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## Introduction

### *Purpose*

1. This report has been prepared as part of the OECD Review of Regulatory Reform in Indonesia. It assesses Indonesia's regulatory settings for Ports, Rail and Shipping, and makes recommendations for improving the design and implementation of legal and institutional arrangements to improve economic performance in these sectors.<sup>1</sup> Recent legislative changes in Indonesia — specifically the Law on Shipping of 2008 and the Law on Railways of 2007 — have the potential to radically transform Indonesia's rail and maritime industries. With the conspicuous exception of the provisions in the Shipping Law that impose a strict cabotage regime for domestic shipping operations, the broad framework established by these laws reflects the lessons that have been learned throughout the world over the last few decades, introducing concepts such as the separation of regulatory and operational functions; seeking to foster increased competition; and encourage private sector participation.

2. However, in a number of instances the specific provisions of the Laws (or in some instances the supporting Regulations) are at odds with this broad strategic direction. In others, while the intent and direction of reform is clear, the expression of this direction remains vague or ambiguous, and will require more detailed articulation in order to provide an effective platform for improved governance and increased efficiency. The focus of this paper has been on identifying these limitations, and suggesting ways in which they might be overcome. This focus inevitably means that much of the paper takes the form of criticism of current arrangements and performance. It is therefore important, at the outset, to emphasise the fundamental soundness of the broad direction of reform, and to acknowledge the significant achievements that the Indonesian government and public service have made in framing and implementing it.

### *Structure*

3. The outline comprises three major sections, dealing with ports, shipping and rail respectively. The two larger sections — Section 1 dealing with the port sector and Section 3, which deals with the rail sector — attempt to provide a very brief overview of the current state of the sector before turning to address specific issues that arise from the current institutional and regulatory arrangements.

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<sup>1</sup> . The report was prepared by Steve Meyrick principal of Porthcawl Pty Ltd. The Ausaid-funded Indonesia Infrastructure Initiative (IndII) has undertaken a great deal of work in the areas that are the focus of this paper. The director and staff of the project have been exceedingly generous in providing written material that they have produced, and also in giving their time to discuss these issues. The paper draws very heavily on the research and insights that they have contributed. However, it should be made clear that IndII is not in any way responsible for the use that has been made of this material.

## 1. PORTS

### 1.1. The trade through Indonesia's ports

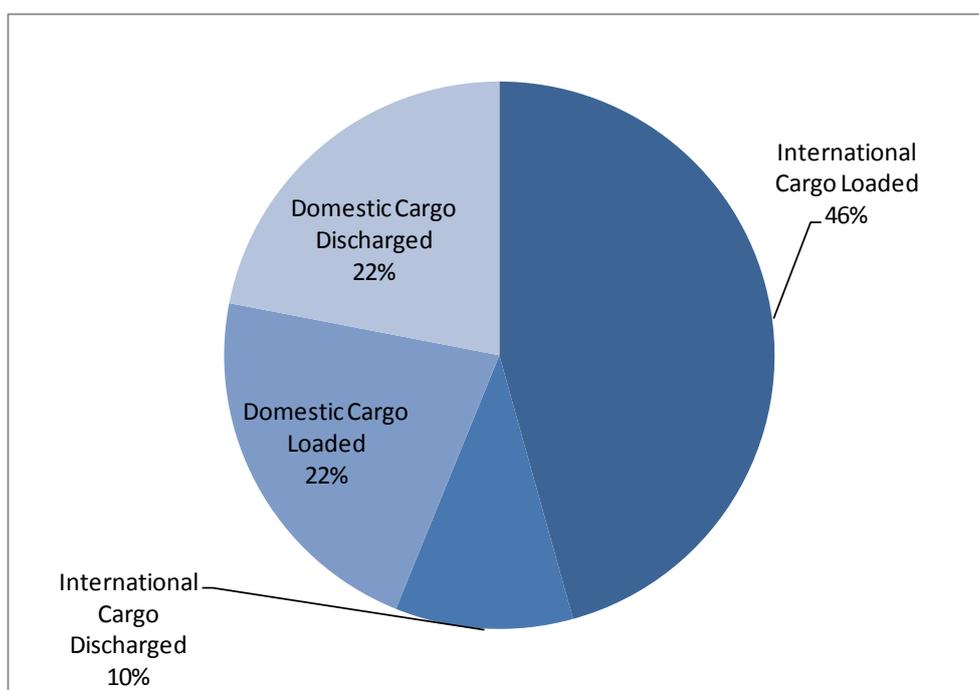
#### *Domestic and international cargoes*

4. As an archipelagic country, Indonesia is dependent on sea transport for much of its domestic transportation as well as for its international trading links. Moreover, the rugged terrain that characterises virtually all of the country has made the development of inland transport infrastructure expensive and difficult. As a consequence, the nation has approximately 1 700 seaports (Ray, 2009).

5. The total throughput of Indonesia's port system has been estimated at 968 million tonnes in 2009 (Nathan Associates, 2011d). Figure 1.1 shows that this total is split fairly evenly between domestic and international cargo movements, with 44% of the total being domestic cargo and 56% international.

6. As international shipping services are concentrated in a relatively small number of ports, it is likely that a significant part of the cargo recorded as 'domestic' is in fact part of an international cargo movement. For example, exports originating in a minor port may be carried on a domestic shipping service to an international gateway, at which they are discharged and then reloaded onto an international vessels — possibly after repacking at the transfer port. Unfortunately, reliable statistics on the proportion of the domestic trade represented by such cargoes do not appear to be readily available. This is unfortunate, as sound information on the structure and magnitude of such movements is fundamental to the evaluation of hub port policies of the type considered in the National Ports Master Plan (see below).

**Figure 1.1. Cargo loaded and discharged at Indonesian ports, 2009**



Source: Based on data from Nathan Associates, 2011c.

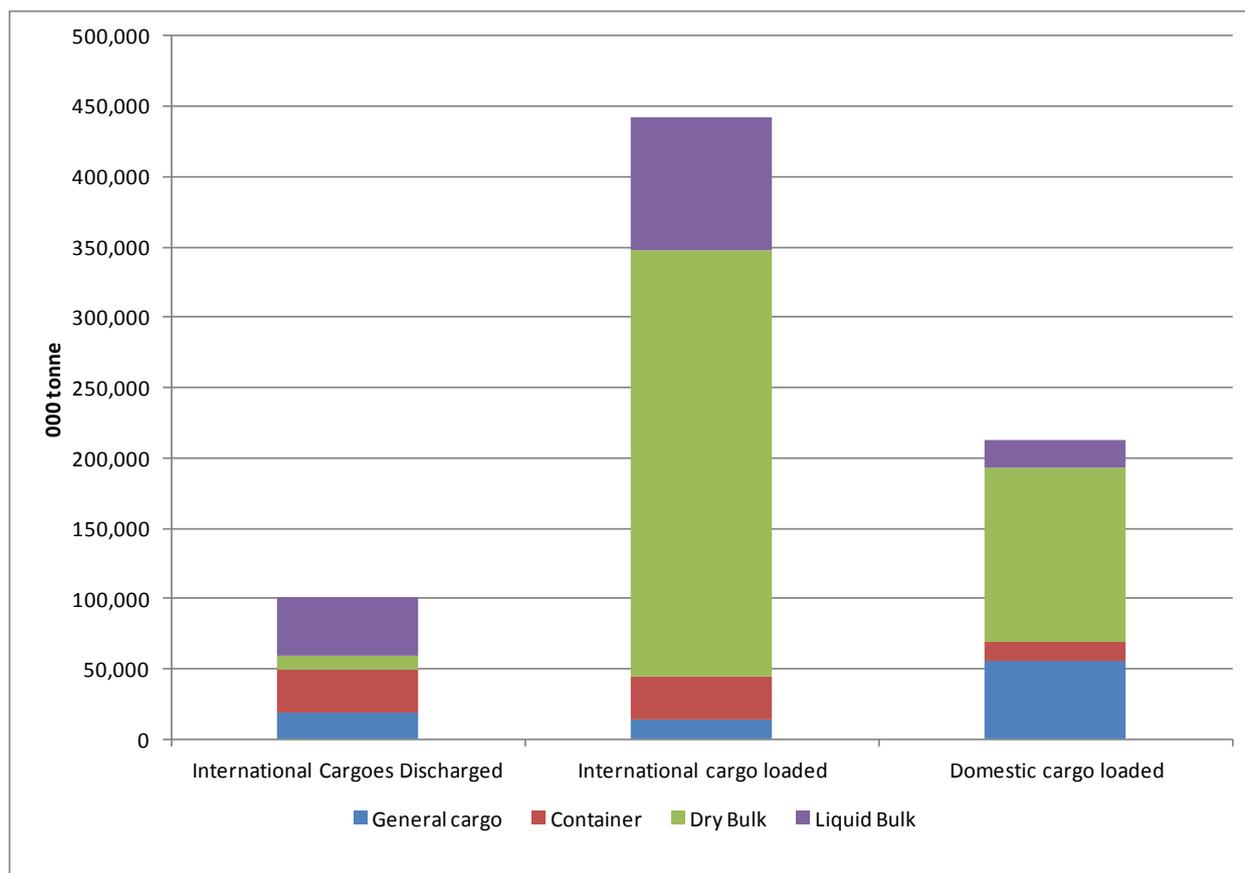
### Commodity composition

7. Figure 1.2 shows that commodity composition of the various cargo components is quite different.

8. Liquid bulk cargoes — of which petroleum products account for approximately 75% — comprise the largest commodity group for international imports. Containerised cargoes rank second, while dry bulk cargoes comprise less than 10% of the total. By contrast, over two-thirds of total international exports are dry bulk — mainly coal, which accounts for 63% of all international maritime exports.

9. Coal is also the largest single commodity in the domestic trade, accounting for nearly one-third of the total. However, minor dry bulks play a much larger role in the domestic trade than they do in the international trade, accounting for 14% of all domestic cargo moved by sea. But the most conspicuous difference between the domestic and international trades is the much greater prominence of non-containerised general cargo in the former: 65% of the general cargo travelling internationally is containerised, compared with 20% of the general cargo travelling on domestic routes. This is likely to be, in part, a reflection of the absence of specialised container-handling equipment at many domestic ports.

Figure 1.2. Commodity composition of Indonesia port traffic



Source: Based on data from Nathan Associates 2011c.

### Individual port throughputs

10. The scale and character of Indonesia's ports varies widely. They range from major international ports handling tens of millions of tonnes annually to small ports serving local communities that handle a few thousand tonnes. Table 1.1 shows that over three-quarters of the total volume handled in Indonesia's ports moves through the thirty largest ports. This applies to both international (79.5%) and domestic cargoes (75.1%).

