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Shipping Law 2025

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Contributing Editors:

Simon Moore & Alex Hookway

Adams & Moore Solicitors LLP

glg Global Legal Group

Expert Analysis Chapters

Q&A Chapters

Indonesia


Emir Nurmansyah


Ulyarta Naibaho


Muhammad Muslim


Adithya Lesmana

Ali Budiardjo, Nugroho, Reksodiputro

1 Marine Casualty

1.1 In the event of a collision, grounding or other major casualty, what are the key provisions that will impact upon the liability and response of interested parties? In particular, the relevant law / conventions in force in relation to:

(i) Collision

According to the Indonesian Commercial Code ("ICC"), the liability in a vessel collision is determined based on the degree of fault attributed to each party involved.

Article 535 of the ICC stipulates that:

"*If a collision is attributable to a fortuity or if it is due to force majeure of if there is any doubt regarding the causes thereof, the loss or damage shall be borne by whoever has sustained it*".

Article 536 of the ICC stipulates that:

"*In the event such ship collision [is] as [a] result of fault of one of the colliding ships or due to the fault of the other ship, the owner of ship who committed the fault shall be liable to for the whole damage*".

Article 537 of the ICC stipulates that:

"*If each ship involved in the collision is to blame therefore the owners' liability shall be proportionate to the degree of fault on each side.*

The ratio shall be established by the Court without having to be indicated by the party claiming damages. If this ratio cannot be determined the owners of the ships shall be liable in equal shares.

In case of [death] or injury each owner shall be liable to third parties for the whole of the loss or damage thereby sustained. The owners who in consequence [have] paid more than [their] share computed as indicated in the first paragraph hereof shall have a remedy in respect thereof against those who are liable with [them]".

Proving the liability of a vessel in a collision hinges primarily on establishing fault, which is closely tied to the professionalism of the ship's crew in shipping practice. Furthermore, according to Article 249 of Law No. 17 of 2008 on Shipping Law as amended by Law No. 6 of 2023 ("Shipping Law"), the responsibility for a collision lies with the master of the vessel, unless evidence proves otherwise. However, the master may be exempted from liability if they have taken appropriate measures and fulfilled their obligations as prescribed by the relevant laws and regulations.

Regarding claims pertaining to collisions, they must be filed within two years from the date of the collision or when the damage becomes apparent. Please be informed that Indonesia has also ratified the Convention on the International Regulations for Preventing Collisions at Sea of 1972 through Presidential Decree No. 50 of 1979.

(ii) Pollution

Every vessel that operates or sails in Indonesian waters must meet the requirements for seaworthiness, which encompass measures for preventing marine pollution. The owners or operators of these vessels are also obligated to obtain and maintain an insurance policy to cover pollution liability.

In accordance with Article 231 of Shipping Law, the owners or operators bear strict responsibility for any pollution caused by their vessels. Failure to comply with these regulations can result in fines or imprisonment.

In the context of pollution, Indonesia has ratified several international conventions. These include the United Nations Convention on the Law of the Sea of 1982 through Law No. 17 of 1985, the International Convention for the Prevention of Pollution from Ships of 1973 (as amended by the Protocol of 1978 and Protocol of 1997) through Presidential Decree No. 46 of 1986 and Presidential Regulation No. 29 of 2012, as well as the International Convention on Civil Liability for Oil Pollution Damage of 1969 and its 1992 amendment ("CLC") through Presidential Decree No. 52 of 1999.

(iii) Salvage / general average

Indonesia has not officially ratified any salvage conventions. The regulations governing salvage operations are outlined in the Minister of Transportation Regulation No. 71 of 2013 on Salvage and/or Underwater Works, as amended several times (MOT Reg No. 71/2013). This regulation defines the scope of salvage activities, which include providing assistance to vessels and/or their cargo in distress or a shipwreck, lifting and removing vessel hulls and cargo, and lifting and removing underwater obstacles or other objects. Only companies specialising in salvage operations are permitted to carry out such activities, and they must obtain the necessary permits from the relevant agency.

Regarding general average, its principles are stipulated in the ICC. General average refers to a situation where intentional sacrifices or expenses are incurred to save a ship and its cargo. The costs incurred are then distributed proportionally (*pro rata*) between the shipowners and cargo owners.

(iv) Wreck removal

Since Indonesia is a party to the Nairobi International Convention on the Removal of Wrecks of 2007, shipowners bear strict liability under the convention.

However, they may be absolved of liability based on limited defences. Additionally, as stated in Article 203 of the Shipping Law, shipowners are obligated to remove any shipwrecks that impede navigation within 180 days of the vessel's sinking. Failure to do so grants the Indonesian Government the authority to remove the wreck at the owners' expense.

Under MOT Regulation No. 71/2013, vessel owners are also required to obtain wreck removal insurance or protection and indemnity insurance from an insurance company recognised by the Indonesian Government. This mandate does not apply to war vessels, state vessels used for governmental duty, and motor vessels with a gross tonnage below 35 tonnes.

(v) Limitation of liability

Indonesia has not ratified any international conventions that specifically address limitation of liability for general maritime claims. However, according to the ICC, shipowners can limit their liability for cargo claims and claims arising from collisions with other vessels.

