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# Shipping 2020

**Contributing editor****Kevin Cooper****MFB Solicitors**

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Lexology Getting The Deal Through is delighted to publish the twelfth edition of *Shipping*, which is available in print and online at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes a new chapter on Egypt.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Kevin Cooper, of MFB Solicitors, for his continued assistance with this volume.

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# Indonesia

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Ali Budiardjo, Nugroho, Reksodiputro

## NEWBUILDING CONTRACTS

### Transfer of title

- 1 | When does title in the ship pass from the shipbuilder to the shipowner? Can the parties agree to change when title will pass?

Title in the ship shall pass from the shipbuilder to the shipowner when the ship has been delivered and registered in the register of Indonesian ships and the deed of registration of the vessel is made and issued. The parties can agree to change the time when title will pass.

### Refund guarantee

- 2 | What formalities need to be complied with for the refund guarantee to be valid?

Basically, the holder of the guarantee shall issue a document stating that such guarantee shall be refunded.

### Court-ordered delivery

- 3 | Are there any remedies available in local courts to compel delivery of the vessel when the yard refuses to do so?

If the yard refuses to deliver the vessel, the local courts could consider compelling such delivery upon examining a lawsuit on the grounds of breach of contract or tort.

### Defects

- 4 | Where the vessel is defective and damage results, would a claim lie in contract or under product liability against the shipbuilder at the suit of the shipowner; a purchaser from the original shipowner; or a third party that has sustained damage?

Article 19 of Law No. 8 of 1999 concerning Consumer Protection provides that entrepreneurs shall be obliged to pay compensation for the damages, contamination or services suffered by the consumer as a result of consuming or using the goods, services, or both produced or traded. In this regulation 'entrepreneurs' means an Indonesian legal entity or non-legal entity that performs its activities within Indonesia.

The lawsuit could be filed against the shipbuilder on the grounds of breach of contract. A purchaser from the original shipowner will not have legal standing to claim any liability against the shipbuilder, as it only has legal ties with the original shipowner. As for a third party that has sustained damage, however, a claim would lie on the basis of tort.

## SHIP REGISTRATION AND MORTGAGES

### Eligibility for registration

- 5 | What vessels are eligible for registration under the flag of your country? Is it possible to register vessels under construction under the flag of your country?

Based on article 158 of Law No. 17 of 2008 concerning Shipping (the Shipping Act) and article 5 of Regulation of the Ministry of Transportation No. 13 of 2012 concerning Vessel Registration and Nationality (Regulation No. 13/2012), the following are the requirements for vessels to be eligible to register under the Indonesian flag:

- the vessels have been measured and have obtained the measurement certificate;
- the vessels have a minimum tonnage of 7 GT;
- the vessel is owned by an Indonesian individual or individuals or a legal entity established under Indonesian law and domiciled in the Indonesian jurisdiction; and
- the vessel is owned by an Indonesian joint venture legal entity whose majority shareholder is Indonesian.

It is possible to register vessels under construction under the Indonesian flag. Article 14 of Regulation No. 13/2012 provides that a ship under construction, whether in Indonesia or overseas, can be registered temporarily in Indonesia with the authorised ship registry office. A temporary registration certificate will be issued on the condition that the vessel construction has physically reached, at least, the completion stage of the hull, main deck and the entire superstructure.

- 6 | Who may apply to register a ship in your jurisdiction?

The following may apply for vessel registration:

- an Indonesian citizen;
- a legal entity established under Indonesian law and domiciled in Indonesian jurisdiction; and
- an Indonesian joint venture legal entity whose majority shareholder is Indonesian.

See also question 5.

### Documentary requirements

- 7 | What are the documentary requirements for registration?

The documentary requirements for vessel registration are as follows:

- (i) evidence of title over the vessel;
- (ii) identity of the owner;
- (iii) taxpayer's registration number;
- (iv) measurement certificate; and

- (v) evidence of payment for the transfer of ownership duty, in accordance with the prevailing laws and regulations.