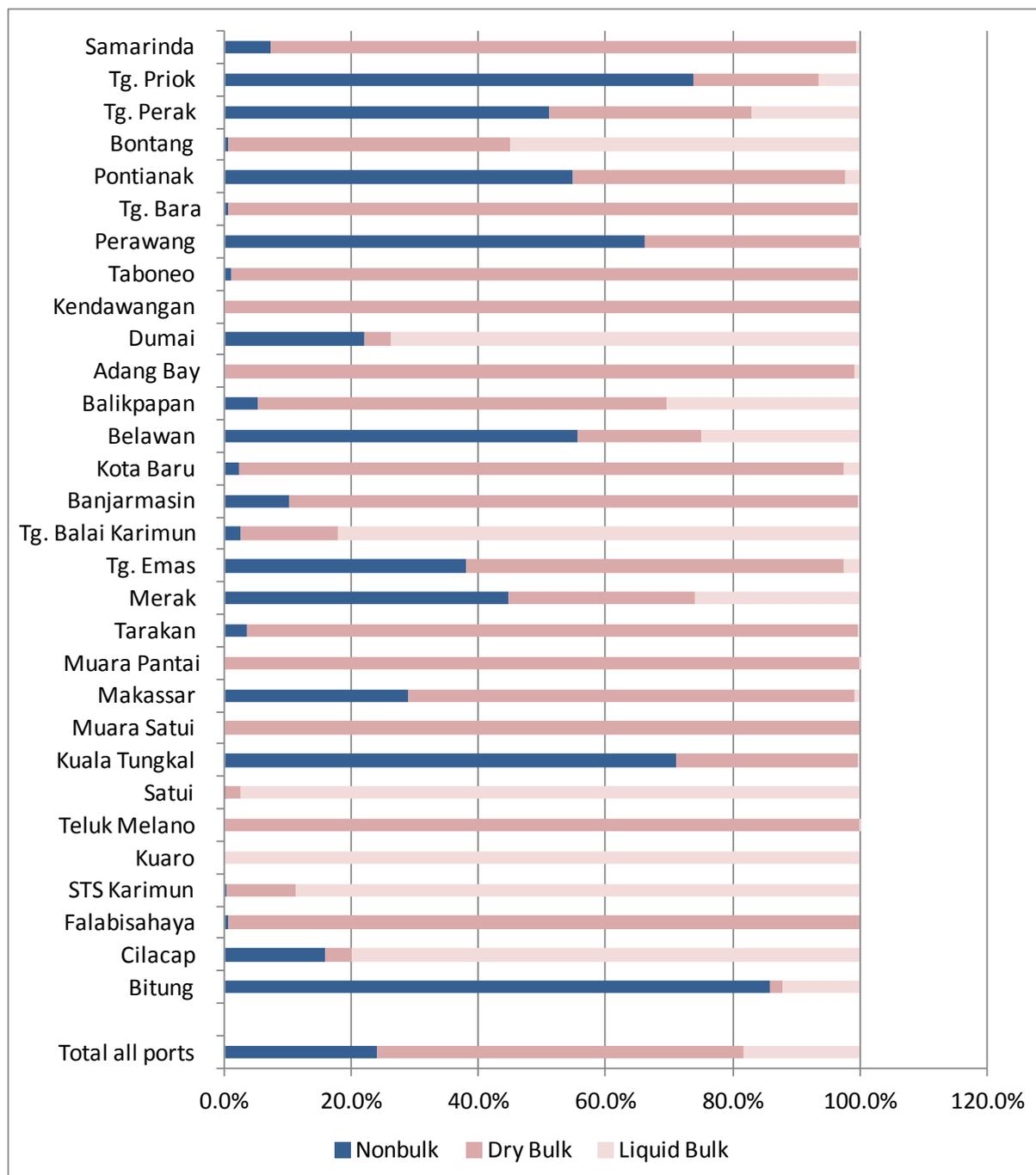
**Table 1.1. Port Volumes (000 tonnes, 2009)**

Port	International			Domestic			Total
	Imports	Exports	Sub-total	Unloading	Loading	Sub-total	
Samarinda	260	52 875	53 135	6 193	12 911	19 104	72 239
Tg. Priok	23 060	20 930	43 990	10 840	12 272	23 112	67 101
Tg. Perak	13 410	7 243	20 653	18 856	19 269	38 125	58 778
Bontang	678	46 764	47 442	300	566	866	48 308
Pontianak	52	250	302	13 175	33 371	46 546	46 847
Tg. Bara	221	41 179	41 400				41 400
Perawang	113	534	647	29 443	8 142	37 586	38 233
Taboneo	103	36 043	36 146	213	224	437	36 582
Kendawangan	-	340	340	15 632	15 632	31 263	31 603
Dumai	857	18 604	19 461	6 415	868	7 283	26 744
Adang Bay	72	25 278	25 350				25 530
Balikpapan	3 155	18 859	22 013	2 613	228	2 841	24 854
Belawan	5 602	7 576	13 178	5 183	2 120	7 303	20 480
Kota Baru	441	18 434	18 876	165	1 404	1 569	20 445
Banjarmasin	143	11 658	11 800	6 632	1 011	7 642	19 443
Tg. Balai Karimun	5 988	11 337	17 326	-	3	3	17 329
Tg. Emas	3 572	2 709	6 282	3 594	7 120	10 714	16 995
Merak	3 630	1 427	5 058	1 997	7 892	9 889	14 947
Tarakan	-	6 468	6 468	3 900	4 072	7 972	14 440
Muara Pantai	0	14 394	14 394				14 394
Makassar	964	381	1 345	7 197	4 138	11 335	12 680
Muara Satui	58	7 876	7 934	1 612	1 621	3 232	11 167
Kuala Tungkal	47	272	319	188	9 358	9 546	9 865
Satui	-	246	246	38	8 947	8 985	9 231
Teluk Melano	-	-	-	8 947	-	8 947	8 947
Kuaro	-	-	-	8 934	-	8 934	8 934
STS Karimun	4 420	4 423	8 843	-	-	-	8 843
Falabisahaya	-	-	-	8 350	29	8 379	8 379
Cilacap	6 344	1 787	8 131	26	38	64	8 195
Bitung	22	865	887	3 537	3 741	7 277	8 164
Top 30 ports	73 212	358 752	432 146	163 980	154 977	318 954	751 097
All other ports	27 746	83 705	111 269	48 480	57 508	105 992	217 264
Total all ports	100 958	442 457	543 415	212 460	212 485	424 946	968 361

Source: Based on data from Nathan Associates, 2011c.

11. The significant ports also vary greatly in complexity from single terminal, single commodity ports — Indonesia has 39 specialised coal ports (Indonesia Associates, 2009) — to large multi-purpose ports incorporating a wide variety of facilities (such as Tanjung Priok or Tanjung Perak). Figure 1.3 shows the commodity composition at each of the thirty largest ports. At most of the large volumes, the cargo base is dominated by bulk commodities — either dry bulk (Adang Bay, Samarinda) or liquid bulk (Satui, Kuaro). In almost all of these cases, a single commodity — usually coal, petroleum, or crude palm oil — comprises the vast majority of the port's throughput.

Figure 1.3. Cargo composition of major ports



Source: Based on data from Nathan Associates, 2011c.

12. However, for a small number of ports — often ports associated with a major city such as Tanjung Priok (Jakarta) and Tanjung Perak (Surabaya) — the majority of the port's business is non-bulk cargo — either containers or non-containerised general cargo.

13. The international container business in particular is concentrated in a handful of ports. Approximately 94% of the national total is handled through just five ports: Tanjung Priok; Tanjung Perak; Belawan; Tanjung Emas and Panjang. The same five ports also account for nearly 85% of container movements in the domestic trade (see Table 1.2).

**Table 1.2. Container volumes through Indonesian ports (000 TEU)**

	International			Domestic			Total
	Imports	Exports	Sub-total	Imports	Exports	Sub-total	
Tanjung Priok	1 605	1 485	3 090	328	505	833	3 923
Tanjung Perak	630	576	1206	256	282	538	1 744
Belawan	302	309	611	180	98	278	889
Tanjung Emas	291	253	544	17	15	32	576
Panjang	137	139	276	14	11	25	301
Makassar	2		2	144	104	248	250
Banjarmarsin			0	61	57	118	118
Pontianak			0	70	29	99	99
Samarinda	0		0	50	45	95	95
Pekanbaru	11	32	43	16	13	29	72
Merak	25	36	61	1	1	2	63
Perawang	1	53	54	4	5	9	63
Bitung			0	27	36	63	63
Palembang	16	16	32	14	15	29	61
Batu Ampar	18	29	47			0	47
Teluk Bayur			0	20	22	42	42
Balikpapan	1	2	3	19	16	35	38
Batam	1	3	4	15	11	26	30
Jayapura			0	12	15	28	28
Buatan	2	26	28			0	28
Kabil	12	15	27	0		0	27
Kuala Tungkai		22	22			0	22
Sorong			0	13	9	22	22
Tarakan			0	9	8	17	17
Ambon			0	7	8	15	15
Batu Licin			0	7	7	14	14
Bau-Bau			0	7	4	11	11
Biak			0	7	3	10	10
Merauke			0	6	4	10	10
P Burung		10	10			0	10
Total Top 30	3 054	3 006	6 060	1 304	1 323	2 627	8 687
Total	3 066	3 034	6 100	1 361	1 361	2 722	8 822

Source: Based on data from Nathan Associates, 2011c.

## 1.2. Port capacity and performance

### *Performance*

14. An assessment of the operational performance of Indonesia's ports is once again hampered by the lack of comprehensive, readily available data.

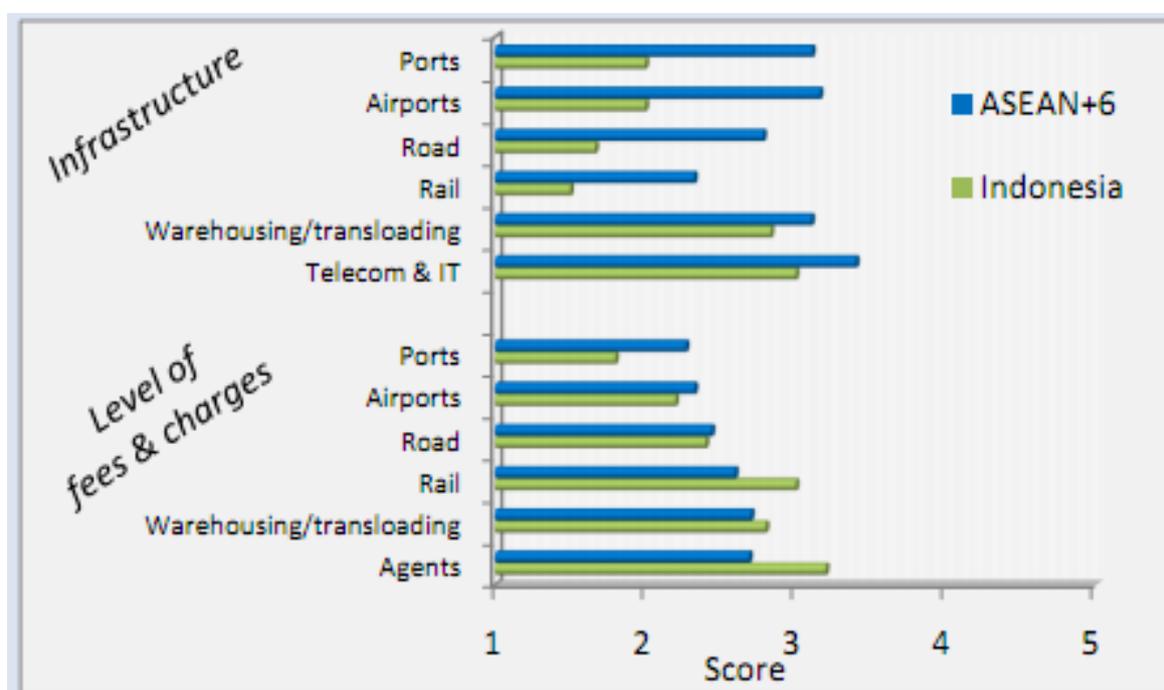
15. There appears to be fairly general agreement that both the operational performance of and the level of investment in Indonesia's port sector leaves something to be desired. On the World Bank's Logistics Performance Index, Indonesia's overall performance is in line with the average for countries at its level of development, but one of the areas which is identified as clearly deficient is the quality of trade and transport related infrastructure:

... Indonesia compares favourably with its ASEAN+6 neighbours when it comes to usage charges for core trade-related infrastructure. Its performance is above average in relation to rail transport and agents' fees. The only major exception to this pattern is maritime ports, where private operators perceive the level of fees and charges to be relatively high. Given Indonesia's reliance on inter-island maritime connections, this contributes to high distribution costs within the archipelago.

When it comes to infrastructure quality, however, the picture is very different (see the top half of Figure 1.4). There is a significant performance gap in all areas except warehousing, and information and communication technologies (ICTs), where the difference between Indonesia's score and the ASEAN+6 average is substantially smaller. (World Bank, 2010)

16. The infrastructure quality deficiency identified by the World Bank is particularly marked in the case of port and rail infrastructure. It is worth noting that those sectors in which Indonesia's performance, relative to the comparator countries, is relatively strong are generally those in which competition and private sector activity are most intense..

**Figure 1.4. Transport Infrastructure ratings in the World Bank LPI**



Note: Higher scores indicate better performance for both infrastructure quality and the level of fees and charges. For example, the low score of Indonesia on port fees and charges indicates that these costs are higher in Indonesia than in the comparator countries.