Under Article 541 of the ICC, shipowners' liability for collision damage is limited to f.50 (50 guilders) per cubic metre of the vessel's net volume added. Provided that the owners are also the carriers of goods, the responsibility over the damage suffered on the goods transported by the vessel must be same as the above limitation. It is important to note that this provision is no longer fully applied in practice due to the very low limitation amount, which is not suitable for the current situation. This is due to the fact that the ICC was established during the Dutch colonial era. Instead, judges nowadays would interpret and determine a more appropriate amount, although it should be noted that the defendant must argue for the limitation of liability in its defence.

Additionally, carriers are unable to limit their liability in cases of deliberate acts or gross negligence, as stipulated in Article 476 of the ICC.

(vi) The limitation fund

In Indonesia, the requirement to establish a limitation fund applies solely to the limitation of liability for oil spill incidents, as stated in Article V, paragraph 3 of the CLC. Despite this, Indonesia is now a former party to the 1971 Fund Convention and currently maintains the observer status with the 1992 Fund Convention. Indonesian law does not have specific provisions governing the type of security to be deposited when establishing a limitation fund. Consequently, commonly used forms of security such as cash deposits and P&I Letters of Undertaking ("LOU") are generally deemed acceptable.

1.2 Which authority investigates maritime casualties in your jurisdiction?

Pursuant to Government Regulation No. 9 of 2019 on Vessel Incident Investigation and MOT Regulation No. 6 of 2020 on Vessel Incident Investigation Procedure, the master of a vessel is required to take proactive measures, seek assistance, notify others about a vessel incident, and report the incident if they become aware of or experience one. The report serves as preliminary evidence during the initial examination of the incident.

The preliminary investigation will be carried out by the harbour master or government official appointed by the MOT (e.g., vessel safety investigator, seaworthiness and marine security investigator) and a follow-up investigation may be conducted by the Admiralty Court (*Mahkamah Pelayaran*), in respect of the seamanship professionalism. If the vessel incident involves criminal allegations, a criminal investigation can be carried out by either the relevant civil service investigating officer or the Indonesian police. The National Transportation Safety Committee (*Komite Nasional Keselamatan Transportasi* or "KNKT") is also authorised to investigate vessel incidents to prevent similar occurrences in the future. In the event that a vessel incident results in damages to a party, the affected party has the option to file a civil claim with the appropriate District Court.

1.3 What are the authorities' powers of investigation / casualty response in the event of a collision, grounding or other major casualty?

Please refer to our response provided for question 1.2 above.

2 Cargo Claims

2.1 What are the international conventions and national laws relevant to marine cargo claims?

Indonesia has not ratified any international conventions regarding claims related to marine cargo. As a result, the resolution of such claims will be based on local laws and regulations, (i.e., ICC, Civil Code, Shipping Law, and other applicable legislation). These laws stipulate that carriers are responsible for compensating losses arising from their failure to deliver the cargo or a part thereof, as well as any damage to the cargo, unless the damage or failure was caused by *force majeure*, or the cargo was already defective upon receipt, or it was damaged due to the shipper's fault or negligence.

The ICC includes provisions that limit the liability of carriers for cargo claims. However, these limitations are rarely enforced by the courts in recent days. Furthermore, according to Article 513 of the ICC, if the bill of lading contains a clause, such as "content, nature, amount, weight, or size unknown" or a similar provision, the carriers will not be held responsible for any cargo claims, unless they should have been aware of the condition and type of the cargo or if the cargo was quantified before being handed over to the carriers.

2.2 What are the key principles applicable to cargo claims brought against the carrier?

Kindly refer to our response provided earlier in relation to question 2.1 above.

2.3 In what circumstances may the carrier establish claims against the shipper relating to misdeclaration of cargo?

Unless the carriers had prior knowledge or should have reasonably known about the nature of the cargo before the voyage, they have the right to seek compensation for any damage resulting from incorrect or insufficient information regarding the cargo.

2.4 How do time limits operate in relation to maritime cargo claims in your jurisdiction?

In the absence of any contrary agreement made between the parties, Article 741 of the ICC establishes a one-year

timeframe within which legal claims concerning payment by the consignee, carriage of passengers and luggage against the carrier, and compensation for cargo damage, must be brought. This one-year period is calculated from either the completion of the voyage or the date when the vessel did not arrive at the intended destination port.

3 Passenger Claims

3.1 What are the key provisions applicable to the resolution of maritime passenger claims?

Indonesia has not ratified the Athens Convention of 1974 relating to the Carriage of Passengers and their Luggage by Sea of 1974, or its Protocols. According to the ICC, carriers are required to ensure the safety of passengers from the moment of boarding until the disembarkation from the ship. In cases where personal injury occurs, carriers must demonstrate that it was caused by an unavoidable event or the passenger's own negligence. Failure to establish this defence obligates the carriers to compensate the passengers for their losses. In the unfortunate event of a passenger's death resulting from an injury, carriers are obligated to provide compensation to the spouse, children, and parents of the deceased passenger. If the transportation of passengers is carried out under an agreement with a third party, the carriers are responsible for both the third party and the passenger's direct descendants. The ICC sets forth limitations on liability for passenger claims, although courts rarely enforce these provisions.