The evidence of title as indicated in (i) above is:

- for a new vessel constructed by a shipyard:
  - shipbuilding contract;
  - protocol of delivery and acceptance; and
  - shipbuilder's certificate;
- for a new vessel constructed by a traditional shipbuilder:
  - builder's certificate acknowledged by a local head of district; or
  - builder's certificate accompanied by a written statement issued by a local head of district explaining the title of the vessel;
- for a vessel previously registered in other jurisdiction:
  - bill of sale, signed before and attested by a notary or authorised government official of the original flag country; and
  - protocol of delivery and acceptance;
- sale and purchase agreement or deed made before a notary;
- notarial deed of grant;
- court stipulation of an inheritance;
- court order of a district court or a final and binding court judgment; or
- minutes of auction.

The evidence of the identity of the owner as indicated in point (ii) above is:

- an identity card in the case of an individual owner; or
- a deed of establishment or a deed of amendment of a company's articles of association made before a notary, showing the latest composition of directors, shareholders, or both, which has obtained approval from the Ministry of Law and Human Rights.

Registration of a vessel previously registered in other jurisdiction must be accompanied by a written statement from the original ship registry evidencing the deletion of the vessel from that registry.

### Dual registration

- 8 | Is dual registration and flagging out possible and what is the procedure?

In accordance with articles 160 and 167 of the Shipping Act, dual registration and flagging out are not allowed.

### Mortgage register

- 9 | Who maintains the register of mortgages and what information does it contain?

Based on article 60 of the Shipping Act, the person responsible for maintaining the register of mortgages is the registrar and recorder for the registration and transfer of ownership of ships at the place where the ship is registered. Subsequently, information in respect of a vessel's registration, including mortgage (or hypothec) of the vessels, shall be recorded in the Main Register of Ship Registration, which is maintained at the Directorate General of Sea Communications at the Ministry of Transportation.

Information contained in the register of mortgages includes, inter alia, the name of the vessel, the owner of the vessel, the name of the mortgagor and mortgagee, the value of mortgage, etc.

## LIMITATION OF LIABILITY

### Regime

- 10 | What limitation regime applies? What claims can be limited? Which parties can limit their liability?

Under Indonesian law, the following regimes apply with regard to limitation of liability as governed under the Indonesian Commercial Code: package and tonnage limitation of liability. Claims that can be limited are cargo claims and claims on damage of vessel caused by collision. Carriers, operators, or both, as well as owners of a vessel, can limit their liability. Indonesia is not a state party to the Convention on Limitation of Liability for Maritime Claims 1976.

### Procedure

- 11 | What is the procedure for establishing limitation?

Pursuant to article 316a of RV (the old Dutch Civil Procedural Law applied for Europeans, which is still used for guidance by Indonesian judges), it is necessary to provide a cash deposit to the registrar of the court. However, to the best of our knowledge, there has never been any precedent of the court applying this procedure. The law is silent on the issue on whether a shipowner or any person invoking limitation of liability can constitute the fund before any legal proceedings are initiated and before it has been required to respond to a claim that has been already commenced.

The limitation fund is calculated as stipulated in article 474 of Indonesian Commercial Code regarding tonnage liability in relation to cargo damage, which provides that if the carrier is the operator of the ship, the liability for loss or damage to the goods carried by the ship shall be limited to 50 rupiahs per cubic metre of the net tonnage of the vessel, increased, in the case of a mechanically propelled vessel, by what was deducted to determine that tonnage, from the gross tonnage for the space occupied by the means of propulsion. The original text of the provision in the Indonesian Commercial Code reads '50 guilders'; however, this is widely interpreted as 50 rupiahs.

The same calculation as described above is also applicable with regard to the application of article 541 of the Indonesian Commercial Code, which provides the tonnage limitation in the case of collision.

We are not aware of any precedent concerning the application of these terms.

A separate right to plead limitation without setting up a fund could be agreed upon by the parties concerned.

### Break of limitation

- 12 | In what circumstances can the limit be broken? Has limitation been broken in your jurisdiction?

The limit can be broken if it is proven that: there is serious negligence on the part of the master or crew; because of an act of God or force majeure; or because of the fault of a shipper who has not properly informed the carrier of the nature of the goods.

In 2014, there was a first-level court decision that held that a carrier as a defendant could not invoke a limitation of liability clause under the Bill of Lading. Hence, based on this decision, somehow the limit had been broken. The plaintiff acted as an insurer of a shipper whose cargo was lost when the ship was sinking. The first defendant was a carrier and the second defendant was the protection and indemnity insurer of the first defendant who insured the first defendant against third-party liability risk.