Source: World Bank, 2010.

17. Dick (2008) referring to the state of Indonesia's international supply chain infrastructure, notes that “but the country’s logistics systems are becoming less rather than more efficient. This is partly because of a 10-year hiatus in infrastructure investment that is only now being addressed”. USAID comments that 'Indonesia’s ports, regarded as relatively inefficient and poorly equipped/managed, are an important factor driving up shipping costs (USAID, 2008).

18. Dick's assessment is consistent with that of Ray (2008). Ray examined limited performance data for 19 of the Indonesia’s 25 “strategic” ports,<sup>2</sup> concluding that “the delivery of port services to users has been poor, and there has been little improvement since the late 1990s”. This is reflected in a number of key performance indicators such as berth occupancy rate (BOR), vessel turnaround time (TRT) and working time. The average turn-around time (a measure aggregating all time required at port including waiting time, approach time, idle time, working time etc) for domestic vessels at these nineteen ports was 82 hours in port, which Ray notes was up from an average of 79 hours in 1999.

19. However, without data on the average volume of cargo worked on each visit, it is unclear whether this change represents a decline in productivity. Ray also reports that, for the complete list of 25 “strategic ports” (including Pelindo II ports) turn-around time in 2006 for domestic shipping was 74 hours (3.1 days) falling to 65 hours (2.7 days) in 2007. Perhaps a more telling statistics is that working time, as a percentage of turnaround time, averaged around about 44.5% in 2005-06. This is virtually unchanged since 2009.

20. Based on 2002 data, Ray also assesses the cargo handling performance at Indonesia's principal international container port, Tanjung Priok, as falling short of relevant international standards. However, more recent analysis undertaken by Nathan Associates suggests that this may no longer be the case. Based on an assessment of quay crane handling rates, the average number of cranes assigned to each vessel, and the vessel operating rate, Nathan Associates concludes that, on all three measures, performance at Tanjung Priok “is in line with worldwide terminals handling similar ships' (Nathan Associates, 2011c). Although data for TPS, the main terminal at Indonesia's second largest international container port, Tanjung Perak, is more limited, performance at this terminal was also assessed as 'reasonable when compared with international standards”.

**Table 1.3. Cargo Handling Performance at main container terminals, Tanjung Priok**

	JICT	Koja
Quay Crane Rate (moves/hour)	27	25
Cranes per vessel	2.2	2.0
Vessel working rate (moves/hour)	60	50
Berth handling rate (moves/hour)	48	n.a.

Source: Nathan Associates, 2011c.

21. In both cases, the assessments made by Nathan Associates on the basis of available statistical evidence were supported by the comments of shipping lines using the terminals.

22. Recent comments by the Indonesian National Shipowners’ Association also suggest a more nuanced view of Indonesian ports' cargo handling performance. In an article bearing the title 'Indonesia port facilities leave lot to be desired', the chair of INSA, Carmelita Hartoto, is reported as asserting that ineffective and inefficient sea transport connectivity has meant high logistics costs in Indonesia, resulting in Indonesia’s low sixth ranking among ASEAN countries in the logistics performance index. Hartoto confirms that, in many ports, shipowners are not happy with productivity and turnaround rates — but qualifies this with the observation that, in some ports the standards were acceptable (Embassy Freight, 2011).

2. Data was not available for the ports managed by Pelindo II.

23. The general picture that emerges from a consideration of these sources is of a port sector in which handling performance is in general relatively poor, but within which certain facilities—in particular the main international container terminals at Jakarta and Surabaya, all of which are now operated in partnership with leading global terminal operators—have been able to achieve international performance standards.

### *Port investment requirements*

24. There appears to be general agreement that the capacity at many of Indonesia's main ports is already taxed, and anticipated high growth rates will result in serious congestion unless urgent action is taken.

25. Technical work undertaken for the National Ports Master Plan estimated that the ports of Belawan, Tanjung Emas, Tanjung Perak, Tanjung Priok are each operating at around 90 percent of effective capacity, while the ports of Pekanbaru and Samarinda, are each operating at around 80 percent of effective capacity. The number of containers handled in Indonesia's ports is expected to almost double by 2015, increasing to 17.2 million from 8.8 million TEU in 2009; and to increase still further to nearly 26 million TEU by 2020. By 2015, additional container capacity will be required at Tanjung Priok, Tanjung, Belawan, Tanjung Emas, Banjarmasin and Pekanbaru (Nathan Associates, 2011c).

26. The estimated total direct investment in port facilities for these elements of port traffic is US\$ 19.2 billion, with 60 percent needed for container traffic, 18 percent for petroleum and petroleum products, 13 percent for coal, and 9 percent for crude palm oil (CPO).

## **1.3. Structure of the port sector**

### *Shipping Law 21/1992 and the Indonesian port corporations*

27. Prior to 2008, the framework for port administration in Indonesia was established by Shipping Law 21/1992. Under this law, four port corporations were established to administer the main commercial ports. Each port corporation (Pelubahan Indonesia, usually abbreviated to Pelindo) was given control of all commercial ports within a designated geographical region. In principle, the corporations were established as limited-liability, profit-making companies. However, the central government retained control of port tariffs, which were set at a national level, ensuring cross-subsidisation both between ports controlled by each IPC and between the IPCs themselves.

28. The main ports administered by each of the four Pelindos are shown in Table 1.4 below.

**Table 1.4. Indonesia: port corporations**

<b>Port corporation</b>	<b>Coverage (Provinces)</b>	<b>Ports administered</b>
Pelindo I	Aceh, North Sumatera, Riau	Belawan, Pekanbaru, Dumai, Tanjung Pinang, Lhokseumawe
Pelindo II	West Sumatera, Jambi, South Sumatera, Bengkulu, Lampung, Jakarta	Tanjung Priok, Panjang, Palembang, Teluk Bayur, Pontianak, Cirebon, Jambi, Bengkulu, Banten, Pangkal Balam, Tanjung Pandan.
Pelindo III	Central Kalimantan, South Kalimantan, West Nusa Tenggara, East Nusa Tenggara	Tanjung Perak, Tanjung Emas, Banjarmasin, Bena, Tenau/Kupang
Pelindo IV	Sulawesi (S, SE, Central and North), Maluku, Irian Jaya.	Makassar, Balikpapan, Samarinda, Bitung, Ambon, Sorong, Biak, Jayapura

Source: Ray, 2009.

29. Under this regime the Port Corporations were both the operators of port facilities and the port landlord. The role of the port corporations was defined as responsibility for:

- Port waters and basins for vessel traffic movement, anchoring, berthing;
- Pilotage and towage services;
- Port facilities for stevedoring, animal handling; warehouses and stacking yards; conventional, container and bulk terminals; passenger terminal;
- Electricity, fresh water supply, garbage disposal and telephone services for vessels;
- Land space for office buildings & industrial estates; and
- Port training and medical centres.

30. Although Indonesia has a long history of private investment in ports designed for the use of a single firm, private investment in public ports is a comparatively recent phenomenon: it was not until 1995 that such investment began to be encouraged by the Indonesian government. Moreover, private sector participation in major public port facilities has taken the form of joint ventures with the controlling IPC, limiting the scope for genuine competition between facilities:

- The largest container terminal at Tanjung Priok, Jakarta International Container Terminal is operated by a joint venture between Pelindo II and Hutchison Port Holdings (HPH), with HPH holding a 51% interest in the operating company (Drewry, 2010)
- The second largest container terminal in Tanjung Priok, the KOJA Terminal, is operated by a joint venture between the same two partners, although in this instance the controlling interest (52%) is held by Pelindo II (Drewry, 2010)
- The smaller terminals Terminal 003 and 009 at Jakarta are both operated by Singapore-based Portek under operating agreements with Pelindo II (Drewry, 2010)
- PT. Terminal Petikemas Surabaya in Tanjung Perak is operated as a joint venture between Dubiai Ports World (DPW) and Pelindo III, with Pelindo III holding a controlling interest of 51% (Drewry, 2010).
- International Container Terminal Services Incorporated (ICTSI) operates Makassar International Container Terminal in Makassar under a 10-year co-operation agreement with Pelindo IV (Drewry, 2010).

### ***Restructuring of the port sector: the Shipping Law 2008***

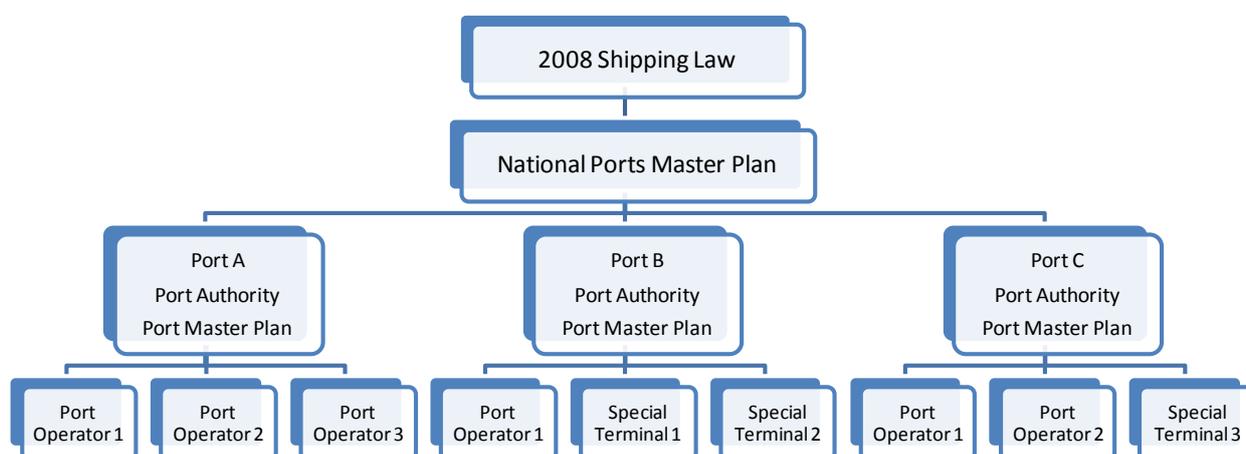
31. The Shipping Law of 2008 introduced significant changes to the structure of port administration in Indonesia. The law separates the functions of port operator and regulator. It provides for new port authorities to be formed, which will take over a number of the functions previously performed by the IPCs. The Shipping Law 2008 removes the IPC's legislated monopoly on commercial ports and in so doing opens the sector up to participation by other operators, including those from the private sector. Under the new law, the role of the IPC, at least in principle, is limited to that of a port facilities operator and/or port services provider, operating in competition with other service providers.

32. As is frequently the case in Indonesian legislation, the Shipping Law itself is cast in general terms, leaving the operational detail of the concepts and strategies that it outlines to be fleshed out in subsidiary legislation. In this case, important regulations supporting the Shipping Law include:

- Government Regulation on Port Affairs 61 of 2009 (GR61), which provides further guidance on the revised port administration arrangements and the nature of the relationships between the various actors;
- Ministerial Regulations No. 63 and 64 of 2010, which respectively establish Port Authorities (PAs) and Port Management Units (PMUs).

33. Ray interprets the proposed architecture for the principal commercial ports of Indonesia is shown in Figure 1.5.

**Figure 1.5. Revised governance arrangements for the strategic ports of Indonesia**



Source: Ray, 2008.

34. Potentially, the 2008 Shipping Law and its subsidiary regulations provides a basis for a fundamental transformation of the national system of port governance that could lead to substantial efficiency improvements in the medium to long term. The law restructures the port sector along the lines of the "landlord" model that is standard in Northern Europe and Australia and has been promoted by many advocates of port reform, including the World Bank (World Bank, 2006).

35. However, realisation of the potential benefits of the Shipping Law reforms will depend on the interpretation that is made of certain provisions of the Law, and on the details of its implementation. Some of the more important issues that will need to be resolved are discussed in the sections below.

