

THE LEGAL REGIME GOVERNING SHIPPING IN INDONESIA.

By: Chairijah¹

ABSTRACT

Marine development, particularly the commercial shipping industry, is integral and essential to Indonesian national economic development. Not only does it meet the needs of domestic development related to the transport of passengers, but also important in the transport of goods and trade in general, including exports-imports activities.²

As an archipelago, Indonesia consists of over 17,506 islands. Having territory over 5.3 billion km square and coast line over 8,100 km, the Government of Indonesia needs to increase its shipping fleets to fulfill domestic needs as well as to enable them to compete with commercial foreign vessels.³

Water transportation plays an important role in strengthening the unity among the islands that make up the Indonesian archipelago, and promoting the nation's unity and integrity. The Indonesian government, therefore, has made a continuing effort to encourage both foreign and domestic investors to be active in the shipping business. Despite of these benefits, sea transportation is potentially risky. For this reason the development and management of shipping must be integrated with other branches of economy by means of clear and sustainable planning.

Obstacles in the development and modernization of shipping and sea transportation businesses, including the fulfillment of the need for experts, infrastructure and budgets in the field of marine transportation are still present, even though, significant steps have been carried out in Indonesia since the 1990s through the Long Term Development Plan of the Government (RPJP).⁴

In this regard, Indonesia enacted Law No. 21 of 1992 regarding Navigation (law 21) which, in respect of shipping matters, is mainly implemented by Government Regulation no. 82 of 1999 regarding Water Transportation (GR 82). GR 82 provides more opportunities for foreign shipping companies (FSCs) to participate in Indonesian shipping and sea transportation businesses, such as conducting international shipping transportation either using Indonesian or foreign-flag vessels.⁵

To promote shipping, Indonesia has exempted the fee for transfer of title from foreign-flag vessels to Indonesian-flag vessels. Indonesia has also ratified several international conventions on shipping and navigation, certain provisions of which have been incorporated in national regulations.⁶

This paper focuses on the discussion of the regulatory framework governing the carriage of goods by sea in Indonesia, including the development and implementation

¹ PAKUAN UNIVERSITY, FACULTY OF LAW, LECTURER.

² Yayasan Pusat Studi Pelayaran Niaga di Indonesia (PUSPINDO), Dewan Redaksi/Tim Penulis PUSPINDO, Sejarah Pelayaran Niaga di Indonesia, Percetakan offset ALDA PT Jakarta, November, 1990, page 2.

³ BPHN, PUSLITBANG, Bentuk-bentuk Penyelesaian Sengketa antar Negara, Penelitian Hukum, 2015.

⁴ RPJP, BAPPENAS.

⁵ Dyah Soewito and Michael D Twomey, of Indonesia-based Soewito, Suhardiman, Eddymurthy & Kardono, look at the conduct of shipping business by foreign shipping companies in Indonesia, the Maritime advocate.com, accessed 27th November 2015.

⁶ *Ibid.*

of the regulation of the transport and water transport, ship owners and the responsibility of the carrier.

Keywords: Indonesian sea transport regulations.

INTRODUCTION

The development of commercial shipping industry really needs to be supported by an appropriate legal framework, which can provide and respond to the interests and activities of commercial shipping in order to enable Indonesia to compete in the world's merchant shipping.

Indonesia is an archipelago that bridges two continents, Australia in the south and Asia in the north. Based on research on Paleo anthropology and archeology, these islands since ancient times have become a stopover for a few tribes that came from Asia mainland. The other research, which is from geological and prehistoric materials research, estimated that since 2000 BC there was a nation that entered the Indonesian islands which later became the ancestors of Indonesia today. It is a fact that migration occurs in prehistoric came in by sea. Therefore there is no doubt that shipping has a history as old as the nation of Indonesia. Based on research of **F. Heger**, there were "*nekara - nekara*" which was made of bronze, by local community were are also found in common shape throughout Southeast Asia. If so then, at that time there had been a connection between regions in Indonesia and the regions of other countries in Southeast Asia. The relationship could be relationship in Trade and others. The next consequence was at that time there had to be a community that had already institutions that allow the Indonesian people benefited from these relationship in the form of political

institutions and trade.⁷ Other evidence indicates that Indonesia is a country that had experts in delivery, the boat-like image, which is found on the small island of OHIODERTAWUN at area of Kei, Buton, New Guinea etc, so it could be estimated that Indonesia had known cruise start from the simplest form. The two evidences here were two types of relationships, namely local shipping that used to connect between the islands and the local trade, while the second is a long-distance cruise which was connecting shipping and trade between nations.

According to Wolters history expert, Van Leur, managed to find evidence from outside Indonesia to explain Indonesia's role in shipping and international trade in the past.⁸ Indonesia also had a *golden moment* of trade in the 5th century AD there have been trade relations between China and Indonesia, which can be proved from the reports of two leaders of Buddhist named **FAHSIN** and **GUNAWAN** and on the other side Indonesia had relationship in trade with India, specifically South coast of India (Kurmandel).

What exactly become the object into a trade has done by the Indonesian people and nation - peoples in various parts of the world at that time were similar kind of spices and wood that smelled like **sandalwood and cinnamon**.

Indonesia for thousands of years had been known as an archipelago and was known as a maritime nation which had introduced this nation to the world to control every aspect of transportation modes according to its era.

⁷ Heger, P in *Alte Metallrommelenaus Sudost Asien*, dikutip dari Sartono Katodihardjo (ed) *Sejarah Nasional Indonesia Vol. II* page 2, dalam *Sejarah Pelayaran Niaga di Indonesia*, Yayasan Pusat Studi Pelayaran Niga di Indonesia (puspindo), Dewan Redaksi/Tim Penulis PUSPINDO, Percetakan offset ALDA PT Jakarta, November, 1990, page 7.

