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Indonesia: Law & Practice

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SSEK Law Firm

INDONESIA

Law and Practice

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SSEK Law Firm

Contents

SSEK Law Firm is a leading shipping law firm in Indonesia, covering the full spectrum of maritime work. The team is led by a partner and foreign legal adviser and includes seven associates. Its work includes advising companies in the natural resources sector on Indonesia's cabotage rules, acting for foreign shipping companies in the acquisition and sale of vessels, assisting clients in entering into joint ventures with Indonesian shipping entities, assisting with licensing requirements, and advising foreign cruise lines on their operations in Indonesia. The team has worked on numerous major port projects and advised some of the biggest port operators in the world. The firm is active in representing lenders and buyers in ship and rig leases.

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1. Maritime and Shipping Legislation and Regulation

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

The Indonesian Maritime Court, or *Mahkamah Pelayaran*, is regulated under Law No 17 of 2008 regarding Shipping, as last amended by Law No 66 of 2024 (specifically, the "Third Amendment to the Shipping Law" and, collectively, the "Shipping Law"). The Shipping Law defines the Maritime Court as a panel of experts that is responsible to, and under, the Ministry of Transportation. The Maritime Court has the authority to conduct follow-up investigations into shipping accidents and to enforce a professional code of ethics and competence for ship Masters and officers after a preliminary examination by the harbour master.

The Maritime Court also has the authority to examine collisions between commercial ships and state ships, and between state ships and warships. Nevertheless, it is not considered a juridical court within the framework of Indonesia's legal system, and at most is only able to issue administrative sanctions.

Moreover, both the Shipping Law and the Indonesian Commercial Code (the "ICC") provide that maritime claims may also be submitted to the Indonesian district courts. Common maritime claims include maritime casualties and collisions, cargo claims and passenger claims.

1.2 Port State Control

Under Article 218 of the Shipping Law, a harbour master (*syahbandar*) has the authority to conduct seaworthiness and safety inspections of Indonesian-flagged ships, and of foreign-flagged ships at Indonesian ports. Harbour masters' powers also include the authority to inspect vessels and seek information for the purpose of gathering evidence in relation to marine casualties.

Minister of Transportation (MOT) Regulation No PM 119 of 2017 regarding Foreign Ship Safety and Safety Check Officers ("MOT Reg 119/2017") defines "port state control" as state supervision of the seaworthiness and safety of foreign ships entering ports to ensure the fulfilment of requirements implemented by harbour masters.

In general, port state control officers appointed by the harbour master have the power to detain and delay the departure of a ship when the ship's failure to meet the aforementioned requirements threatens the safety of the ship, human lives and/or the maritime environment. Indonesia's port state control system has been implemented with reference to the Memorandum of Understanding on Port State Control in the Asia-Pacific Region (the "Tokyo MOU"), of which Indonesia is a signatory. The Tokyo MOU is specifically mentioned in MOT Reg 119/2017.

Port state control officers do not have any authority over marine casualties such as grounding, pollution or wreck removal. According to Government Regulation No 31 of 2021 ("GR 31/2021"), ship-owners are responsible for managing grounding and wreck removal. However, if the ship-owner has not carried out wreck removal within 180 days of the collision, the removal must be carried out by the MOT, at the expense of the owner of the wreck. If the position of the wreck and/or its cargo is disrupting the operation of the port and/or polluting the maritime environment, the harbour master may order the ship-owner to immediately lift or get rid of the wreck and/or its cargo.

In addition, in line with Section 3.1 of the Tokyo MOU, the authority of port state control officers in connection with pollution matters is limited to inspecting a ship's Master or crew and their readiness to prevent pollution.

Indonesia recently succeeded in fulfilling the whitelist criteria for the Tokyo MOU, which should help reinforce shipping safety and security in Indonesian waters.

1.3 Domestic Legislation Applicable to Ship Registration

The Shipping Law provides that an Indonesian vessel's legal status is only valid if the vessel has already been registered in a particular jurisdiction. Under Minister of Transportation (MOT) No PM 39 of 2017 regarding the Registration and Nationality of Vessels ("MOT Reg 39/2017"), vessel registration includes registration of the following:

- ownership rights;
- the granting of mortgages; and
- other proprietary rights (such as bareboat charters and leasing).

The MOT has appointed the director general of sea transportation to oversee this process.

1.4 Requirements for Ownership of Vessels

In Indonesia, the operation or use of a vessel requires registration and licensing. The owner of a vessel can register the vessel in Indonesia with a vessel title transfer and registrar official (*pejabat pendaftar dan pencatat balik nama kapal*) appointed by the MOT. For a vessel to be registered, it must have a minimum of seven gross tonnage (GT) and be owned by an Indonesian citizen or an Indonesian legal entity that is majority Indonesian owned. Article 7 of MOT Reg 39/2017 provides that the following documents must be submitted for vessel registration:

- proof of title on the vessel;
- identity of the vessel owner;
- taxpayer registration number (*nomor pokok wajib pajak*);
- tonnage certificate (*surat ukur*);
- proof of payment for the transfer of title (*balik nama*); and
- power of attorney (if an application is submitted by a proxy).

The vessel registration application is submitted online through the electronic vessel registration system (*sistem pendaftaran kapal elektronik – SPKE*), and the vessel title transfer and registrar official will examine the application within three working days to ensure the completeness of the documents. Minutes of the vessel registration will be issued if the requirements described above have been satisfied. As stipulated by Article 11(1) of MOT Reg 39/2017, the vessel owner will then receive a grosse vessel registration deed.

1.5 Temporary Registration of Vessels

MOT Reg 39/2017 permits the temporary registration of vessels that are under construction in Indonesia or abroad. This temporary registration will be made in the form of a temporary registration certificate, which will only be issued when construction of the hull, main deck and the entire superstructure has been completed.

