

Government Centralises Power and Maintains Status Quo in the Shipping Industry



The fifth edition of "Omnibus Law 2020: Overview Series" will highlight changes in shipping sector.

With a major overhaul in sectors such as investment and employment, Law No. 11 of 2020 on Job Creation ("Omnibus Law") does not make significant changes to shipping law in Indonesia. Our initial analysis seems to show that there are no major controversies surrounding this sector. We detail some notable points under the Omnibus Law below.

Establishment of a Centralised Shipping Business Licensing System?

A crucial development under the Omnibus Law for the shipping industry is the centralisation of the licensing regime.

Business licenses for shipping activities and shipping related services (such as stevedoring, cargodoring, ship management, ship agencies, ship repair and maintenance etc.) will still be issued by the relevant government authorities (i.e. the Minister of Transportation, Governor and/or Head of Regent/Mayor) depending on the scope of its business activities.

But the authority to issue such license will, however, be based on the norms, standards and requirements that will be determined by the central government. These norms, standards, and requirements will be further stipulated in government regulation.

Cabotage Rule Still Applies

Before the approval of the Omnibus Law by the House of Representatives, there was a rumour that the Omnibus Law would revoke the cabotage rule – a set of regulation requiring domestic transportation of goods and passenger to be undertaken only by Indonesian-flagged vessels.¹ The cabotage rule was initially introduced in 2005 and bolstered in 2008 under the Shipping Law (Law No. 17 of 2008).

Much to the relief of the domestic shipping industry, the Omnibus Law did not amend or revoke Article 8 of the Shipping Law, which is the core of the implementation of the cabotage rule in Indonesia. Therefore, domestic transportation of goods and passenger can only be conducted by Indonesian-flagged vessels with Indonesian crew.

Provisions on the Ownership of Indonesian-Flagged Vessel Remain the Same

While there was some initial apprehension that the Omnibus Law would allow foreign entities to own more shares in a shipping company (engaging in domestic shipping),² the provision on foreign entities' ownership under Article 158 of the Shipping Law remains the same. While there were some redactional edits made under the Omnibus Law, no material change was made.

The relevant article in the Omnibus Law still regulates that an Indonesian-flagged vessel can only be owned by:

1. Indonesian nationals (*Warga Negara Indonesia*);
2. a local company based in Indonesia (*Perusahaan Terbatas*); or
3. a joint-venture Indonesian company where the majority of shares are held by Indonesian nationals.

Given the status quo of this requirement, coupled with the preservation of the cabotage rule, it seems unlikely that the government will allow 100% foreign ownership or anything above 49% ownership in domestic sea transportation business activities.

PMA Shipping Companies are Still Required to Own a GT 5000 Vessel

The Omnibus Law's spirit of ease of doing business may leave the foreign investors wondering whether the government will revoke or amend the requirement for foreign investment ("PMA") shipping company to own a GT 5000 vessel.

¹ <https://ekonomi.bisnis.com/read/20200922/98/1294969/insa-khawatir-asas-cabotage-dicabut-omnibus-law>
<https://splash247.com/indonesia-revokes-new-cabotage-rules/>

² <https://www.cnbcindonesia.com/opini/20200229095715-14-141404/omnibus-law-tsunami-bagi-pengusaha-pelayaran-nasional>

After a lengthy discussion at the House of Representatives, it was decided that Article 29 of the Shipping Law will not be amended under the Omnibus Law. Therefore, the requirement for a PMA company to have a GT 5000 vessel remain in force.

Permission for SIOPSUS Holder to Transport Third Parties' Cargo?

Under the Shipping Law, a company that is not specifically engaged in shipping business but intends to transport goods via sea for its own interest (i.e. goods required for its main business activities – *menunjang kegiatan usaha utama*) must obtain a Special Operational Permit for Sea Transportation (*Surat Izin Operasi Perusahaan Angkutan Laut Khusus* or commonly referred to as SIOPSUS). The Shipping Law expressly prohibits a SIOPSUS holder from transporting the goods of other parties and/or the goods of the general public, except in a special condition and such SIOPSUS holder has obtained the approval of the relevant authorities.

The Omnibus Law eliminates the general prohibition for SIOPSUS holder to transport goods of other parties and/or the general public. Still, there is no clarity whether a SIOPSUS holder can do so in an ordinary condition and without obtaining the approval of the relevant authorities (i.e. by merely arguing that the goods are required for its main business activities).

Utilisation of Foreign-Flagged Vessels

The Omnibus Law added a new Article 14A into the Shipping Law to specifically permit utilisation of foreign-flagged vessel in Indonesian waters, so long as Indonesian vessels are not available. Permission to utilise foreign-flagged vessel in Indonesian waters was previously regulated in Government Regulation No. 22 of 2011 (and its implementing regulation, Ministry of Transportation Regulation No. 92 of 2018), which allow approximately eight activities to use foreign-flagged vessel (“**specific foreign vessel activities**”).

The historical intention of Government Regulation No. 22 of 2011 and Ministry of Transportation Regulation No. 92 of 2018 was supposed to provide a temporary solution to the shortage of qualified Indonesian vessels while increasing the numbers of the national fleet for specific foreign vessel activities. With the inclusion of Article 14A in the Shipping Law, it raises the question whether the utilisation of foreign vessel for specific foreign vessel activities has now become a permanent solution.

Provisions on Hypothec, Preferred Maritime Liens, and Ship Arrest Remain a Status Quo

It is interesting to note that the Omnibus Law fails to improve the provisions on hypothec, preferred maritime liens (*piutang-pelayaran yang didahulukan*) and ship arrests, all of which are key points of interests for both business actors, as well as financial institutions.

We will have to wait and see if the government will issue a new set of regulations to further elaborate and address the practical needs of the three subjects above to boost the domestic shipping industry.

Changes to Maritime-Related Sanctions

In general, the type of maritime-related violations in the Shipping Law that are subject to criminal sanctions or penalty remains the same. The Omnibus Law does, however, increase the fines by approximately 30% to 50%. The most significant increase is the fine for the failure to remove shipwrecks or cargo (Article 203 of the Shipping Law), from IDR 200 million to IDR 10 billion.

Most interestingly, any violation of the Shipping Law must now be accompanied by a “consequence” to be subject to a criminal sanction or fine. For example, to be subject to imprisonment or a fine, the operation of a ship without a valid license must result in an accident, human casualties or property loss.

Conclusion

The Omnibus Law was met with different reactions from the Indonesian shipping communities. While most of the essential and strategic provisions in the Shipping Law have been retained, it seems that the government’s main aim in the shipping sector is to simplify the business licensing procedures, which must now follow the guidelines established by the central government. It will be interesting to see whether the centralisation of power will, in practice, significantly ease the shipping activities licensing process.

The Indonesian government enacted Law No. 11 of 2020 on Job Creation on 2 November 2020. In anticipation of the questions that will arise, we are monitoring this evolving situation, with various teams currently examining the bill to produce updates that are relevant to you. As always, we are committed to supporting you with advice and guidance. You can find our alerts on the Omnibus Law [here](#).

If you have any questions or concerns, please contact our attorneys or the BD team at BD@ahp.id.

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