⁸ *Ibid.*

INDONESIAN TRADE BY SEA TODAY

Indonesia glory in the past should become a booster for Indonesia in the present. The ancestors of Indonesia has introduced Indonesia through commercial shipping throughout the world, with the spices trade and so on the pride must continuously developed for generations today.

Indonesia consists of 17.506 islands, water transportation plays an important role in the strengthening the unity among the islands that makes up the Indonesian archipelago, and promoting the nation's unity and integrity. The Indonesian government, therefore, has made a continuing effort to encourage both foreign and domestic investors to be active in the shipping business.

In this regard, Indonesia enacted Law No. 21 of 1992 regarding Navigation (law 21) which, in respect of shipping matters, is mainly implemented by Government Regulation no. 82 of 1999 regarding Water Transportation (GR 82). GR 82 provides more opportunities for foreign shipping companies (FSCs) to participate in Indonesian shipping and sea transportation businesses, such as conducting international shipping transportation either using Indonesian or foreign-flag vessels.⁹

To promote shipping, Indonesia has exempted the fees for the transfer of title from foreign-flag vessels to Indonesian-flag vessels. Indonesia has also ratified several international conventions on shipping and navigation, certain provisions of which have been incorporated in its national regulations.

Indonesia possessing more coastline than any other country in the world, and with an ever-growing population of over 214 million people, Indonesia must be informed of the legal issues surrounding the use and exploitation of the seas.

Indonesia has ratified the United Nations Convention of the Law of the Sea (UNCLOS), by Act No. 17, year 1985, and the enactment of the Indonesian Navigation law No. 21/1992 (referred to as Law No. 21/1992).

AN OVERVIEW OF SHIPPING AND ITS REGULATION IN INDONESIA

Today, the government develops national laws and regulations concerning the delivery so that they can obtain optimum efficiency in the delivery of favorable economic results in accordance with national considerations. The efficiency has been achieved through a process of consensus between public and private interests enacted through legislation and some regulations set by the President or delegated to the Minister.¹⁰

The National Transportation System

The National Transportation System aims at the realization of an organised and consistent transportation arrangement that includes land, sea and air transportation that interact with each other so as to reach all districts in the country, and all international borders. Indonesia has identified maritime transportation as a crucial element and one of priority in the national transportation system. The priority given to maritime transportation is in part explained by Indonesia's archipelagic circumstances, and its ever-increasing population which puts considerable pressure on other forms of transport.

The Development of Indonesia's Maritime Sector

Transportation, in particular by sea, plays a crucial role in the development of the economy and the government's efforts to maintain economic and political integration of the wide-spread regions.

⁹ *Ibid*, the Maritime advocate.com

¹⁰ Article 28 of The Presidential Decree of Republic of Indonesia No. 188/1998 on the Procedure of Legal Draft Preparation states that: "The agreement of matters in arranging legal drafts applies also to the arrangement of Presidential Decrees Government Decrees, and other regulation.

Shipping accounts for about 27% of Indonesia's total cargo traffic.¹¹ The major part of inter-island cargo traffic is almost entirely carried out by sea. Indonesia has more than 300 ports of various sizes classified as national ports, export ports, special ports and rural ports. The development of the Maritime Sector gained a foothold more than sixty years ago since the proclamation of Indonesian Independence on 17th August 1945.¹² According to the World Bank report, since the mid 1970s the ports have seen annual average growth rates of 7.5% for international cargo flows and 13% for domestic cargoes.¹³ The Indonesian government is continually developing ports due to increasing demand and competition with international businesses.¹⁴

The government instituted the Maritime Sector Development Program (MSDP) in 1982. The first phase was designed to analyse the essential

weaknesses in the maritime transportation sector and to advise on remedial measures. Fifteen task forces were formed to study various aspects of the country's maritime transportation sector, such as administration and management, port operations, shipping industry, maritime legislation and human resources and labour development requirements. Some of the studies have been completed and have resulted in specific target programs.

Indonesia's maritime sector faces a number of problems. To address these problems, the MSDP called for a series of major organisational, structural and operational reforms. As inter-island shipping and port development are the focal points of government concern, substantial funds and expertise have been directed towards such activities in those fields.¹⁵

The table below shows the prominent role of sea transportation in comparison to other modes of transportation.

Table 2.0: Domestic Transport Modes for Passenger Freight (1995- 2000)

Year	Types of Transportation			
	Road	Rail	Sea	Air
1995	2,080,882	141,171,260	49,719,743	25,874,960
1996	984,214	153,646,979	52,016,220	27,803,935
1997	1,650,639	155,366,412	50,891,806	26,835,764
1998	1,666,341	185,150,586	51,553,476	16,160,270
1999	1,336,628	186,469,269	46,050,000	13,797,015
2000	1,493,650	200,166,010	47,647,622	12,380,434
Average growth Rate (%)	-0.96%	+7.46%		-2.21% -12.62%

Source: Ministiy of Communication/Pusdatin, 1999

¹¹ The National Maritime Profile, 1996, p.iii.

¹² The National Maritime Profile.

¹³ Umar M Husseyn, *Hukum Maritim dan Masalah-Masalah Pelayaran di Indonesia*, Buku ke-3, Pustaka Sinar Harapan, Jakarta, 2001, p. 173.

¹⁴ The National Indonesian Shipping Company (PT.PELNI), Annual Report, Jakarta, 1999, p. 8.

¹⁵ Umar M. Husseyn, *Masalah Pembangunan dan Penegakan Hukum Kelautan di Indonesia*, Seminar Hukum Nasional, 16 Juli, 2003.

According to the Indonesian National Shipowners Association (INSA), it is likely that the country's shipping industry will grow around 20% during 2013 due to the country's good economic performance.

In 2013, there were 560 new ships in the Indonesian shipping industry, which had increased the number of Indonesian flagged ships to 12 600.

