Indonesia

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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

With regard to liability in a collision, the Indonesian Commercial Code ("**ICC**"), which was enacted in the 19th century, provides that:

a. If the collision is caused by *force majeure*, or if there are doubts as to the cause of the collision, the damages shall be borne by those who have suffered them.

b. If the collision is caused by the fault of one of the colliding vessels, liability to remedy the damages shall be borne by the vessel that committed the fault. Wirjono Prodjodikoro, an Indonesian scholar, stated that a collision caused by a defect (unseaworthiness) of the vessel shall also be considered as the fault of the vessel.

c. If the collision is caused by the fault of two or more vessels, the liability of each vessel is in proportion to the degree of their respective faults. Prodjodikoro stated that the test of fault is the impact of the fault on the damage suffered, irrespective of the intention (*culpa*) of the vessel.

d. If a vessel being towed collides due to the fault of the towing vessel, the owners of both the towed and the towing vessel shall be jointly and severally responsible for the damage.

Upon declaring independence in 1945, Indonesia decided that the articles of the ICC would continue to be followed unless they were contrary to the Constitution.

Under Law No. 17 of 2008 regarding Shipping ("**Shipping Law**"), unless it can be proven otherwise, the master of the vessel shall be held liable in a vessel accident.

As to collisions, 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.

(ii) Pollution

Indonesia has ratified the following treaties:

a. The United Nations Convention on the Law of the Sea of 1982 ("**UNCLOS**"), by way of Law No. 17 of 1985.

b. 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 ("**MARPOL**"), by way of Presidential Decree No. 46 of 1986 and Presidential Regulation No. 29 of 2012.

c. The International Convention on Civil Liability for Oil Pollution Damage of 1969 and its amendment of 1992 ("**CLC**"), by way of Presidential Decree No. 52 of 1999.

Indonesia has not ratified the International Oil Pollution Compensation ("**IOPC**") Fund Convention of 1992 and the Supplementary Fund Protocol of 2003.

Under the Shipping Law, all crew members in a vessel are obliged to prevent and mitigate environmental pollution from their vessel. In addition, vessel owners or operators are obliged to procure an insurance policy for their pollution liability. Failure to comply may result in imprisonment and/or fines for vessel owners or operators.

(iii) Salvage / general average

We are not aware of any salvage conventions that have been ratified by Indonesia.

The Shipping Law was further implemented by Minister of Transportation ("**MOT**") Regulation No. PM 71 of 2013 on Salvage and Underwater Works, as amended by MOT Regulation No. PM 33 of 2016 ("**MOT Reg 71/2013, as amended**"). This regulation defines salvage as the provision of aid to a vessel and/or its cargo that has suffered a vessel accident or perils of the sea, including removing the shipwreck or underwater obstacle or other object. MOT Reg 71/2013, as amended provides that a salvage operation may only be conducted by a business entity specifically engaging in the salvage business, fulfils the technical requirements under MOT Reg 71/2013, as amended and holds a permit from the Capital Investment Coordinating Board (*Badan Koordinasi Penanaman Modal* or "**BKPM**") upon the recommendation of the Directorate General of Sea Transportation ("**DGST**").

Under Article 547 of the ICC, a salvage reward shall be paid for any salvage operation. Such reward must be paid even if the salvage operation is not successful, unless otherwise agreed by the parties. The salvor is also entitled to receive compensation for costs, losses and loss of profits.

Indonesia has not ratified the York-Antwerp Rules, but parties may agree to incorporate such rule within their agreements. In the absence of a contractual provision on general average, the provisions of the ICC shall apply.

(iv) Wreck removal

Indonesia has not ratified the Nairobi International Convention on the Removal of Wrecks of 2007.

The Shipping Law, as implemented by MOT Reg 71/2013, as amended, obliges a vessel owner to remove its shipwreck and/or cargo that are disturbing navigational safety and security within 180 days after such vessel and/or cargo sank.

MOT Reg 71/2013, as amended also requires vessel owners to insure their vessels with wreck removal insurance or protection and indemnity insurance from an insurance company recognised by the Government of Indonesia. This requirement is waived for war vessels, state vessels used for governmental duty, and motor vessels with a gross tonnage of less than 35 tonnes.

(v) Limitation of liability

Indonesia has not ratified the International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships of 1957 or the International Convention on the Limitation of the Liability for Maritime Claims of 1976, including their Amendment Protocols.