Article 160 of the Shipping Law prohibits the dual registration of vessels.

1.6 Registration of Mortgages

Vessel mortgages in Indonesia fall under the authority and jurisdiction of the MOT. Under Articles 28 and 29 of MOT Reg 39/2017, the benefi-

ciaries of vessel mortgages may be Indonesian or foreign citizens, banks and financing or non-financing institutions (both national and international). Vessel mortgages will only be granted following the submission of an application to a vessel registrar, accompanied by the following documents:

- a credit/loan agreement;
- the original grosse vessel registration deed or grosse deed of the vessel's title transfer; and
- a power of attorney in notarial deed form (if such registration is registered by a proxy).

Following execution of the vessel mortgage deed by the mortgagor, the mortgagee and the MOT official, Article 31 of MOT Reg 39/2017 provides that the vessel registrar will then hand over a grosse mortgage deed as well as the vessel registration grosse deed or vessel transfer of title grosse deed to the mortgagee.

Under Article 33 of MOT Reg 39/2017, the assignment of a mortgage on a vessel requires the preparation of a deed of assignment of a vessel mortgage. The receiver of the assignment of a vessel mortgage must submit an application to the vessel title transfer and registrar official where the vessel is registered through the SPKE. The following original documents are required for the application:

- proof of assignment of the mortgage;
- original grosse vessel registration deed or grosse deed of the vessel's title transfer; and
- grosse deed of mortgage on vessels.

1.7 Ship Ownership and Mortgages Registry

Under Article 43 of MOT Reg 39/2017, the registration or documentation of ships will be recorded within a daily register, master register and central register. The master register will be open to the public. Furthermore, the MOT has established the SPKE, which allows ship ownership and registration to be viewed and accessed by the public. An application to the relevant vessel title transfer and registrar can be made to obtain a vessel legal status statement letter that indicates whether a mortgage has been imposed on a vessel.

2. Marine Casualties and Owners' Liability

2.1 International Conventions: Pollution and Wreck Removal

Indonesia has ratified the International Convention on Civil Liability for Oil Pollution Damage of 1969 (the "CLC") and the Protocol of 1992 to Amend the CLC, by way of Presidential Decree No 18 of 1978 and Presidential Decree No 52 of 1999, respectively.

Indonesia ratified the International Convention for the Prevention of Pollution from Ships of 1973, as modified by the Protocol of 1978 relating thereto and by the Protocol of 1997, through Presidential Decree No 46 of 1986 and Presidential Regulation No 29 of 2012. In 2014, Indonesia also ratified the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, through Presidential Regulation No 65 of 2014.

2.2 International Conventions: Collision and Salvage

Indonesia has ratified the 1972 International Regulations for Preventing Collisions at Sea, by way of Presidential Decree No 50 of 1979, but has not ratified the Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels. Liability in the event of ship collisions is also regulated by the ICC.

Article 535 of the ICC provides that, if a vessel collision occurs due to an accident or an act of force majeure, or if there is doubt concerning the cause of the collision, damages will be borne by those who have suffered losses. Under Article 536 of the ICC, if a vessel collision is the fault of one of the colliding vessels, the damages will be borne by the vessel entrepreneur (*pengusaha kapal*) who has committed the fault. Nevertheless, as stated in Article 537 of the ICC, if a vessel collision occurs due to the fault of both colliding vessels, the liability of each party will be proportionate to the fault committed. A judge appointed by the party claiming indemnity will establish the extent of this liability. If the judge fails to establish the extent of the liability, the liabilities will be equal for both parties.

Indonesia has not yet ratified the 1989 International Convention on Salvage or any other protocols or conventions on salvage. It has enacted MOT Regulation No 71 of 2013 regarding Salvage and/or Underwater Works, as last amended by MOT Regulation No 27 of 2022 regarding the Third Amendment of MOT Regulation No 71 of 2013 regarding Salvage and/or Underwater Works. This Regulation provides that loss or damage to the skeleton of ships and their goods is the liability of the ship's owner, as are any fees that arise.

2.3 1976 Convention on Limitation of Liability for Maritime Claims

Indonesia has not ratified the 1976 Convention on Limitation of Liability for Maritime Claims. Maritime claims are currently regulated by the ICC and are defined in Article 223 of the Shipping Law. The ICC provides a limitation of liability depending on the context and nature of the event (eg, ship collision, marine cargo damage).

2.4 Procedure and Requirements for Establishing a Limitation Fund

Indonesian laws and regulations do not specify the form, amount or procedures for a limitation fund. In practice, a shipper may request the owner of a vessel provide a deposit in the form of cash with the intention of using the deposit as a limitation fund.

2.5 Seafarers' Safety and Owners' Liability

Indonesia has ratified the Maritime Labour Convention ("MLC") through Law No 15 of 2016, which is entrenched further by Article 87 of GR 31/2021. GR 31/2021 requires all Indonesian-flagged vessels to adhere to MLC requirements and to obtain MLC certification. To enforce this obligation, the MOT has issued MOT Regulation No PM 58 of 2021 regarding Maritime Labour Convention Certification ("MOT Reg 58/2021"). Under MOT Reg 58/2021, ship-owners or ship operators are required to apply for a declaration of the satisfaction of MLC requirement Part I and a declaration of the satisfaction of MLC requirement Part II certificates ("DMLC").

These certificates must include essential information that must be provided by the ship-owners or operators during the submission, such as:

- minimum age;
- seafarer health certificates;
- education and qualifications;
- working hours and rest periods;
- crew composition;
- accommodation;
- recreational facilities on board;
- catering;
- health and safety;
- accident prevention;
- onboard health care;
- complaint procedures;

- wage payments;
- financial guarantees for repatriation; and
- related financial assurance for ship-owners or operators.

