

SHIP ARREST IN INDONESIA

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1. Please give an overview of ship arrest practice in your country.

Ship arrest in Indonesia is regulated in Articles 222 and 223 of Law No. 17 Year 2008 regarding Shipping ("**Shipping Law**"), with the following provisions:

Article 222:

- (1) harbor master can only arrest the ship in the harbor upon the written orders of the court.
- (2) The arrest of ship based on the written order of the court as referred to in paragraph (1) can be based on reasons:
 - a. The ship in question related to the criminal case; or
 - b. The ship in question related to a civil case.

Article 223:

- (1) The order of ship arrest by a court in a civil case in the form of maritime claim is done without going through the process of a lawsuit.
- (2) Further provisions on procedures for the containment vessel at the port referred to in paragraph (1) is regulated by the Minister.

Notes:

Article 223 of Shipping Law states that ship arrest procedures shall be regulated under a Minister Regulation, however until now the said Minister Regulation has not been issued. In practise, this legal vacuum is often used as the reason for the Court to reject the requests of ship arrest under Article 222 and 223 of Shipping Law. According to our search in several District Courts in Jakarta and also based on our practice in several Courts in Indonesia, the Courts very rarely conduct the arrest of ship based on Article 222 and 223 of Shipping Law.

2. Which International Convention applies to arrest of ships in your country?

Currently Indonesia is in the process to ratify the 1999 International Convention on Arrest of Ships, but to date the Convention has not yet been officially ratified. On the other hand, Indonesia has ratified the 1993 International Convention on Maritime Lien and Mortgages under President Regulation No. 44 in the year 2005.

3. Is there any other way to arrest a ship in your jurisdiction?

There is another way to arrest a ship by conducting seizures towards the ship.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

The Indonesian Civil Law acknowledge 2 (two) types of seizures, namely:

- a) Security seizure (*conservatoir beslag*) as based on Article 227 of Indonesian Civil Prosedural Regulation (Herziene Inlands Reglement / "HIR")
This seizure is requested to the Court by the Plaintiff along with a civil claim and the Judges who examine the case will declare the seizure is valid and valuable in the Court Decision if the civil claim is granted.
- b) Execution seizure (*eksekutorial beslag*) as based on Article 197 of HIR
This seizure is requested by the winning party (execution petitioner) to the Head of the District Court after the issuance of a final and binding Decision, in which the execution petitioner request for seizure towards the assets of the losing party (one of which is the ship) in order to fulfill the obligations under the Decision.

As we have previously explained that since the Minister Regulation concerning the arrest of a ship has not been issued, Courts rarely conduct the arrest of a ship under Article 222 and 223 of Shipping Law.

Alternatively, the Courts may conduct security seizure which shall be submitted under a civil claim and/or execution seizure which shall be submitted upon a final and binding Decision. The purpose of this seizure is to have the ship sold in auction after the issuance of a final and binding Decision and the proceeds of sale will be given to the winning party (execution petitioner).

5. For which types of claims can you arrest a ship?

According to Article 223 paragraph (1) of Shipping Law and its Elucidation (explanation), the maritime claims which can be the basis of ship arrest arise due to:

- a. Loss or damage caused by the operation of the ship;
- b. loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship;
- c. damage to the environment, ship or cargo on board as a result of salvage operation or salvage agreement;
- d. damage or threat of damage by the ship to the environment, coastline or related interests; measures taken to prevent damages to the environment, ship and cargo on board; as well as costs of reasonable measures of reinstatement of the environment;
- e. costs or expenses relating to the raising, removal or repair of a ship including cost for ship salvage and crew rescue;
- f. cost with regard to the usage and operation or charter of a vessel based on a charter party etc.
- g. costs with regard to the carriage of goods or passengers on board the ship, whether contained in a charter party or otherwise
- h. loss of or damage to or in connection with goods (including luggage) carried on board the ship;
- i. general average;
- j. costs of towage;
- k. costs of pilotage;
- l. costs with regard to the materials, provisions, bunkers, equipment (including containers) supplied or services rendered to the ship for its operation, management, preservation or maintenance;
- m. costs with regard to the construction, reconstruction, repair, converting or equipping of the ship;
- n. costs with regard to the port, canal, dock, harbor and other waterway dues and charges;
- o. wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship, including costs of repatriation and social insurance contributions payable on their behalf;
- p. disbursements incurred for the interest the ship on behalf of the owners;
- q. insurance premiums (including mutual insurance calls) in respect of the ship, payable by or on behalf of the ship owner or demise charterer;
- r. any commissions, brokerages or agency fees payable in respect of the ship by or on behalf of the ship owner or demise charterer;
- s. costs of any dispute as to ownership or possession of the ship;
- t. costs with regard to any dispute between co-owners of the ship as to the employment or earnings of the ship;
- u. costs with regard to a mortgage or a "hypothèque" or a charge of the same nature on the ship;
- v. costs with regard to any dispute arising out of a contract for the sale of the ship.

6. Can you arrest a ship irrespective of her flag?

Yes, as long as the ship is in Indonesian waters, since there is no specific restriction to arrest a foreign ship.

7. Can you arrest a ship irrespective of the debtor?

Yes, since there is no specific restriction to arrest a ship from any certain parties.

8. What is the position as regards sister ships and ships in associated ownership?

Sister ships or ship in associated ownership cannot be arrested. According to Article 222 paragraph (2) of Shipping Law, the arrest of a ship shall be against the ship in question.

9. What is the position as regards Bareboat and Time-Chartered vessels?

Bareboat and time-chartered vessels can be arrested as long as the vessels are related to the maritime claim.