The plaintiff argued that the sinking was due to unseaworthiness of the ship and the master's failure to apply good seamanship. On the other hand, the first defendant invoked force majeure defence and limitation

of liability clause under the bill of lading. The court rejected the force majeure defence by the first defendant. Further, the court held that the first defendant could not invoke limitation of liability.

However, although the court was faced with the issue of whether or not the first defendant could invoke limitation of liability, it did not consider the issue of whether there was negligence on the part of the master or crew, nor was it convinced by the defendant's force majeure defence. The court's reasoning was rather based on its view that limitation of liability was a term that was unilaterally made by the first defendant as a carrier and hence did not reflect the parties' equality. We are unaware whether this decision was appealed or not.

Based on our observations and researches, limitation of liability proceedings have never been tested or exercised in Indonesia and thus, we cannot provide any information on what happens with any fund that has been established if limitation is broken.

### Passenger and luggage claims

#### 13 | What limitation regime applies in your jurisdiction in respect of passenger and luggage claims?

Indonesia is not a party to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea. Obligations of ship operators carrying passengers (or water transportation companies, as they are described in the Shipping Act) and the rights of passengers are briefly set out in the Shipping Act and some of its implementing regulations. In line with Government Regulation No. 20 of 2010, as amended by Government Regulation No. 22 of 2011 (GR No. 20 of 2010 as amended), carriers are obliged to insure their liability in relation to death or injury to passengers and delays in transportation. Further, based on article 181(5) of GR No. 20 of 2010 as amended, the limit for insurance liability arising out of delays in transportation of passengers will be based on contractual arrangements between the operators and passengers, evidenced by the terms and conditions on the tickets.

## PORT STATE CONTROL

### Authorities

#### 14 | Which body is the port state control agency? Under what authority does it operate?

The port state control agency is the harbour master. Such agency operates under the authority of the Directorate General of Sea Communications.

### Sanctions

#### 15 | What sanctions may the port state control inspector impose?

The sanction that may be imposed by the port state control inspectors (harbour masters) is that they will not issue port clearance for vessels entering or leaving the port.

The ship can be detained with the approval or under the order of the court.

### Appeal

#### 16 | What is the appeal process against detention orders or fines?

The appeal process against detention orders or fines is to file an objection or rebuttal to the district court that issued the orders.

## CLASSIFICATION SOCIETIES

### Approved classification societies

#### 17 | Which are the approved classification societies?

The Regulation of the Ministry of Communications No. PM 7 of 2013 regarding the Obligation of Indonesian Flagged Vessels to be Classified under Classification Bureau (Decree No. 7/2013) obliges every Indonesian-flagged ship being 20 metres LBP or more, of 100 GT or more, or having a main engine of 250 HP or more, to be classified under the rule of PT Biro Klasifikasi Indonesia, an Indonesian classification society. Alternatively, such vessels may also be dually classified under foreign classification societies acknowledged by the Indonesian government. These classification societies are members of the International Association of Classification Society, comprising:

- American Bureau of Shipping;
- Bureau Veritas;
- China Classification Society;
- Croatian Register of Shipping;
- DNV GL;
- Indian Register of Shipping;
- Korean Register of Shipping;
- Lloyd's Register of Shipping;
- Nippon Kaiji Kyokai;
- Polish Register of Shipping;
- Registro Italiano Navale; and
- Russian Maritime Register of Shipping.

### Liability

#### 18 | In what circumstances can a classification society be held liable, if at all?

There is no regulation pertaining to the liability of a classification society.

## COLLISION, SALVAGE, WRECK REMOVAL AND POLLUTION

### Wreck removal orders

#### 19 | Can the state or local authority order wreck removal?

The state authority, in this case the Directorate General of Sea Communications, may order wreck removal under article 203 paragraph (1) of the Shipping Act, while local authorities cannot do so.

### International conventions

#### 20 | Which international conventions or protocols are in force in relation to collision, wreck removal, salvage and pollution?

As regards the conventions or protocols in relation to collision, by Presidential Decree No. 50 of 1979 Indonesia ratified the Convention on the International Regulation for Preventing Collisions at Sea 1972.