Technical inspections to ensure compliance with the DMLC will be carried out regularly by marine inspectors (*pejabat pemeriksa keselamatan kapal*) with the qualifications and authority to conduct ship safety inspections.

MOT Reg 58/2021 also sets minimum standards for various aspects of seafarers' wellbeing, including:

- accommodations;
- onboard facilities;
- health rooms;
- recreational amenities; and
- food services.

The Regulation also underscores the significance of having an employment agreement in place to provide legal certainty and protection to seafarers.

3. Cargo Claims

3.1 Bills of Lading

Indonesia has not ratified any international conventions concerning bills of lading. Carriage by sea and bills of lading are therefore regulated by the ICC. The ICC does not stipulate a standard form so bills of lading may be issued in a form that is convenient for the parties, as long as they properly indicate the main functions of bills of lading under the ICC, ie, a receipt or acknowledgment that the goods have been received by the carrier, prima facie evidence of a contract of carriage, and a document of title to claim the goods upon shipment.

3.2 Title to Sue on a Bill of Lading

Under Article 510 of the ICC, the lawful bearer of the bill of lading has the title to sue. This can be the shipper, the consignee or a notified party. By virtue of the ICC, the recipient or bearer may be identified as the person designated by the sender, and this designation can be specified with or without explicitly naming the person in the bill of lading. The ICC also provides that the term "bearer" is interpreted as referring to either the person designated by the sender or the person presenting the bill of lading.

However, in practice, the bill of lading typically specifies the name of the recipient or the consignee. Accordingly, if the bill of lading does not specify the name of the bearer, the transfer of title may occur by executing proper documentation on the assignment of the underlying contractual arrangement and simply delivering the bill of lading document to the new bearer. In the more likely and common case where the bill of lading specifies the name of the bearer, a new bill of lading must be issued to the designated new bearer to effectuate the transfer of title.

3.3 Ship-Owners' Liability and Limitation of Liability for Cargo Damages

Indonesia has not ratified any relevant international conventions for marine cargo claims to date. The liability of ship-owners for cargo damage is generally regulated within the applicable contract or agreement between the parties. Furthermore, Article 468 of the ICC provides that a carrier must compensate losses or damages that arise as a result of the failure of delivery of goods due to damage, wholly or partially, unless it can be proven that the non-delivery of goods is a result of a force majeure event that could not have been prevented. Therefore, rather than the ship-owner, it is the carrier that should be responsible for any cargo damage.

If the ship-owner is not the actual or contractual carrier for cargo, they may not be liable, as they will not be bound by any contract relating to cargo damage with the owners of the cargo.

3.4 Misdeclaration of Cargo

Under Article 479 of the ICC, a carrier can establish an indemnification or compensation claim for a misdeclaration of cargo by the shipper. In terms of court judgments, Indonesia does not adopt the stare decisis principle, meaning that different courts have discretion to interpret cases and the applicable underlying laws.

3.5 Time Bar for Filing Claims for Damaged or Lost Cargo

Under Article 741 of the ICC, there is a one-year limit for the submission of claims for damaged or lost cargo. This time limit will be calculated after the voyage has been completed or after the vessel has failed to arrive at the designated location where the cargo was meant to be delivered, within one year after the start of the voyage.

4. Maritime Liens and Ship Arrests

4.1 Ship Arrests

Indonesia is a party to the 1999 International Convention on Arrest of Ships, 1999, but has not ratified the Convention into law, so it is not yet enforceable in Indonesia. Nevertheless, ship arrests are regulated by Article 222 of the Shipping Law. This states that ship arrests may be carried out by harbour masters after a written court order if the ship is connected to a criminal or civil claim. Article 223 of the Shipping Law provides that the detention of ships in connection with a maritime civil claim may take place in the event of the following:

- loss or damage due to the operation of a ship;
- loss of life or fatal injury that occurs on land or in the water or sea due to the operation of a ship;
- damage to the environment, ship or cargo due to salvage operation activities or an agreement on salvage;
- damage or threat of damage to the environment, coastline or other interests caused by a ship, including costs needed to take measures to prevent damage to the environment, ship or cargo, as well as for remediation of the environment as a result of the damage caused;
- costs or expenses relating to lifting, removal or repair, or relating to the ship, including costs of rescue of the ship and the ship's crew;
- costs for the use, operation or rental of a ship as set out in a charterparty or otherwise;
- transportation costs for cargo or passengers on board a ship, as set out in a charterparty or otherwise;
- loss or damage to cargo, including trunks/suitcases, transported on board a ship;
- loss and damage to a ship and cargo due to an accident at sea (general average);
- towage costs;
- pilotage costs;
- costs of goods, equipment, ship supplies, fuel oil or bunker, or ship tools, including containers provided for service purposes and ship supplies for the operation, upkeep, rescue or maintenance of the ship;
- costs of construction, reconstruction or reconditioning, repair, alteration or completing ship supplies;
- fees for port, canal, dock, harbour, shipping lane and/or other levies;
- salaries and other payables for a ship's captain, officers, crew members and others

employed on board a ship, including repatriation and social insurance costs for their interests;
- financing or disbursements incurred for the interest of the ship on behalf of the ship's owner;
- insurance premium (including "mutual insurance call") for the ship payable by the ship's owner or charterer without the ship's crew or bareboat (demise charterer);
- commission, fees, broker or agency fees payable relating to the ship on behalf of the ship's owner without the ship's crew (demise charterer);
- costs of a dispute related to the ownership status of the ship;
- costs of a dispute between the co-owners of a ship related to the operation and revenue or mining products of the ship;
- a mortgage fee on a ship or other encumbrance of a similar nature on the ship; and
- costs of a dispute caused by a ship sale agreement.

At the time of writing, there are no implementing ministerial regulations regarding these procedures for the detention or arrest of ships.