Based on the original text of Article 474 of the ICC, the liability of a vessel owner due to vessel collision or cargo claims is limited to 50 gulden (the currency used by the Netherlands during the East Indies occupation) per cubic metre of the net tonnage of a vessel. A mechanically moved vessel shall have the tonnage of the machinery added to the gross tonnage to determine the net tonnage for vessel collision liability. However, the tonnage of such machinery shall be deducted from the gross tonnage to determine net tonnage for cargo claims liability. The ICC uses 50 gulden because the ICC was enacted during the Dutch occupation of Indonesia and it has not been amended since Indonesia's independence in 1945.

(vi) The limitation fund

Indonesian law does not specifically regulate the form or amount of a limitation fund. In practice, a shipper may request the vessel owner to provide a cash deposit to be used as a limitation fund.

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

The Shipping Law provides that any preliminary investigation with respect to vessel accidents shall be conducted by the relevant port authority. The port authority may forward the result of its investigation to the Shipping Court (*Mahkamah Pelayaran*) to be examined further.

Presidential Regulation No. 2 of 2012 regarding the National Transportation Safety Committee (*Komite Nasional Keselamatan Transportasi* or "**KNKT**") established the KNKT to conduct investigations related to vessel accidents for the purpose of preventing similar future accidents.

2 Cargo Claims

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

The ICC provides that a carrier is liable to provide compensation for any damages arising from its failure to deliver cargo, whether partially or entirely, or any damages to the cargo, unless such damage or failure to deliver was caused by *force majeure*.

Indonesia has not ratified the Hague/Hague-Visby/Hamburg/Rotterdam Rules.

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

In practice, either the shipper, the consigner, the lawful holder of the bill of lading, the cargo owner or the cargo insurer (by subrogating) is entitled to bring cargo claims against the carrier for loss or damages arising from the carrier's alleged default.

Article 513 of the ICC provides that if the bill of lading states that the "content/nature/amount/weight/size is unknown", or a similar clause to this effect, the carrier will not be responsible for any cargo claim, unless the carrier should have known the condition and type of the cargo or the cargo was quantified before the carrier.

Unless otherwise agreed by the parties, the ICC provides a one-year limit to bring legal claims related to: (i) payment to be made by the consignee; (ii) carriage of passengers and luggage against the carrier; and (iii) compensation for cargo damages.

Aside from the ICC, an injured party is also entitled to submit a civil claim on the basis of an unlawful act (similar to tort) under the Indonesian Civil Code. Like the ICC, the Indonesian Civil Code was promulgated in the 19th century and has not been amended since Indonesian independence.

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

The carrier shall be entitled to receive compensation for damages caused by incorrect or incomplete information related to the nature of cargo, unless the carrier knew or should have known about the nature of the cargo.

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 relating to the Carriage of Passengers and their Luggage by Sea of 1974.

Article 522 of the ICC regulates that the carrier is responsible for passenger safety starting from when the passenger embarks on the vessel until when they disembark. The carrier is obliged to compensate for losses caused by injuries suffered by passengers related to the voyage, unless the injury was caused by the passengers themselves. Should the injury result in death, the carrier is responsible for compensating the spouse, children, and parents of the deceased for the loss. If the passenger is carried based on a third-party agreement, the carrier is responsible for both the passenger and the third party.

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?

The Shipping Law provides that a vessel may be arrested by the harbourmaster at the relevant port, based on a written court order that is issued if the vessel is involved in a criminal or civil case. The Shipping Law further provides that a court order for a vessel arrest in a civil case relating to maritime claims may be issued without initiating civil court proceedings. Further provisions on the procedures for vessel arrest at Indonesian ports are supposed to be provided by Minister of Transportation regulation. However, as of the date of this writing, such regulation has not been issued.

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?

Yes. The elucidation of Article 223 of the Shipping Law provides that costs related to bunkering activities are one of the legitimate bases for a maritime claim.

4.3 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?

Article 316 of the ICC provides that several receivables over a vessel are given priority right, namely (in order of priority):

1. Cost of seizure and auction.
2. Receivables of the vessel master and the crew arising from an employment agreement during their tenure in that vessel.
3. Salvage reward, pilotage cost, signal cost and port cost, and other shipping costs.
4. Collision claims.

Under the Shipping Law, a party may exercise a maritime lien (referred to as "prioritised maritime receivables") upon claims to receivables for which a vessel acts as a security. Upon such claim against receivables secured by the vessel, the payment of maritime receivables must be prioritised.