3.2 What are the international conventions and national laws relevant to passenger claims?

Indonesia has not ratified any international conventions pertaining to passenger claims. Therefore, the process for filing passenger claims in Indonesia will be based on the provisions of the ICC.

3.3 How do time limits operate in relation to passenger claims in your jurisdiction?

Article 741 of the ICC stipulates a one-year time limit for passenger claims.

4 Arrest and Security

4.1 What are the options available to a party seeking to obtain security for a maritime claim against a vessel owner and the applicable procedure?

When filing a civil lawsuit, a party could file a conservatory attachment over the vessel owner's assets, including the vessel itself. Furthermore, according to the provisions of the Shipping Law, the harbour master has the authority to arrest a vessel at the port where it is currently situated, based on a written court order, if the vessel is implicated in either criminal or civil case proceedings. Specifically, in civil cases concerning maritime claims, the Shipping Law allows for the arrest of a vessel by the harbour master without the need to initiate civil court proceedings. However, it is worth noting that the law itself is silent on several important issues, such as whether an arrest can be granted against foreign flagged vessel in a maritime claim, the procedure, time and costs necessary to arrest a vessel, procedure to release the vessel, provisions relating to the security to replace the arrest, counter security, definition of wrongful arrest. These issues create several unanswered legal issues and thus there is no legal certainty whether Indonesian courts will issue an arrest order if a party requests for it.

4.2 Is it possible for a bunker supplier (whether physical and/or contractual) to arrest a vessel for a claim relating to bunkers supplied by them to that vessel?

A bunker supplier may have the option to apply for the arrest of a vessel based on the bunkers they have supplied. To initiate the arrest process, the bunkers supplied are outlined in our response to question 4.1 above.

4.3 Is it possible to arrest a vessel for claims arising from contracts for the sale and purchase of a ship?

Claims arising from contracts for the sale and purchase of a ship are considered civil disputes (breach of contract claim). The party suffering damage due to such breach of contract may have the option to apply for the arrest of the vessel using the procedure outlined in our response to question 4.1 above.

4.4 Where security is sought from a party other than the vessel owner (or demise charterer) for a maritime claim, including exercise of liens over cargo, what options are available?

By means of Presidential Regulation No. 44 of 2005, Indonesia has ratified the International Convention on Maritime Liens of 1993. Nevertheless, the practical implementation of maritime liens is not explicitly defined within Indonesian Law. Therefore, there is a notable chance that the exercise of maritime liens may not be effectively carried out in Indonesia.

However, according to Articles 65 and 66 of the Shipping Law, it is explicitly stated that vessel owners, charterers, managers, or operators have a legal obligation to prioritise the payment of prioritised maritime receivables (*piutang pelayaran yang didahulukan*). These receivables include various types of payments and costs related to the vessel and its operation that include the following:

1. the encompassing of salaries and other payments to the vessel's master, crew, and complementary crew, including repatriation costs and social insurance contributions;
2. the cover of condolence money for deaths or medical expenses resulting from injuries directly related to the vessel's operation;
3. salvage costs;
4. port and shipping line expenses, as well as pilotage costs; and
5. losses incurred due to physical loss or damage caused by the vessel's operation, excluding losses or damages to cargoes, containers, and passengers' belongings.

Furthermore, there are certain costs arising from salvage operations conducted by the Indonesian government for wreck removal to ensure navigation safety or protect the maritime environment, as well as repair costs owed to shipyards or dockyards (retention right) if the vessel is moored in an Indonesian shipyard or dockyard during a forced sale.

It is important to note that these prioritised maritime receivables (*piutang pelayaran yang didahulukan*) and associated costs take precedence over the payment of pledge, shipping mortgage, and registered receivables.

4.5 In relation to maritime claims, what form of security is acceptable; for example, bank guarantee, P&I letter of undertaking?

There is no mandatory type of security under Indonesian law. The general forms of security that are commonly used in Indonesia are mortgage, fiduciary and pledge. In addition, bank or corporate guarantees or P&I LOU are also commonly used.

4.6 Is it standard procedure for the court to order the provision of counter security where an arrest is granted?

Indonesian law does not recognise the concept of counter security. The vessel arrest will be revoked once the civil or criminal case proceedings are resolved. Please note, however, that if a vessel is confiscated due to criminal case proceedings, there will always be a possibility that the vessel is forfeited for the interest of the state by the court.

4.7 How are maritime assets preserved during a period of arrest?

Although the Shipping Law allows for the arrest of the vessel, the necessary implementing regulations have not been enacted. Therefore, many important issues pertaining vessel arrest, including preservation of maritime assets, have not been legislated.

4.8 What is the test for wrongful arrest of a vessel? What remedies are available to a vessel owner who suffers financial or other loss as a result of a wrongful arrest of his vessel?

Indonesian law does not explicitly address the criteria for determining wrongful arrest or the available remedies in case of wrongful arrest. In instances where a vessel is arrested or confiscated as part of criminal proceedings, the Indonesian Criminal Procedure Law allows for the application of a pretrial (*praperadilan*) review examination at the District Court. This review examines the legality or illegality of the arrest, detention, termination of investigation, or termination of prosecution. In cases of illegal arrest or detention, compensation or rehabilitation may be granted as a consequence. The amount of compensation, as stipulated by Government Regulation No. 92 of 2015, is between from IDR 500,000 to IDR 100 million.