With this fleet, the Indonesian shippers were expected to be able to deliver around 1.2 billion tons of cargo, for both domestic and international markets. One factor contributing to the Indonesian shipping is the government's implementation of the cabotage principle, which means that all vessels operating in Indonesian waters must be domestically owned. The increasing number of national flagged vessels for domestic maritime transportation and the amount of cargo delivered by the national fleet indicate the benefit generated. However, there are exceptions to the principle, because of the inability of local companies to provide the technologically advanced facilities and personnel needed for sophisticated activities like oil and gas drilling and production.¹⁶ The country's shipping industry suffered heavily from the downturn during 2009 crisis. One reason was the overcapacity resulting from the downturn (OSK 2012). Although INSA predicted growth for the sector, the health of the global economy is still very fragile, and in the most shipping markets the situation is still unpredictable (Jati 2012). However, Indonesia's growing economy has attracted foreign shippers to cooperate with local shipowners. International joint ventures are expected to emerge between those shipping

companies in 2013 (Osman 2012). One of the key issues regarding the growth of the Indonesian maritime sector is investments in port infrastructure, including road and rail links (BMI 2012). Indonesia's geographical characteristics are very difficult and as a consequence, the nation has approximately 1,700 seaports. The total throughout the country's port sector was estimated at 968 million tonnes in 2009, which splits almost evenly between the domestic and international cargo movement. Weak operational performance of Indonesia's port sector and low level of investments in port infrastructure are major challenges for the sector (OECD 2012).¹⁷

Shipping Policy

Indonesia has a merchant shipping fleet of approximately 2.6 million dwt.¹⁸ The government has implemented a stringent abolition policy for ships over twenty-five years old, with the intention that the projected replacement number for new ships is not likely to exceed the number of ships scrapped.

In the past inter-island shipping was reserved for national shipping lines on the cabotage principle, and it was in many ways intensively regulated. However, as the result of recent changes in policy, freight tariff control has been relinquished and now almost all ports are open for international trade and shipping.

In overseas shipping, most of the Indonesian national lines are members of liner conferences and enjoy an exclusive privilege in carrying cargo for conferences. The government has ratified the UN Convention on a Code of

¹⁶ Akseli Jouttenus, Indonesia, continually growing and developing, maritime sector, Maritime sector developments in the global markets, Smart Comp Research Report No 3, October 2013, 4.4, access 2 Dec 2015.

¹⁷ *Ibid.*

¹⁸ Directorate General of Sea Communication, Department of Communication, Republic of Indonesia, *Port Affairs*, Working Paper, 2001, p.24.

Conduct for Liner Conferences.¹⁹ However, until now, no legislative or other measures have been taken to implement the Convention. In 1985 the government invoked a cargo reservation policy on all government cargoes. In practice, however, the policy has not been effectively executed, due to various circumstances, for example: the lack of funds, human resources and political will.

In April 1985 the government issued a Presidential Decree (No. 4) that includes general policies in the field of maritime transportation and import and export procedures.²⁰ The decree was aimed at promoting economic activities in general and the boosting of non-oil commodity exports following the declining trend in oil prices in the 1980s. The decree also introduced significant changes in import and export procedures, inter-island shipping, international shipping, handling of goods and documents and shipping agencies and port operations in general. Significantly, the decree also abolished the protectionist outlook of the previous policies with regard to national shipping and offered traders various options for shipping their cargoes.

Foreign vessels are free to enter almost all Indonesian ports, provided national shipping companies are appointed as agents. The policy has affected the operations of liner conferences serving the Indonesian foreign trade, including the national line members of the conferences. There is a general concern that the policy could lead

to a greater dependency on foreign shipping that may in the long run affect the nation's economy.

Government Initiatives to Challenges

In the effort to develop maritime policy and enhance the shipping industry the Directorate General of Sea Communication undertook a study which identified the following issues as of specific interest to the government and which required foreign or international assistance as:²¹

- there was a need to have a study in the Indonesian/International sea-borne trade, in particular with respect to the role of international shipping in the country's foreign trade;
- there was a need to conduct a series of seminars and workshops concerning the various international conventions related to maritime transport, such as the Code of Conduct for Liner Conferences, transport of goods by sea, and multimodal transport; and
- there was a need for a critical assessment of factors that influenced developments in the maritime industry between 1994 and 1999.

Introduction to Water Transportation Regulation

The Indonesian Government Regulation No. 82/1999 plays a significant role in the implementation of the Navigation Law (No.21/1992). This regulation provides direction for all parties who are involved in shipping activities.²²

¹⁹ Article 2 participation in trade, point 4a,b. The group of national shipping lines of two countries the foreign. Trade between which is carried by the conference shall have equal rights to participate in the freight and volume of traffic generated by their mutual foreign trade and carried by the conference; (b) Third-country shipping lines, if any, shall have the right to acquire a significant part, such as 20 per cent, in the freight and volume of traffic generated by that trade.

²⁰ MUmar M. Husseyn, "Hukum Maritim dan Masalah-masalah Pelayaran di Indonesia", Buku 2, Jakarta: Pustaka Sinar Harapan, 2001, p. 123.

²¹ *Ibid.*

²² Note paragraphs (a) and (b) in the Preamble to the Indonesian Government Regulation No 82/1999: "(The water transportation system also serves a strategic function to ensure the implementation of Wawasan Nusantara, strengthening of the national defence, and to accelerate connections to all Indonesian communities in an effort to obtain national goals, and this also serves as an effort to

Since water transportation is an integral part of the Indonesian domestic transportation system, the Government has a duty to develop, monitor and control water transportation.²³ Safe and efficient water transportation is necessary because it is important to safeguard human lives, boost economic growth, and bolster national integrity and defence security.

