2022).

In addition to regulatory issues, contractual aspects also contribute to the weak legal protection afforded to container terminal operators. In port business practices, cooperation agreements between terminal operators and shipping companies or service users often reflect an imbalance in bargaining power. It is not uncommon to find clauses that impose a greater burden of liability on terminal operators, while their rights are not proportionally protected. Clauses regarding indemnification, risk allocation, and dispute resolution mechanisms are often drafted to protect the interests of the party with greater economic power. Consequently, when disputes arise, container terminal operators find themselves at a disadvantage from both legal and business perspectives. (Matsuda et al., 2021)

This phenomenon highlights a gap between the normative conditions expected by the legal system and the reality observed in practice. Normatively, the law should provide certainty, justice, and balanced protection to all parties involved in container loading and unloading activities. However, in reality, there are still various regulatory loopholes and contractual imbalances that expose container terminal operators to high legal risks. Uncertainty regarding the allocation of liability and weak legal protection for terminal operators have the potential to hinder operational efficiency, reduce investment interest, and disrupt the smooth functioning of the national logistics system.

Based on this description, this study is important to analyze the extent to which legal protection for container terminal operators has been accommodated in Indonesian positive law, to identify the factors causing ongoing issues regarding liability for container damage during loading and unloading operations, and to formulate a model for regulatory and contractual reform capable of providing greater legal certainty. The results of this study are expected not only to contribute to the development of legal scholarship, particularly in the fields of maritime law and business law, but also to serve as a basis for policymakers in updating port regulations to create a more equitable, effective, and sustainable container loading and unloading service system.

## **RESEARCH METHODOLOGY**

### **Research Method**

This study is a normative legal study focusing on an analysis of the legal norms governing legal protection for container terminal operators in container loading and unloading services in Indonesia. A normative legal study was chosen because the issues under examination relate to statutory provisions, legal principles, legal doctrines, and legal concepts governing the relationship between container terminal operators and the parties involved in port activities. This study aims to analyze the adequacy of existing legal regulations, identify normative weaknesses that cause legal uncertainty, and formulate a restructuring of regulations capable of providing more effective legal protection for container terminal operators.

The research approaches employed include the statutory approach, the conceptual approach, and the comparative approach. The statutory approach involves examining various regulations related to port

operations and container loading and unloading services, including Law No. 17 of 2008 on Shipping, Government Regulation No. 61 of 2009 on Port Operations, as well as various implementing regulations governing the loading and unloading of goods to and from ships. The conceptual approach is used to analyze various relevant legal theories and concepts, such as the theory of legal certainty, the theory of legal protection, the theory of legal liability, and the principles of contract law that serve as the foundation for assessing the legal relationship between the parties. Meanwhile, a comparative approach is used to compare Indonesia's legal framework with the practices or legal systems of other countries that have more advanced port management systems, thereby identifying alternative solutions for the reform of national law.

The legal materials used in this study consist of primary, secondary, and tertiary legal sources. Primary legal sources include legislation, relevant court decisions, and legally binding documents. Secondary legal materials consist of legal textbooks, scholarly articles, national and international journals, previous research findings, and expert opinions related to port law, contract law, and legal protection. Tertiary legal materials include legal dictionaries, legal encyclopedias, and other reference sources used to aid in understanding the legal terms and concepts that are the subject of this research.

The collection of legal materials is conducted through library research by reviewing various relevant legal sources and literature. All legal materials obtained are then inventoried, classified, and systematized based on the topic of discussion to facilitate the analysis process. This stage is conducted to obtain a comprehensive overview of the applicable legal framework as well as the various issues that arise in the practice of container loading and unloading services.

The analysis of legal materials was conducted qualitatively using methods of legal interpretation and legal argumentation. The analysis began by identifying the legal norms governing the legal responsibilities and protections for container terminal operators, followed by an evaluation of their consistency and alignment with the principles of legal certainty, justice, and public interest. Next, an interpretation was conducted of legal provisions that have the potential to lead to multiple interpretations or ambiguity in their implementation. The results of this analysis were used to identify weaknesses in existing regulations and to formulate a model for regulatory and contractual restructuring that is better able to provide legal protection for container terminal operators in container loading and unloading services in Indonesia.

