



IMO
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**AN ACT TO INCORPORATE THE INTERNATIONAL
CONVENTION ON CIVIL LIABILITY FOR BUNKER OIL
POLLUTION DAMAGE, 2001 INTO THE LAWS OF THE
REPUBLIC OF INDONESIA**

**A Legislation Drafting Project submitted in partial fulfillment of the
requirements for the award of the Degree of Master of Laws (LL.M.)
at the IMO International Maritime Law Institute**

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I. Explanatory Note

A. Introduction

The International Convention on Civil Liability for Bunker Oil Pollution Damage (the 2001 Bunker Convention) was adopted in a diplomatic conference held at IMO Headquarters, from 19 to 23 March 2001. The Convention was adopted together with three accompanying resolutions which are Resolution on limitation of liability, Resolution on promotion of technical co-operation and Resolution on protection for persons taking measures to prevent or minimize the effects of oil pollution.

The 2001 Bunker Convention came into force on 21 November 2008. Until February 2009, 33 states have ratified the convention.

The adoption of the 2001 Bunker Convention completed the international regime on oil pollution compensation from oil spill at sea, as it establishes compensation for the victims of oil pollution caused by any bunker oil onboard or originating from the ship which is not covered under the International Conventions on Civil Liability on Oil Pollution Damage (Civil Liability Conventions).

The 2001 Bunker Convention is a Convention that is closely related to other IMO Conventions such as the original 1969 Civil Liability Convention and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (1971 Fund Convention) which entered into force in 1975 and 1978 respectively. Both 1969 Civil Liability Convention and 1971 Fund Conventions were amended in 1992 by two Protocols, and the amendments are known as 1992 Civil Liability Convention and the 1992 Fund Convention. Another convention that also relates to the 2001 Bunker Convention is the 1976 International Convention on Limitation of Liability for Maritime Claims (the 1976 LLMC Convention) that was further amended by the 1996 Protocol which provides for limitation of liability of the shipowner.

B. Background

The 2001 Bunker Convention was adopted to ensure that adequate, prompt, and effective compensation is available to persons who suffer damage caused by spills of oil, when carried as fuel in ships' bunkers. Ships within the scope of application of this convention are bulk carriers, passenger ship and container, since these ships carry large quantity of oil as fuel and lubricating oil.

The 1992 Civil Liability Convention is applicable only to oil spill from oil tankers and covers pollution from persistent oil carried as cargo and from persistent oil carried in the form of bunkers but only if the tanker was laden at the time of the incident. The 1992 Civil Liability Convention that governs the liability of shipowners for such oil pollution damage lays down the principle of strict liability for shipowner and creates a system of compulsory liability insurance. According to the convention shipowners are normally entitled to limit their liability to an amount which is linked to the tonnage of the ship.

Consequently, there was a strong need for the liability regime to deal with compensation which arises from pollution damage from ships' – other than tankers - bunker oil spill. The Report of the United Kingdom P & I Club mentioned that half of marine pollution claims involved vessels which carried oil as bunker, such as cruise ships, dry cargo ships and bulk carrier.¹

In response of the above mentioned needs, the drafting of the 2001 Bunker Convention was put into the Work Programme of the IMO Legal Committee in 1996 and the IMO Legal Committee in the 82nd Session prepared the final text of the draft. The draft was subsequently presented to the IMO Diplomatic Conference in March 2001 and afterwards was adopted at the same conference together with three resolutions.

¹ <http://www.tc.gc.ca/pol/en/Report/tp14370/1-1.htm>. The web page was visited in November 2008.

The 2001 Bunker Convention is modeled on the 1992 Civil Liability Convention. However, the 2001 Bunker Convention has its own scope of application that would not overlap with the applicable Civil Liability Convention.

C. Overview of the 2001 Bunker Convention

Definitions

The 2001 Bunker Convention has been developed to fill the gap left by the 1992 Civil Liability Convention and 1992 Fund Convention. There is no overlap between the 1992 Civil Liability Convention and the 2001 Bunker Convention because the latter does not apply to pollution damage as defined by the 1992 Civil Liability Convention,² whether or not compensation can be recovered under the 1992 Civil Liability Convention.