Regulation No. 82/1999 has ten sub-regulations. These include:

- regulating Water Transportation;
- determining what constitutes water transportation activities;
- establishing the infrastructure and navigable routes for water transportation;
- deciding the fares for water transportation;
- providing specialised transportation services for disabled people;
- providing transportation for dangerous cargo e.g. armaments and ammunition;
- obliging shipping companies to carry passengers/cargo as specified in the agreed contract;
- ensuring the ship's owner(s) has the responsibility to compensate for damage or injury to cargo/passengers;
- establishing that the ship's captain has a duty to report the location of his/her ship to the appropriate port, or to call to another vessel in the vicinity; and
- managing domestic merchant fleets.

The ten sub-regulations mentioned above create an integrated and well-

managed water transportation system. Stringent government policies are enforced to ensure that shipping entrepreneurs who abuse the law are punished accordingly. For instance, their permit to operate a shipping business in Indonesia may be cancelled.

Regulation No. 82/1999 provided a legal framework for shipping entrepreneurs.²⁴ Ministerial Decrees from the Transportation and Communications Department remain in force, as long as they do not contradict each other, or are not amended by the new law covering the Water Transportation regulation.²⁵ It is interesting to note that as different departments come under the Government, the effect of Ministerial Decrees is limited to specific duties. For example, the Transportation and Communications Department oversees the implementation of fares and their rates.

The key principles of Regulation No. 82/1999 include the many functions and strategies of water transportation established in Indonesian territories (Wawasan Nusantara), safeguarding national security, uniting Indonesian nationals and territories, boosting economic growth and the need to implement this regulation as a prerequisite for the implementation of the Navigation Law No. 21/1992.

The implementation of Regulation No.82/1999 depends on four laws. Primary of these laws is Article 5, Section (2) of the 1945 Indonesian Constitution, which states that "The President of the

increase business income so as to enlarge the national economy. Based on considerations noted in paragraph (a) and for the implementation of Law No. 21/1992, the Indonesian government will consider the establishment of the regulation.)

²³ *Ibid.*

²⁴ Note paragraph (d) in the Preamble to the Indonesian Law No. 21/1992 concerning Navigation: "(In the provision of legal aid services in accordance with transportation business activities, the Indonesian government considered the establishment of a national act in the field of sea transportation. The circumstances of this regulation, that is still in effect today, are not sufficient for the recovery of business at this time).

²⁵ Article 96, The Indonesian Government Regulation No. 82/1999, (On the date the government regulation becomes effective all regulations which are subordinate to the Ministerial Decree are still valid as long as the subordinate regulation does not contradict with the Ministerial Decree.)

Republic of Indonesia shall determine the government regulations necessary to implement statutes". Further enabling comes from Law No. 17/1985, the State Gazette of the Republic of Indonesia No.76/1985, and the Supplement to the State Gazette No. 3319 regarding the ratification of the United Nations Convention on The Law of the Sea. The Navigation Law No. 21, the State Gazette of the Republic of Indonesia No.98/1992 and the Supplement to the State Gazette No. 3379 are also needed to enable implementation of Regulation No. 82/1999, as is Law No. 6/1996 concerning the Indonesian Archipelago, the State Gazette of the Republic of Indonesia No. 78/1996, and the Supplement to the State Gazette No. 3647.

The water transportation regulation comprises 11 Chapters²⁶ and Articles.²⁷ In addition to these provisions, the regulation also sets up several Articles related to the dynamics of water transportation, and Articles concerned with business provisions underpinning shipping activities.

Domestic and International Sea Transportation

The most important role of the domestic transportation system is to fulfil

domestic transportation needs, including the carriage of domestic passengers, goods and animals from vessel to vessel, and the embarking and disembarking at ports located in Indonesian islands, and offshore transportation.²⁸ Domestic shipping companies manage domestic sea transportation activities and ships are allowed to sail only under the Indonesian flag.

There are specific conditions for foreign ship companies, such as permitting the substitution of foreign ships to transport cargo for domestic demand in certain periods.²⁹ Such periods occur with the celebration of Ramadhan, Christmas and New Year holidays. As a result, it is government policy to assign foreign companies at these times to cater for the domestic shipping industry.³⁰

In order to meet the increased demand for ships during these festive seasons, the government has allocated funds to conduct studies, inspections and evaluations to ascertain the capacity needed to accommodate the increased amount of cargoes. The government has invited shipping entrepreneurs to contribute accurate data concerning the total amount of shipping capacity available.³¹

The guidelines meets the demands for ships including the total amount of

²⁶ Chapter One: General; Chapter Two: Legal Framework of the Waters Transportation Regulation; Chapter Three: Water Transportation Business; Chapter Four: Sea Transportation Business; Chapter Five: Networking and Routes of Water Transportation; Chapter Six: The Sea Transport Tariff; Chapter Seven: Transportation Service for Disabled Passengers; Chapter Eight: Transport of Special and Dangerous Goods; Chapter Nine: The Obligation for Carrying; Chapter Ten: The Responsibility of Ownership; Chapter Eleven: Water Transportation Information Systems.

²⁷ Articles 3 to 10, PP. No.82/1999, state that (a.) The operation of domestic shipping business is to be managed by national shipping companies using ships with Indonesia flags that are in a seaworthy condition with a minimum size of G.T. 5000; (b.) National shipping companies and foreign companies could be made co-operative corporations in joint venture agreements; and (c.) The Foreign shipping companies that have activities carrying goods by sea to and from Indonesian export ports must be openly represented by an administration office agent.

²⁸ Article 3, Paragraph 1, of PP No. 82/1999, states: (a). "The operation of domestic shipping business is to be managed by national shipping companies using ship with flying Indonesian flag. (b). To connect sea ports for Indonesian inter-island traffic in all Indonesian territory."

²⁹ Article 4, Paragraph (1) of PP No 82 / 1999, on Water Transportation.