Through this research method, it is hoped that a deep understanding of the legal issues faced by container terminal operators can be gained, and that recommendations can be generated to serve as a basis for policy development and regulatory reform in the port sector. Thus, this study not only contributes theoretically to the development of legal science but also has practical value in supporting the creation of legal certainty and improving the quality of governance in container loading and unloading services in Indonesia.

## **RESULTS AND DISCUSSION**

### **Legal Protection for Container Terminal Operators Under Indonesian Positive Law**

Legal protection for container terminal operators under the Indonesian legal system is primarily derived from various laws and regulations governing shipping, port operations, and cargo loading and unloading activities. As a vital part of the national logistics system, container terminal operators play a strategic role in ensuring the smooth flow of goods through ports. However, the high operational risks inherent in container loading and unloading activities necessitate legal certainty regarding the rights, obligations, and responsibilities of the parties involved. Therefore, the existence of clear and comprehensive regulations is a critical factor in providing legal protection for container terminal operators.

Regulations governing container terminal operations are generally based on Law No. 17 of 2008 on Shipping. This law regulates the operation of shipping and port services as part of the national transportation system. Under these provisions, ports are defined as facilities used to serve ships, passengers, and cargo, including container loading and unloading activities. Through these regulations, the state grants legitimacy to port business entities and terminal operators to provide port services in accordance with established standards for safety, security, and service efficiency.

Normatively, Law No. 17 of 2008 has provided a legal basis for the existence of container terminal operators as legitimate business entities within the national port system. However, upon further analysis, these regulations remain focused on the governance of port operations and do not yet specifically address

legal protections for container terminal operators. Provisions regarding the liability of parties involved in container loading and unloading activities remain general in nature and thus fail to provide certainty regarding the scope of liability in the event of damage to or loss of containers. This situation indicates that the legal protection provided remains implicit and does not directly address the protection needs of terminal operators as parties directly exposed to various operational risks.

Further regulations regarding port operations are set forth in Government Regulation No. 61 of 2009 on Ports. This regulation governs various aspects related to port management, the provision of terminal facilities, ship and cargo services, and the management of port operational activities. In the context of container terminals, Government Regulation No. 61 of 2009 provides a legal basis for port business entities to operate terminal facilities and provide container loading and unloading services to service users.

The existence of Government Regulation No. 61 of 2009 provides administrative certainty regarding the status and authority of container terminal operators. However, this regulation still places greater emphasis on port management and operational aspects than on legal protection. Provisions regarding the allocation of liability in the event of disputes arising from damage to or loss of containers have not been detailed. As a result, dispute resolution often depends on the interpretation of various other regulations or on contractual clauses agreed upon by the parties. This situation has the potential to create legal uncertainty because there are no normative standards that explicitly define the limits of each party's liability in container loading and unloading services.

In addition to the Shipping Law and the Government Regulation on Ports, regulations concerning container loading and unloading activities are also scattered across various implementing regulations, including ministerial regulations governing the organization and operation of loading and unloading of goods to and from ships. These regulations govern operational procedures, service standards, service provider obligations, and the mechanisms for carrying out loading and unloading activities at ports. In theory, these technical regulations aim to enhance operational efficiency while ensuring the safety and security of port activities.

However, the sheer number of regulations governing the port sector has actually created a new problem: regulatory fragmentation. Various provisions scattered across different laws and regulations often have overlapping scopes, making it difficult to determine which standards should be applied in the event of a dispute. In practice, container terminal operators must not only comply with provisions derived from the Shipping Act and the Government Regulation on Ports but also with various technical regulations issued by relevant ministries and agencies. This complexity has the potential to create legal uncertainty because each regulation has a different regulatory focus and is not always systematically integrated.