## 1.4. Key issues in implementing the Shipping Law

### *Port planning*

36. One important initiative promoted by Shipping Law 17 of 2008 is integrated port planning. At the highest level, the Law calls for the development of a National Port Master Plan (NPMP) with a 20 year planning horizon. The responsibility for the development of the NPMP was subsequently assigned to the Directorate General of Sea Transportation; the Plan and a Draft Decree for the implementation of the plan been prepared, and a stakeholder consultation process is currently under way.

37. A framework for planning the national port system is hinted at by Article 70 of the Shipping Law, which categorises Indonesia's ports into two main types: marine ports; and river and lake ports. Marine ports are further divided into a functional hierarchy comprising three levels:

1. main ports, which handle "large" volumes of cargo and serve both the domestic and foreign trades;
2. collector ports, which handle "medium" levels of trade but serve domestic trades only;
3. feeder ports which handle "limited" levels of trade and also serve only domestic trades.

38. However, the implications of this functional hierarchy— other than the specification that only main ports will be involved in international trade—for port administration and planning are not entirely clear. No precise meaning is given to the terms “limited”, “medium” and “large” volumes of cargo. The picture is further confused by the addition of a further stratification in article 81 of the Shipping Law, which divides ports into “commercial” and “non-commercial” ports. Once again, these terms are not clearly defined, but in this case they are linked to clear implications for port administration: port authorities are to be established for "commercial" ports; and port management units are to be established for "non-commercial" ports.

39. Additionally, there is no clear and definitive link between either the functional classification (main collector or feeder port) or the commercial/non-commercial split and the level of government that is to be responsible for port administration. An indirect linkage can be made between commercial ports and the National government, as the law requires that commercial ports be administered by port authorities and only the National government can establish port authorities. But, according to Nathan Associates (2011d, p. 5), port management units can be formed at the National, regional or local government level.

40. The need for clarity on which level of government is responsible for these matters is particularly important because decentralisation has been a major plank of the profound political reform program that Indonesia has implemented over the last two decades. While responsibility for Indonesia's major ports remains with the central government (and will be executed through the port authority structure discussed above), the Shipping Law clearly envisages a continuing role for regional local governments in the development of the port system, particularly collector and feeder ports. At present, while it is a legal requirement that port construction must occur based on the NPMP and individual plans, there is no requirement for regional and local governments to consult the central government in granting licenses for port construction and port development.

41. Without greater certainty on which level of government is responsible for which ports, and greater clarity of how conformity of new port facility development in ports controlled by lower levels of government with the NPMP will be maintained, "there is a potential for haphazard expansion of the port system. It is possible, for example, that regional or local governments may permit port developments which are driven by local political and other considerations that conflict with national needs" (Nathan Associates, 2011c).

42. That this is more than a purely theoretical possibility is shown by the fact that there have been tensions between the central government and regional/local governments on these matters. The REPSF study reports one such instance:

A case in point is a massive development, Jakarta New Port, at East Ankol close to Tg Priok, mooted by the DKI – the Government of the Special Province of Jakarta. Apparently driven by a request from Japanese motor manufacturers, the US\$500M port is in the planning stages. The basis for the development is the need to accommodate the movement of 60 000 FWD vehicles per annum as part of the ASEAN automotive trade. According to DKI, IPC II has failed to respond.

The issue appears to be that it cannot be built legally as it breaks government Regulation No. 69/2001 which places the location under Pelindo II control. However, the DKI are apparently of the view that it is legal under new decentralisation legislation. The government has so far refused its permission but it may come under legal pressure. (PDP/Meyrick and Associates, 2004b).

43. The Law requires that each port authority prepare a master plan for ports under its control with a similar time horizon. These plans must be consistent with the NPMP. Clear assignment of responsibility for implementation of this requirement of the Law will also be important in ensuring consistency and integration in future port development. Our understanding, based on discussions with Indonesian government officials, is that appropriate arrangements have been put in place. Responsibility for ensuring that port Master Plans are developed and that they are consistent with the NPMP has been assigned to DGST. The performance of DGST in discharging this responsibility will be monitored by Presidential Working Unit for Supervision and Management of Development (UKP4).

### *Recommendation*

*1.1. Clear policies and procedures be developed to clarify the responsibilities of various levels of government for future development of the port sector, and to ensure the appropriate integration of sub-national plans with the National Port Master Plan.*

### ***Structure and number of port authorities***

44. The effectiveness of the port governance model established by the new Shipping Law will be critically dependent on the institutional capacity of the newly established port authorities.

45. Under current arrangements, port authorities and port management units are established as operating units within the Ministry of Transport. This is not ideal. The preferred model in most jurisdiction is for port authorities to operate outside of the normal civil service structure, with their own corporate existence and Board of Directors and a substantial degree of financial autonomy. This last element is particularly important in ensuring that finance is available for critical port functions – for example, maintenance dredging – independently of the normal budgetary processes of government. Nathan Associates (2011 B) has suggested that it may be possible for Indonesia's port authorities to be transformed into public service organisations (BLUS) – that is, stand-alone organisations within the public service with

features that provide a measure of independence and financial self-sufficiency. This will be an important step towards achieving the autonomy that is normally considered to be an important element in ensuring the effectiveness of landlord port operations.

46. It is also important to ensure that port authorities have the resources and expertise required to discharge their responsibilities effectively. The duties and responsibilities of port authorities are complex and onerous and in many cases require access to specialised knowledge and skills that are likely to be in short supply. It has been reported that DG ST intends to establish a total of 96 port authorities and 186 port management units (Nathan Associates, 2011b). This appears to be based on the establishment of a separate port authority for each significant port. This does not appear to be required by the shipping law; will make it difficult to ensure that each port authority has the skills required to exercise its functions effectively; and is likely to fail to take advantage of potential economies of scale in port authority staffing. It may well be worthwhile to consider whether grouping ports regionally or according to some other criterion can significantly reduce the number of port authorities required. This may also facilitate the integrated planning of port facilities.

As at February 2012, it was reported that four port authorities had already been established: PA 1 [Belawan]; PA 2 (Tanjung Priok); PA 3 (Tanjung Perak) and PA IV (Makassar). From discussion with government officials, we understand that, for budgetary reasons, no additional port authorities will be created in the immediate future, and that port administrators from at least some other ports will be brought into one or other of the four port authorities that have been established. Cross-referencing to Table 1.4, it is clear that one of these port authorities falls within each of the geographical areas into which the port system of Indonesia has historically been divided, and within each of which a separate Pelindo has previously had responsibility for selected ports.

47. One approach to limiting the number of port authorities required would be simply to permanently limit the number of port authorities to the four that have already been established, and to extend the scope of each of these four port authorities to cover all commercial ports within a defined geographical area centred on the ports for which they were originally established.

48. One drawback of this approach would be that a geographically sensible allocation of responsibility between the port authorities may result in something approximating a one-to-one correspondence between the new port authorities and the pre-existing IPCs (Pelindos). This would heighten the risk of regulatory capture. The most appropriate solution to this is to break down the geographically based monopoly that the IPCs currently hold, through the pro-competitive measures outlined in the section below on Encouraging Private Sector Participation and Competition. If these measures are not sufficient to create effective competition within the geographical area controlled by a particular port authority, then breaking up the IPC historically operating within that area should be considered.

49. If restricting the number of new port authorities to four is considered too radical a reduction in the (proposed) number of port authorities, the port development regions defined in the Draft National Port Master Plan may provide an alternative basis for rationalisation. The seventeen development regions and the major ports contained within each are listed in Table 1.5.

**Table 1.5. Port Development Regions identified in the Draft National Port Master Plan**

Port Development Region	Major ports within the development region
I	Belawan, Kuala Tanjung, Sibolga, Lhokseumawe
II	Dumai, Pekanbaru, Kuala Enok, Pembuangan, Jambui, Batam, Bitan
III	Teluk Baur, Teluk Tapang, Bengkulu
IV	Palembang, Panjang, Teluk Semangka, Bangka/Belitung
V	Tanjung Priok, Marunda, Karawang, Banten (Ciwandan), Bojanegara, Sunda Kelapa, Cirebon/Balongan, Pelabuhan Ratu
VI	Tanjung Emas, Cilacap, Jepara (Tanjung Jati)
VII	Tanjung Perak, Teluk Lamong, Socah, Bulupandan, Gresik
VIII	Benoa, Tanah Ampo, Kupang
IX	Pontianak (S, Pemaju), Telok Air
X	Balikpapan, Samarinda, Sangkulirang
XI	Banjarmasin
XII	Makassar, Pare-pare, Luwuk
XIII	Bitung
XIV	Ambon, Halmahera (Ujung Palau)
XV	Sorong (inc proposed extension)
XVI	Jayapura
XVII	Merauke.

Source: INDII, 2011a.

50. There may be scope for further consolidation, with several of these regions of these regions controlled by a single port authority (for example, it may be possible to combine the three Papuan port development regions — XV-XVII).

#### *Recommendation*

1.2. *Before any further Port Authorities or Port Management Units are created, options for reducing the number of bodies required be thoroughly explored.*

#### **Relationship between Port Authorities and IPCs**

51. The Shipping Law envisages a continued role for the Indonesian Port Corporations: the Law provides that state-owned business enterprises (a definition that includes the IPCs) will continue to undertake “exploitation” activities at the ports in which they currently operate (Nathan Associates, 2011a, p. 6).

52. A narrow interpretation of this provision would be that it simply clarifies that IPCs can continue to exist and to provide port services in the future. This interpretation is compatible with the landlord model and the separation of roles that appears to inform the Shipping Law: IPCs would, as envisaged in Figure 1.4, continue to exist as one of a number of possible providers of port services in ports.

53. However, Nathan Associates reports that 'based on discussions with Pelindo II, their view is that they will have total control over all lands, facilities and services in their current boundaries'. On this interpretation, it is difficult to see how the newly established port authorities could effectively discharge their obligations under the Law, which charges the Port Authority with responsibility for:

- master planning of the port(s) under their control;
- regulating the use of port lands;

- setting operational performance standards;
- acting as the government's representative in engaging in concessions and other forms of agreements with Port Business Entities (Nathan Associates, 2011a).

54. This will require that many of the powers and functions previously exercised by IPCs are unambiguously transferred to the new Port Authorities, and that IPCs are restructured to focus their activities exclusively on the provision of port services within a framework of concessions and licences managed by the Port Authority. Neither the Law nor supporting regulation GR61 appear to define a clear pathway by means of which this will be achieved.

#### *Recommendation*

*1.3. The respective roles of Port Authorities and IPCs be clarified by means of a Ministerial Direction, which should incorporate a redefinition of the charter of the IPCS and a clear time-bound transition plan for the transfer of those functions that have historically been performed by IPCs but will in future be undertaken by Port Authorities and Port Management Units.*

#### ***Encouraging private sector participation and competition***

55. One of the stated objects of the Shipping Law is to ensure efficiency and enhance global competitiveness, and GR61 specifically signals the eradication of port monopolies as one of the strategies by means of which this is to be achieved. But in practice both the current structure of the port industry and regulations governing the provision of port services by private parties present obstacles to private sector participation and the encouragement of competition.

56. The transfer of functions to port authorities and the assignment of assets discussed in the previous sections will go some way to reducing the structural impediments to increased competition. But the “exploitation” provision virtually guarantees that potential new entrants will face an entrenched, dominant incumbent that controls a wide range of port services. To counteract this and encourage new entry, port authorities may need to adopt policies and practices specifically to reduce the dominance of the existing IPCs over time. These may include:

- for those services for which simultaneous provision by competing operators is unlikely, setting a definite term to the current licence, after which the selection of the future licensee will be made through an open and competitive process;
- excluding the incumbent from bidding for the right to operate a proposed new development unless there are demonstrable synergies that would arise from the incumbent also operating the new facility.

57. The development of competition could also be accelerated by removing limitations on operators of Special Terminals (terminals located outside the defined port areas that serve proprietary cargoes) and Own Interest Terminals (proprietary terminals within port areas). In both case, there are restrictions on the use of the terminal for third party cargoes that are clearly designed to protect the business of the established common user terminal.