³⁰ Article 4, Paragraph (3) of PP No. 82/1999, on Water Transportation.

³¹ Article 6 The Indonesian Ministerial Decree No. KM. 33/2001 on the Practice of foreign vessel operation.

space of a ship's capacity for local transportation; the vulnerability of domestic shipping companies; and the support for domestic shipping companies.

Allowances made during the festive season are not only to meet the immediate demand but also to protect the domestic shipping companies. Domestic shipping companies are vulnerable to big foreign shipping companies because bigger shipping companies can compete more effectively due to a better business infrastructure, efficient scheduling and competitive pricing.

Article 4, Sections 4 and 5 of Regulation No. 82/1999, specify the requirements concerning the operation of foreign ships. The requirements are as following:

- the charter agreement of the ship must be made available;
- ships must be registered in the Indonesian Classification Bureau to determine its size, category and the cargo it can carry;
- foreign shipping entrepreneurs must report to the Ministry of Communication Department before their ships are used by industry; and
- International Shipping Operation Standards must be met.

The Indonesian Government has stipulated several requirements and procedures concerning international shipping activities, which are found in Articles 6 to 10. These include:

- domestic or foreign shipping companies can carry out International shipping activities;
- ships must sail under the Indonesian flag and/or under a foreign flag State such as the Panama flag State;³²
- loading and unloading of cargo can be

undertaken at International Trade Ports; and

- ships, which are on an international voyage using regular and irregular routes, can load and unload their cargo at public ports after being subjected to quarantine and immigration checks.

Immigration and quarantine checks are necessary to ensure that goods coming into the country comply with the approved commodity list in order to eradicate smuggling of contraband goods.

Types of Shipping Businesses

Articles 8 to 11 classify international shipping businesses into three groups:

Joint Venture Shipping Companies

A joint venture company between an Indonesian and a foreign entrepreneur must be based on Indonesian law and on other requirements as stated in the Indonesian Corporate Law No. 2/1995. The Joint Venture Company must have at least one ship with 5000 Gross Tonnage (GT 5000).

Foreign Shipping Company Agency

Under Article 9 Section (1) of the Indonesian Government Regulation No. 82/1999 each foreign shipping company that has an overseas branch office in Indonesia must appoint a domestic shipping company as a foreign company agent.³³ The Agent must have at least one ship with 5000 Gross Tonnage (GT 5000).

Foreign Shipping Company Representative

The Provisions in Government Regulation No. 82/1999 requires each

³² Article 92 Status of ships, United Nation Convention on the Law of the Sea, 1982, states "Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas..."

³³ 6bThe CCH Macquarie Dictionary of Business, Macquarie Library, 1993, p.25, "Agent- a person authorised to act, or with authority to act in transaction in the course of his/her ordinary business."

foreign shipping company to nominate a domestic company as its representative, and the domestic company must have a sustainable trading operation in Indonesia. The domestic representative should have the ability and responsibility to facilitate the administrative management for the foreign companies in the national business/shipping sector. The company is, however, prohibited from conducting agency activities, including using space on the foreign shipping company's ships for domestic transport.³⁴

General exemptions exist for certain categories of operations. For example, companies in the business of carrying passengers to cross the international border from Batam Island to Singapore's port must not have ships with a capacity of less than a minimum size of GT 5000. As a result, each entrepreneur who has his or her ship registered under the Indonesia's flag can take advantage of this exemption, even where the size of his or her ship's capacity may not be up to GT 5000.

Indonesian Citizens and Traditional Water Transportation Businesses

The most important commercial maritime benefit enjoyed by Indonesian citizens is the opportunity to develop their enterprises, for example the areas suitable for the conduct of their businesses usually lie in internal Indonesian waters. The types of vessels that they use - sailing, traditional manpower, or motorised - often do not conform to any standard size. Consequently the Government is concerned with the improvement of the sea capability of entrepreneurs and seamen, management, mechanics and radio operators. Besides that, the government is obliged to set tariffs for port service transactions as well as to provide

facilities to assist in the establishment of their businesses.

The traditional water transportation business is a type of shipping industry, which the government deliberately fosters in order to support the small and medium level entrepreneurs in Indonesian shipping, as well as to develop their business in transportation. Indeed Article 33 Section (1) of the 1945 Indonesian Constitution states that the economy should be organised as a common endeavour based upon the principle of the family system. This statement indicates that the basis of Indonesia's economic development is democracy and co-operation. Prosperity is for everybody. Therefore, each Indonesian citizen is given equal rights in obtaining an opportunity for business. Article 33, Section (1) of the 1945 Indonesian Constitution, implemented in the preamble of the Indonesian Law No. 5/1999 on the Ban and Monopolistic Practices and Unfair Business Competition is called Monopolistic Regulation. This law provides a legal guarantee of equal opportunity for everyone in participating in business activities.

Articles 12 and 13 with regard to Law No. 82/1999, Indonesian Government Regulation of Water Transportation, identify a number of measures required to develop effective traditional shipping businesses. These include:

- Operational Area: The area of traditional shipping operation is in internal waters;
- Types of companies: small and medium level entrepreneurs can only manage the traditional shipping business;
- Size of ships: Traditional shipping activities will be operated by traditional sailing vessels, traditional manpower vessels, or motorised vessels, which do not conform to the standard size;

³⁴ Article 10, No. 82/1999 the Indonesian Regulation "Each foreign shipping company that has an activity to earning good by sea from and to ports in Indonesia's territory has an obligation to open representative."

and

- The government has an obligation and responsibility for establishing and developing traditional shipping industries, such as in providing capital loans at a lower interest and for longer periods of repayment, short courses related to shipping activities for improving human resources, and subsidised port taxes.