The Third Amendment to the Shipping Law introduces an express provision on the possibility of ship arrest in the context of asset seizures under either civil or criminal procedures, which must be carried out pursuant to the applicable laws. With regard to civil case arrests, while the Shipping Law stipulates that a written court order may be enforced without the process of a lawsuit, due to the paucity of further implementing regulations, it appears that a court order related to civil claims may only be issued as a result of or in relation to a court proceeding, such as in the context of collateral seizure or enforcement seizure. It is therefore unlikely a court will issue a vessel arrest instruction without undergoing a civil lawsuit litigation process. With regard to criminal cases, the Indonesian Criminal Procedural Code (*Kitab Undang-Undang Hukum Acara Pidana – KUHAP*) allows the Indonesian police to seize a vessel by virtue of a warrant issued by the chairman of the relevant district court. In dire and urgent circumstances, seizures may be enforced by the police with a warrant obtained at a later time. See **4.5 Arresting a Vessel** for further discussion on this matter.

4.2 Maritime Liens

In Indonesia, maritime liens are referred to as prioritised maritime receivables, in which a party may exercise a maritime lien for claims to receivables where ships or vessels will act as a security. Indonesia has also ratified the International Convention on Maritime Liens of 1993, by way of Presidential Regulation No 44 of 2005. Furthermore, Article 65(2) of the Shipping Law states that maritime receivables include the following:

- payment of wages and costs, and other payments to the Master and crew of the vessel, including repatriation costs and social insurance contributions to be financed;
- payment for the death or medical expenses for bodily injuries in relation to the operation of the vessel, both at land and at sea;
- payment for the salvage of the vessel;
- payment of port fees or other shipping routes and pilotage fees; and
- any losses that arise from physical loss or damage caused by the operation of the vessel, other than loss or damage to the cargo, container and passenger baggage.

Under Article 66 of the Shipping Law, the payment of maritime receivables will be prioritised over the payment of pledges, mortgages and registered receivables. In the absence of priori-

tised receivables or maritime liens, a party may file a civil claim to the relevant district court.

Maritime claims are defined in Article 223 of the Shipping Law as being in line with provisions regarding the arrest of ships, as described in **4.1 Ship Arrests**. Maritime claims also include expenses related to the utilisation, operation or leasing of a vessel, as well as transportation expenses for cargo or passengers aboard a ship, as stipulated in a charterparty or other relevant arrangements.

4.3 Liability in Personam for Owners or Demise Charterers

In the case of a civil claim relating to a maritime claim, Article 223 of the Shipping Law stipulates that a ship can be detained without a lawsuit process. However, as far as is known, this has never occurred in practice, and both civil and criminal matters must go through the process of obtaining a court order to determine that a liability has been established. After a court order is obtained, the harbour master may carry out the arrest of the vessel.

4.4 Unpaid Bunkers

Under Article 223 of the Shipping Law, the cost of bunkers and bunkering activities may be a basis for maritime claims and therefore can lead to the arrest of a vessel. Indonesian law does not provide any further regulations on the difference between a contractual supplier and an actual supplier for unpaid bunkers. As vessel arrest will take place as a result of a court order, the contractual supplier, actual supplier or whomever is the aggrieved party may ask the courts to issue an arrest warrant to the harbour master.

If bunkers are supplied to a chartered vessel, it is possible that the bunker supplier may not be able to submit a claim to arrest the vessel, as the charterer is not seen as the owner of the vessel. Although the ICC provides that the costs for the bunker should be borne by the charterer, the degree of the charterer's responsibility and authority over the vessel arising from the contract may differ based on the specific terms outlined in the charter agreement.

Nonetheless, the bunker supplier claimant may still submit a civil claim with a standard civil proceeding for unpaid bunkers. In any event, as stated above, due to the absence of implementing regulations, the bunker supplier claimant still needs to pursue a standard civil proceeding even in the case of supplying bunkers to a vessel operated by the ship-owner.

4.5 Arresting a Vessel

As discussed in **4.1 Ship Arrests**, under Article 222 of the Shipping Law, the arrest of vessels may be carried out by the harbour master at the relevant port, pursuant to a court order. As ship arrest may be carried out based on criminal or civil maritime claims, reference must be made to the confiscation of assets within civil or criminal proceedings.

As stated in Article 1(16) of the Indonesian Criminal Procedural Code (*Kitab Undang-Undang Hukum Acara Pidana – KUHAP*), the confiscation of assets will be carried out by an investigator, where there will be a seizure of movable or immovable and tangible or intangible assets to be used for evidence in an investigation, prosecution and proceeding. Article 39 of the KUHAP states that certain assets may be seized if they are directly used to conduct a crime or to prepare for the same, if they are used to prevent a criminal investigation, or if they are directly related to a crime.

Nevertheless, as described above, Indonesia has not issued any regulations regarding the formalities or procedures for the arrest of a vessel. The law is also silent on the need for security deposits in the context of ship arrests. Furthermore, neither the Indonesian Civil Procedural Law nor Supreme Court decisions have provided any guidelines or requirements for ship arrests. As a result, the authority of the harbour master or the courts remains unclear.

On the matter of powers of attorney or notarisations, in general, to act on behalf of foreign parties who are located outside Indonesia, the claim petitioner will be required to obtain a power of attorney, and to be notarised and consularised at a local Indonesian embassy.

4.6 Arresting Bunkers and Freight

Indonesian law does not provide any explicit regulation on the arrest of bunkers or freight. Nevertheless, under Article 223 of the Shipping Law, costs related to bunkers may be seen as a maritime claim and therefore arrest of a vessel due to its bunkers or freight should be executed through a court order.

4.7 Sister-Ship Arrest

The Shipping Law does not contain any provisions concerning the arrest of sister-ships or associated ships.