For the conventions and protocols in relation to pollution, by Presidential Decision No. 18 of 1978 Indonesia has ratified the International Convention on Civil Liability for Oil Pollution Damage 1969. The protocol of 1992 to amend that Convention has also been ratified by Presidential Decision No. 52 of 1999. In addition, by Presidential Decision No. 46 of 1986, Indonesia has ratified the Marine Pollution Conventions of 1973 and 1978.

Indonesia has not yet ratified any conventions or protocols in relation to salvage.

## Salvage

21 | Is there a mandatory local form of salvage agreement or is Lloyd's standard form of salvage agreement acceptable? Who may carry out salvage operations?

There is no mandatory local form of salvage agreement. Lloyd's standard form of salvage agreement is acceptable. Salvage operations may be carried out by companies with permits from the Directorate General of Sea Communications for such operations.

## SHIP ARREST

### International conventions

22 | Which international convention regarding the arrest of ships is in force in your jurisdiction?

Indonesia has not yet ratified any of the conventions regarding arrest of ships.

### Claims

23 | In respect of what claims can a vessel be arrested? In what circumstances may associated ships be arrested? Can a bareboat (demise) chartered vessel be arrested for a claim against the bareboat charterer? Can a time-chartered vessel be arrested for a claim against a time-charterer?

Pursuant to article 222 paragraphs (1) and (2) of the Shipping Act, an arrest of a vessel can only be conducted against the vessel concerned by a written order from the court based on the existence of a maritime claim. An order from the court for the arrest of vessel in respect of a maritime claim will be issued without the process of submitting a civil claim or lawsuit.

With respect to the arrest, the vessel's flag will not make a difference in respect of claims for arresting the vessel.

The Shipping Act is silent on whether associated ships can be arrested. However, the wording 'against the ships concerned' suggests that the arrest of associated ships cannot be undertaken, at least not under the framework of the Shipping Act.

Despite the above, note that, under Indonesian law, it is also possible to arrest ships based on the existence of a civil claim, by way of conservatory attachment. A plaintiff filing a civil claim against a defendant may apply for conservatory attachment over the defendant's assets to prevent the defendant from dissipating its assets to secure the enforcement of the court decision against such defendant. In the context of civil claim against a shipowner, a plaintiff may apply for conservatory attachment against the shipowner's assets, including all ships owned by such shipowner. If this is the case, then it is possible to attach not only the ships concerned with the maritime claim (in the framework of article 222 of the Shipping Act), but also other ships (or associated ships) owned by the shipowner's concerned.

Note, however, that the attachment of the associated ships as elaborated in the foregoing paragraph will fall under the regime of conservatory attachment, which would mean that an attachment of vessels can also be performed by an interlocutory decision in the form of an attachment order from the court during the course of a civil case. Such attachment can affect any assets of the defendant and not only the vessel.

As mentioned earlier, in line with article 222 paragraphs (1) and (2) of the Shipping Act, an arrest of a vessel can be conducted against the ships concerned by a written order from the court based on the existence of a maritime claim. Elucidation to article 223 (1) of the Shipping Act lists several types of maritime claims, among others, fees related to the use or the operation or the charter of ships as set out in charter parties. Based on these provisions, it can be interpreted as follows:

- the wording 'against the ships concerned' seems to suggest that the arrests of ships can be undertaken against such ships as long as it can be established that the maritime claim relates to such ships, irrespective of who the registered owners of such ships are; and
- assuming that the claims against the bareboat charterer or the time-charterer arise from the charter parties, these claims fall within the scope of maritime claim as set out under the Elucidation to article 223 (1) of the Shipping Act.

Against such background, it can be interpreted that a bareboat (demise) chartered vessel or a time-chartered vessel can be arrested for the claims against the bareboat charterer or the time-charterer if the claims are classified as maritime claims under the Shipping Act, among others, claims that arise out of charter parties. Nevertheless, note that since the implementing regulation on ship arrest has not been issued to date, our interpretation above cannot be confirmed in practice.

### Maritime liens

24 | Does your country recognise the concept of maritime liens and, if so, what claims give rise to maritime liens?

No. Indonesian law does not recognise the concept of maritime liens.

### Wrongful arrest

25 | What is the test for wrongful arrest?