4.9 When is it possible to apply for judicial sale of a ship and what is the procedure for judicial sale?

In the context of vessel mortgage enforcement, judicial sale of a ship can may only commence by obtaining writ of execution (*executoriale beslag/penetapan sita eksekus)* from the court and during this process, based on strict interpretation of Article 195 (6) of Indonesian Procedural Law, only the debtor or other parties with title over the encumbered ship may challenge the writ of execution application made by the creditor and delay issuance of the writ of execution. If the court agrees to issue a writ of execution, any challenge to it will not be accepted.

During the process of judicial auction sale (following and based on the writ of execution), Article 1210 of the Indonesian Civil Code also provides that the purchaser of a ship under auction may request that the ship be released from any encumbrances (including the previously registered ship mortgage with lower rank) whose value exceeds the purchase price. A purchaser that wishes to make such request, must, within one month of the transfer, arrange that the legal ranking for division of the purchase price be issued by the court, in accordance with the rules stipulated in the legal regulations of Civil procedures (Article 1212 ICC). Once the legal ranking for division is issued by the court and the purchase price is used to pay the outstanding debt of the previous ship owner in the rank order based on the court decision and its respective proportion, the ship will be free of all liens and encumbrances that may have arisen during the previous ownership of the ship. This will be the case even if the purchase price is less than all outstanding debt and, therefore, some debt of the previous ship owner remains unpaid.

As for judicial sale of a ship due to other civil proceedings, the writ of execution will be issued by the court upon issuance of the final and binding judgment. The process afterwards will follow the steps elaborated above.

5 Evidence

5.1 What steps can be taken (and when) to preserve or obtain access to evidence in relation to maritime claims including any available procedures for the preservation of physical evidence, examination of witnesses or pre-action disclosure?

Indonesian law does not specifically regulate regarding the procedures for preserving or accessing evidence in relation to maritime claims. Generally, the procedures to preserve or to obtain access to evidence would be conducted in accordance with the relevant procedural law.

5.2 What are the general disclosure obligations in court proceedings? What are the disclosure obligations of parties to maritime disputes in court proceedings?

Under Indonesian law, the general obligation of disclosure (discovery rule) in court proceedings is not acknowledged. Instead, the parties are obligated to present evidence that substantiates their claims or defences.

5.3 How is the electronic discovery and preservation of evidence dealt with?

The concept of discovery is not recognised in Indonesia, which means there is no specific procedure in place for electronic discovery or the preservation of electronic evidence.

6 Procedure

6.1 Describe the typical procedure and timescale applicable to maritime claims conducted through: i) national courts (including any specialised maritime or commercial courts); ii) arbitration (including specialist arbitral bodies); and iii) mediation / alternative dispute resolution (ADR).

6.1.1 Which national courts deal with maritime claims?
There are no specialised courts dedicated solely to maritime matters in Indonesia. While an Admiralty Court (*Mahkamah*

Pelayaran) exists, it is more akin to an enquiry process rather than a judiciary process. Additionally, its jurisdiction is limited to cases concerning the seamanship professionalism. The Admiralty Court has the authority to assess whether the master and officers of the vessel were at fault in navigating the vessel during an incident or collision. For maritime claims, they are generally treated as civil disputes and should be brought before the District Court or resolved through arbitration.

In the event of a civil dispute that cannot be resolved amicably between the parties, court proceedings can be pursued. These proceedings typically involve multiple stages, starting with the District Courts as the initial trial courts, followed by the High Courts for appeals, and ultimately the Supreme Court, which is the highest judicial institution in Indonesia. The Supreme Court has the authority to review civil cases through cassation and civil review. The overall duration of a civil case, from examination to obtaining a decision from the Supreme Court, typically ranges from one to two years.

Alternatively, if the disputing parties mutually agree to settle their civil dispute through arbitration, the matter will be heard and determined by the arbitration institution specified in their arbitration agreement. The resulting arbitration award will be final and binding, providing a resolution to the dispute outside of the court system.

6.1.2 Which specialist arbitral bodies deal with maritime disputes in your jurisdiction?

Indonesia does not have dedicated arbitration bodies specifically handling maritime disputes.

6.1.3 Which specialist ADR bodies deal with maritime mediation in your jurisdiction?

Indonesian law recognises alternative dispute resolution in the form of consultation, negotiation, mediation, conciliation, or expert assessment. However, it is worth noting that there are no specific organisations or bodies specialised in alternative dispute resolution solely for marine-related disputes in Indonesia.

6.2 What are the principal advantages of using the national courts, arbitral institutions and other ADR bodies in your jurisdiction?

To date, national courts continue to be the primary choice for resolving disputes, including those of a maritime dispute. From a cost perspective, national court proceedings are often considered more economical compared to arbitration. However, one disadvantage is that national court proceedings typically take longer to reach a resolution. On the other hand, arbitration offers significant advantages, such as the ability to appoint arbitrators with specialised knowledge in maritime disputes and the final and binding nature of arbitral awards, resulting in a more expedited process. Nevertheless, arbitration proceedings can only take place if there is a pre-existing arbitration agreement between the parties involved.