4.8 Other Ways of Obtaining Attachment Orders

Parties can obtain attachment orders by filing a civil claim with the district court. During the civil proceeding, the plaintiff may file an attachment order petition with the chair of the court for seizing the defendant's assets to obtain security. By applying for this confiscation, it is possible for the plaintiff to request the seizure of all the ships possessed by a ship-owner acting as the defendant in the civil claim.

4.9 Releasing an Arrested Vessel

As discussed in **4.5 Arresting a Vessel**, Indonesia does not have any implementing regulations that govern the procedures for vessel arrests. As a result, the release of arrested vessels is akin to the confiscation of assets, conservatory attachment or detainment. As noted, vessels are arrested based on a court order, so the release will only be carried out based on a court decision.

Indonesia does not recognise the concept of using securities or guarantees in exchange for the arrest or seizure of assets. The release of arrested vessels will only take place upon the resolution of the claim or through the revocation of the arrest via a court order. The use of a club's letter of indemnity or a foreign bank's bank guarantee may therefore not be accepted by the court.

4.10 Procedure for the Judicial Sale of Arrested Ships

As discussed in **4.5 Arresting a Vessel** and **4.9 Releasing an Arrested Vessel**, there is an absence of regulations on the procedure for the arrest of ships.

If the ship has previously been arrested and subjected to a collateral seizure (ie, a seizure order issued to ensure that the assets remain accessible and are not transferred or removed for enforcement purposes) prior to the issuance of a final and binding decision, subject to procedures relevant to the applicable laws, the execution of these assets may be carried out through a private sale agreed between the parties. This process allows the judgment debtor (the losing party) to fulfil its obligations to the

judgment creditor (the winning party) in line with the relevant court decision.

However, if there is no previous collateral seizure imposed prior to the decision, and it is the intention of the judgment creditor to arrest the ship owned by the judgment debtor for the purpose of enforcing the decision, then the judgment creditor may file a petition with the courts to execute the decision. As a result of this petition, the State Auction Office will carry out a judicial sale in the form of an auction. The costs for such auction may vary depending on the district court. In addition, there are no detailed regulations or guidelines regarding the maintenance of assets during the period of arrest. However, the arrest of the vessel itself will be carried out by the relevant port authority.

Under Article 316 of the ICC, the following claims are seen to have priority rights for the proceeds of auction sales:

- costs for execution – ie, confiscation/seizure for judicial sale (*biaya sita-lelang*);
- claims for the captain and crew of ships arising from labour agreements;
- fees for assistance, sea guides and signage, ports and other shipping costs; and
- collision claims.

Article 316a of the ICC provides that claims or receivables with priority rights as described above will take precedence over mortgages.

4.11 Insolvency Laws Applied by Maritime Courts

Law No 37 of 2004 regarding Bankruptcy and Postponement of Debt Settlement Obligation (the "Indonesian Bankruptcy Law"), as last partially revoked by Law No 4 of 2023 regarding the Development and Strengthening of the Financial Sector, is analogous to Chapter 11 of the United States Bankruptcy Code. The Indonesian Bankruptcy Law regulates the reorganisation of a company to allow it to continue business while simultaneously paying its debts to its creditors.

As discussed in **1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts**, the authority of Indonesia's Maritime Court is limited to the inspection of ship accidents and the enforcement of ethical codes for captains and officers. Therefore, under Article 222 of the Shipping Law, the arrest of a vessel will be ordered by the district court (*pengadilan negeri*), whereas the competent bankruptcy court in Indonesia is the Commercial Court (*Pengadilan Niaga*). However, Articles 242 and 245 of the Indonesian Bankruptcy Law prohibit the arrest of the vessel and judicial sales by the owners during "Chapter 11" proceedings before the Indonesian Commercial Court.

4.12 Damages in the Event of Wrongful Arrest of a Vessel

Indonesia is a party to the International Convention on Arrest of Ships, 1999 but has not yet ratified it into law. As discussed in **4.5 Arresting a Vessel** and **4.9 Releasing an Arrested Vessel**, the lack of regulations concerning the procedure for vessel arrest results in uncertainty in the event of a wrongful arrest. If a party intends to get indemnified or obtain damages due to wrongful arrest, it will have to file a claim or lawsuit with the district court. The judges at the district court will determine whether to order payments for the wrongful arrest, using their discretionary authority.

It is important to note that Article 223 of the Shipping Law does elaborate on the circumstances that constitute maritime claims that may

be submitted to the courts, as described in **4.1 Ship Arrests**.

5. Passenger Claims

5.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

Indonesia has not ratified any international conventions regarding the resolution of passenger claims, including the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea of 1974. However, Article 522 of the ICC stipulates that the carrier is required to compensate passengers for losses suffered because of the voyage. Losses caused by the passengers themselves are not within the scope of this compensation. If an injury results in death, the compensation will be made to the spouse, children and parents of the deceased. If passengers are transported based on an agreement with third parties, Article 522 of the ICC provides that the carrier will be responsible to the third party, the passenger and their heirs.

According to Article 741 of the ICC, the time limitation for filing a claim is one year after the arrival of the vessel or, if the vessel did not arrive at the destination, one year after the commencement of the transport to the place where the passengers were to be unloaded.

The available limitation on liabilities for owners who are also the carrier of the vessel applies if the loss is caused by injuries sustained by the passengers transported by that vessel.

Article 525 of the ICC limits the responsibility of the owners to pay only 50 gulden per cubic metre of the net content of the vessel. However, if the vessel is mechanically operated, the amount of payment will be calculated according to the net content of the vessel that is deducted from the gross contents for the space occupied by the propulsion apparatus. 50 gulden is used, as the ICC was enacted during the Dutch occupation of Indonesia and has not been amended. In practice, the damages are usually determined by judges through court decisions. If the goods carried by the passengers or their heirs suffer losses, the carrier will be wholly liable if the damage was caused intentionally or if damage occurred as a result of a material or significant offence carried out by the carrier.