River and Lake Transportation System

Chapter 3 of Regulation No. 82/1999 on water transportation deals specifically with the river and lake transportation system, and recognises river and lake transportation needs with respect to Indonesia's geography. This is one of the types of transportation links that connect inaccessible areas and villages or regencies. River and lake transportation has been long known in history, and is used by local communities in their activities; thus this category of transportation is familiar to them. The existing river and lake transportation has many aspects that include:

- Economics, including the development and enhancement of the small level shipping entrepreneur level so as to contribute to the realisation of an equitable national economic order that takes into account the interest and needs of small entrepreneurs and local communities;³⁵
- Psychological and political means of strengthening the nation's unity and integrity; and
- Defence and security are significant in controlling, inspecting and protecting Indonesia's territories from external interference.

Internal Border Crossing Transportation Fleet

Because of geographical conditions, Indonesia needs several types of water

transportation fleet. A specific type of transportation is necessary for rural transportation, where borders exist between one village and other places in Indonesia's territorial waters, and where transportation is scheduled on a regular basis. The type of fleet is very specific as well. The meaning of "border crossing" in this part is different from the meaning of "border crossing" when the discussion relates to foreign shipping company representatives referred to in Chapter One of Regulation No. 82/1999. The transportation system determined in this provision relates to transportation that acts as a moving bridge to connect roads or railway tracks that have been flooded. The types of vessels that they use are sailing, manpower or motorised vessels that do not conform to the standard size.

Pioneer Type of Water Transportation

The pioneer type of water transportation fostered by the Indonesian Government serves many purposes. One is to connect inaccessible areas potentially bordering other villages. It also has the purpose of supporting order, and has the ability to give priority to rural development, as well as improving a more even distribution of national development. Moreover, it helps bringing national stability, and places national security on a firm basis. Article 17 (2) elaborates on this by further outlining the following purpose of the Water Transportation System:

- to connect accessible areas which have not been developed yet;
- to connect rural areas, which do not have sufficient types of transportation modes; and
- to connect isolated areas of low commercial value which are unprofitable for shipping business, because income per capita in this area is considered too low.

³⁵ Article 33, 1945, the Indonesian Constitution states: "...the basis of economic democracy, production by all for all, under the leadership or control of the members of society. It is prosperity of the community, which is stressed, not prosperity' of the individual."

The focus of pioneer water transportation is on providing transportation through regularly scheduled services with low tariff burdens, providing smooth mobility for the inhabitants, and as a carrier of goods. Government administration matters, such as development and trade, are also addressed.

When commercial interests operate in accessible areas, their pioneer status will end. Where the government conducts pioneer water transportation, it provides compensation or subsidy. The compensation or subsidy is to pay for the usage and all operating costs of national shipping companies and other private companies that are responsible for the provision of transport services.

The provisions that regulate the above-mentioned activities can also be found in Article 18. They are as follows:

- the government executes water transportation as stated in Article 17;
- the Ministry of Communication and Transportation has the authority to appoint the National Sailing Company or other private companies as providers of pioneer transport service in any particular area;
- the Government provides some compensation and subsidy for the usage of operating costs that are related to pioneer transport;
- the total amount of compensation or subsidy that may be given by the government to entrepreneurs is the difference between costs paid by the company with the company's operational income; and
- the implementation of regulations as stated in Sections (1), (2), and (3) may be further elaborated upon by Ministerial Decree.

Water Transportation Business

The business of waters transportation is regulated in 41 Articles that are divided into seven parts. All Articles in this chapter explain the steps required in order to be permitted to conduct a

shipping business in Indonesia, and to determine who can be permitted to operate an open shipping business in Indonesia. In addition, the Articles explain the requirements to be fulfilled by the entrepreneur, the processes to be carried out in order to get a shipping business license, and the different types of shipping businesses. The government of Indonesia has the same rights and obligations as an entrepreneur.

Article 19 states that only an Indonesian Corporate Company that is a Limited Liability Company, or a State Owned Enterprise, or a Local Government Enterprise or Cooperative may conduct a shipping business. In having a business license they may operate a business legally. Once the business license is issued it remains valid during the operating period of the business.

Articles 20 to 22 explain the requirements that need to be fulfilled by the entrepreneur. These include:

- the entrepreneur must have a ship under the Indonesian Flag State as a symbol and the ship size ought to be GT 175 (one hundred and seventy-five Gross Tonnage);
- the company is obliged to submit report concerning any alteration of ownership in the company, such as a change of owners, or a change in the domicile of the company or in the domicile of the company's owners;
- the entrepreneur must have a business permit issued by the Minister;
- the shipping entrepreneur must be an expert in the branch of the shipping field carried out; and
- the company must operate its business for at least six months after the business permit is issued.

Analysis of Water Transport Regulation

The purpose of the Water Transportation Regulation (The Government Decree No. 82/1999) is to simplify the Indonesian sea transportation system.

This is because Indonesia has specific geographical conditions that are quite difficult to compare with those of other countries such as Australia, Singapore and Malaysia. These particular conditions caused the Indonesian government to set up several regulations concerning sea transportation and especially water transportation that is conducted for inter-island transportation.

The regulations that have been stipulated in part one through part five apply directly to water transportation, except for part two. As discussed above, part two relates to sailing by Indonesian citizens. This part is more inclined towards the regulation of the small shipping business.

All laws must be implemented by government decree. The Water Transportation Regulation was in operation because Government Decree No. 82/1999 had already been effected. However, some water transportation activities are still not yet regulated as the government has not made the appropriate decrees. These circumstances have not allowed for a smooth application of some parts of these regulations as had been expected.

This is seen particularly in certain circumstances in part two where the Indonesian Government was keen to pay more attention to the small shipping business category in order to improve their activities. Also several policies were issued in order to help small business groups in shipping, such as limiting the size of ship's capacity to GT 7 only. In fact, the extension of help through government policies is also necessary for medium level businesses due to the high risk involved and the amounts of finance, as well as the need for specific qualifications in human resources.³⁶

In addition the government must find

a way to provide more subsidies to small shipping companies to help them. The decrease or increase of fuel price is a problem for the small business groups because all shipping companies are dependent on fuel as a propellant.