Wrongful arrest can be challenged in court based on error with respect to the status of ownership of the arrested ship or the legal procedure of the arrest.

### Bunker suppliers

26 | Can a bunker supplier arrest a vessel in connection with a claim for the price of bunkers supplied to that vessel pursuant to a contract with the charterer, rather than with the owner, of that vessel?

No. A bunker supplier cannot arrest a vessel in connection with a claim for the price of bunkers supplied to that vessel pursuant to a contract with the charterer. A bunker supplier has the contractual relationship with the charterer, not with the vessel owner. Since the charterer does not own the vessel, the bunker supplier cannot arrest the vessel that is owned by a third party (ie, the vessel owner).

A bunker supplier cannot arrest the vessel since the vessel is not an asset of the charterer with whom a bunker supplier has a contractual relationship.

### Security

27 | Will the arresting party have to provide security and in what form and amount?

Under Indonesian law, it is not necessary for the arresting party to provide security.

28 | How is the amount of security the court will order the arrested party to provide calculated and can this amount be reviewed subsequently? In what form must the security be provided? Can the amount of security exceed the value of the ship?

Under Indonesian law, there are no stipulations requesting the arrested party to provide security.



## Formalities

29 | What formalities are required for the appointment of a lawyer to make the arrest application? Must a power of attorney or other documents be provided to the court? If so, what formalities must be followed with regard to these documents?

Since there is no specific regulation on vessel arrest, in practice a claimant must lodge an arrest application by filing a civil lawsuit against a defendant. In terms of appointment of a lawyer to file a civil lawsuit, a power of attorney (POA) granted by a client (or a claimant in this case) to a lawyer is required. Such POA must specifically mention representation of the claimant by such lawyer in the civil lawsuit concerned. The POA must be notarised and legalised by the diplomatic representative of the Republic of Indonesia in the country where it is executed.

All evidence in writing must be in their original form. Since court proceedings before an Indonesian court are conducted in Indonesian, any documents in a foreign language must be accompanied by its official Indonesian translation. This is to say that the POA should be made in Indonesian or at least in bilingual form (Indonesian and another foreign language, as necessary). All submissions of the documents to the court are conducted manually. If the vessel arrest application is granted by the court, it will issue a court order ordering the arrest.

## Ship maintenance

30 | Who is responsible for the maintenance of the vessel while under arrest?

As regards the maintenance of the arrested vessel, in practice, the owner or operator of the vessel shall be responsible.

## Proceedings on the merits

31 | Must the arresting party pursue the claim on its merits in the courts of your country or is it possible to arrest simply to obtain security and then pursue proceedings on the merits elsewhere?

The arresting party must pursue the claim on its merits. In practice, arrest of a vessel is similar to imposing a conservatory attachment on the property of a party that has failed to fulfil its obligations.

## Injunctions and other forms of attachment

32 | Apart from ship arrest, are there other forms of attachment order or injunctions available to obtain security?

Yes. The claiming party may request that the court order a conservatory attachment. A conservatory attachment is affected by means of an interlocutory decision of the court in the form of attachment order during the course of a civil case. Such attachment can affect any assets of the defendant, whether moveable or immovable. Note that to seek an order for conservatory attachment, a claim on the merits will have to be submitted beforehand.

## Delivery up and preservation orders

33 | Are orders for delivery up or preservation of evidence or property available?

No. Such orders are not recognised under Indonesian law.

## Bunker arrest and attachment

34 | Is it possible to arrest bunkers in your jurisdiction or to obtain an attachment order or injunction in respect of bunkers?

No. Arrest or attachment over bunkers cannot be performed in Indonesia. Bunkers cannot be separated from the vessel. Thus, an arrest or attachment must be sought over the vessel.

## JUDICIAL SALE OF VESSELS

### Eligible applicants

35 | Who can apply for judicial sale of an arrested vessel?

The plaintiff in a civil claim may apply for judicial sale of an arrested vessel.

### Procedure

36 | What is the procedure for initiating and conducting judicial sale of a vessel? How long on average does it take for the judicial sale to be concluded following an application for sale? What are the court costs associated with the judicial sale? How are these costs calculated?

The judicial sale of a vessel is recognised as a form of execution or enforcement of a court decision and may only be performed after obtaining a final and binding decision from the court.

