



# THE MARITIME CLUSTER IN MOTION – LEGAL ISSUES

MARITIME INDONESIA 2008

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19 November 2008

## Presidential Decree No. 5/2005

(1) ALL DOMESTIC GOODS AND IMPORTS DESTINED FOR STATE-OWNED COMPANIES AND CARRIED BETWEEN INDONESIA SEAPORTS MUST BE CARRIED BY INDONESIAN-FLAGGED VESSELS – CABOTAGE PRINCIPLE;

(2) REDUCTION IN NUMBER OF PORTS OPEN TO FOREIGN VESSELS FROM 141 TO 20-30;

(3) INCREASE FISCAL INCENTIVES FOR DOMESTIC SHIPPERS; AND

(4) NECESSITY OF DEVELOPING FINANCIAL SERVICES TAILORED TO NEEDS OF DOMESTIC SHIPPERS.

### Implementation of the Cabotage Principle – Problems Faced

- *Insufficient Indonesian Flagged Ships* to fully implement Cabotage Principle – estimated shortfall of around 650 vessels
- Current vessels not meeting IMO standards.

## Issues:

- Maritime cluster (shipowners, ship managers, banks, insurers, classification, lawyers, ship supplies, ship repair, bunker) requires favourable legal and economic environment to develop simultaneously
- Estimated US\$ 4.6 billion needed to fund new/replacement vessels
- Reluctance of banks to lend

## CONFIDENCE

Generating confidence of international maritime community in Indonesian Shipping -

THE KEY TO SUCCESS OF  
INDONESIAN MARITIME CLUSTER  
AND GROWTH OF THE  
INDONESIAN FLEET

## Legal Regime - The Objectives

- Freedom of Contract
- Faith in Judicial System
- Enforcement
- International Maritime Industry Standards
- Fiscal Incentives

## Freedom of Contract

- Choice of Governing Law
- Choice of Dispute Resolution Mechanism
- Enforceability of covenants and undertakings

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## The Judicial System

- Clamping down on extra-judicial interference
- Exclusion of ad hoc policy considerations
- Strict protection of contractual rights
- Certainty in implementation of laws

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### Enforcement

- Importance of consistent enforcement
- Clear legal basis for enforcement of rights of mortgagee against vessel
- Consistent application of legal basis for enforcement of rights of mortgagee against vessel in different courts and provinces in Indonesia
- Enforcement of foreign governing law in ship mortgage, where provided.

### Enforcement

- Clear judicial process for enforcement of ship mortgages by arrest and sale of vessel
- Execution of ship arrest by court
- Detention of vessel pending judicial sale
- Judicial sale of vessel to foreign buyers

## **International Maritime Industry/ Business Standards**

- Vessels as security in mortgages
- System of registration of ship mortgages
- Ship Classification Standards
- Liberalization - allow partial foreign ownership
- Foreign insurers for hull & machinery and P&I cover

## Fiscal incentives

- Government subsidized loan for shipowners
- Tax incentive for shipping income
- Government guarantee for long term loans to shipowners by foreign banks
- Promotion of Shipping Assets Trust for public participation in financing

## Maritime Academy

- Improve standard of seamanship
- Improve standard of ship management and operation
- Improve standard of financial management of shipownership

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**THANK YOU**

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