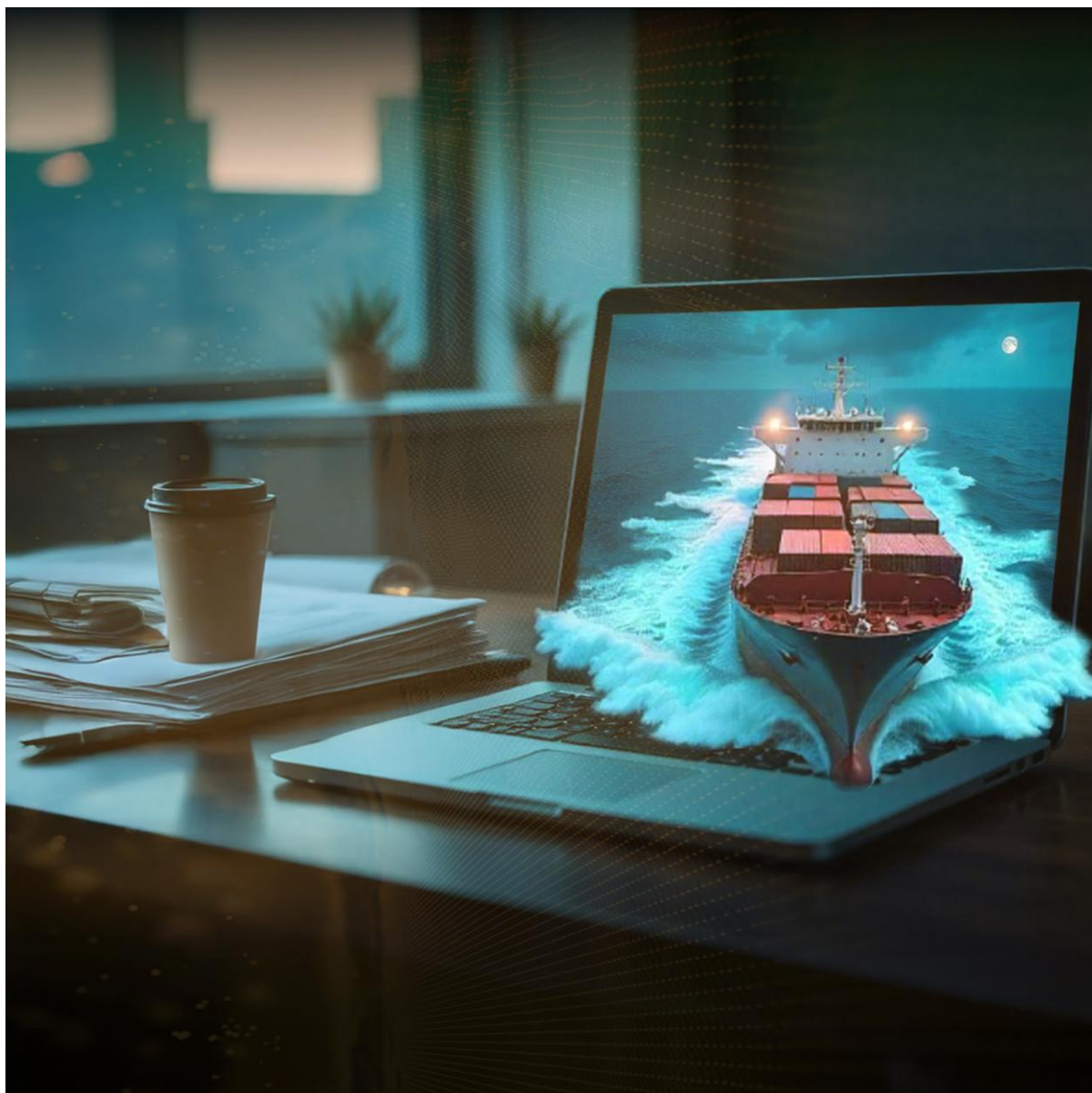


DISPUTE RESOLUTION

# New Amendment to Shipping Law: Indonesian Government Tightens Shipping Business Requirements



Recently, Indonesia's shipping sector experienced a significant change with the enactment of Law No. 66 of 2024. This law is the third amendment ("**Third Amendment**") to Law No. 17 of 2008 on Shipping, as previously amended by Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation ("**Shipping Law**"). The Third Amendment introduces a range of updates impacting shipping business requirements, port management structures, the role of the admiralty court, and the regulations on traditional shipping and ship arrest procedures.