Following such decision from the court, the winning party should submit a petition for execution to the court. Furthermore, the court shall issue a warning twice to the losing party to obey the court's decision. Failure to obey such warning will result in the court issuing an execution order to the court bailiff and the State Receivables and Auction Office to perform such judicial sale in the form of an auction. Prior to the auction, the Auction Office will also announce the auction twice. The whole process, in practice, will take quite a considerable time.

The court costs for the judicial sale vary depending on the stipulation issued by the head of each district court. Additionally, there are also the costs of the Auction Office, taxes and the cost for the change of ownership.

### Claim priority

37 | What is the order of priority of claims against the proceeds of sale?

Pursuant to article 316 of the Indonesian Commercial Code, the following claims are prioritised against the proceeds of sale:

- costs of execution;
- debts due to the master and the crew arising under the seafarer's agreements relating to the period during which they have served aboard the ship;
- remuneration due for salvage, pilotage dues, canal and harbour dues and other shipping dues; and
- debts arising from collisions.

### Legal effects

38 | What are the legal effects or consequences of judicial sale of a vessel?

In Indonesia, the judicial sale can be deemed as an execution sale through the process of public auction conducted under court order. The legal effect would be a change of ownership over the vessel. Should the vessel be subject to encumbrances or liens, the holder of the said security rights may lodge rebuttal against the process of the judicial sale, as a vessel that is encumbered with a lien or maritime liens cannot be the subject of a judicial sale.

**Foreign sales**

39 | Will judicial sale of a vessel in a foreign jurisdiction be recognised?

Yes, insofar as the judicial sale of the vessel is performed in accordance with the prevailing laws and regulations in that jurisdiction.

**International conventions**

40 | Is your country a signatory to the International Convention on Maritime Liens and Mortgages 1993?

Yes. By Presidential Decree No. 44 of 2005, Indonesia has ratified the International Convention on Maritime Liens and Mortgages 1993. However, at the time of writing, the implementing regulation of the Presidential Decree is not yet available.

**CARRIAGE OF GOODS BY SEA AND BILLS OF LADING****International conventions**

41 | Are the Hague Rules, Hague-Visby Rules, Hamburg Rules or some variation in force and have they been ratified or implemented without ratification? Has your state ratified, accepted, approved or acceded to the UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea? When does carriage at sea begin and end for the purpose of application of such rules?

The Hague Rules and Hague-Visby Rules have not been ratified by Indonesia, but in practice the parties may refer to any of the provisions of those rules in the bill of lading.

The Hamburg Rules have been ratified by Indonesia, but in practice they are not implemented.

As to the Rotterdam Rules, up to this point there has not been any proposal from Indonesia to ratify, accept, approve or accede to the rules.

**Multimodal carriage**

42 | Are there Conventions or domestic laws in force in respect of road, rail or air transport that apply to stages of the transport other than by sea under a combined transport or multimodal bill of lading?

In relation to multimodal transport, there are Government Regulations No. 8 of 2011 concerning Multimodal Transport and Regulation of the Ministry of Transportation No. 8 of 2013 concerning Implementation and Commercial Operation of Multimodal Transport. Nevertheless, these regulations do not specifically address road, rail or air transport that apply to stages of the transport other than by sea under a combined transport or multimodal bill of lading.

Indonesia is also a signatory to the ASEAN Framework Agreement on Multimodal Transport, 17 November 2005.

**Title to sue**

43 | Who has title to sue on a bill of lading?

The shipper, consignee or notified party has title to sue on a bill of lading.

**Charter parties**

44 | To what extent can the terms in a charter party be incorporated into the bill of lading? Is a jurisdiction or arbitration clause in a charter party, the terms of which are incorporated in the bill, binding on a third-party holder or endorsee of the bill?

Any relevant terms in the charter party can be included in the bill of lading. A jurisdiction or arbitration clause in a bill of lading would be binding on a third-party holder or endorsee of such bill of lading.

**Demise and identity of carrier clauses**

45 | Is the 'demise' clause or identity of carrier clause recognised and binding?

Such clauses are unknown in Indonesian shipping practice and are therefore not applicable.

**Shipowner liability and defences**

46 | Are shipowners liable for cargo damage where they are not the contractual carrier and what defences can they raise against such liability? In particular, can they rely on the terms of the bill of lading even though they are not contractual carriers?