6.3 Highlight any notable pros and cons related to your jurisdiction that any potential party should bear in mind.

Indonesia might have been considered an unfriendly jurisdiction in dealing with maritime claims due to the absence of comprehensive maritime laws and regulations, as exemplified by the intricate procedure for vessel arrest in Indonesia. The expansive geography of Indonesia poses challenges in locating vessels and determining the appropriate harbour master with the authority to conduct an arrest. Furthermore, legal proceedings in Indonesia may have a relatively lengthy duration, and the country has not ratified various conventions that are widely accepted and utilised in other nations.

7 Foreign Judgments and Awards

7.1 Summarise the key provisions and applicable procedures affecting the recognition and enforcement of foreign judgments.

Foreign court judgments are generally not recognised and cannot be enforced in Indonesia. In order to enforce a foreign court judgment against Indonesian citizens or assets owned by Indonesian individuals or entities, an order from a domestic court or a non-Indonesian institution empowered by an international treaty is required. While Indonesia has ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1959 (referred to as the "New York Convention"), no such treaty has been established with any foreign country concerning the recognition and enforcement of judgments from foreign courts. As a result, if a foreign court judgment is to be enforced in Indonesia, it would need to undergo a new legal proceeding before an Indonesian court. Furthermore, any judgment obtained through this process would be subject to multiple levels of appeal within the Indonesian judicial system.

7.2 Summarise the key provisions and applicable procedures affecting the recognition and enforcement of arbitration awards.

Pursuant to Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, a foreign arbitration award can be recognised in Indonesia if the following conditions are met:

(a) The award is issued by an arbitrator or arbitration tribunal in a country that has a bilateral or multilateral treaty with Indonesia on the recognition and enforcement of foreign arbitration awards.
(b) The award falls within the scope of commercial law in Indonesia.
(c) The award does not violate public order.
(d) The award obtains an *exequatur* order from the chief judge of the Central Jakarta District Court.
(e) The award obtains an *exequatur* order from the Supreme Court of the Republic of Indonesia if the arbitration dispute involves the Republic of Indonesia as one of the parties in the arbitration dispute.

Indonesia has ratified the New York Convention, fulfilling requirement (a). The fulfilment of requirements (b) to (e) will be determined based on the evaluation of the chief judge of the Central Jakarta District Court.

Enforcing foreign arbitration awards in Indonesia involves significant formalities and can be a cumbersome process. Generally, there are three stages involved in the enforcement of a foreign arbitration award in Indonesia: (a) registration of the award; (b) obtaining a writ of enforcement; and (c) execution. Stages (a) and (b) are prerequisites for the award to become enforceable in Indonesia, while stage (c) is pursued if the party against whom enforcement is sought does not comply voluntarily with the award.

8 Offshore Wind and Renewable Energy

8.1 What is the attitude of your jurisdiction concerning the maritime aspects of offshore wind or other renewable energy initiatives? For example, does your jurisdiction have any public funding programme for vessels used in offshore wind? Summarise any notable legislative developments.

Renewable energy in the shipping industry

Indonesia acknowledges the significance of renewable energy and has proactively expedited its development to enhance the national electricity sector. One of the approaches involves harnessing renewable energy sources, such as wind energy, and converting it into electricity for the nation's benefit.

The development of renewable energy sources has been undertaken by either private business entities or by the government, either entirely or partially. However, it is important to note currently, the electricity generated from these sources must be sold to PT Perusahaan Listrik Negara (Persero), the sole electricity supplier in Indonesia based on Power Purchase Agreement (*Perjanjian Jual Beli Tenaga Listrik*).

8.2 Do the cabotage laws of your jurisdiction impact offshore wind farm construction?

Kindly refer to our response provided earlier in relation to question 8.1 above.

9 Updates and Developments

9.1 Describe any other issues not considered above that may be worthy of note, together with any current trends or likely future developments that may be of interest.

Greenhouse gas emissions have become a significant concern for the Indonesian government recently, prompting proactive measures to mitigate them across different sectors, including the shipping industry. One of the steps to achieve decarbonised ports, is the adoption of Onshore Power Supply ("OPS") facilities in Indonesian Ports. This initiative aims to enable ships sailing in Indonesian water to utilise OPS to reduce the emission. By utilising OPS, the vessel does not use the power source from the combustion engine on board while docking and performing port activities. Currently, the OPS implementation is available in 21 ports in Indonesia.

Therefore, the ships will be required to make necessary adjustments to their equipment, Standard Operating Procedures and also engage in communication with the Port Business Entity/*Badan Usaha Pelabuhan* ("BUP") and other related parties regarding the implementation.

The Indonesian government has also begun with several initiatives pertaining carbon capture and storage ("CCS") by the enactment of Presidential Regulation No. 14 of 2024 on Carbon Capture and Storage ("PR 14/2024"). CCS may be undertaken in: (i) an existing oil / gas block that has been developed based on a production sharing contract ("PSC"); or (ii) a specific area that has been designated as a "carbon storage permit area" (*Wilayah Izin Penyimpanan Karbon*). As most of Indonesian oil/gas block is located offshore, the CCS implementation may affect the vessels operating within the area, although there is still no specific regulation that has been issued to address this matter in further details.