The Shipping Law provides that maritime receivables include:

a. Payment of wages, costs, and other payments to the master and crew of the vessel.
b. Payment for the death or medical expenses for bodily injuries related to the operation of the vessel.
c. Payment for the salvage of the vessel.
d. Payment of port fees or other shipping routes and pilotage costs.
e. Losses arising out of physical loss or damage caused by the operation of the vessel aside from loss or damage to the cargo, container, and baggage.

Under the ICC, the Indonesian Civil Code, and the Shipping Law, payment of maritime receivables shall be prioritised over payment of pledges, mortgage, and registered receivables.

If there are no prioritised receivables or maritime liens, then parties may make claims to the district court by way of a regular civil claim.

Indonesia has also ratified the International Convention on Maritime Liens of 1993, by way of Presidential Regulation No. 44 of 2005.

4.4 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. However, in practice, a bank guarantee or corporate guarantee is more commonly used than P&I letters of undertaking.

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 procedures for investigations and evidence-gathering for maritime claims.

5.2 What are the general disclosure obligations in court proceedings?

Indonesia does not recognise general disclosure obligations (i.e. the discovery rule) in a court proceeding as a means to obtain evidence. Each party to a dispute has the burden to produce evidence to support their claims.

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.

Maritime claims are already regulated in Indonesia under the Shipping Law. However, under the elucidation of Article 223 of the Shipping Law, maritime claims are conducted in accordance with the provisions on vessel arrest. As discussed in point (4), Indonesia has not enacted an implementing regulation on the procedure for vessel arrest in Indonesia. Thus, there is no typical procedure or timescale applicable to maritime claims.

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

With regard to ship arrest, as we stated above, there are as yet no specific guidelines for ship arrest under Indonesian law. Indonesia is a signatory to the International Convention on the Arrest of Ships of 1999 ("**Ship Arrest Convention**"), although Indonesia has not ratified the Ship Arrest Convention. Under Law No. 24 of 1999 regarding International Treaties ("**Treaties Law**"), ratification of an international convention must be done through the issuance of a Law (*Undang-Undang*) or Presidential Decree (*Keputusan Presiden*), as the case may be, in order to be enforceable in Indonesia. Pursuant to Articles 10 and 11 of the Treaties Law, the Ship Arrest Convention should have been ratified by way of a Presidential Decree. Although the Ship Arrest Convention has been signed by the Government of Indonesia, it is still not applicable in Indonesia absent the ratification of the same into law. We note that in 2005, the President of Indonesia enacted Presidential Instruction No. 5 of 2005 regarding the Empowerment of the National Shipping Industry, in which the President instructed the legislature to accelerate the process of ratifying the Ship Arrest Convention. In conclusion, Indonesia has recognised the basic principles of ship arrest, but has yet to implement those principles.

7 Foreign Judgments and Awards

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

Indonesian law does not recognise foreign court judgements as enforceable in Indonesia. The parties must submit a new claim in an Indonesian court to enforce a judgment awarded by a foreign court. The foreign court judgment may be submitted as evidence in the new claim in the Indonesian court.

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

Indonesia has ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 ("**New York Convention**"), by way of Presidential Decree No. 34 of 1981.

Pursuant to Law No. 30 of 1999 regarding Arbitration and Alternative Dispute Resolution ("**Arbitration Law**"), a foreign arbitral award is recognised and enforceable in Indonesia if:

a. The award is given by an arbitrator or tribunal in a state that is, along with Indonesia, a party to a bilateral or multilateral treaty that recognises foreign arbitral awards.

b. The award is only limited to an award that is considered to fall within the scope of commercial laws under Indonesian law.

c. The award does not contravene public order.

d. The award has received an execution order from the Central Jakarta District Court.

e. If the award involves the Republic of Indonesia as one of the parties in dispute, the award may only be enforced after receiving an execution order from the Indonesian Supreme Court.

8 Updates and Developments

8.1 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.

(i) Vessel registration

The Shipping Law states that an Indonesian vessel's legal status can only be valid if the vessel has already been registered in a jurisdiction. To implement the provisions of the ICC and the Shipping Law, MOT Regulation No. PM 39 of 2017 regarding the Registration and Nationality of Vessels ("**MOT Reg 39/2017**") states that vessel registration includes registration of: (i) ownership right; (ii) granting of mortgage; and (iii) other proprietary right, such as by way of bareboat charter and leasing. Vessel registration can be done with a Vessel Registrar, a government official appointed by the Director of the DGST.

However, it should be noted that according to the ICC, as further regulated in the Shipping Law and MOT Reg 39/2017, a vessel may only be registered if it has a gross tonnage of at least 7 tonnes, is owned by an Indonesian citizen or a legal entity established under Indonesian law, or is owned by an Indonesian joint-venture company in which at least 51% of the shares are owned by an Indonesian citizen.