Shipowners are not liable unless there is provision in the contract relating to the shipowner. The defence that the shipowner can raise is that it has no legal relationship at all, since it is not a party to the contract of carriage. However, the shipowner can rely on the terms of the bill of lading to defend itself, even though it is not a contractual carrier, as long as the rights and obligations of the shipowner are also stipulated therein. Alternatively, the shipowner may also use the terms of the bill to point out that they have no obligations whatsoever with regard to the contract of carriage.

**Deviation from route**

47 | What is the effect of deviation from a vessel's route on contractual defences?

The effect of deviation from a vessel's route on contractual defences would depend on the content of the contract.

**Liens**

48 | What liens can be exercised?

Based on article 316 of the Indonesian Commercial Code, the following are the privileged rights (comparable to liens):

- costs of execution;
- debts due to the master and the crew arising under the seafarer's agreements relating to the period during which they have served aboard the ship;
- remuneration due for salvage, pilotage dues, canal and harbour dues and other shipping dues; and
- debts arising from collisions.

**Delivery without bill of lading**

49 | What liability do carriers incur for delivery of cargo without production of the bill of lading and can they limit such liability?

Delivery of cargo without production of the bill of lading may take place against certain guarantees provided by the consignee.

By the parties' agreement, carriers are not prohibited from limiting the liability of the carrier.

## Shipper responsibilities and liabilities

### 50 | What are the responsibilities and liabilities of the shipper?

Based on articles 468, 504, 517p, 519u, 520i and 520j of the Indonesian Commercial Code, the shipper shall be liable for damages and late delivery of the goods or cargo occurring due to its own fault. Accordingly, the shipper is obliged to provide goods or cargo in good condition and on time, as well as proper information relating to the nature of the goods or cargo. Furthermore, the shipper shall be liable to pay damages resulting from the shipper's request to discharge and rearrange the goods or cargo at his or her own initiative.

## SHIPPING EMISSIONS

### Emission control areas

#### 51 | Is there an emission control area (ECA) in force in your domestic territorial waters?

There is no emission control area in force in Indonesia.

### Sulphur cap

#### 52 | What is the cap on the sulphur content of fuel oil used in your domestic territorial waters? How do the authorities enforce the regulatory requirements relating to low-sulphur fuel? What sanctions are available for non-compliance?

There are no regulations capping the sulphur content of fuel oil used in Indonesian territorial waters.

## SHIP RECYCLING

### Regulation and facilities

#### 53 | What domestic or international ship recycling regulations apply in your jurisdiction? Are there any ship recycling facilities in your jurisdiction?

Indonesia is not a party to Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships. A few general provisions pertaining to ship recycling are scattered under domestic legislation, such as the Shipping Act. Note that the term 'ship scrapping' instead of 'ship recycling' is used in Indonesian domestic regulations.

The Elucidation to article 241 of the Shipping Act defines 'ship scrapping' as the activities of cutting and destroying ships that are no longer used in a safe and environmentally sound manner. In line with article 241 paragraph 1 of the Shipping Act, ship scrapping must be done in compliance with the requirements on marine environment protection.

There are several private recycling facilities that are run traditionally in Indonesia.

## JURISDICTION AND DISPUTE RESOLUTION

### Competent courts

#### 54 | Which courts exercise jurisdiction over maritime disputes?

Any district court (the court of first instance) exercises jurisdiction over maritime disputes in Indonesia. The relevant court should be the court in the domicile of the defendants or the location of the vessel.

## Service of proceedings

#### 55 | In brief, what rules govern service of court proceedings on a defendant located out of the jurisdiction?

The rules that govern service of court proceedings are contained in the Indonesian Civil Procedural Laws (HIR, RBG and RV). Service of court proceedings must be performed by a court bailiff from the district court having jurisdiction over the domicile of the defendant.

## Arbitration

#### 56 | Is there a domestic arbitral institution with a panel of maritime arbitrators specialising in maritime arbitration?

The domestic arbitral institution is called the BANI Arbitration Centre, whose head office is located in Jakarta. Branch offices are located in Batam, Bandung, Denpasar, Medan, Surabaya, Palembang and Pontianak. The BANI Arbitration Centre has arbitrators who are expert in maritime law and business.