Shipping law amendment

On 28 October 2024, Indonesia passed the Third Amendment to Law No 17 of 2008 on Shipping through Law No. 66 of 2024 (the "Third Amendment"), after receiving approval from the Indonesian House of Representatives on 30 September 2024. The Third Amendment further tightens Indonesia's cabotage regulations and introduces several other changes that will greatly affect foreign direct investors in Indonesian shipping industries.

Indonesia's cabotage rules prohibit the use of foreign-flagged vessels for domestic shipping services, covering all maritime activities within Indonesia, including the transporting of goods or passengers between ports and islands within the country's territorial waters. Foreign vessels are also restricted from operating for non-transportation purposes in Indonesian waters, although exceptions are available for certain types of vessels, such as those used in seismic surveying, oil drilling and salvage operations, subject to strict requirements.

When the cabotage policy was introduced in 2010, it dramatically changed Indonesia's shipping industry, requiring international shipping companies operating in the country to reflag their vessels with the Indonesian flag. This policy also impacted other industries, particularly the oil and gas industry, by affecting international service providers that supplied foreign-flagged rigs and offshore support vessels for various projects in Indonesia.

The implementation of the cabotage policy resulted in a significant increase in FDI in Indonesia, as international shipping companies were required to form joint ventures with local Indonesian partners holding a majority share in order to reflag their vessels. Registering the vessels under the joint venture company's name was also a condition for changing the vessels' flags. At that time, joint ventures needed to own at least one vessel of 5,000 gross tonnage (GT) to obtain the sea transportation business licence needed for vessel operation in Indonesia.

With the enactment of the Third Amendment, Indonesia now adopts more stringent limitations on foreign investment in Indonesia's shipping sector by significantly raising the vessel ownership requirement for joint venture companies, regardless of whether the vessel is used for commercial shipping or for supporting their business. These companies are now mandated to own and operate vessels of 50,000 GT each, which is slightly larger than a Panamax-sized vessel. This represents a substantial increase from the previous requirement of at least one vessel with a minimum of 5,000 GT.

Additionally, they must partner with a local shipping company, which must retain at least 51% of the shares in the joint venture. The definition of a local shipping company includes limited liability companies specifically engaged in sea transportation business activities with a valid sea transportation business licence that is 100% owned by Indonesian shareholders up to the ultimate shareholder's level. A shipping company with any percentage of foreign ownership is therefore not qualified to hold the 51% shares in a joint venture shipping company, even though the joint venture shipping company is established under Indonesian law.

Under the old regime, foreign investors could partner with any Indonesian individual or entity to hold the 51% majority shares. However, under the Third Amendment, the majority shareholder must now be a national sea transportation company that holds a valid sea transportation business licence. This requirement also extends beyond the shipping industry to foreign joint venture companies in non-shipping sectors operating vessels for their own use. They must also own at least one 50,000 GT vessel.

Regardless of this vessel ownership requirement change, the Third Amendment includes a grandfathering provision that exempts joint venture sea transportation companies, which already own vessels and began operations prior to the enactment of the legislation, from the new vessel ownership requirement. Additionally, the Third Amendment stipulates that the new vessel ownership requirement will come into effect one year after the legislation's enactment on 28 October 2024.

However, there are limitations to the applicability of this grandfathering provision. Joint venture sea transportation companies that began operations before the enactment of the Third Amendment may not benefit from the grandfathering provision if they undertake any of the following corporate actions after the new vessel ownership requirement comes into effect:

- amend their articles of association;
- change their shareholding composition or structure; and/or
- acquire a new vessel.

As a result, the exemption will be revoked if these companies alter their shareholding structure or acquire new vessels. Regardless, the legislation does not clearly specify whether joint venture companies undertaking any of these actions would be prohibited from operating their existing fleet or whether their existing business licence would be suspended or revoked, creating further complexity for the general business practice.

While the intention behind increasing the vessel ownership requirement to 50,000 GT may be to support domestic shipping companies, it will create a significant additional barrier for foreign businesses interested in investing in Indonesia's shipping sector. To do so now, the prospective investor must, first, be a shipping company that owns a vessel slightly larger than a Panamax-sized ship, which entails significant operating expenses and would require substantial investment therefore.

Secondly, they must collaborate with a local shipping company that is mandated to hold at least a 51% stake in the joint venture. This requirement may present difficulties in securing appropriate partners due to the substantial funding needed.

Additionally, these two requirements also extend to joint venture companies in non-shipping sectors that intend to own and operate vessels in support of their primary businesses. As a result, the adoption of the Third Amendment poses a challenge, especially in the mining transportation and offshore oil and gas and construction sectors. These industries do not require 50,000 GT vessels generally, but employ smaller, more specialised hi-tech vessels instead, which are mostly procured through an FDI scheme.