From the perspective of Radbruch's theory of legal certainty (2006), this situation indicates that the legal system governing container terminal management has not yet fully met the elements of legal certainty. Radbruch(2006) asserts that the law must be formulated clearly, consistently, and in a manner that allows for predictable application. However, the multitude of regulations governing port-related aspects without adequate harmonization makes it difficult for terminal operators to determine their rights and obligations with certainty. When disputes arise regarding container damage, differences in interpretation often emerge regarding which party should be held liable, leading to uncertainty in legal resolution.

An analysis using the theory of legal certainty also shows that one of the prerequisites for achieving legal certainty is the existence of clear rules that are consistently applied by the competent authorities (Suhartoyo, 2025). In the context of container terminal management, this requirement has not been fully met because provisions regarding liability and legal protection remain scattered across various regulations that do not always provide the same guidance. As a result, the application of the law in practice often depends on the interpretation of each party and the specific circumstances of the case at hand.

Another weakness found in these regulations is the absence of specific provisions that explicitly provide legal protection to container terminal operators. Most existing regulations focus more on the obligations of terminal operators to provide safe, fast, and efficient services rather than on the legal rights that can serve as a basis for protection when facing claims for damages. In fact, as parties conducting high-risk operational activities, terminal operators require certainty regarding the limits of their legal liability as well as protective mechanisms that can prevent the imposition of disproportionate liability.

The findings of this study indicate that Indonesian positive law has provided a sufficient regulatory framework for governing the operation of container terminals, but has not yet been able to provide optimal legal protection for their operators. Unlike the study by (2023), which focuses more on aspects of operational efficiency and port productivity, this study demonstrates that the main issue lies in the weak legal protection framework for container terminal operators. The contribution of this study lies in identifying gaps in the legal framework regarding the protection of terminal operators and the need for regulatory harmonization to reduce regulatory overlap, which has long been a source of legal uncertainty. Based on the results of this analysis, it can be concluded that legal protection for container terminal operators under Indonesian positive law still faces two main issues: overlapping regulations and the absence of specific regulations that explicitly provide legal protection. Therefore, regulatory reform is needed through the harmonization of port regulations and the formulation of specific provisions governing the limits of liability, risk allocation, and legal protection mechanisms for container terminal operators. These steps are essential to ensure legal certainty, enhance fairness for all parties, and support the creation of a more effective and sustainable port system.

## **Issues Regarding Liability for Container Damage**

### ***Causes of Disputes***

One of the most common legal issues arising in container loading and unloading services in Indonesia is disputes regarding liability for damage to or loss of containers during operational processes. This issue becomes increasingly complex because loading and unloading activities involve various parties, including shipping companies, container terminal operators, stevedoring companies, equipment operators, and cargo owners. Each party has different authorities and responsibilities; however, in practice, the boundaries of these responsibilities are not always clearly defined. Consequently, when container damage or loss of goods occurs, there are often differing interpretations regarding which party should be held liable for the resulting losses.

The primary factor leading to these disputes is the lack of clarity regarding the division of responsibility among the parties involved in loading and unloading operations. Normatively, various laws and regulations in the shipping and port sectors have established guidelines for the conduct of loading and unloading services; however, they have not provided clear boundaries regarding the scope of each party's responsibility at every operational stage. In many cases, damage to containers can occur while the containers are still on board the vessel, during the transfer process using loading and unloading equipment, or once they are in the terminal's storage area. These circumstances make it difficult to determine the exact point at which damage occurred and which party should bear legal liability. This lack of clarity ultimately creates legal uncertainty that has the potential to harm container terminal operators, as they are often the party most easily held liable by service users.

In addition to normative aspects, the high operational risks involved in loading and unloading activities are also a contributing factor to the emergence of disputes. Container loading and unloading operations involve the use of various heavy equipment, such as quay container cranes, reach stackers, rubber-tyred gantry cranes, and other transport vehicles, all of which have the potential to cause damage in the event of operational errors. These risks increase as container traffic volumes rise and demands for high service productivity intensify. Although terminal operators have implemented operational standards and occupational safety systems, the possibility of damage resulting from technical factors, human error, or external conditions cannot be entirely eliminated. Therefore, clear regulations regarding risk allocation are necessary so that each party understands the limits of its liability in the event of a loss.