The Shipping Law further stipulates that one of the maritime liens for which payment should be prioritised is compensation for death or medical expenses for bodily injury, whether occurring on land or at sea, directly related to the operation of the ship, and other losses resulting from physical damage/injury caused by the operation of the ship.

6. Enforcement of Law and Jurisdiction and Arbitration Clauses

6.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

Indonesian courts will recognise and enforce law and jurisdiction clauses in bills of lading, as long as the bill of lading fulfils the requirements under Article 1320 of the Indonesian Civil Code for a legitimate contract under Indonesian law. Under Article 1320, a legitimate contract requires:

- the free consent of the parties;
- the legal capacity of the parties to conclude an agreement;
- an object of the contract that is defined or specific; and
- a lawful purpose or admissible cause.

The freedom of contract principle under Article 1338 of the Indonesian Civil Code will apply to a bill of lading if the requirements for a legitimate contract are met. This principle allows the parties to choose the law applicable to their contract and the jurisdiction to settle any disputes arising from the contract.

The implementation of this principle was applied in a Supreme Court decision in January 1986 meaning the freedom of contract principle is recognised and utilised by Indonesian courts as a basis to adhere to the parties' choice of law. In the 1986 Supreme Court decision, the bill of lading of the parties contained the following statement: "The contract evidenced hereby or contained herein shall be governed by English Law. Any claim or other dispute thereunder shall be solely determined by the English Court, unless..." The Court concluded that, by this agreement, the dispute was to be decided by a court in England according to English law, so the Indonesian courts were not authorised to examine and adjudicate this dispute.

6.2 Enforcement of Law and Arbitration Clauses Incorporated Into a Bill of Lading

As discussed in **6.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading**, the courts will recognise and enforce a law and arbitration clause in a bill of lading as long as the bill is a legitimate contract as defined by Article 1320 of the Indonesian Civil Code. The courts will consistently uphold the principle of freedom of contract, even when it is in relation to a charterparty.

In addition, under Article 1(3) of Law No 30 of 1999 regarding Arbitration and Alternative Dispute Resolution (the "Indonesian Arbitration Law"), an arbitration clause within a written agreement is considered a valid arbitration agreement. Furthermore, Article 3 of the Indonesian Arbitration Law explicitly states that the courts do not have the authority to adjudicate matters governed by an arbitration agreement. The existence of an arbitration clause in a bill of lading automatically removes the courts' jurisdiction over the dispute.

6.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards was ratified by Indonesia on 5 August 1981 and is therefore applicable. Other than that, the Indonesian Arbitration Law will apply in the case of arbitration.

6.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

Article 222 of the Shipping Law states that the courts will only order an arrest of a vessel or an attachment where the relevant claim is subject to a court order. However, Indonesia is a signatory to the New York Convention and, as further confirmed by Article 66 of the Indonesian Arbitration Law, this participation enables overseas arbitration decisions to be enforced in Indonesia, including an attachment or an arrest of a vessel.

Nonetheless, this is only possible if the arbitration award is issued by an arbitration institution in a contracting state of the New York Convention. In order to request the execution of an international arbitration award in Indonesia, Article 67 of the Indonesian Arbitration Law states that the relevant party or its proxy must file a request of execution to the registrar of the Central Jakarta District Court.

When the relevant claim is subject to a foreign jurisdiction clause that gives rise to a decision by

a foreign court, the claim is prohibited from being executed in Indonesia. The court will therefore not order an arrest of a vessel or attachment. This is consistent with Article 436 of the Indonesian Regulations on Legal Proceedings (*Reglement op de Rechtvordering – RV*), which states that "the execution of a foreign district court's decision cannot be implemented, unless a law provides otherwise, or at least in order to be implemented it is necessary to file a new lawsuit using the foreign district court's decision as evidence for reconsideration by the competent court". This provision is a confirmation of the interpretation of Article 222 of the Shipping Law, whereby the "court order" stated thereunder will refer to an Indonesian court order.

The alternative solution in this situation is to resubmit the claim to an Indonesian district court and utilise the obtained foreign court decision to persuade the court to decide in favour of the claimant.

6.5 Domestic Arbitration Institutes

There is no Indonesian domestic arbitration institute that specialises in maritime claims. However, maritime claims can be settled through the Indonesian National Arbitration Centre (*Badan Arbitrase Nasional Indonesia – BANI*), an independent arbitration institution in Indonesia, if agreed by the parties.

6.6 Remedies Where Proceedings Are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

When court proceedings are commenced in Indonesia, the relevant party can file an objection to the court on the basis of Article 11 of the Indonesian Arbitration Law, which explicitly prohibits the courts from adjudicating in disputes that are validly governed by an arbitration clause.

However, when the proceedings commence outside the jurisdiction of Indonesia, Indonesian law does not provide any remedy or injunction to restrain those court proceedings.

7. Ship-Owners' Income Tax Relief

7.1 Exemptions or Tax Reliefs on the Income of Ship-Owners' Companies

The income of a ship-owner's companies in Indonesia may receive an exemption from Article 22 income tax (ie, income tax arising from the export and import of goods) or VAT on the importation of a transportation or fishing vessel, on the condition that the vessel-owner holds a sea transportation company business licence ("SIUPAL"). The SIUPAL has recently been replaced with a sea transportation business standard certificate (*sertifikat standar usaha angkutan laut*, or "Standard Certificate"). For more detail, see **9.1 Other Jurisdiction-Specific Shipping and Maritime Issues**. Generally, Article 22 income tax is imposed on government-owned and private business entities that carry out export, import and re-import trading activities.

Other than that, a VAT exemption may be implemented, depending on the services generated by certain national water transportation companies. However, Indonesia provides no optional tonnage tax on the income of a ship-owner's companies.