This alert examines the most important updates introduced by the Third Amendment and discusses their potential consequences for stakeholders in the shipping industry.

## Stricter Shipping Business Requirements for Foreign Investors

Entering the Indonesian shipping market has become more challenging for foreign investors due to the changes introduced by the Third Amendment. These changes affect not only shipping companies themselves but also businesses in related sectors like mining, offshore oil and gas, and construction that utilise vessels.

### *Changes to Shipping JVCs*

Previously, both individuals and business entities, whether Indonesian or foreign, could establish a joint venture company for shipping activities (a "**Shipping JVC**"). Now, only business entities are permitted to form Shipping JVCs, meaning individuals can no longer directly hold shares in Shipping JVCs. This change aims to prevent the use of nominee shareholders, ensuring greater transparency in ownership.

### *Partnership and ownership requirements*

Foreign shipping companies must now partner with an Indonesian shipping company that holds a valid shipping business licence (known as *Surat Izin Usaha Perusahaan Angkutan Laut* or "**SIUPAL**"). Furthermore, the Indonesian partner must own at least 51% of the shares in the Shipping JVC, ensuring majority Indonesian ownership and control.

### *Vessel size requirements*

The Third Amendment also significantly increases the minimum size requirement for Shipping JVCs with foreign ownership ("**Foreign Shipping JVCs**"). The minimum required size for Indonesian-flagged vessels has increased tenfold, from **5,000 Gross Tonnage (GT)** to **50,000 GT** per vessel. Gross Tonnage (GT) is a measure of a ship's overall internal volume. So, this change effectively requires larger vessels for foreign-owned JVCs, which could pose a significant hurdle for some foreign investors.

### *Impact on other industries and alternative structures*

These new requirements extend beyond traditional shipping activities. They also apply to joint ventures in other sectors, such as mining, offshore oil and gas, and construction, that operate vessels under a Special Sea Transportation Operation License (known as *Surat Izin Operasi Perusahaan Angkutan Laut Khusus* or "**SIOPSUS**"). Obtaining a SIOPSUS has become more challenging, particularly for those in the mining and offshore oil and gas industries. As a result, we anticipate that foreign investors and stakeholders in these industries may explore alternative business structures beyond direct foreign investment. Some investors are considering management agreements or loan agreements with strong reserved matter provisions favouring the lender. While legally permissible, these structures may be scrutinised as potential nominee arrangements, which are prohibited under Indonesian foreign investment law.

### ***Transitional period***

While the Third Amendment provides a one-year transitional period until 28 October 2025, the Directorate of Sea Transportation at the Ministry of Transportation (“**DGST**”) is already applying these new rules to SIUPAL applications. This means new foreign investments are already subject to stricter regulations, even before the official deadline.

### ***Exemptions for existing JVCs and SIOPSUS holders***

Existing Foreign Shipping JVCs and SIOPSUS holders are exempt from these new requirements, as long as they do not change their shareholding structure or acquire new vessels. However, existing Foreign Shipping JVCs should be aware that the DGST may verify compliance during SIUPAL licence renewals or endorsements.

## **Expanded Role of the Admiralty Court**

The Third Amendment significantly expands the authority of the Admiralty Court, giving it greater oversight of the shipping industry. Previously, the Court’s role was primarily limited to investigating ship accidents and enforcing the professional code of ethics and competency for shipmasters and officers. The Third Amendment broadens its powers considerably.

The Admiralty Court is now authorised to:

- Inspect ship operators, owners, and officers involved in ship accidents.
- Impose sanctions for violations or negligence.
- Mediate disputes related to seafarers' employment agreements.
- Investigate accidents involving Indonesian-flagged ships in both domestic and international waters, as well as foreign ships in Indonesian waters.