58. Finally, with the redefined role of the IPCs as port service companies, there is no obvious reason that their operations should be confined to a particular geographical region. Encouraging IPCs, and joint ventures between an IPC and a private sector operator, to offer services in ports in which the IPC concerned has not historically operated, may also be an avenue for intensifying competitive pressure in the

provision of port services. Discussions with Indonesian government officials suggest that some tentative movements have already been made in this direction, with Pelindo II undertaking a pre-feasibility study on the development of port facilities in Sorong, which lies within the geographical region historically served by Pelindo IV.

59. Even with these measures in place, however, it is doubtful that competition in the provision of port services will, in the short to medium term, be sufficiently strong to ensure efficient performance and competitive pricing by incumbent service providers. It may therefore be useful, at least in the short to medium term, for the Ministry of State-owned Enterprises, to define clear performance standards for key port services delivered by enterprises under its control, and to monitor the prices charged for the performance of these services.

### *Recommendations*

*1.4. An active strategy of encouraging the development of a competitive environment in Indonesia's ports be adopted, including allowing private terminals to handle third party cargoes, competitive allocation of port services licences, restricting bidding for new opportunities from dominant operators and encouraging competition between IPCs.*

*1.5. Until competition in port services is clearly effective, the Ministry of State-owned enterprises set clear performance standards for key port services delivered by enterprises under its control, and monitor the prices charges for the provision of these services.*

### *Assignment of assets*

60. An important foundation stone for the establishment of effective relationship between the Indonesian Port Corporations and the port authorities is the appropriate allocation of assets between the two parties.

61. It has been reported that discussions have been held between those port authorities that have been established, the relevant IPCs, and the Finance and Development Supervisory Board (Badan Pengawasan Keuangan dan Pembangunan / BPKP) to identify and value the assets that will be transferred from the IPCs to the Port Authorities (Hutagalung, 2011). We have not been able to ascertain whether the process of asset identification and evaluation has been finalised, or whether the transfers have actually been effected.

62. It is important that the criteria for determining which assets should be transferred are appropriate. Huagalung suggests that:

The calculation is made to understand which assets were developed by Pelindo and therefore will continue to be owned by Pelindo, and which assets were granted by the Government to Pelindo. Assets that were granted will be returned to the Port Authorities.

63. This historical analysis does not appear to be an appropriate basis for the assignment of assets between the parties. Rather, future ownership and control of the relevant assets should be determined by reference to the future role and functions of each party. Basic infrastructure assets should be transferred to the relevant port authority. Operating equipment should be retained by the IPC. The ownership of specific site improvements — such as terminal paving and fencing — will need to be determined on a case-by-case basis with reference to the nature and term of the concession agreement that applies to the particular terminal.

64. Of particular importance in this context is the ownership – or at least effective control – of the land assets of the port. There has been some discussion of the precise status of the landholdings of the port corporations. According to Nathan Associates (2011b), the land controlled by the port corporations is not in fact owned by them, but rather was entrusted to them to manage and use for port purposes. This appears to be supported by Hutagalung (2011), who refers to the right of port corporations to manage land under Hak Pengelolaan or “HPL” – a special land title for government entities or state owned enterprises —rather than to the ownership of land by port corporations. If this is indeed the case, it should simplify the process of transferring the land from the port corporation to the new Port Authority. But in any case effective control of port lands by the port authorities will be central to their ability to carry out the core functions assigned to them at the shipping law 2008.

65. It is therefore imperative that this control should be unambiguously transferred to them at the earliest possible date.

#### *Recommendation*

1.6. *Decisions on the allocation of assets between IPCs and port authorities be based solely on the relevance of those assets to the future roles and functions of those entities, and on this basis control of all port lands be allocated to Port Authorities (or PMUs).*

#### **Hub port development**

66. The NPMP proposes the development of designated ports as Indonesia's major international gateways.

67. For security and customs control reasons, all countries limit the number of points at which international trade can enter or leave the country. As international supply chains have become increasingly intermodal, the need for integrated planning of landside and maritime infrastructure have provided additional reasons for clearly identifying those ports that will play a key role in handling a country's imports and exports.

68. The designation of selected ports as Indonesia's main international hubs is therefore appropriate and necessary. Particularly — although not exclusively — for container ports, the development of efficient international gateways requires substantial investments in supporting inland infrastructure: the roads, rail links and intermodal terminals required to deliver cargoes efficiently to the port. It also frequently requires the development on basic infrastructure — shipping channels, breakwaters, and reclaimed land — that is not only expensive but also has a substantial impact on the marine environment. Clarity on which ports will be developed as the major international gateways helps to channel investment in inland infrastructure appropriately and avoid wasteful and environmentally damaging duplication of maritime infrastructure. It helps both to reduce the cost of developing the port system and to facilitate the timely delivery of needed infrastructure.

69. However, some parties appear to be interpreting the provisions of the NPMP as a return to the 'gateway' port policies that prevailed in Indonesia in the early 1980s. This policy effectively prohibited movement of Indonesian general cargo exports through ports other than Belawan, Jakarta, Surabaya and Makassar (Dick, 2008). During the October interview program, it was suggested that hub port development should also be supported by limiting the number of ports at which international imports and exports could be handled to a very small number, and requiring importers and exporters to use domestic shipping to transfer their cargoes to and from these ports for international shipment. In December 2011, the government announced that it has limited the number of seaports open for international shipping to 25. This is well down from the previous 141 seaports, although far short of the outcome sought by Indonesia

National Shipowners Association (INSA), which wants only four ports in Indonesia to be open for international shipping (Investor Daily, 2011).

70. While selective investment in hub ports within a clearly defined national port hierarchy is sensible — from both an environmental and economic perspective—this does not imply that coercive measures to constrain importers and exporters to use only these hubs for international trade are desirable. Artificially constraining the options available to the international trading community will almost be economically damaging and undermine the objectives of the Master Plan for the Acceleration and Expansion of the Economic Development of Indonesia (Coordinating Ministry for Economic Affairs, 2011d).

71. For similar reasons, positive initiatives to co-ordinate and facilitate investments associated with a hub port policy should be preferred to restrictions on port investment at other —unless those prohibitions are necessary for environmental or safety reasons.

*Recommendation:*

1.7. *Those ports that will be the primary hubs be clearly identified in the National Port Master Plan, future development of international intermodal transport chains be clearly focussed on these ports. However, shipper choice should be maintained by continuing to permit the direct export and import of international cargoes through a large number of ports across Indonesia.*

**Data**

72. Several reports have noted that there is a lack of readily useable statistical information on maritime trade flows to, from and within Indonesia. Shipping records maintained by the Director General of Sea Transportation (DGST) and the data collected by the IPCs contain much of the information required to build up a sound picture of port traffic, but this data is not cleaned, processed and compiled in a way that makes it readily accessible for planning purposes:

One of the concerns regarding the 2010 Technical Report on the Development of the National Port Master Plan was the lack of comprehensive traffic data describing the extent of operations for the entire Indonesian port system and for many of the country's major ports. The 2010 Technical Report cited the lack of available data as the key impediment to the presentation of national port traffic data. (Nathan Associates 2011c, p. 23).

73. Information on port performance is patchy and dependant on the processes and procedures of individual IPCs.

74. Timely and accurate data on port trade and performance is essential for sound port planning and effective port management. The Shipping Law includes provisions for the establishment of an integrated web-based Shipping Information System, which includes a Port Information System consisting of port physical, operational, cargo and tariff information (Nathan Associates, 2011b) that would address this need.

*Recommendation:*

1.8. *Clear responsibility for the development of the Shipping Information System mandated by the Shipping Law be assigned to the DGST, which should as an immediate priority be required to develop and commit to a clear time bound action plan for implementation of the System.*

## 2. SHIPPING

### 2.1. International shipping

75. Historically, Indonesia has employed a range of policies to support its national shipping industry, including the reservation of specific cargoes to Indonesian vessels, bilateral cargo-sharing agreements with trading partners on the sharing of cargoes carried between the two countries, and limiting the number of ports open to international shipping. However, most of these limitations were removed or substantially relaxed during the 1980s and early 1990s, and there now appear to be only very limited constraints on the carriage of Indonesia's international trade (Dick, 2008). Cargo reservation is now confined to government and state owned enterprise import cargoes, which must be carried by Indonesian-flag vessels (PDP/Meyrick, 2005a).

76. The 2008 Shipping Law include a useful simplification of the criteria for registration of Indonesian shipping companies, including those engaged in international shipping. As Dick (2008) explains:

... For international and domestic shipping firms there has been a marked simplification. Owners are no longer required to hold both a business licence (izin usaha) and an operating licence for the ships. The basic requirements are now simply that a firm be a legal entity and own an Indonesian-flag vessel of at least 175 gross tons. Formally, under PP82/1999 (partIII), a sea transport company had to be legally registered for that purpose, and to hold a valid business licence, which in turn required the firm to provide the Minister with details of incorporation, proof of ownership of the ship larger than 175 tons, employment of a suitably qualified staff, proof of company domicile and a tax file number.

77. At least one source reports that there has seen a significant increase in the share of Indonesia's international cargo carried by Indonesian-flagged vessels, and appears to attribute this increase to the implementation of the Act (Asrofi, 2011).

78. However, it is not clear why this should be the case, as there do not appear to be any provisions in the new law that directly impose additional restrictions on foreign owned carriers competing for Indonesia's international cargoes. One possible mechanism is through increased use of Indonesian vessels on "triangulated" routes. Some shipping routes require vessels to call at a number of Indonesian ports as part of an international journey: for example, many lines operate services that call Singapore-Surabaya-Jakarta. With the tightening of the cabotage rules (see Section 2.2.), it is now more difficult for foreign vessels to load cargoes in Surabaya for discharge in Jakarta. Indonesian vessels, however, are still able to do so. This greater flexibility provides Indonesian vessels with a competitive advantage over their foreign rivals on this route, and may over time lead to the replacement of foreign with Indonesian vessels.

## 2.2. Regulations regarding carriage of domestic cargoes

79. The general movement towards economic liberalisation during the 1990s was reflected in relaxation of Indonesia's cabotage requirements, which led to an increase in the share of domestic cargo carried on foreign flag vessels rising to around 45% in 2005 (Sutjipto, undated). The 2008 Shipping Law included a very significant strengthening of cabotage requirements, formally requiring that all foreign -flag vessels operating in the Indonesian domestic trades be replaced by (or re-registered as) Indonesian flag vessels and use Indonesian crews by 2011 (Simbolon, 2010).

80. However, while the 2008 Shipping Law (and the earlier Inpres 5/2005) appears to have reversed the tide of liberalisation by significantly strengthening cabotage requirements, it does not appear to have re-introduced any of the other restrictive measures (such as route licensing and capacity controls) that were part of earlier regulatory structures (Dick, 2008).

81. Unsurprisingly, the stricter cabotage regime has been welcomed by the Indonesian National Shipowners Association. It has led to a very significant increase in the volume of cargo carried on domestic routes by Indonesian ships:

The implementation of the cabotage principle will go a long way in making shipping industry more attractive to investors and creditors by greatly increasing the cargo volume for national freighters, which in turn would require more cargo vessels. Since the first shipping restrictions were implemented in 2005, the freight transported by Indonesian ships has almost doubled from 114.5 million tonnes to 224.8 million tonnes last year. The number of ships operated by local companies has increased by 62.8%, from 6041 in March 2005 to 9835 ships at September 2010. Domestic shipping industry experienced dramatic increase in its share compared with foreign shipping both in domestic freight and international freight. In domestic freight increase from 55% in 2005 to 95% in the first quarter of 2010. (Asrofi, 2010).

While implementation of cabotage restrictions may be helpful for National ship-owners, the extent to which the notional ownership of companies operating the vessels reflects the real beneficial ownership is uncertain. During discussions held with Indonesian officials in February 2012, representatives of both DGST and Economic Affairs noted the difficulties that can be experienced in obtaining information on company ownership in Indonesia, and raised the possibility that a significant proportion of the purported benefits of the cabotage regulation may flow to non-national interests. The stricter regulations are likely to increase costs to national shippers who are faced with reduced choice and higher costs as a result.