Based on our observation, there are not many maritime law disputes that have been brought to the BANI Arbitration Centre.

## Foreign judgments and arbitral awards

#### 57 | What rules govern recognition and enforcement of foreign judgments and arbitral awards?

A foreign judgment cannot be enforced in Indonesia. Foreign judgments must be relitigated and the previous judgment shall be treated as evidence in the new case filed in Indonesia.

Recognition and enforcement of arbitration awards is governed by Law No. 30 of 1999 regarding Arbitration and Alternative Dispute Resolution (Indonesian Arbitration Act), which refers to the rules of the 1958 New York Convention with respect to international arbitration awards.

## Asymmetric agreements

#### 58 | Are asymmetric jurisdiction and arbitration agreements valid and enforceable in your jurisdiction?

Assuming that asymmetric jurisdiction clauses typically require one party to an agreement to sue in the courts of a specified jurisdiction, while allowing the other party to sue in any court with jurisdiction, note that Indonesian law is silent on this issue. Nevertheless, the general principle is that parties have the autonomy or freedom to choose to refer their dispute to a particular forum for dispute resolution, including any court.

Further, assuming that what is meant by asymmetric arbitration agreements are clauses which allow one party (typically the claimant) to choose whether to sue in the courts of a specified jurisdiction or to refer the disputes to particular arbitration, note that the Indonesian Arbitration Act is also silent on this issue. However, the general principle is that the court shall decline jurisdiction over the disputes of the parties that have been bound by an arbitration agreement.

To date, we are not aware of any court decisions dealing with the issues of asymmetric jurisdiction and arbitration agreements.

## Breach of jurisdiction clause

#### 59 | What remedies are available if the claimants, in breach of a jurisdiction clause, issue proceedings elsewhere?

A defendant could submit an objection or demurrer challenging jurisdiction in their submission.

60 | What remedies are there for the defendant to stop domestic proceedings that breach a clause providing for a foreign court or arbitral tribunal to have jurisdiction?

A defendant may file an objection or demurrer regarding the competency of the forum, as stipulated in the relevant contract in their submission.

### LIMITATION PERIODS FOR LIABILITY

#### Time limits

61 | What time limits apply to claims? Is it possible to extend the time limit by agreement?

In general, as regards time limits for breach of contract and tort, article 1967 of the Indonesian Civil Code imposes a 30-year time limit.

However, the Indonesian Civil Code and Commercial Code also stipulate the time limits for particular claims, including those related to maritime claims. Such time limits could be extended or reduced by agreement of both parties.

#### Court-ordered extension

62 | May courts or arbitral tribunals extend the time limits?

In practice, the courts or arbitral tribunals have full discretion on this. Therefore, they may extend the time limits.

### MISCELLANEOUS

#### Maritime Labour Convention

63 | How does the Maritime Labour Convention apply in your jurisdiction and to vessels flying the flag of your jurisdiction?

Indonesia has not yet ratified the Maritime Labour Convention and therefore it is not applicable in this jurisdiction.

#### Relief from contractual obligations

64 | Is it possible to seek relief from the strict enforcement of the legal rights and liabilities of the parties to a shipping contract where economic conditions have made contractual obligations more onerous to perform?

Economic conditions will not prevent parties from seeking the strict enforcement of their legal rights and liabilities under a shipping contract against another party. Should economic conditions impede the performance of a shipping contract, parties should attempt an amicable negotiation.

#### Other noteworthy points

65 | Are there any other noteworthy points relating to shipping in your jurisdiction not covered by any of the above?

One of the key provisions of the Shipping Act, which was passed in April 2008, are the cabotage rules, which limit domestic carriage (coastal or inter-island trade) to Indonesian national flag-carrying vessels. In addition, the vessels are required to be crewed by Indonesian citizens. The Cabotage Law was effectively implemented on 7 May 2011.

To implement the Cabotage Law, the Ministry of Transportation has issued the implementing regulation concerning the restriction of the operation of foreign vessels in Indonesia, which is amended by Ministry of Transportation Regulation No. 100/2016. Pursuant to Ministry of Transportation Regulation No. 100/201, under certain restrictions and requirements, foreign vessels can only be operated in Indonesia for the following activities:



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