



ICLG

The International Comparative Legal Guide to: **Shipping Law 2019**

7th Edition

A practical cross-border insight into shipping law

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EDITORIAL

Welcome to the seventh edition of *The International Comparative Legal Guide to: Shipping Law*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of shipping laws and regulations.

It is divided into two main sections:

Seven general chapters, which explore topical issues affecting shipping law from a cross-border perspective.

Country question and answer chapters. These provide a broad overview of common issues in shipping laws and regulations in 44 jurisdictions.

All chapters are written by leading shipping lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Andrew Bicknell of Clyde & Co LLP for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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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 legal 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 Indonesian 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 the Minister of Transportation (“MOT”) Regulation No. PM 71 of 2013 on Salvage and Underwater Works, as lastly amended by MOT Regulation No. PM 38 of 2018 (“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 as well as Government Regulation No. 24 of 2018 regarding Electronically Integrated Business Licensing Service (“GR 24/2018”) 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 Commercial and Operational License issued by the Online Single Submission (“OSS”) system under the name of Salvage and Underwater Works Business Approval (*Peretujuan Perusahaan Salvage dan Pekerjaan Bawah Air*).

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 accidents in the future.

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) the payment to be made by the consignee; (ii) the 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 the cargo, unless the carrier knew or should have known the nature prior to the journey.

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 the MOT regulation. However, as of the date that this was written, 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 Is it possible to arrest a vessel for claims arising from contracts for the sale and purchase of a ship?

As discussed above, 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. Claims arising from the sale and purchase of a ship constitute a civil case. Thus, the plaintiff in such a case may ask the court to issue an arrest warrant to the harbourmaster.

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?

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.

Further, Article 316 of the ICC provides that the general priority rights provided under Article 1139 of the Indonesian Civil Code (including but not limited to court fees, rent and reparation fees of a rented object, and salvage costs) do not apply to vessels.

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 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.

Article 66 of the Shipping Law provides that payment of maritime receivables shall be prioritised over payment of pledges, mortgage, and registered receivables. This is consistent with the provision of Article 1134 of the Indonesian Civil Code, which provides that certain

rights may be prioritised over pledge or mortgage if it is expressly regulated under the law. If there are no prioritised receivables or maritime liens, then a party may file a civil claim to the district court.

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

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. However, in practice, a bank guarantee or corporate guarantee is more commonly used than a P&I letter 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 section 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 judgments 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 limited to what is considered to fall within the scope of commercial law in Indonesia.
- 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) Electronically integrated business licence

In order to engage in the sea transportation business, a company must obtain a Sea Transportation Company Business License (*Surat Izin Usaha Perusahaan Angkutan Laut* or “**SIUPAL**”). Under GR 24/2018, a SIUPAL is considered as a Business Licence, and will be issued by the OSS system on behalf of the MOT.

Please note that the MOT has issued a ministerial regulation MOT Regulation No. 89 of 2018 regarding the Norms, Standards, Procedures, and Criteria of the Electronically Integrated Business Licensing System in Sea Transportation Sector (“**MOT Reg. 89/2018**”) to align the sea transportation licensing procedures with the OSS system. Under the OSS, any new licence application made through the OSS will be followed by the issuance of a “temporary” licence. This means that a Business License will automatically be generated by the OSS system and delivered to the applicant once an application is completed after filling out the requisite information. The Business License will clearly state that it will only become effective once the required commitments are met by the applicant. Therefore, a business may only begin its operations once the commitments under the respective Business Licence are fulfilled.

(ii) 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, the government enacted MOT Regulation No. PM 39 of 2017 regarding the Registration and Nationality of Vessels (“**MOT Reg 39/2017**”). MOT Reg 39/2017 states that vessel registration includes the registration of: (i) ownership right; (ii) granting of mortgage; and (iii) other proprietary rights, 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.

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 seven 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.