A number of weaknesses of Government Decree No. 82/1999 can be identified. These include:

- several regulations could not be implemented, as they have not been enabled by direction;
- some provisions still overlap other regulations of similar substance, such as ownership responsibility (Chapter X, Article 92). There is merely some indication of responsibility, provided without any limitations on such responsibility. The circumstances will provide many changes to unfair business practices or business monopoly, which are related to the entrepreneur's capacity to provide compensation;
- as for explanations, with regard to the cancellation of a water transportation business license, part five did mention that "this provision has been clear", yet it actually needs more clarification. In contrast, articles such as Article 36 obviously contain more clarifications; and
- the requirements for the establishment of shipping businesses in every single category (big shipping company, medium and small business) are similar.

Currently, the Indonesian Shipping Laws are being reformed and improved. These developments may be regarded as an excellent policy, responding to both national and international market demands.

It remains doubtful as to whether newly adopted regulations could

³⁶ The Department of Communication and Telecommunication. Operation System of National Sea Transportation and its Problems, Working paper, *Sea Transpot*, Jakarta, 2000, p. 12, states: "Due to the lack of capital, national shipping industries are unable to develop their fleet that pushes them to operate inadequate vessels."

satisfactorily keep up to date with the current modernisation of shipping service activities. However, no regulation is perfect and complete, and none can satisfy all parties' interests. Nevertheless, the new Indonesian Law governing shipping industries are proof of the efforts made by the Indonesian Government to provide better results and solutions.

It is known that the existence and implementation of new regulations can affect several interests and business activities. Particularly, some users such as entrepreneurs assert that new regulations operate contrary to their business activities and prove to be of less benefit to them. An example is the implementation of route networking as provided for in Article 62 that addresses regular route services (liners) and irregular route services (trampers). With regard to Domestic Route Transport, Article 64, Section (1), (4) and Article 65 of PP No. 82/1999 (Waters Transportation system) are relevant. Article 64 states that the sea transport activities should be conducted with the main purpose being to connect ports that are centres of accumulation and distribution.

Articles 65 states that the networking and domestic sea transportation, as mentioned in Article 64, shall be determined in accordance with the following considerations:

- the development of central trade, industry and tourism;
- the development of regional territory;
- the harmony within intra modal transportation; and
- the phenomenon of national unity.

Taking into account both regulations, a definitive statement would agree that a sea transportation service very much depends on time schedules. Indeed, the observation of punctuality in keeping to time schedules should produce excellent

services.

Hariy Hilliard, senior master of a ship working for the Indonesian Sea Transportation Companies, states:

The shipping industry is a complex activity which concerns science and technology and also involves several public and private interests. To elaborate on these simple words, the shipping products comprise human resource as well as ship and pier components that in turn produce service transportation products in the form of a "SCHEDULE". These shipping products may differ without determining the exact schedules for them. Nevertheless, it is improbable that the shipping industry would produce excellent products were their components to be scheduled by entrepreneurs. They might determine them as different entities for their own purposes.³⁷

The shipping industry in alliance with the port authority has not been able to maximise the development of "joint products" for the shipping business. The predatory behaviour of certain mandatory port businesses (now only 3%) on shipping industries allows domestic ship companies to gain opportunities to carry cargo, because the shipping industries cannot produce a marketable "schedule". The absence of cooperation between the port administrator on the one hand and the shipping entrepreneurs on the other is the main problem preventing shipping entrepreneurs from being able to arrange efficient and attractive schedules. The position of both parties appears uncompromising as neither of the parties is willing to move from the opinion they hold to.

However, it is normal for entrepreneurs not to expect reform of previous regulations that provided some benefit to

³⁷ Hilliard, Capt. Harry, Marine Development Policy, Working Paper, *Port Policy Mission in Supporting Sea Power Development*, Jakarta: National Seminars, Alumna Maritime Academy, 21-22 November, 2000, p.6.

them. In contrast, it is quite difficult for the government to satisfy every single entrepreneur's interest. In addition, it is important for the government to decide on the timing of the issuance of new regulations in consideration of domestic interests, and in order to respond to global market developments.

Indonesia's economic growth is also boosted by the development of a national water transportation system. As stated in Articles 12, 13, 14, 15, 16 and 17 of PP No. 82/1999, inland water transportation, such as river transportation and pioneer shipping, can also function as sea transport by serving remote, isolated and less developed regions. A particular existing route and its connections to certain isolated areas and small ports may be developed to provide a wider opportunity to enhance the region's economic growth.

However, as a result of the government's reinforcement of small fleets to support the inland transportation system, the economic average growth rate has grown to 12.79% per year, based on statistical data (Transportation and Telecommunication Statistics - Ministry of Communication And Telecommunication).

The main intention in regulating port affairs is to provide geographically suitable port arrangements appropriate to the port's function, and also to provide more efficient operations.³⁸ At this time a simple system, maintained by users, and the more complex system coexist.³⁹ In public port areas entrepreneurs and customers still face various bureaucratic impediments. Official institutions, such as the P.T. PELINDO group, have the authority to operate a port's technical organisation working units in accordance with their duty to provide services for ships' traffic, passengers and cargoes. It is the Port Administrator who has the

authority to manage port activities. This dichotomy within the public port authority still remains, and not only makes the service procedures less efficient, but also provides indications that the public port management is in disarray. The Indonesian government realises that in such circumstances it must search for an effective solution with immediate effect.