8. Implications of Non-Performance, the IMO 2020, Trade Sanctions and the War in Ukraine

8.1 Force Majeure and Frustration

The Indonesian Civil Code recognises the concept of force majeure, with the key provisions

addressing the concept found in the following Articles of the Indonesian Civil Code.

- Article 1244 obligates compensation for losses unless the obligor proves that non-performance was due to unforeseen events beyond their control, even in the absence of bad faith.
- Article 1245 waives compensation if obligations cannot be fulfilled due to uncontrollable circumstances or unforeseen events.

In line with these provisions, the ICC also states that a carrier is not liable for delays or the safety of carriage if it can be proven that these issues arose from circumstances beyond their control which could not reasonably have been prevented or mitigated.

The Indonesian Civil Code and the ICC do not provide particular examples of force majeure, and the concept lacks specificity compared to modern international standards. It is therefore common for contracting parties to tailor force majeure clauses to suit their specific needs within their contractual arrangements.

Indonesian law does not recognise the concept of frustration of contract. However, Article 1254 of the Indonesian Civil Code provides an alternative concept, stating that all conditions that are intended to do something that cannot be done, something that is contrary to morality, or something that is prohibited by law are void and render agreements conditioned upon them not in effect.

8.2 Enforcement of the IMO 2020 Rule Relating to Limitation on the Sulphur Content of Fuel Oil

Through Presidential Regulation No 29 of 2012, Indonesia has ratified Annexes III, IV, V and VI of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (the "MARPOL Convention"), which includes the "IMO 2020" rule.

The IMO 2020 rule is further implemented through:

- Directorate General of Sea Transportation Circular Letter No UM.003/93/14/DJPL-18 regarding Limitation of Sulphur Content in Fuel and Obligation to Deliver Fuel Consumption on Ships; and
- Directorate General of Sea Transportation Circular Letter No 35 of 2019 regarding Obligation to Use Low Sulphur Fuel and Prohibition on Transporting or Carrying Fuel that Does Not Meet the Requirements and Management of Waste from Exhaust Gas Recirculation from Ships.

Both of the Circular Letters make reference to Annex VI of the MARPOL Convention.

In summary, the Circular Letters provide that, as of 1 January 2020, ships sailing in Indonesian territory are required to use fuel with a sulphur content not exceeding 0.5% mass by mass ("m/m"). Indonesian-flagged ships that still use fuel with a sulphur content greater than 0.5% m/m must be equipped with an exhaust gas cleaning system or scrubber as approved by the Directorate General of Sea Transportation. Nonetheless, all Indonesian-flagged vessels sailing internationally are prohibited from transporting or carrying fuel with a sulphur content greater than 0.5% m/m for the propulsion/propulsion system or fuel for the operation of other equipment on board, starting 1 March 2020, unless exempted under the MARPOL Convention.

8.3 Trade Sanctions

Indonesia does not recognise nor enforce any international trade sanctions as part of its domestic law. Indonesia also does not exert general restrictions on specific jurisdictions carrying out trading activities, although it does impose temporary export and/or import restrictions on certain products from certain jurisdictions. For example, Indonesia issued Minister of Trade Regulation No 10 of 2020 on Temporary Restriction on the Import of Living Animals from the People's Republic of China in response to the COVID-19 pandemic and ratified the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, through Indonesian Law No 7 of 1997.

Indonesia became a member of the World Trade Organisation with the ratification of the Agreement Establishing the World Trade Organisation by virtue of Law No 7 of 1994 and therefore can impose trade sanctions as a countermeasure or "retaliatory action" in the case of a non-fulfilment of obligations pursuant to the rules of the WTO.

Indonesia has not imposed any trade sanctions in relation to the Russia-Ukraine war, and continues to partake in trade activities (eg, exports and imports) with both states.

8.4 International Conflict(s)

Articles 464 and 465 of the ICC allow for the termination of an agreement by providing written notice to the other party, if the enforcement of the agreement is obstructed due to the outbreak of war, and the obstruction cannot be resolved within a reasonable time. If the ship is carrying freight or passengers and is not in port at the time of termination, it must proceed to the nearest seaport. In all cases where the agreement is terminated prior to its completion, the ICC requires that freight costs remain payable in full up to the last day of the contract.

In relation to war risk insurance coverage, Articles 646 and 647 of the ICC provide that in the case of an insurance agreement that includes the term "free from damage", the insurer will be liable for damage unless the insured goods are destroyed due to acts of violence, robbery, hijacking, robbery, detention by order of a ruler, declaration of war or acts of retaliation. At the time of writing, there are no legal precedents regarding defaults or non-performance of obligations caused by ongoing international conflicts in publicly available court decisions.

9. Additional Maritime or Shipping Issues

9.1 Other Jurisdiction-Specific Shipping and Maritime Issues

Previously, under MOT Regulation No 89 of 2018 regarding the Norms, Standards, Procedures and Criteria for the Electronically Integrated Business Licensing System in the Sea Transportation Sector, a SIUPAL was required for businesses in the sea transportation sector. Indonesia has now adopted a risk-based licensing regime where business licences will be assessed and granted in line with the risk of the business activity.

With the implementation of the risk-based licensing regime, the SIUPAL has been replaced by a Standard Certificate, pursuant to MOT Regulation No 12 of 2021 regarding Standards of Business Activities and Products in the Implementation of Risk-Based Business Licensing in the Transportation Sector, as lastly amended by MOT Regulation No 13 of 2023, which is intended to simplify the requirements and procedures for obtaining the business licence. However,

since the nomenclature of the Standard Certificate is still relatively new, there may be discrepancies between the Regulation and the actual implementation of it.