The exemption to the two requirements only offers temporary relief as a company availing of the exemption will eventually have to comply with the new requirements as soon as they adjust their shareholding structure or acquire a new vessel. Accordingly, as it may not be feasible to comply with both requirements, companies outside the shipping industry might choose to give up vessel ownership entirely.

Moreover, the government's efforts to curb price disparities and logistical issues between various archipelagic regions in Indonesia may be hampered by the new barriers to FDI in the shipping sector. One of the factors contributing to the high cost of logistics in Indonesia is the shortage of vessels. Unfortunately, this new amendment may close off opportunities for foreign investors to contribute to the expansion of the domestic fleet. It remains to be seen whether the implementation of the Third Amendment will boost the investment shipping industries by Indonesian domestic investors.

In addition to strengthening the cabotage policies, the Third Amendment introduces several other significant changes.

Development of sea transportation in remote areas

The Third Amendment establishes two new categories of sea transportation services for underdeveloped and remote areas. They are:

- Pioneer Lines (*Pelayaran Perintis*); and
- Public Service Water Transportation *Angkutan Laut Pelayaran Rakyat*.

These categories are now recognised separately, unlike in the past when they were grouped together under the broader category of water transportation in underdeveloped and/or remote areas.

Although the legislation does not provide detailed distinctions between Pioneer Lines and Public Service Water Transportation, it outlines the following general differences.

- Pioneer Lines are intended for transporting passengers and/or cargo, whereas Public Service Water Transportation specifically target economy class passengers.
- National Sea Transportation Companies operating Pioneer Lines will receive government compensation (from either central or regional authorities), while Public Service Water Transportation providers will receive a government subsidy (from either central or regional authorities).

Further regulations will clarify the specifics of both compensation and subsidies.

Source of funds for traditional marine transportation

The Third Amendment strengthens traditional marine transportation by specifying that it will now be funded through the State revenue and expenditure budget (*anggaran pendapatan dan belanja Negara*), the provincial revenue and expenditure budget (*anggaran pendapatan dan belanja daerah provinsi*), and the district/city revenue and expenditure budget (*anggaran pendapatan dan belanja daerah kabupaten/kota*). Traditional marine transportation (*pelayaran rakyat*) refers to small-scale sea transportation operations run by individuals or communities using traditional boats, mainly in remote and underdeveloped regions.

Changes to port management responsibilities

Before the Third Amendment, port management responsibilities were divided between the Port Authority (*Otoritas Pelabuhan*) for commercially operated ports and the Port Management Unit (*Unit Penyelenggara Pelabuhan*) for non-commercially operated ports. Following the Third Amendment, the term "Port Management Institution" (*Penyelenggara Pelabuhan*) is standardised for all port authorities. The Third Amendment assigns responsibility for establishing Port Management Institutions at main and collector ports, whether commercially operated or not to the Minister. Regional governments will be responsible for establishing these institutions at non-commercial feeder ports.

The new structure clarifies that regional governments are limited to managing non-commercial feeder ports, a responsibility that was not explicitly regulated before.

Enhancing local stevedoring business

Port companies operating multipurpose or conventional sea terminals must now partner with local stevedores to enhance

micro, small and medium-sized enterprises and promote equality and fairness in business practices. Prior to the Third Amendment, port companies could independently handle loading and unloading at the sea terminals they operated.

Mandatory involvement of Hydro-Oceanography Agency in navigational aids management

The Ministry of Transportation is now required to co-ordinate with the Hydro-Oceanography Agency of the Indonesian Navy in managing navigational aids, particularly in the publication of Indonesian marine charts and nautical announcements.

Pilotage

The Third Amendment expands the definition of "compulsory pilotage areas" to include:

- nature reserves and conservation areas;
- conservation areas in waters, coastal zones, and small islands; and/or
- conservation areas at sea.

A "compulsory pilotage area" refers to designated maritime zones where vessels must hire a qualified pilot to navigate safely. This expansion broadens the scope of these areas to include not just congested or hazardous zones but also environmental protection areas.

The Third Amendment also mandates that management and operation of pilotage services in special terminal areas be carried out by companies holding a port business licence. Previously, the licence holder of a special terminal could independently provide pilotage services for their terminal. A special terminal typically serves the licence holder's own interests, often in industries such as mining.

Ship arrest

The Third Amendment revises the ship arrest provisions by eliminating the requirement for implementing regulations, which had delayed the enforcement of ship arrest since the original enactment of the Shipping Law. In 2008, the Shipping Law introduced the concept of ship arrest, allowing a vessel involved in a civil maritime case to be arrested by a court order without the need for a lawsuit. However, due to the absence of specific procedural regulations, the arrest provisions were deemed ineffective, leading to uncertainty about how the arrests should be conducted.

Unfortunately, the Third Amendment did not address this issue. The amendment revokes the provision that specifies that the arrest procedure will be detailed in the Minister's Regulation as the implementing regulation. However, the arrest procedure remains unclear, as no detailed procedures for ship arrest are outlined in the law.

Maritime Tribunal

The Third Amendment expands the authority of the Maritime Tribunal. The Maritime Tribunal is an investigative body that is part of the Ministry of Transportation and is responsible for maritime accidents. The Maritime Tribunal can now not only summon and investigate the captain and crew members but also vessel operators, ship-owners, and other relevant personnel or officials involved in an accident. Previously, the Maritime Tribunal's authority was limited to enforcing the qualifications and conduct of the captain and crew.