From the perspective of Kelsen's theory of liability (2017) an individual or legal entity can only be held liable if there is a legal basis demonstrating a causal link between the action taken and the resulting loss. In the context of container loading and unloading services, this principle requires clear evidence regarding the cause of the damage and the party whose actions led to the loss. However, in practice, such proof is often difficult to establish because the loading and unloading process involves many parties and takes place over a relatively short period of time. As a result, the determination of liability is often based more on a party's position within the service chain than on proof of the actual fault that occurred.

Another issue that exacerbates disputes is the ineffective claims mechanism. In port operations, claims for container damage are generally filed based on cooperation agreements or operational regulations in

effect at each terminal. However, not all contracts specify in detail the procedures for filing claims, the standards of proof for damage, the deadlines for filing claims, or the dispute resolution mechanisms. As a result, the claims settlement process often takes a long time and leads to differing interpretations among the parties. The lack of clarity in these procedures ultimately increases transaction costs, prolongs the dispute resolution process, and has the potential to disrupt the smooth operation of the port.

The findings of this study indicate that the issue of liability for container damage is not solely caused by operational errors but is also influenced by weaknesses in the legal framework governing the relationships among parties involved in loading and unloading activities. Unlike previous studies, which have largely focused on the technical aspects and operational efficiency of container terminals, this study finds that the root of the problem actually lies in the lack of clarity regarding the division of liability and risk allocation within Indonesia's port legal system. This situation indicates that recurring disputes are not merely managerial issues but also legal issues requiring regulatory reform.

Based on the theory of legal certainty, a legal system is said to provide certainty if the applicable rules are able to provide clear guidelines regarding the rights and obligations of the parties and can be applied consistently (Sonatha, 2023). In this context, the lack of clarity regarding the division of responsibilities, high operational risks, and ineffective claim mechanisms indicate that legal protection for container terminal operators remains suboptimal. Therefore, a reformulation of the regulations is needed to explicitly govern the division of liability, standards of proof for damage, claims mechanisms, and proportional risk allocation in order to create legal certainty and fairness for all parties involved in container loading and unloading services.

### ***Contractual Imbalances in Container Loading and Unloading Services***

In addition to issues stemming from regulatory ambiguity, disputes involving container terminal operators are also influenced by contractual imbalances governing the legal relationships between terminal operators and shipping companies, cargo owners, and other service users. In port operations, contracts serve as the primary legal instruments used to govern rights, obligations, risk allocation, and dispute resolution mechanisms. However, not all contracts are drafted based on the principles of balance and proportionality. On the contrary, many contracts actually place container terminal operators at a disadvantage, thereby increasing the legal risks they must bear in the provision of loading and unloading services.

One of the most common forms of contractual imbalance is the presence of exculpatory clauses. An exculpatory clause is a contractual provision intended to limit or even eliminate the liability of one party for losses that may arise during the performance of the agreement. In the practice of container loading and unloading services, such clauses are often used by parties with stronger economic standing and bargaining power, such as shipping companies or certain service users. As a result, liability for damage to or loss of containers tends to be shifted to the terminal operator, even though such losses may not necessarily be entirely caused by the terminal operator's fault. This situation indicates that exculpatory clauses do not always function as instruments for fair risk allocation; rather, they can serve as a means of imposing disproportionate risk on the party with weaker bargaining power.

From a contract law perspective, the existence of exoneration clauses is not actually prohibited as long as they comply with the principle of freedom of contract as stipulated in Article 1338 of the Civil Code (.). However, the principle of freedom of contract cannot be interpreted absolutely. Hernoko(2006) emphasizes that freedom of contract must be exercised within the framework of the principles of proportionality and good faith so as not to cause injustice to either party. Therefore, a clause that excessively limits one party's liability or shifts the entire risk to the other party has the potential to conflict with the principle of contractual balance. In the context of container terminal management, exculpatory clauses that shift all liability to the terminal operator can create legal uncertainty while simultaneously reducing the legal protection that should be afforded.