(ii) Cabotage principle

The Shipping Law requires that domestic sea transportation be carried out by an Indonesian shipping company using an Indonesian-flagged vessel and Indonesian crew. These provisions are broadly interpreted to cover most vessels, including different types of vessels operating in Indonesian waters that are not engaged in domestic sea transportation. However, pursuant to MOT Regulation No. PM 100 of 2016 regarding Procedure and Requirement to Obtain License to Use Foreign Vessels for Other Activities Not Included within the Carriage of Passenger and/or Goods in Domestic Transportation, as amended by MOT Regulation No. PM 115 of 2017 ("**MOT Reg 100/2016, as amended**"), specific types of foreign-flagged vessels operated in Indonesian waters for specific types of activities may be exempted from cabotage rules. Such foreign-flagged vessels may be operated in Indonesia by a holder of a Shipping Company Business License (*Surat Izin Usaha Perusahaan Angkutan Laut* or "**SIUPAL**") after meeting the requirements provided in MOT Reg 100/2016, as amended. The cabotage exemption is granted in the form of a permit to use foreign vessels (*Izin Penggunaan Kapal Asing* or "**IPKA**"), which can only be issued to SIUPAL holders.

Under MOT Reg 10/2016, as amended, an IPKA is granted for a maximum period of one year and may be extended with a recommendation from an evaluation team appointed by the DGST, if the applicant has exhausted all efforts concerning the procurement of an Indonesian-flagged vessel and provides proof of its latest procurement or tender offer.

A list of foreign-flagged vessels that can conduct drilling activities in Indonesian waters up to the end of December 2018 is provided in Annex I to MOT Reg 10/, as amended. These vessels include:

a. Jack-up rigs/jack-up barges/self-elevating drilling units.

b. Semi-submersible rigs.

c. Deepwater drill vessels.

MOT Reg 10/2016, as amended allows for foreign-flagged vessels not included in Annex I to MOT Reg 10/2016, as amended to be used in Indonesian waters. However, these foreign-flagged vessels may be used in Indonesia only at the discretion of the MOT, rather than through the typical IPKA. The MOT shall approve the use of such vessels in Indonesian waters after taking into account the following:

a. The availability of Indonesian-flagged vessels that have the specifications required by the applicant, as confirmed by the evaluation team.

b. Whether the activity of the foreign-flagged vessel is to support Indonesian national interests, with a recommendation confirming such from the relevant ministry and/or institution.

c. The limited time period of the permit.

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Dyah Soewito is a founding partner of SSEK Legal Consultants and the head of the firm's award-winning shipping practice. She specialises in shipping and maritime law, foreign investment, and corporate and commercial law.

Dyah assists multinational and joint-venture shipping and offshore drilling companies with all aspects of their operations in Indonesia. Most recently, she advised a global provider of floating production services to the oil and gas industry in an $870 million lease deal. She has assisted a European multinational in navigating foreign ownership restrictions under Indonesia's shipping law, represented a leading European contractor on a possible joint venture with an Indonesian shipping entity, and advised an Australian dredging marine company on the importation and reflagging of dredgers.

Dyah has been recognised by *Chambers & Partners*, *Asialaw* and *IFLR1000* as one of the leading practitioners in Indonesia in shipping law, real estate and corporate law.

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Stephen Igor Warokka is a senior associate at SSEK. Stephen is involved in a wide range of projects, including shipping and maritime law, general corporate law, mergers and acquisitions, foreign capital investment law, immigration law and negotiations with various government officials related to commercial transactions.

Stephen's more recent experience includes: representation of various foreign shipping companies in the acquisition and sale of vessels; advising a foreign shipping company on the shipping agency business in Indonesia; advising and representing an Indonesian shipping company in connection with a facility agreement with syndicated lenders; and advising shipping companies on foreign ownership restrictions and Indonesian cabotage laws.

In 2015, Stephen was seconded to the Tokyo offices of Mori Hamada & Matsumoto, one of the largest and most highly regarded law firms in Japan. During his secondment, Stephen advised on Indonesian laws and regulations for Japanese companies doing business in the country.

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SSEK was named the 2014 Indonesian Law Firm of the Year by *Who's Who Legal*, the 2013 Indonesian Law Firm of the Year by *Chambers Asia-Pacific*, and an *Asian-MENA Counsel* Law Firm of the Year every year since 2009.

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