Vessel Certification

Besides the SIUPAL (now the Standard Certificate), a company that owns a ship will obtain several additional licences from the online single submission system. Ship-owning companies must obtain the following commercial/operational licences:

- a vessel nationality certificate (*surat tanda kebangsaan kapal*);
- a tonnage certificate (*surat ukur*);
- a safety certificate (*sertifikat keselamatan*);
- a load line certificate (*sertifikat garis muat*);
- a safe manning certificate (*sertifikat pengawakan kapal*) for manned vessels;
- a document of compliance (*dokumen penyesuaian manajemen keselamatan*) for manned cargo vessels with a gross tonnage equal to or larger than 500 tonnes; and
- a safety management certificate (*sertifikat manajemen keselamatan*) for manned cargo vessels with a gross tonnage equal to or larger than 500 tonnes.

Foreign and locally flagged vessels operating in Indonesia must acquire the following pollution prevention certificates:

- an international oil pollution prevention certificate (*sertifikat internasional pencegahan pencemaran oleh minyak*);
- an international air pollution prevention certificate (*sertifikat internasional pencegahan pencemaran oleh udara*); and
- an international sewage pollution prevention certificate (*sertifikat internasional pencegahan pencemaran oleh kotoran*).

In addition, any vessel communicating through the radio frequency spectrum must obtain a ship radio station certificate, according to Law No 36 of 1999 regarding Telecommunications, as amended by Government Regulation in Lieu of Law No 2 of 2022 regarding Job Creation and Minister of Communication and Informatics (now Minister of Communication and Digital) Regulation No 9 of 2018 regarding Provisions and Procedures on the Operation and Licensing of Radio Frequency Spectrum, as lastly amended by Minister of Communication and Informatics Regulation No 9 of 2023.

Cabotage Principle

The Shipping Law provides that domestic sea transportation must be carried out by an Indonesian shipping company with an Indonesian-flagged vessel and Indonesian crew. The scope of these provisions is often seen to cover most vessels, including vessels in Indonesian waters that do not engage in domestic sea transportation.

Specific types of foreign-flagged vessels operating in Indonesian waters for specific types of activities may be exempted from cabotage rules as regulated under MOT Regulation No PM 2 of 2021 regarding Procedures and Requirements for the Granting of Foreign Vessel Utilisation Approval for Activities Other than Domestic Carriage of Passengers and/or Goods. This Regulation provides an exhaustive list of the types of activities for which foreign vessels may be used, namely:

- oil and gas survey;
- drilling;
- offshore construction;
- offshore operational support;
- dredging;
- salvage and underwater works;

- electricity activities (performed by power plant vessels); and
- terminal construction.

To be able to conduct these activities, foreign-flagged vessels must apply for an approval for the use of foreign vessel (*persetujuan penggunaan kapal asing – PPKA*) after obtaining their SIUPAL/Standard Certificate.

Vessel Ownership Shareholding Requirement

Before the introduction of GR 31/2021, vessel registration in Indonesia was governed under the Shipping Law and MOT Reg 39/2017. Article 158(2) of the Shipping Law and Article 5(2) of MOT Reg 39/2017 stipulate identical criteria for vessels to be eligible for registration in Indonesia, as follows:

- vessels with a gross tonnage of at least seven GT;
- vessels owned by Indonesian citizens or legal entities established under Indonesian law and domiciled in Indonesia; and
- vessels owned by Indonesian legal entities that are joint ventures whose majority shares are owned by Indonesian citizens.

While Article 93 of GR 31/2021 consistently provides the same wording as above, the elucidation thereof specifies that such local majority shareholders in the context of a joint venture company must manifest in the form of:

- a national sea transportation company wholly owned by Indonesian citizens for commercial activities; and/or
- Indonesian legal entities wholly owned by Indonesian citizens for non-commercial activities, including social activities, tourism and sports.

While the above indicates that there is more of a restriction in place regarding the entity that can serve as the majority shareholder of a vessel-owning joint venture company, there is also a lack of clarity regarding which parties are expected to engage in commercial or non-commercial activities and what these activities respectively entail. Therefore, it is yet to be affirmatively determined whether "commercial activities" or "non-commercial activities" refer to the activities of the majority shareholder of a vessel-owning company or to those of the vessel-owning joint venture company itself.

Shareholding and Vessel Ownership Requirements for Shipping JV Companies

The government of Indonesia recently enacted the Third Amendment to the Shipping Law, which introduces sweeping changes that reshape the regulatory landscape for Indonesian shipping joint ventures (ie, shipping companies established in Indonesia which have a foreign entity as a shareholder) ("Shipping JV"). A Shipping JV intending to own a vessel must now have a wholly Indonesian-owned shipping company as their majority shareholder. This new requirement effectively excludes Indonesian individuals and wholly Indonesian-owned non-shipping entities from partnering with foreign entities to form Shipping JVs and holding the majority shares therein.

The Third Amendment to the Shipping Law imposes further restrictions on foreign participation by limiting shareholding in JVs to foreign shipping companies. The term "foreign shipping company" remains undefined, leaving its interpretation uncertain until implementing regulations are issued. However, it can be inferred that foreign shareholding in a Shipping JV (which must hold the minority stake in any event) is required to be held by an entity actively engaged

in shipping to thereby qualify as a foreign shipping company.

The Third Amendment to the Shipping Law also imposes a substantial increase in the vessel ownership requirement by a Shipping JV, which raises the minimum measurement for each vessel operated by a JV to 50,000 GT, a tenfold jump from the previous 5,000 GT threshold. This minimum measurement requirement is also applied to vessel-owning joint venture companies engaging in the manufacturing and/or mining sectors.

While the Third Amendment to the Shipping Law provides that existing Shipping JVs (and the joint venture companies engaging in the manufacturing and/or mining sectors, as applicable) benefit from a conditional exemption under a grandfathering clause therein, this privilege is forfeited if they amend their corporate deeds, modify shareholding structures or acquire additional vessels.

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