(iii) General Vessel Certification

Pursuant to the Shipping Law, a company owning a vessel must fulfill certain standard requirements, evidenced by the issuance of the following certificates:

- a. Vessel Nationality Certificate (*Surat Tanda Kebangsaan Kapal*).
- b. Tonnage Certificate (*Surat Ukur*).
- c. Safety Certificate (*Sertifikat Keselamatan*).
- d. Load Line Certificate (*Sertifikat Garis Muat*).
- e. Safe Manning Certificate (*Sertifikat Pengawakan Kapal*), only for manned vessels.
- f. Document of Compliance (*Dokumen Penyesuaian Manajemen Keselamatan*), only for manned cargo vessels with a gross tonnage equal to or larger than 500 tonnes.
- g. Safety Management Certificate (*Sertifikat Manajemen Keselamatan*), only for manned cargo vessels with a gross tonnage equal to or larger than 500 tonnes.

The above certificates are issued by the MOT based on the provisions of MOT Regulation No. PM 45 of 2012 regarding Vessel Safety Management, MOT Regulation No. PM 8 of 2013 regarding Vessel Measurement, MOT Regulation No. PM 70 of 2013, as amended by MOT Regulation No. 140 of 2016 regarding the Education, Training, Certification, and Duties of Seafarers, MOT Regulation No. 39 of 2016 regarding Vessel Load Line and Loading, and MOT Reg 39/2017.

(iv) Pollution Prevention Certificate

Pursuant to the Shipping Law, any vessel operating in Indonesian waters must meet certain pollution prevention and control standards, evidenced by a National Pollution Prevention Certificate (*Sertifikat Nasional Pencegahan Pencemaran*), which will be issued based on

the provisions of MOT Regulation No. PM 29 of 2014 regarding the Prevention of Maritime Environment Pollution. Vessels that operate in international waters from time to time will be required to obtain additional certifications, namely:

- a. International Oil Pollution Prevention Certificate (*Sertifikat Internasional Pencegahan Pencemaran Oleh Minyak*).
- b. International Air Pollution Prevention Certificate (*Sertifikat Internasional Pencegahan Pencemaran Oleh Udara*).
- c. International Sewage Pollution Prevention Certificate (*Sertifikat Internasional Pencegahan Pencemaran Oleh Kotoran*).

(v) Vessel Classification

Vessels operating in Indonesia must also undergo classification pursuant to MOT Regulation No. 7 of 2013, as amended by MOT Regulation No. 61 of 2014 regarding Classification Obligation for Indonesian-Flagged Vessels (“**MOT Reg 7/2013, as amended**”). This classification is done either by PT Biro Klasifikasi Indonesia (“**Persero**”), a state-owned enterprise, or another local or foreign classification agency recognised by the Government of Indonesia under MOT Reg 7/2013, as amended. The classification agency will issue a Classification Certificate (*Sertifikat Klasifikasi*) for the vessel.

(vi) Ship Radio Station Certificate

Under Law No. 36 of 1999 regarding Telecommunications and Minister of Communication and Informatics Regulation No. 9 of 2018 regarding Provisions and Procedures on the Operation and Licencing of Radio Frequency Spectrum, a vessel utilising the radio frequency spectrum must obtain a Ship Radio Station Certificate.

(vii) 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 the MOT Reg 92/2018 regarding the 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 (“**MOT Reg 92/2018**”), specific types of foreign-

flagged vessels operating in Indonesian waters for specific types of activities may be exempted from cabotage rules. Such foreign-flagged vessels may be operated in Indonesia by the holder of a Shipping Company Business License (*Surat Izin Usaha Perusahaan Angkutan Laut* or “**SIUPAL**”) after meeting the requirements provided in MOT Reg 92/2018. The cabotage exemption is granted in the form of an MOT decree containing the Foreign Vessel Utilization Approval (*Persetujuan Penggunaan Kapal Asing* or “**PPKA**”), which can only be issued to SIUPAL holders.

A list of foreign-flagged vessels that can conduct activities in Indonesian waters up to the end of December 2020 is provided in Annex I to MOT Reg 92/2018. These activities include:

- a. oil and gas survey;
- b. drilling;
- c. offshore construction;
- d. offshore operational support;
- e. dredging;
- f. salvage and underwater work;
- g. floating power plant; and
- h. port construction vessel.

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