Requiring Indonesian goods to be carried in Indonesian ships and restricting foreign-flag access to Indonesian ports raises an external tariff, while the inefficiencies of domestic transport by land and sea raise an internal tariff. Not surprisingly, the economy fails to grow as fast as expected, so unemployment and poverty remain stubbornly high. (Dick, 2008)

82. The interpretation of the cabotage requirements has been very broad, encompassing off-shore support vessels for the oil and gas industry as well as vessels actually involved in the carriage of cargo (Streifer, 2011). This could be particularly damaging as the domestic shipping industry is poorly equipped to provide for the needs of this industry. Fortunately, this has been recognised in the recently approved *Government Regulation No. 22 of 2011 on the Amendment of Government Regulation No. 20 of 2010 on Water Transportation*.

The Amendment is intended to broaden the rules on use of foreign flagged vessels through definitional changes and to exclude certain vessels from the cabotage requirements that do not provide domestic sea transportation services of goods or persons.

The activities for which foreign flagged dispensation can be obtained with a permit from the Minister for Transportation (MOT) include (a) oil and gas survey (b) drilling (c) offshore construction (b) supporting offshore operations (e) dredging and (f) salvage and underwater works.

The MOT. It has also issued MOT regulation number 48 of 2011 (the MOT regulation) regarding the procedures to obtain a permit to use foreign flag vessels. The MOT Regulation is the implementing regulation of the Amendment, and clearly provides that the permit is only available if “Indonesian-flagged vessels are not available or are not sufficiently available.... The regulations are still very restrictive on the use of foreign flag vessels, particularly the limited time period of the permit of three months, which in the case of many contracts may not be sufficient to fulfil the contract. (Streifer, 2011)”

83. It is widely accepted amongst economists and regulatory analysts that strict cabotage regulations are damaging to a nation's trade and economy. Protected domestic shipping operations everywhere tend to be less efficient than open market operations. This is because domestic shipping operators often lack the capital to make the investments that drive efficiency; in part because restricting the domestic trades to national operators precludes important sources of innovation and experience in international best practice; in part because cabotage limits or eliminates opportunities for integrating international and domestic shipping operations; and in part because protected markets easily fall under the sway of powerful operators who can dominate the market and exercise significant market power.

84. However, it would be unrealistic to call at this time for reversal of a recently introduced policy which has strong sectoral support and to which opposition is not as yet widespread, organised or vocal. However, useful steps could be taken to limit and ultimately ease the economic damage that will result from the policy.

85. One element of this would be to ensure that Indonesia's cabotage policy does not cut across the commitments it has to participation in the ASEAN single market project. The major relevant ASEAN initiative in the maritime area is the Roadmap Towards an Integrated and Competitive Maritime Transport in ASEAN. Recognizing that the ASEAN countries are at different stages of economic development and have differing factor endowments, the Roadmap develops a set of principles rather than focusing on clear-cut goals. ASEAN countries accepting the Roadmap commit themselves to:

1. Foster competition in shipping markets;
2. Adhere to the principle of free competition on a commercial basis for cargo movements to from or between ASEAN countries;
3. Prevent or minimise the imposition of unjustifiable fees, surcharges or imposts by shipping lines or associations of shipping lines with a dominant position in any trade to from or within ASEAN;
4. Ensure that any international shipping operations retained under government ownership are corporatised and operated in accordance with commercial principles;
5. Refrain from providing preferential access to routes, cargoes or contracts to government-owned lines, and to adopt a timetable for the removal of such preferences where they currently exist;
6. Work collectively and progressively towards the development of a single integrated ASEAN shipping market; and

7. Develop guiding principles for the provision of port services based on the cost of service and infrastructure provision.

86. The sixth of these commitments is directly relevant to cabotage policy.

### *Recommendations*

2.1. *The Amendment limiting the application of the cabotage laws to vessels not involved in the transportation of cargoes of persons be strengthened by simplifying the requirements for obtaining a permit and extending the time period during which the permit is valid.*

2.2. *Indonesia participate fully in the programme outlined by the Roadmap towards an Integrated and Competitive Maritime Transport in ASEAN.*

### **2.3. Subsidised services**

87. Providing the support for the provision of shipping services to the more remote regions of the archipelago has long been an element of Indonesian maritime policy, given effect (at various times) both through the provision of public sector services (through PELNI) and through the subsidisation of private operations on particular routes.

88. Subsidies are provided to PELNI through three main channels (a) direct payments of compensation for associated costs, including an appropriate profit margin (b) subsidies for imports including fuel and (c) equity injections, mainly in the form of contributed ships. In 2010, 23 inter-provincial and intra-provincial operated by PELNI were the recipients of PSO support through one or other of these mechanisms.

89. Pioneer services provided by private operators are subsidised by the government through an explicit payment of the difference between the costs of operation (including a contractually agreed profit margin) and revenue from tariffs that are regulated by government. Pioneer service contracts are allocated annually through a competitive bidding process. In 2010, Pioneer service providers operated 56 routes covering 30 ports throughout Indonesia; 11 routes were for the western part of the country, while the remainder served the east. (Benson *et al.*, 2010)

90. The new Shipping Law makes provision for the continuation of such services, but the structure of the financial support offered, and the basis on which decisions will be made and subsidies allocated, is not at present completely clear.

91. “The 2008 Law specifies that shipping to backward and remote areas should be carried out by government, but qualifies this by allowing that the task may be contracted out long-term to national shipping firms under government subsidy and subject to annual review. This could perhaps become a framework for a more rigorous community service obligation approach, but such a development does not seem to be imminent.” (Dick, 2008)

92. A systematic and transparent approach to the subsidisation of 'Pioneer' services is important both because it will help to ensure that the target communities actually receive the standard of service that is intended and because it will ensure that these services are provided at minimal cost to government.

93. Work undertaken by Nefiadi (2010) identifies three key policy principles that should be adopted in determining and allocating subsidies for shipping services to remote communities:

- the provision of subsidies should be based on a contractual arrangement requiring the contractor to deliver minimum performance standards, rather than on a reimbursement of input costs;
- the service provider to receive the subsidy should be selected through an open, competitive tendering process open to all competent service providers, both government and private;
- contracts and service provision should be awarded for a period that is long enough to encourage the acquisition of suitable vessels and to broaden the pool of potential service providers.

*Recommendation*

2.3 *The future provision of subsidised services should be based on multi-year contracts for the provision of clearly specified outputs and awarded on the basis of competitive tenders open to all competent suppliers.*

### 3. RAIL

94. The geography of Indonesia is not conducive to the development of an extensive rail transport network. With nearly 1 000 permanently inhabited islands, many of which have difficult terrain, economic development has tended to cluster around coastal cities that were until quite recently largely isolated from each other, not a few of which remain so even today.

95. Nevertheless, rail has the potential to play a very important role in specific freight markets — particularly but not exclusively in the carriage of Indonesia's bulk exports — and in passenger transportation. To realise this potential fully, it is vital that the institutional and regulatory framework within which rail transport operates promotes safe, efficient and reliable provisions of rail transport services.

#### 3.1. Rail Infrastructure

96. Indonesian rail infrastructure is largely a legacy of the colonial period, and is largely concentrated on the two most heavily populated islands of Java and Sumatera. The total length of the rail network is 4 553 kilometres, of which 4 327 kilometres is classified by the Directorate of Land Transportation as mainline and 226 as branch line (Lubis *et al.*, 2005). The network, all of which is 1 067 mm gauge, consists of four unconnected subsystems: three in different parts of Sumatera, and one extending throughout Java.

97. For the most part, the Indonesian rail system is constructed using comparatively light rail and permissible axle loads are low: limits on the Java sub-system range from 15 to 18 tonnes per axle, compared with a typical axle loading on narrow gauge systems of 22.5 tonnes. The relatively light axle loading:

Tends to limit the usefulness of the railway for freight purposes (since most 2-axle freight wagons weigh approximately 18 tonnes, leaving only 12-15 tonnes for lading; most 4-axle wagons weigh 25 tonnes, yielding a wagon payload of approximately 35 tonnes — a low limit for bulk commodities, typically a railway mainstay (HWTSK, 2010a).

98. It may be this limitation that is reflected in the user assessments of infrastructure quality. In the World Economic Forum assessment of infrastructure quality, Indonesia's rail infrastructure is assessed at 2.7 (on a scale from 1 – very poor – to 7 – excellent) (Nathan Associates, 2008). According to recent review by HWTSK, reported concerns that 'the railway is in poor physical condition, had poor discipline and had a number of safety defects' are largely unfounded. Track inspections carried out by the study revealed that the infrastructure is in generally good condition and that operating and safety discipline is reasonably high (HWTSK 2010a, p. 31)

#### 3.2. The rail task

99. The Indonesian public rail system, operated by PT Kereta Api (PTKA) carries around 200 million passengers per year (approximately 7% of the non-metropolitan passenger market) and approximately 20 million tonnes of cargo (approximately 0.6% of goods moved (Hidayat, 2009).

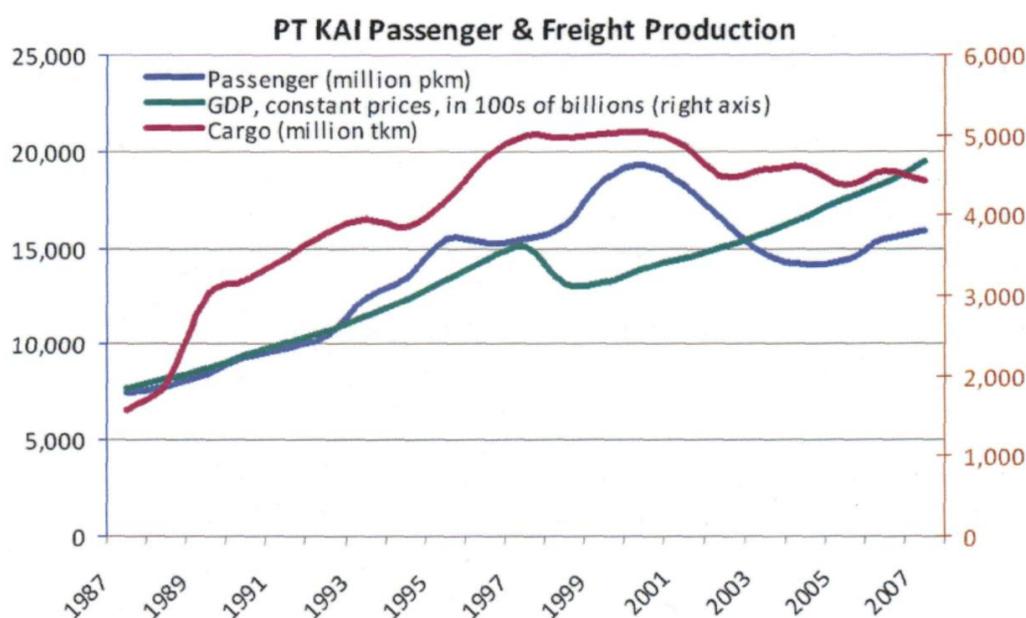
100. Four main transport tasks are undertaken by PTKA:

- inter-city Passenger services on the island of Java;
- general freight services in Java;
- short-haul passenger services in greater Jakarta metropolitan area (Jabodetabek);
- coal haulage on the island of Sumatera.

101. In 2008, these four tasks account for 90% of PTKA's revenue (Van der Ven, 2009).

102. Figure 3.1 shows that, while there has been some fluctuation from year to year, there has been no real growth in either the passenger or the freight task over the last decade.

**Figure 3.1. Trends in Rail Traffic, Indonesian Public Railways**



Source: HWTSK 2010.

### 3.3. Reform history

#### *The legislated monopoly*

103. From 1963, when all public railways in Indonesia were unified under a single administration, Indonesia's railways were operated by a government department (known from 1973 on as PJKA — Perusahaan Jawatan Kereta Api). Under legislation introduced in 1992 (Law 13/1992), PJKA was reformed into a Railways Public Corporation (Perumka) operating as a vertically integrated national monopoly. Its operations covered both passenger and freight services. (PTKA, 2011)

104. Further reform was undertaken in the late 1990s. Under Regulation 19/1998, Perumka was, in June 1999, converted into a limited liability company (Persero) and renamed PT Kereta Api, formally paving the way for private sector investment of up to 49% (Australia Indonesia Partnership, 2010a). As well as increasing the scope for private investment, the creation of PT Kereta Api (PT KAI) was intended to promote a range of improvements in governance and corporate performance.