10. Do your Courts require counter-security in order to arrest a ship?

According to the Shipping Law, there is no provision concerning the counter security in order to arrest a ship.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Indonesia Shipping Law regulates the maritime lien (prioritized maritime-receivables) under Article 65 and 66 as follows:

Article 65:

(1) If there is a claim against the receivable secured by a ship, the owner, charterer or operator of a vessel must prioritize the payments of maritime-receivables as shown in the following.

(2) Maritime-receivables referred to in paragraph (1) are as follows:

- a. for the payment of wages and other payments to the master, ship's crew, and other complementary crew of the ship in respect of their employment on the ship, including costs of repatriation and social insurance contributions that should be financed;
- b. to pay money over the death or pay medical expenses for bodily injuries, both on land and at sea that are directly related to the operation of the ship;
- c. for payment for the salvage of the vessel;
- d. for port fees and other shipping lanes, and pilotage dues; and
- e. to pay for losses caused by physical loss or damage caused by the operation of the ship other than loss or damage to cargo, containers, luggage and passengers carried on board.

(3) Prioritized maritime-receivables cannot be imposed on board for securing the claims referred to in paragraph (2) letters b and e if such action arising as a result of:

- a. damages arising from the transport of oil or hazardous substances and other toxic by sea; and
- b. radioactive material or a combination of radioactive material with toxic materials, explosive or other hazardous properties of nuclear fuel, product, or radioactive waste.

Article 66:

(1) Payment of prioritized maritime-receivables referred to in Article 65 shall have priority over payment of pledge, mortgage, and listed receivables.

(2) The owner, charterer, manager, or operator of a vessel must prioritize the payment of the costs incurred in addition to the payment of prioritized maritime-receivables referred to in Article 65.

(3) The costs referred to in paragraph (2) are as follows:

- a. costs arising from the removal of sunken or stranded ship taken by the Government to ensure the safety of shipping or maritime environmental protection; and
- b. ship repair costs that belong to the shipyard or dock (retention rights) if at the time of the forced sale of the vessel is in dry dock or docks located in the jurisdiction of Indonesia

(4) Maritime-receivables as defined in Article 65 has a priority level in accordance with the order, unless the claim for the salvage vessel has been incurred prior precede other claims, the costs of salvage becomes priority over the other prioritized maritime-receivables.

There is no specific regulation concerning the arrest of ships under maritime liens, therefore the basis for arrest of ships under maritime liens shall be the same as the maritime claims as mentioned in Article 223 of Shipping Law and its Elucidation (explanation).

12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes, Indonesia has ratified the 1993 International Convention on Maritime Liens under the President Regulation of the Republic of Indonesia No. 44 in the year 2005. Furthermore, Article 65 and 66 of Indonesian Shipping Law also accommodated the maritime liens.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

Several weeks to a few months, depending on the court having jurisdiction over the matter.

14. Do you need to provide a POA or any other documents of the claim to the Court?

Yes, we need to provide and submit a POA, petition letter for the ship arrest, together with supporting evidences proving the maritime claim to the Court.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

We are required to submit the original POA and original petition letter to the Court when we submit the petition of ship arrest. If the POA is signed out of Indonesian territory, the POA will require notarisation and legalization by the Indonesian Embassy in the relevant country.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Yes. A party may file for a civil claim and request for a seizure towards the arrested ship.

17. What is the procedure to release a ship from arrest?

Currently there is no regulation which specifically regulates the procedure to release a ship from arrest, but basically ship release will be based on the disputing parties reaching a settlement and or the shipowner proving to the court that the arrest is not justified.

18. What type of security needs to be placed for the release?

Currently there is no regulation which specifically regulates the security for release of ship arrest and based on our practices, the Court does not require any security for the release of ship arrest.

19. Does security need to cover interest and costs?

There is no specific regulation on this matter and the Courts do not impose this security.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

The Court normally requires settlement of the dispute in order to lift the arrest.

21. How long does it take to release the ship?

Once the parties confirm settlement of the dispute then it might take a few days to process release of the vessel.

22. Is there a procedure to contest the arrest?

There is no regulation which specifically regulates the procedure to contest the arrest. However, for the execution seizure of ship, the contesting party may file an Objection Claim to the District Court against the execution seizure in order to lift the seizure.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

There is no period of time granted by the Courts, but in practice it will take around 6 to 12 months for the District Court (first level court) proceeding.

24. Do the Courts of your country acknowledge wrongful arrest?

There is no specific regulation on wrongful arrest of ship.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Yes, Indonesian Law acknowledge the piercing of corporate veil under the Company Law (Law No. 40 Year 2007).

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

Under Indonesian Law, a ship can be sold in auction after the issuance of a final and binding Decision on the civil claim. A civil claim in Indonesian Law shall be adjudicated by a District Court (first level court). The Decision of District Court can be filed for appeal to High Court, further cassation to the Supreme Court and then Case Review to the Supreme Court before it becomes final and binding. Therefore it may takes more than 2 years until a Decision is final and binding.

Iqbal Hadromi is the founding partner of Hadromi & Partners Law Firm and has over 2 decades of experience in the legal business. Asia Pacific Legal 500 has named him as one of the leading lawyers in Indonesia in the fields of banking & finance, corporate & M&A, dispute resolution, IP, projects & energy, restructurings & insolvency, real estate, and shipping. He has also been listed by Lawyer Monthly of UK as one of the Asia Pacific's 100 leading lawyers. His expertise in corporate and M&A has in the past been highly recommended by Chambers & Partners. He is also actively involved in litigation and dispute resolution work for domestic and multinational clients as well as written in various articles and spoken in various seminars on Indonesian law. Iqbal speaks Indonesian and English.