Despite the Indonesian Government Regulation PP No. 82/1999 concerning Water Transportation, several obstacles still exist for ships' entrepreneurs, particularly the substance of Article 3. Paragraph (1) that states that the domestic sea transportation activities to connect sea ports for Indonesian inter-islands traffic in all Indonesian territories shall be conducted by national shipping companies and ships under the Indonesian flag.

Furthermore Article 4, Paragraph (1) states that the use of ships under foreign flags may only occur during certain circumstances such as, for example, when national ships have insufficient capacity to many passengers or cargoes. In this situation, the government allows foreign ships operated by national shipping companies to be used as substitutes for national ships.

The Ministry of Communication and Telecommunication has the duty to obtain information about any insufficient capacity on the part of national ships, and determines this by inspection and evaluation of the amount and types of ships needed, and for what periods of time.

The operation of many foreign ships in Indonesian waters was based on the "back-to-back charter" system, where the foreign ship's owner conducts the operation.⁴⁰ The national merchant fleets still face challenges. Statistical data for 1998 shows that the national fleet has the capacity to obtain market share of

³⁸ Article 2 Section (2) PP No. 69/2001, the explanation.

³⁹ Umar M. Hussey, op.cit., p. 101.

⁴⁰ *Ibid.* p. 102.

approximately 3.52% for import activities and 96.48% for export activities. Foreign shipping companies still enjoy the lion's share of import cargoes. Also, 46.90% of interisland cargo is by national shipping companies, whereas foreign shipping companies carried only 10% of domestic cargoes.⁴¹

PORT BUILDING

Recently, the Indonesian government has shown more commitment for infrastructure and standardizing port charges. State-owned companies Pelindo and Terminal Peti Kemas are cooperating in order to standardize port charges starting from 2014 (OSK 2012). One major improvement in port capacity is the expansion of the Indonesia's largest port, Kalibaru in North Jakarta, which is expected to commence first phase operations in 2014 with a capacity of 1,5 million 20-foot equivalent units. (Osman 2012) According to OECD report, Indonesia's port sector should encourage more private sector participation and improve the environment for competition (OECD 2012). Another needed improvement is to make ports suitable for cruise ship activity. The challenges to overcome include inadequate conditions, facilities, security and cleanliness at ports. (Jakarta Post 2011). Indonesia has around 200 shipyards and are mostly centered in Batam in Riau Islands; Tanggamus in Lampung; and Lamongan in East Java. Country's shipbuilding industry's annual capacity has reached 800 000 DWT for ship production and 10 million DWT for ship repairs. The Indonesian government has set a goal to develop larger vessels, up to 70 000 DWT, particularly tankers, by 2015, which would help grow the shipbuilding industry. Even though government has given incentives as government-paid import duties for component purchases and tax

allowances, it is unlikely that the industry will hit the set targets in the near future. For instance, the shipbuilding sector suffers from relatively high production costs in relation to its competitors in the other Asian countries such as Vietnam and China. (Wee 2013) Piracy is also one of the challenges of the Indonesian maritime sector. At the global level the number of pirate attacks has been decreasing, but the conditions concerning piracy in Indonesia have not improved. However, piracy incidents in Indonesia are generally not as dangerous as those occurring in regions elsewhere. There are very rarely serious cases where firearms are used and major injuries occur. (Putri, Buensuceso & Winata 2013). Nevertheless, the Indonesian maritime sector has seen growth through the past years. Additionally there are other sectors like automotive, electronics, food and beverage and fertilizer seeing increased capacity, which contributes to the country's maritime transport. There is also potential to develop the ship component industry in the country (IME 2013). At the same time, the CBR countries could take advantage of the fact that Indonesian maritime sector is seeking improvement in many different areas like maritime policy, fisheries, port development and management, and capacity of the shipyards. For instance, the Finnish Konecranes recently won record order of over EUR 100 million for container handling equipment from Indonesian terminal operator (Konecranes 2013).⁴²

CONCLUSION

Although politics has a dominant role in the shipping industry, particularly for transportation systems and port management, does not mean the political environment has played an important role

⁴¹ Sea Trarispot, *op.cit.*, p. 48.

⁴² *Op.Cit.*, Smart Comp Research Report.

in shipping development. The establishment of ports and the development of sea transportation progressed regardless of national developments towards an improved political system. Fear for the disintegration of the nation has become an important issue lately, resulting from increased interference by external forces in Indonesia's sovereignty. By concentrating more attention on Indonesian Navigation Laws and Government Regulations, several regulations reveal some port management and navigation activities operating under local government authority. Article 7 - Law No. 22/1999. Section (1) states:

- "The Authority of the Local Government includes the authority in all government administration activities, except for the authority of Foreign Political Policy, Defence and Security, Judicature, Monetary and Fiscal, and Religion as well as other authority; and.⁴³
- "The intended meaning of "other authority" as in the above paragraph includes other authorities with responsibilities for national development planning policies, and for the restraint of national development on the local level, and with accountability for the balancing of funds and finances, state administration system, state of economic institution, development of character building, nature

resources utilisation, high technology strategies as well as conservation and national standardization.

The handover of central government power to the local government is regarded as excellent policy. Local government hopes to gain benefits from the central government and its enactment of international agreements. The core of the matter is the recognition of a local government's capability to manage its territory in accordance with the defense of the nation, the development of regional income, and the creation of new opportunities of business for local inhabitants. It may be the local government rather than the central government is the one which more successfully handles the regional development program. Another reason is that the local government knows better the situation and condition of its territory and its natural and human resources, as well as the needs of local inhabitants.

The regulation is not set up well systematically, because some provisions cover similar matters in other articles. This circumstance creates confusion for the users, particularly those users who are not really familiar with this regulation. Furthermore, the explanatory parts of these regulations are not clear in giving adequate information as to the intention of these articles.

⁴³ Article 7, Paragraph (1), Chapter FV, Law No. 22/1999. *Ibid*, Paragraph (2).