Furthermore, the Admiralty Court can now recommend a wider range of administrative sanctions to the Minister of Transportation. These include warnings, suspensions, or even the revocation of business licences for ship operators and ship owners, as well as disciplinary sanctions for ship officers. Previously, the Court's recommendations were limited to warnings and the revocation of seafarer competency certificates.

It is important to note that while the Admiralty Court's powers are expanded, its role remains advisory. The final authority to impose sanctions still rests with the Minister of Transportation.

## **Strengthening and Modernising Traditional Shipping**

The Third Amendment recognises the vital role of traditional shipping (*pelayaran rakyat*) in connecting remote and underdeveloped regions of Indonesia. These small-scale shipping operations, often using traditional wooden vessels, are now being integrated into the broader shipping framework with the goal of improving safety, expanding connectivity, and supporting micro and small enterprises. The government also aims to preserve the legacy of traditional shipping as an important part of Indonesia's maritime heritage.

The Third Amendment establishes two key categories within traditional shipping:

- **Pioneer Lines (*Pelayaran Perintis*):** These services focus specifically on serving remote and underdeveloped areas, providing essential transportation links.
- **Traditional Water Transportation (*Angkutan Laut Pelayaran Rakyat*):** This category encompasses small-scale transport operations managed by local communities, often utilising traditional vessels.

Further details on the specific regulations governing these categories are expected to be released in future implementing regulations.

The Third Amendment also demonstrates a commitment to strengthening the *pelayaran rakyat* sector by securing funding through state, provincial, and district/city revenue and expenditure budgets. This financial support aims to ensure the sustainability and continued operation of these essential services.

## Streamlining Port Operations

Indonesia's port management system has been restructured to improve efficiency and streamline operations. Previously, port management responsibilities were divided between two entities:

- The Port Authority (*Otoritas Pelabuhan*) oversaw commercial ports.
- The Port Management Unit (*Unit Penyelenggara Pelabuhan*) managed non-commercial ports.

The Third Amendment consolidates these functions under a single entity: the Port Management Institution (*Penyelenggara Pelabuhan*). This new structure clarifies responsibilities and simplifies oversight.

The responsibilities are now divided as follows:

- The DGST oversees Port Management Institutions for major commercial ports (often referred to as main ports) and smaller supporting commercial ports (often referred to as collector ports).
- Regional governments manage non-commercial feeder ports through their own Port Management Institutions.

This restructuring eliminates the previous Port Authority and Port Management Unit structures at the central government level. They are replaced by the unified Port Management Institution under the Ministry of Transportation. Similarly, at the regional level, the regional government's Port Management Institution now assumes the responsibilities previously held by its Port Management Unit. The amendment also explicitly defines the jurisdiction of regional governments, limiting them to the management of non-commercial feeder ports. This clarifies their role and avoids potential overlap or confusion.

## Simplifying Ship Arrest Procedure

The Third Amendment simplifies the procedure for ship arrests in Indonesia, aiming to make the process more efficient. Previously, the Shipping Law stipulated that ship arrest procedures would be governed by a ministerial regulation. However, no such regulation was ever issued, creating a potential loophole that could be exploited by ship owners to challenge or delay arrest proceedings.

The Third Amendment eliminates the requirement for a specific ministerial regulation. Now, ship arrests will adhere to existing laws and regulations. While additional implementing regulations are still anticipated, this change

removes the abovementioned loophole that were previously used to obstruct or prolong ship arrests. This clarification should streamline the process and make it more difficult for ship owners to use the absence of a specific regulation as a delaying tactic.

## **Key Takeaways**

The Third Amendment introduces significant changes to Indonesia's shipping regulatory landscape, particularly impacting foreign investment. While the increased vessel ownership threshold of 50,000 GT and the restriction on individual shareholding in Foreign Shipping JVCs are designed to strengthen domestic shipping companies, these measures may present challenges for foreign investors. Existing foreign investors operating in Indonesia's shipping sector may need to re-evaluate their long-term strategies and assess the feasibility of future expansion or vessel acquisition.

It is also important to consider the potential impact of these changes on the government's broader goals. While a key government priority is reducing price disparities across Indonesia, the Third Amendment's potential impact on foreign investment in fleet expansion could inadvertently worsen vessel shortages and contribute to higher shipping costs.

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