105. However, the reforms do not appear to have been conspicuously successful in either field. The World Bank's Completion Report on its Railway Efficiency Project, which provided some of the impetus for the corporatisation of the railway, notes that 'in the field of the core business itself few companies have expressed their interest but did not follow up due to commercial considerations'. The report also comments extensively on the difficulties in implementing proposed governance and commercial reforms.

### ***Recent legislative and regulatory changes***

106. As part of a broad range of transport sector reforms (including the 2007 Shipping Law referred to in Section 1), the Government of Indonesia has passed the Railway Law No. 23/2007 and supporting regulations 56/2009 and 72/2009.

107. Dikun (2010a) summarises the essence of the 2007 Law in the following terms:

Law No. 23/2007 concerning Railways marks a new era for Indonesian railway, with three ground rules, namely (a) abolishing the SOE [state-owned enterprise] monopoly and opening the opportunity for the private and the local government in the railway business, (b) making possible the separation of the previously integrated operations and infrastructure and (c) establishing the Government as the advisor and the supervisor in charge of the railway operations. Law No. 23/2007 establishes that the operation of railway facilities and infrastructure shall be done by enterprises, either SOE/Local SOE, the private sector, or by public/ private partnerships. Law No. 23/2007 also confirms that corporate restructuring be carried out in accordance with Article 214, related to the operator of PT KAI, to adjust its approach to the spirit of Law No. 23/ 2007 with regard to competition and openness.

108. However, while the new legislation appears to provide an appropriate framework for the future development of the Indonesian rail industry, in practice change appears to have been slow, with no clear champion for change and some resistance from established parties (Dikun, 2010b).

### ***Establishment of KCJ***

109. The World Bank Rail Efficiency Project and subsequent reform initiatives have favoured the separation of at least the urban passenger business from the other businesses, partly because of their differing technical and commercial requirements but also because of the risk of distorting freight markets through the 'leakage' of funds intended to support metropolitan transit services into rail freight operations.

110. This reform has been substantially achieved through the establishment of PTKA Commuter Jabodetabek (KCJ) as a subsidiary of PTKA with its own management structure and accounts.

## **3.4. Rail sector performance**

111. The evaluation of the performance of the Indonesian rail system against international benchmarks undertaken during the preparation of the National Railway Master Plan yields mixed results. PTKA's performance was compared with that of other narrow gauge railways with similar network length and geographical conditions, with the following results:

- PTKA employment levels are generally consistent with those of other railways of its size;
- PTKA's network productivity (measured as traffic units per km of network) and labour productivity (measured as traffic units per employee) ranks around the median value for the networks studied;
- Performance in terms of rolling stock productivity is respectable: in terms of traffic units per power unit, PTKA is in the middle of the group of railways studied, while on passenger-kilometres per coach unit PTKA ranked second only to Japan;
- PTKA's passenger fares are relatively low, but its freight charges are towards the high end compared with comparable rail networks (HWTSK, 2010a).

112. Overall, the picture that emerges from the benchmarking work is of a rail system that is performing reasonably, but in which there is scope for further improvement.

### **3.5. Further development of the rail sector**

113. There is a widespread view that the rail mode share falls short of what it could and should be (Dikun, 2010a). The report of the technical team on National Railways Revitalisation assesses achievable market share increases as:

- an increase in the railway market share in passenger transport from approximately 4% currently up to 10-20% in 2015 and as much as 25% in 2025;
- an increase in the railway's freight market share from current low levels of 3% of contestable traffic to 5-10% by 2020.<sup>3</sup> (HWTSK, 2010a).

114. Although there are a number of external factors — including inadequate road pricing — that impact on the competitiveness of the rail sector, the foundation work for the National Rail Master Plan identifies a number of initiatives that could be taken to further develop the rail market. These initiatives fall into three broad classes discussed below.

#### ***Reversing the past trend of reducing the size of the public rail network***

115. The total length of the Indonesian rail network is 6 720 km, of which approximately one-third has progressively been withdrawn from service, leaving approximately 4 600 km of track currently in operation. The draft NRMP anticipates significant extensions to the existing network, that may include selected rehabilitation of some of the currently disused track.

116. A comparison of the existing and proposed inter-city networks is provided in Table 3.1.

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3. The figure of 0.7% cited in Section 0 above is the rail share of all freight, including small local road movements for which rail is not a feasible option.

**Table 3.1. Extensions of inter-city network envisaged in draft NRMP**

Island	Existing Inter-city Railway Track Length (km)	Proposed expansion	Total length in 2025
Java	3 300	3 500	6 800
Sumatera	1 300	1 200	2 500
Kalimantan		1 100	1 100
Sulawesi		200	200

Source: HWTSK, 2010a.

### *Intensifying traffic in existing areas of operation*

#### *Passengers*

117. The draft NTMP identifies significant opportunities for increasing rail penetration in the Jabodetabek area, with an estimated achievable target of 550 million passengers per year by 2025 (up from 125 million currently).

118. Achieving this target will require significant improvements in existing operations, including large investments in both rolling stock and station facilities. But HWTSK (2010a) suggests that it will also require the construction of at least the first phase of the Jakarta MRT system. This is being delivered by PT Mass Rapid Transit Jakarta (PT MRT Jakarta). PT MRT Jakarta, which was incorporated in 2008, is 99.5% owned by Provincial Government of DKI Jakarta 99.5%

119. Other mooted initiatives include a rail connection to Soekarno Hatta Airport.

#### *Freight*

120. In the short to medium term, there are opportunities to increase traffic on the existing network through incremental infrastructure improvements to reduce transit times and alleviate restrictions on axle loads, and improving connections to port facilities (particularly in Jakarta). In the longer term, the connectivity provided by the trans-Sumatran railway, which would link the three existing Sumatran systems, could also promote increased traffic on the existing network.

### *Encouraging specialised railway services independent of PTKA*

121. There is general agreement that the greatest opportunities for expanding rail share of the freight market lie in the development of lines serving commodity exports, and most particularly in lines linking coal mines to ports.

#### *Vertical separation*

122. One of the conceptual cornerstones of the reform program is the vertical separation of rail infrastructure management from above-rail operations. This does not appear to have yet occurred. Amongst the prerequisites for effective segregation are:

- clear identification of the assets to be assigned to the infrastructure manager;
- establishment of an effective system for determining appropriate track access charges, including as a minimum clear accounting separation;

- introduction of a system for the transparent and equitable allocation of train paths;
- definition of the technical terms and conditions of track access.

123. It is not clear that all of the foundation stones for effective vertical separation are yet in place. The implementation of the “PSO, IMO, and TAC” reforms first proposed in Rail Efficiency Project has been particularly problematic (Muthohar and Sumi, 2010). These reforms allude to the intended implementation of a formal Public Service Obligation to compensate the rail organisation non-commercial services it was required by government to provide (PSO); establishing a mechanism to compensate the rail company for infrastructure maintenance and operation (IMO); and establishing a system of track access charges (TAC). Together with the conversion of Perumka to a limited liability company and developing a framework and strategy for private sector participation, these initiatives comprised the policy reform agenda of the project. However, the Completion Report on the Railway Efficiency Project noted:

The newly established Persero [i.e. limited liability company] was not reorganised along “line of business” principles and the PSO, IMO, and TAC were never agreed to and implemented. The company’s assets were not revalued, tariff rationalisation plans were not carried out and a framework for PSP was never adopted. (World Bank, 2005)

124. Dikun (2010b) makes it clear that some progress appears to have been made on the structural separation issue through a series of Ministerial Decrees made in April 2010, but full vertical separation has not yet been achieved. But the implementation of the PSO-IMO-TAC arrangements are still not in place:

The PSO-IMO-TAC scheme was a 1997 joint decree by the Ministers of Transport, National Planning, and Finance. It was designed to improve and simplify the financial arrangements between PT Kereta Api Indonesia and the Government, but has never been properly implemented (Dikun, 2010a).

125. In a recent press statement, the Directorate General of Railways has acknowledged that slow progress on these issues is retarding the achievement of the objectives of the 2007 reforms and acting as a deterrent to private sector investment (Investor Daily, 2011a).

126. Technical complexities have been cited as one of the main reasons for delay in implementation of the PSO-IMO-TAC arrangements. It is true that there are complex conceptual and practical issues involved, particularly in the valuation of infrastructure assets for the purpose of estimating the appropriate TAC. But given the importance of these arrangements to the overall reform process, it is likely that the economic benefit from prompt implementation of a workable system is likely to exceed any economic cost of imperfect estimation. This is particularly the case as most of the assets to which the TAC charges relate will be sunk assets.

127. There may therefore be benefit in adopting a simplified approach to the TAC issue. One possibility is to simply set initial TAC with reference to benchmark rates charged on comparable rail systems, subject to a floor which ensures that total revenue from the TAC exceeds IMO costs. This could be construed as a 'market' approach to setting the TAC, implicitly valuing the assets to which it relates on the basis of the net revenue that they can generate at 'reasonable' price levels. Similar 'line in the sand' approaches to asset valuation are not uncommon in the regulation of privatised enterprises during the initial regulatory period. The TAC can then be adjusted from year to year to account for new investment in rail infrastructure.

128. Under this approach, TAC receipts would necessarily equal or exceed the efficient IMO requirements of the infrastructure provider, so funding these requirements should not be a problem.

129. The main challenges with the PSO element appear to be practical rather than conceptual: in particular, ensuring the reliable and timely receipt of PSO payments from Government (Bisnis Indonesia, 2011). While formal contractual arrangements can be useful, there is no complete solution to this issue. But the consequences of any payment difficulties will obviously be reduced if the level of budgetary support required can itself be reduced. The Director of PT KAI has recently suggested that there is considerable scope for doing this, by reviewing commuter fares and linking them to the cheapest bus fares available on the routes (Kompas, 2011).

*Recommendations:*

3.1. *Implementation of the full structural separation arrangements and transparent PSO-IMO-TAC be pursued as a matter of priority.*

3.2. *To facilitate this, a simplified “line in the sand” approach to the estimation of TAC be adopted and the approaches to reducing KCJ/PKASI dependence on PSO payments be investigated.*

**3.6. Decentralisation**

130. One of the major thrusts of the 2007 Law is to permit sub-national government to take independent action to develop rail infrastructure and even to establish rail operating companies if they so desire. Dikun identifies specific provisions of the Law directed to this end (see Table 3.2).

**Table 3.2. Provisions of new rail law relating to decentralisation of rail industry**

Provision	Elucidation
Article 23 Paragraph 2	In the absence of an enterprise to operate public railway infrastructures, the government or the local governments may conduct the operation of railway infrastructures.
Article 31 Paragraph 2	In the absence of an enterprise to operate public railway rolling stocks, the government or the local governments may conduct the operation of railway infrastructures.
Article 33 Paragraph 4b	Provincial governments may grant licenses for the procurement, development and operation of specialised railways with routes crossing the boundaries of kabupaten/kota within a province upon approval of the central government.
Article 33 Paragraph 4c	Kabupaten/kota governments may grant licenses for the procurement, development and operation of specialised railway with routes within the boundaries of kabupaten/kota, upon recommendation of the provincial government and approval of the central government.

Source: Dikun, 2010a.

131. These provisions appear to be having some effect in facilitating regional government participation in rail sector development. The primary role of the Provincial Government of Jakarta in the implementation of the proposed MRT system has already be noted (see Section 3.5 above on Intensifying traffic in existing areas of operation).

132. Decentralisation is an important potential source of diversification of rail investment and rail operations. However, there are clear risks involved in this process, including lack of network integrity and duplication and inconsistency in technical and safety standards as well as redundant and inefficient investment. On the other hand, private sector and sub-national government investment in railways will be facilitated by clarity and consistency on the technical and other requirements of future rail developments.