Another issue is the imbalance of rights and obligations between the parties in cooperation agreements. Analysis shows that many operational contracts in the port sector place greater emphasis on the terminal operator's obligations than on its rights. Terminal operators are required to ensure container security, guarantee the smooth operation of services, meet productivity targets, and bear various operational risks. Conversely, the terminal operators' rights to legal protection, limitations on liability, or fair compensation

mechanisms are often not specified in detail. This imbalance means that the contractual relationship no longer reflects the principle of equality between the parties, which is one of the main foundations of modern contract law.

According to contractual exchange theory, a sound contract must reflect a balanced distribution of rights and obligations so that each party reaps benefits and bears risks proportionally. When one party is burdened with obligations that far exceed the rights it receives, the contractual balance is disrupted (Bagchi, 2025). In container loading and unloading services, this imbalance can increase the vulnerability of terminal operators to claims for damages and legal disputes, especially when the contract does not provide clear limits on the liability to be borne.

Contractual imbalances are also inextricably linked to the weak bargaining position of container terminal operators during contract negotiations. Theoretically, contracts arise from an agreement between parties who have the freedom to determine the terms of the agreement. However, in the practice of port business, the parties are not always on an equal footing. International shipping companies or large-scale service users generally possess greater economic power and market influence than terminal operators. This situation often leaves terminal operators with insufficient leverage to negotiate more favorable clauses or secure adequate legal protection.

This weak bargaining position results in many contracts being drafted as standard contracts that terminal operators must accept without the opportunity to make substantial changes. In such situations, the principle of freedom of contract becomes purely formal because one party lacks genuine freedom to determine the content of the agreement. Consequently, the resulting contract reflects the dominance of the party with greater economic power rather than a truly balanced agreement. This situation ultimately increases the risk of disputes and places terminal operators in a position with insufficient legal protection. The findings of this study indicate that the issue of liability for container damage is influenced not only by regulatory weaknesses but also by contract structures that do not yet reflect the principles of fairness and balance. Unlike previous studies, which generally focused on operational aspects and port risk management, this study found that contractual imbalances are a key factor affecting the effectiveness of legal protection for container terminal operators. Therefore, a reformulation of cooperation contracts in the port sector is necessary through the restriction of excessive exculpatory clauses, the strengthening of the principle of proportionality in the allocation of rights and obligations, and the creation of a more balanced negotiation mechanism. These steps are essential to establishing fair contractual relationships, enhancing legal certainty, and providing more effective protection for container terminal operators in cargo handling services in Indonesia.

### *Analysis Based on the Theory of Legal Liability*

The issue of liability for damage to containers during loading and unloading services cannot be separated from the concept of legal liability, which forms the basis for determining which party is obligated to bear the loss. In port operations, disputes regarding container damage or loss frequently arise because they involve numerous parties interacting within a single operational process, ranging from shipping companies, container terminal operators, stevedoring companies, equipment operators, to cargo owners. Therefore, the theory of legal liability serves as a crucial tool for analyzing how responsibility should be fairly allocated and applied in container loading and unloading operations.

From the perspective of fault-based liability, an individual or legal entity can only be held liable if it is proven to have committed a fault that caused the loss. This principle is a general foundation of civil law, requiring the presence of an unlawful act, fault, loss, and a causal relationship between the act and the resulting loss. In the context of container loading and unloading services, terminal operators can only be held liable if it can be proven that container damage resulted from negligence or errors committed during operational processes. For example, damage caused by a crane operator's error, failure to follow container safety procedures, or the use of equipment that does not meet safety standards.

However, the application of the principle of liability based on fault in loading and unloading operations often faces various obstacles. The loading and unloading process is a complex activity involving many parties simultaneously, so it is not always easy to determine who actually made the mistake. In many cases, damage to a container is only discovered after the container has been transferred from one party to another. Consequently, identifying the party at fault becomes difficult and often leads to protracted

disputes. This situation demonstrates that the application of the principle of liability based on fault in the port sector frequently faces practical limitations, particularly regarding the burden of proving a causal link between a specific action and the resulting loss.