Additionally, the Maritime Tribunal is now authorised to impose administrative sanctions on operators, ship-owners, and authorised personnel for negligence or errors leading to maritime accidents. These sanctions can include written warnings, suspension, or revocation of business licences for operators and ship-owners and disciplinary action for authorised personnel. The Maritime Tribunal is also empowered to mediate disputes related to seafarers' employment agreements.

The expansion of the Maritime Tribunal's authority also introduces additional risks for vessel operators' officers and personnel. The Maritime Tribunal is now authorised to summon, investigate and impose administrative sanctions on officers/personnel if they are found to be responsible for a maritime accident. The disciplinary action that may be imposed on officers/personnel could be perceived as an individual sanction, thereby increasing their personal risk. However, the legislation is unclear on the types of disciplinary sanction that could be imposed on them, such as whether it might include any form of financial sanction.

It is also still unclear whether the term "officers and personnel" could be interpreted by the panel of judges of the Maritime Tribunal or other relevant government institutions as including directors of the vessel operator. This lack of clarity allows for a broad interpretation of the definition of the term. In such a case, it could significantly affect the decision-making process of the board, as the key management officials of the vessel operator.

Emir Nurmansyah, a senior partner at ABNR and member of the firm's management board, is one of the most respected and versatile lawyers in Indonesia today. After some 30 years in legal practice, he is a market leading lawyer for project finance, banking & finance, corporate and M&A, and FDI. He also offers extensive experience and expertise in TMT, restructuring & insolvency, shipping and aviation. Emir is the head of ABNR's project finance department and banking and finance department.

Ali Budiardjo, Nugroho, Reksodiputro
Graha CIMB Niaga 24th Floor
Jl. Jend. Sudirman Kav. 58, Jakarta, 12190
Indonesia

Tel: +62 21 250 5125
Email: enurmansyah@abnrlaw.com
LinkedIn: www.linkedin.com/in/emir-nurmansyah-06858a62

Ulyarta Naibaho is an experienced and versatile litigator and joint head of ABNR's award-winning Disputes & ADR Department. Her work in contentious matters extends across all industry sectors and practice areas, with a particular emphasis on commercial, shipping, FDI, mining, cybersecurity/cybercrime, administrative law, hate speech, corporate crime, and environmental disputes. She also frequently represents clients in arbitration proceedings and other alternative dispute resolution forums, including enforcement of court judgments and arbitration awards.

Uly, who holds an LL.M. in Mineral Law & Policy from the University of Dundee, Scotland, has extensive experience as in-house counsel with a number of private-sector companies prior to joining ABNR. She is a listed arbitrator at Badan Arbitrase Nasional Indonesia (BANI) (the Indonesian Arbitration Centre) and recommended for dispute resolution by *The Legal 500 Asia Pacific* and *Chambers Asia Pacific*.

Ali Budiardjo, Nugroho, Reksodiputro
Graha CIMB Niaga 24th Floor
Jl. Jend. Sudirman Kav. 58, Jakarta, 12190
Indonesia

Tel: +62 21 250 5125
Email: unaibaho@abnrlaw.com
LinkedIn: www.linkedin.com/in/ulyarta-naibaho-b1465b20

Muhammad Muslim (or Oka, as he is familiarly known) is a senior associate at ABNR. He is lauded as a "Rising Star" for Shipping by *The Legal 500 Asia Pacific*, and has been named one of Indonesia's "top 50 up-and-coming future legal leaders" by prestigious Hong Kong-based legal publication *Asia Business Law Journal* (ABLJ).

He focuses on maritime and shipping but also works on foreign direct investment, and projects and energy, especially matters that have ties to the maritime industry. Muhammad earned his Bachelor's degree from the University of Indonesia and an LL.M. in Maritime Law from the University of Southampton, England.

Ali Budiardjo, Nugroho, Reksodiputro
Graha CIMB Niaga 24th Floor
Jl. Jend. Sudirman Kav. 58, Jakarta, 12190
Indonesia

Tel: +62 21 250 5125
Email: mmuslim@abnrlaw.com
LinkedIn: www.linkedin.com/in/muhammad-muslim-barokallah-a2b533281

Adithya Lesmana, a member of ABNR's award-winning litigation team, joined ABNR in September 2010 and is now a senior associate. His main areas of practice encompass shipping and maritime, commercial litigation, restructuring and insolvency, arbitration and alternative dispute resolution.

Adithya graduated from the University of Indonesia, majoring in international law in 2010. In 2014, he received an Indonesia Endowment Fund for Education scholarship to pursue a Master's degree, and in December 2015 graduated with an LL.M. with Merit at Queen Mary University of London, majoring in comparative and international dispute resolution.

Ali Budiardjo, Nugroho, Reksodiputro
Graha CIMB Niaga 24th Floor
Jl. Jend. Sudirman Kav. 58, Jakarta, 12190
Indonesia

Tel: +62 21 250 5125
Email: alesmana@abnrlaw.com
LinkedIn: www.linkedin.com/in/adithya-lesmana-0472822b

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