133. For these reasons, effective integration of the plans of lower levels of government with the National Railway Master Plan is necessary. The 2007 legislation provides for this by requiring that the NRMP provide guidance and co-ordination for the development of sub-national plans. HWTSK (2010a) notes that this guidance should:

- ensure that sub-national plans comply with the NRMP National network plans, spatial plans, and capital investment plans;
- provide “due diligence” guidelines on core issues to avoid major financial and regulatory mistakes;
- provide conformance with the financial and technical options that will be licensed by DGR at sub-national government levels;
- communicate the importance of well-developed, economically and financially sound sub-national RMPs to the achievement of national goals in the rail sector; and
- ensure that any sub-national railway does not inhibit the development of other sub-national railways.

#### *Recommendation*

3.3. *Clear formal guidelines be developed to inform sub-national governments of the division of responsibilities future railway development between national and sub-national governments, and the technical and other standards that railways were developed by sub-national governments or the private sector will be required to meet.*

### **3.7. Mechanisms for private investment in rail infrastructure**

134. The Indonesian regulatory framework provides two distinct mechanisms for facilitating private investment in the rail system: public-private partnerships and “special purpose railways”.

#### *Special purpose railways*

135. The 'special purpose railway' provisions apply to railways that will be used by a single user (there appears to be some ambiguity as to whether the railway owner needs to be a party related to the user or not). Facilitating the development of rail lines developed to cater for a single commodity, and (at least in the first instance) to serve a single producer is of some importance in Indonesia, as many of the key market opportunities for rail system expansion are in serving the mining industry — particularly coal in Sumatera and Kalimantan (Van der Den, 2010).

136. Although the special railway provisions in their present form are new and in some ways improved, some provision for the construction of special railways has been available since 1992. No railways have so far been constructed under these provisions (Kingsley, 2010). Recent reforms do, however, appear to have sparked renewed private sector interest in investing in special purpose railways. According to press reports, there are proposals for special purpose railway investments totalling nearly US\$8 billion that have been approved or are close to being approved:

- China Railway Group Ltd, in partnership with PT Bukit Asam Tbk (PT BA), has received 'in principle' approval to construct a 307km-long railway from Tanjung Enim (South Sumatera) to Lampung;
- An in-principle permit has also been issued for Ras Al-Khaimah, from United Arab Emirates, in partnership with PT Kutai Timur Investama to invest USD 1.3 in a 135 km-long railway from Muara Wahau to Lubuk Tutung;
- Russian Railways intends to construct a 285 km-long specialised railway project in East and Central Kalimantan, with investment estimates of USD 2-3 billion;
- Adani Global in co-operation with PT BA is set to construct a 270km-long railway in South Sumatera at a projected cost of USD 1.6 billion (Investor Daily, 2011c).

137. While this is encouraging, the conditions that attach to the development and operation of special railways are very restrictive, and reduce both the private sector appetite for investment in this infrastructure and the potential economic benefits that can be derived from this investment.

138. Additionally, some of these conditions are vaguely expressed in the relevant legislation and supporting regulations, and therefore subject to interpretation.

139. In discussions with the OECD, the Department of Transport indicated that:

- It is possible for a special purpose railway to be established by a joint venture if the mine (or other freight generating business) is itself a joint venture.
- It is possible for a special purpose railway to choose to apply for approval to covert to become a public railway if it wishes to do so later and thereby carry other parties' freight and there would be no 'in principle' reason why such an application would be denied (although there may be safety and technical criteria to be satisfied).
- A party that has converted to a public railway can control who uses the railway and the prices with only one exception – the government can mandate fair & reasonable access for passengers.

140. We also understand that it would be possible, in principle, for a special purpose railway to be established between a point of production (for example, a mine) and a point on the public railway system, and for the trains operated on the special purpose railway to continue along the public railway to a port or other destination (subject to the train operator meeting the technical conditions of access and paying an appropriate track access fee).

141. Public clarification of these points is important because, in the decentralised governance environment of Indonesia, potential investors may need to seek approval from a number of different levels of government, and interpretation may differ both within and between levels of government. This increases uncertainty and further chills the investment climate.

142. To fully rectify these deficiencies, modifications to the Railway Law are desirable. However, as HWTSK (2011) points out, modifying legislation is a lengthy and uncertain process and seeking modifications to the legislation will therefore, in itself, increase uncertainty for investors. HWTSK therefore advances an alternative proposal that would reduce the negative effects of current restrictions through modifications that could be made by means of Ministerial and Government Regulations. The most important of these changes are outlined below.

#### *Government regulation*

- Provide the Minister for Transport with the authority to waive Special Railway service restrictions where public transport capacity is demonstrably inadequate.
- Provide a Limited Public Railway (LPR) option as a sub-category of Public Railways, permitting a broader scope of services than the Special Railway, but an infrastructure access option to serve the broader public interest.
- Exclude an LPR from any government financial support or subsidy for the development, and from the PPP requirements of competitive tendering and inclusion in the National Railway Master Plan.
- Provide that negotiated Limited Public Railway licences (rather than the Regulation itself) will specify the details of the processes for securing access to the railway and other conditions of the railway operation.
- Simplify and consolidate the licensing requirements for both Special Railways and Limited Public Railways to avoid overlap and duplication between national and sub-national authorities

#### *Ministerial regulation*

- Clarify the definition of primary enterprise control for Special Railways in a way that will allow the project developer greater flexibility to structure project financing, increase opportunities for local participation, and secure the commercial benefits of the railway.
- Clarify and specify the regulations and outcomes that will apply when a Special Railway interconnects with another Special Railway or a Public Railway service.
- Specify exceptions to the "point to point" rule so that service interconnections and spur lines to third-party facilities along the rail alignment may be approved as part of the Special Railway services.
- Specifically link, through consistent terminology and precise cross-references, proposed articles in the Ministerial Regulation with articles of existing Government Regulations, so as to minimise conflicting interpretations (HWTSK, 2011).

#### *Recommendation*

3.4. *Develop and adopt Government and Ministerial Regulations incorporating the changes outlined above.*

### *Private sector partnerships*

143. Railways intended to serve more than one user cannot be developed under the 'Special Purpose Railway' provision, but may be constructed as Public-Private Partnerships. The PPP guidelines require that the project proponent take the proposed initiative to government (at the national or sub-national level). The right to construct the railway then becomes subject to a public tender process in which the original proponent enjoys some advantages but is not guaranteed success. The resulting railway must provide access to multiple above rail operators (HWTSK, 2011).

144. The PPP provisions are newer — the first provisions for such developments were made only five years ago, and the current regulations are less than two years old — but no projects have so far been committed to under this framework.

145. According to recent press reports, the MP3EI project has identified a number of projects open to the private sector (see Table 3.3).

**Table 3.3. Rail PPP projects identified in Economic Development Masterplan**

No	Project Name	Value (trillion Rp)
1.	Tanjung Enim - Tanjung Carat Railway, 270 Km	17.00
2.	Tanjung Enim – Lampung Railway 300 Km	15.00
3.	MRT East - West	30.00
4.	Double track, Semarang - Bojonegoro - Surabaya Railway & Facilities, 185 Km	9.50
5.	Soekarno-Hatta Airport Railway	2.27
6.	Double track, Pekalongan - Semarang Railway, 87.9 KM	1.80
7.	Puruk Cahu - Tanjung Isuy Railway, 203 Km	20.30
8.	Puruk Cahu - Bangkuang Railway, 185 Km	15.00

Source: Investor Daily, 2011b.

146. However, the same report notes that, under Presidential Regulation (Perpres) No. 83/2011, PKAI has been assigned responsibility to 'organise infrastructures and facilities for Soekarno-Hatta Airport Railway and the Jabodetabek Circle Line Railway'. Although the Regulation appears to allow PKAI to partner with private enterprise on delivering the project, such a framework may not necessarily be the most attractive option for a private investor — particularly if some of the potential patrons of the service might otherwise use PKAI routes. This therefore appears to be an instance in which the opportunity to attract new competition into the provision of rail infrastructure services, originally recognised in MP3EI, has been diminished or lost.

147. This point has been made by the Working Committee on Railways of the Indonesian House of Representatives:

The issuance of Presidential Regulation No. 83/2011 on the Assignment of PT Kereta Api Indonesia (KAI) to organise the infrastructures and facilities for the operations of Soekarno-Hatta Airport Train and the Jabodetabek Circle Line Train has been greatly regretted by the Working Committee (Panja) on Railway [of the House of Representatives]. The reason is that this step has actually asserted the monopoly of PT KAI. In fact, the main spirit of the Law No. 23/2007 on the Railways is to eliminate the monopoly of PT KAI. Efforts to eliminate this monopoly are expected to give birth to a healthy climate of competition. If there is competition among several KRL operators in enhancing railway transport services, the community will likely benefit from it. (Kompas, 2011).

*Recommendation*

*3.5. Where opportunities for PPP participation in public rail projects have been identified, or are identified in the future, the processes allow for potential private sector participants to develop and submit proposals that do not involve PKAI.*

## **4. Draft recommendations**

### **Recommendations from Section 1 - Ports.**

1.1. *Clear policies and procedures be developed to clarify the responsibilities of various levels of government for future development of the port sector, and to ensure the appropriate integration of sub-national plans with the National Port Master Plan.*

1.2. *Before any further Port Authorities or Port Management Units are created, options for reducing the number of bodies required be thoroughly explored.*

1.3. *The respective roles of Port Authorities and IPCs be clarified by means of a Ministerial Direction, which should incorporate a redefinition of the charter of the IPCS and a clear time-bound transition plan for the transfer of those functions that have historically been performed by IPCs but will in future be undertaken by Port Authorities and Port Management Units.*

1.4. *An active strategy of encouraging the development of a competitive environment in Indonesia's ports be adopted, including allowing private terminals to handle third party cargoes, competitive allocation of port services licences, restricting bidding for new opportunities from dominant operators and encouraging competition between IPCs.*

1.5. *Until competition in port services is clearly effective, the Ministry of State-owned enterprises set clear performance standards for key port services delivered by enterprises under its control, and monitor the prices charges for the provision of these services.*

1.6. *Decisions on the allocation of assets between IPCs and port authorities be based solely on the relevance of those assets to the future roles and functions of those entities, and on this basis control of all port lands be allocated to Port Authorities (or PMUs).*

1.7. *Those ports that will be the primary hubs be clearly identified in the National Port Master Plan, future development of international intermodal transport chains be clearly focussed on these ports. However, shipper choice should be maintained by continuing to permit the direct export and import of international cargoes through a large number of ports across Indonesia.*

1.8. *Clear responsibility for the development of the Shipping Information System mandated by the Shipping Law be assigned to the DGST, which should as an immediate priority be required to develop and commit to a clear time bound action plan for implementation of the System.*

### **Recommendations from Section 2 – Shipping.**

2.1. *The Amendment limiting the application of the cabotage laws to vessels not involved in the transportation of cargoes of persons be strengthened by simplifying the requirements for obtaining a permit and extending the time period during which the permit is valid.*

2.2. *Indonesia participate fully in the programme outlined by the Roadmap Towards an Integrated and Competitive Maritime Transport in ASEAN.*

2.3. *The future provision of subsidised services should be based on multi-year contracts for the provision of clearly specified outputs and awarded on the basis of competitive tenders open to all competent suppliers.*

### **Recommendations from Section 3 – Rail.**

3.1. *Implementation of the full structural separation arrangements and transparent PSO-IMO-TAC be pursued as a matter of priority.*

3.2. *To facilitate this, a simplified “line in the sand” approach to the estimation of TAC be adopted and the approaches to reducing KCJ/PKASI dependence on PSO payments be investigated.*

3.3. *Clear formal guidelines be developed to inform sub-national governments of the division of responsibilities future railway development between national and sub-national governments, and the technical and other standards that railways were developed by sub-national governments or the private sector will be required to meet.*

3.4. *Develop and adopt Government and Ministerial Regulations incorporating the changes outlined above.*

3.5. *Where opportunities for PPP participation in public rail projects have been identified, or are identified in the future, the processes allow for potential private sector participants to develop and submit proposals that do not involve PKAI.*

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