On the other hand, the concept of strict liability has also emerged, which does not require proof of fault as the basis for liability. Under this concept, a party engaged in high-risk activities may be held liable for losses arising from those activities even if no fault is proven. The principle of strict liability is fundamentally intended to provide more effective protection to the aggrieved party and to create legal certainty in high-risk activities. In container loading and unloading operations, the strict liability approach has the potential to be applied because these activities involve the use of heavy machinery, the movement of large quantities of goods, and operational risks that cannot be completely eliminated.

Nevertheless, the application of strict liability to container terminal operators must be approached with caution. If the entire risk of container damage is imposed on terminal operators without considering the factors causing the loss, this could actually lead to injustice. Terminal operators may be forced to bear losses that are actually caused by factors beyond their control, such as containers that were already damaged before arriving at the terminal, errors by shipping companies, or the actions of third parties. Therefore, the principle of strict liability cannot be applied absolutely but must be accompanied by clear provisions regarding the limits of liability and the conditions under which terminal operators may be exempted from the obligation to compensate for losses.

Another issue that has a significant impact on disputes over container damage is the burden of proof. Under a fault-based liability system, the party filing a claim generally must prove that the loss suffered was caused by the fault of another party. However, in the practice of container loading and unloading services, such proof is often extremely difficult to establish because damage can occur at various operational stages involving many parties. It is not uncommon for physical evidence of damage to be discovered only after the container has left the terminal area, making it difficult to determine the location and time when the damage occurred.

This difficulty in proving liability often places terminal operators at a disadvantage. In many cases, terminal operators must prove that the damage did not occur while the container was under their control. Such a burden of proof can increase the legal risks and dispute resolution costs that terminal operators must bear. From the perspective of Kelsen's theory of liability (2017) legal liability should be based on a clear relationship between an act, a legal obligation, and the imposed sanction. Therefore, an unclear system of proof has the potential to obscure this relationship and create uncertainty in the enforcement of the law.

This analysis shows that the issue of liability for container damage is not only related to determining the party at fault but also concerns the legal framework regarding risk allocation and the burden of proof in disputes. This study finds that Indonesian positive law has not yet provided adequate regulations regarding standards of proof and the allocation of liability in container loading and unloading services. Unlike previous studies that have primarily addressed operational aspects of ports, this study demonstrates that the root of the dispute lies in the lack of clarity regarding the liability model applied to container terminal operators.

Based on the analysis, it can be argued that the legal liability system in container loading and unloading services needs to be oriented toward a more proportional model by balancing the principles of fault-based liability and strict liability. Furthermore, clearer regulations are needed regarding the burden of proof and risk-sharing mechanisms so that dispute resolution can be conducted more fairly and efficiently, while providing legal certainty for all parties involved in container loading and unloading activities.

### **Reconstructing Legal Protection for Container Terminal Operators**

An analysis of the legal framework governing container loading and unloading services reveals that legal protection for container terminal operators still faces various obstacles, stemming from regulatory, contractual, and institutional aspects. Unclear division of responsibilities, overlapping regulations, contractual imbalances, and weak dispute resolution mechanisms have created legal uncertainty that could potentially harm terminal operators. These conditions indicate that efforts to provide legal protection cannot be achieved by addressing just one aspect; rather, they require a comprehensive reconstruction of the legal system governing container loading and unloading activities. This

reconstruction aims to create legal certainty, balance the relationships among the parties, and provide more effective protection for container terminal operators as one of the key actors in the national logistics system.

The first area requiring reconstruction is regulation, specifically through the harmonization of port regulations. Currently, regulations governing container loading and unloading activities are scattered across various laws and regulations with differing scopes and regulatory focuses. Law No. 17 of 2008 on Shipping, Government Regulation No. 61 of 2009 on Ports, and various other implementing regulations address aspects of port operations in a piecemeal manner without providing integrated provisions regarding the legal protection of container terminal operators. As a result, overlapping norms and differing interpretations have arisen, making it difficult to determine liability in the event of a dispute. From the perspective of the theory of legal certainty, the law must be able to provide clear and consistent guidelines so that every legal subject can understand their rights and obligations with certainty. Therefore, regulatory harmonization is necessary to eliminate conflicts of norms, align provisions scattered across various regulations, and establish a more coherent port legal system.

In addition to regulatory harmonization, specific provisions regarding the liability of container terminal operators are also needed. Research findings indicate that Indonesian positive law has not yet explicitly defined the scope of terminal operators' liability in container loading and unloading activities. As a result, terminal operators often find themselves vulnerable to various claims for damages, even though the losses incurred may not necessarily fall entirely within their sphere of control. Therefore, it is necessary to establish norms that specifically regulate the scope of terminal operators' liability, mechanisms for exemption from liability, standards of proof for damages, and the conditions that may serve as grounds for liability exemptions. Such regulations are essential to strike a balance between the service obligations that terminal operators must fulfill and the legal protection to which they are entitled.

A second restructuring is needed in the contractual aspect through the standardization of container terminal operating contracts. Until now, the legal relationship between terminal operators, shipping companies, and service users has largely been based on contracts drafted individually according to the interests of each party. This practice often results in contractual imbalances because the party with the stronger economic position tends to dominate the drafting of the contract's terms. To address this issue, a standard contract template is needed to serve as a reference for operational cooperation in container terminals. Such a standard contract must contain clear provisions regarding the rights and obligations of the parties, legal liability, risk management mechanisms, procedures for filing loss claims, and dispute resolution procedures. Contract standardization is not intended to eliminate contractual freedom, but rather to ensure that such freedom remains within the bounds of fairness and balance.

Another aspect that needs to be restructured is the arrangement for proportional risk allocation. In current practice, the risk of damage to or loss of containers is often disproportionately borne by terminal operators through unbalanced contract clauses. This situation contradicts the principle of proportionality in contract law, which requires a fair distribution of rights, obligations, and risks among the parties. Therefore, risk allocation must be based on the principle of who has control over the source of risk and who is best able to prevent the occurrence of loss. With this approach, liability is no longer imposed unilaterally on terminal operators but is allocated proportionally according to each party's contribution to the occurrence of the loss.

Strengthening dispute resolution clauses is also a crucial part of contract restructuring. Many disputes arising from container loading and unloading services drag on for a long time due to the absence of a clear dispute resolution mechanism in the contract. Therefore, container terminal operating contracts must include clauses that detail dispute resolution procedures, including the stages of negotiation, mediation, arbitration, and litigation. These provisions aim to provide certainty regarding the dispute resolution forum to be used and to reduce the potential for protracted conflicts. With a clear mechanism in place, the parties can resolve disputes more quickly, efficiently, and at a lower cost.

In addition to regulations and contracts, the restructuring of legal protections must also address institutional aspects. One necessary step is strengthening oversight functions regarding container loading and unloading operations. Effective oversight is essential to ensure that all parties fulfill their obligations in accordance with applicable laws and operational standards. To date, weak oversight has made it difficult to detect unbalanced contractual practices and non-compliance with operational standards at an

early stage. Therefore, the government, through port authorities, needs to strengthen the oversight system regarding both operational and contractual aspects in the provision of container loading and unloading services.

Institutional restructuring should also focus on optimizing dispute resolution mechanisms. Resolving disputes through the courts often takes a long time and involves high costs, making it less effective for resolving business disputes in the port sector. Therefore, alternative dispute resolution mechanisms that are faster and more responsive to the needs of the business community need to be developed. Optimizing maritime mediation and arbitration institutions can be one solution to improve the effectiveness of dispute resolution in the port sector. These mechanisms not only provide legal certainty more quickly but also help maintain business relationships among the parties involved in container loading and unloading activities.

Based on the above discussion, the legal protection for container terminal operators must be comprehensively restructured through regulatory updates, improvements in contract drafting, and institutional strengthening. This restructuring constitutes the implementation of the theories of legal certainty and legal liability, which prioritize the balance of rights and obligations as the primary principle in legal relationships. The contribution of this research lies in the development of a legal protection model that not only focuses on the formulation of new norms but also integrates regulatory, contractual, and institutional aspects into a unified system. Thus, the proposed reconstruction model is expected to create legal certainty, enhance protection for container terminal operators, and support the realization of fairer, more effective, and sustainable port governance in Indonesia.

**Table 1. Legal Reconstruction Model for the Protection of Container Terminal Operators in Container Loading and Unloading Services in Indonesia**

Aspect	Existing Conditions	Issues	Proposed Reconstruction	Objective
Regulations	Regulations are scattered across the Shipping Law, the Government Regulation on Ports, and various implementing regulations	Overlapping norms and unclear regulations regarding responsibilities	Harmonization of port regulations through the synchronization of rules and the development of integrated standards	Achieving legal certainty and consistency in regulations
Legal Protection	There are currently no specific regulations regarding legal protection for container terminal operators	Terminal operators are in a vulnerable position when facing claims for damages	Establishment of specific regulations regarding the rights, obligations, and limits of liability of container terminal operators	Providing clearer and more effective legal protection
Liability	The limits of liability for the parties have not been specified in detail	Disputes frequently arise regarding which party is responsible for damage to containers	Clarification of the division of liability based on the level of possession and control over the containers	Creating fairness and certainty in determining liability
Operational Contracts	Contracts are drafted individually according to the interests of each party	Contractual imbalances and the dominance of the party with greater economic power	Standardization of container terminal operational contracts containing mandatory minimum clauses	Ensuring a balance of rights and obligations among the parties

Risk Allocation	The risk of damage to or loss of containers tends to be borne by the terminal operator	Imbalance in the distribution of risk and liability	Regulations on proportional risk sharing based on the principles of proportionality and risk control	Achieving contractual fairness
Dispute Resolution	Dispute resolution mechanisms are often not specified in detail in the contract	Disputes are protracted and incur high costs	Strengthening dispute resolution provisions through mediation, arbitration, and other alternative mechanisms	Improving the effectiveness of dispute resolution
Supervision	Oversight of contract implementation and loading/unloading activities remains limited	Potential for contract deviations and violations of operational standards	Strengthening the oversight functions of port authorities and relevant agencies	Ensuring compliance with regulations and contracts
Institutional	Dispute resolution remains litigation-oriented	The dispute resolution process is time-consuming and costly	Optimizing maritime mediation and arbitration institutions	Achieving swift, effective, and fair dispute resolution

## CONCLUSION

This study shows that legal protection for container terminal operators in container loading and unloading services in Indonesia has not yet fully provided adequate legal certainty. Although there are various regulations governing shipping, port operations, and loading and unloading activities, these regulations remain sector-specific and are scattered across various laws and regulations, leading to overlapping norms and differing interpretations in their application. Furthermore, there are no specific regulations that explicitly provide legal protection for container terminal operators, particularly regarding limits of liability, mechanisms for liability exemption, and protection against claims for damages arising from container loading and unloading activities.

Issues regarding liability for container damage persist due to the lack of clarity in the allocation of liability among the parties involved in the loading and unloading process, the high operational risks inherent in port activities, and the ineffectiveness of the existing claims mechanisms. This situation is exacerbated by contractual imbalances characterized by the excessive use of exculpatory clauses, an imbalance in the rights and obligations of the parties, and the weak bargaining position of container terminal operators during contract negotiations. As a result, terminal operators are often in a vulnerable position facing various legal claims even though the losses incurred are not entirely within their control.

Based on an analysis of the theories of legal certainty and legal liability, this study finds that a comprehensive reconstruction of legal protection for container terminal operators is necessary, carried out through three main dimensions: regulation, contracts, and institutional frameworks. Regulatory reconstruction is achieved through the harmonization of port regulations and the establishment of specific provisions regarding the liability of container terminal operators. Contractual reconstruction is carried out through the standardization of operational contracts, proportional risk allocation, and the strengthening of dispute resolution clauses. Meanwhile, institutional reconstruction is carried out through the strengthening of supervisory functions and the optimization of dispute resolution mechanisms in the port sector. This reconstruction model is expected to ensure legal certainty, fairness, and legal benefits for all parties involved in container loading and unloading services, as well as to support the creation of more effective, transparent, and sustainable port governance in Indonesia.

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