Article 1 of the 2001 Bunker Convention provides for the definition of different terms employed in the conventions. For example, article 1 (9) defines pollution damage as:

- (a) loss or damage caused outside the ship by contamination resulting from the escape or discharge of bunker oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment shall be limited to cost of reasonable measures of reinstatement actually undertaken or to be undertaken;
- (b) the cost of preventive measures and further loss or damage caused by preventive measures.

This definition is similar to that provided for in the 1992 Civil Liability Convention. The definition of “owner” in the 1992 Civil Liability Convention is “person or persons registered as the owner of the ship” thus channeling all responsibility under the convention only to that registered owner of the ship concerned. On the other hand, the definition of owner in the 2001 Bunker Convention is surprisingly wider, mentioning that “shipowner means the owner, including the registered owner,

² Tsimplis, MN, Marine Pollution from Shipping Activities: the Journal of International Maritime Law Vol 14 (2008), P.123.

bareboat charterer, manager and operator of the ship”. It follows that wherever else in the convention a liability is imposed on the shipowner, that person will be the one mentioned in article 3.

Ship is defined in article 1 (1) of the Bunker Convention as “any seagoing vessel and seaborne craft, of any type whatsoever”. This definition provided for in the Bunker Convention is wider than the one given in article 1 (1) of the 1992 Civil Liability Convention which reads “any seagoing vessel and any seaborne craft any type whatsoever, *actually carrying oil in bulk as cargo*”.

Article 1(5) of the Bunker Convention defines bunker oil as “any hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of the ship, and any residues of such oil”. This definition is different from the definition stated in article 1 (5) of the 1992 Civil Liability Convention, whereas oil is defined as “persistent oil that carried on board a ship as cargo or in the bunkers of such a ship”.

Scope of Application

The 2001 Bunker Convention applies to pollution damage caused in the territory including the territorial sea of a State party, or in its Exclusive Economic Zone (EEZ). If a state party has not established an EEZ, then the Bunker Convention shall apply in an area beyond and adjacent to the territorial sea of that State, determined by the state in accordance with international law and not exceeding 200 nautical miles from the baseline. The Bunker Convention also applies to preventive measures wherever are taken.

Liability of Shipowner

The 2001 Bunker Convention establishes strict liability for the shipowner of the ship based on article 3 up to the limit mentioned in article 6, unless the shipowner could prove that he is not to be held liable in terms of article 3 (3) and (4). The 2001 Bunker Convention does not contain any channeling provisions excluding claims against parties other than the registered shipowner. Therefore, the same Diplomatic conference that adopted the 2001 Bunker Convention also adopted a Resolution inviting states to consider, when implementing the Convention, the need to introduce in their national legislation immunity for salvors and persons taking preventive measures.

According to article 3 (3) the shipowner can avoid liability if it can be proved that the damage resulted from:

- (a) an act of war, hostilities, civil war, insurrection, or natural phenomenon,
- (b) act of a third party or
- (c) negligence or other wrongful act of the government to maintain and provide the navigational aids.

In addition, the shipowner would also be exonerated wholly or partly from liability if the damage resulted from the person who suffered the damage (article 3 (4)).

Exclusions

Article 4 of The 2001 Bunker Convention stipulates that it does not apply to pollution damage as defined in the 1992 Civil Liability Convention, whether or not the compensation is payable in respect of the 1992 Civil Liability Convention. The 2001 Bunker Convention also does not apply to warship, naval auxiliary and government's ship that are used for non-commercial purpose. The ship owned by the government of the state party which is used for commercial purposes, shall be subject to the jurisdiction established in accordance with article 9 of the 2001 Bunker Convention and free of all immunities given as a government's ship.

Incident involving two ships

Article 5 stipulates that when an incident occurs which involves two or more ships and causes pollution damage, the shipowners of all ships concerned, unless exonerated under article 3, shall be jointly and severally liable for all such damage.

Limitation of Liability

The 2001 Bunker Convention does not set new limits of liability in article 6 which stipulates that it does not affect the right of the shipowner and the person or persons providing insurance or other financial security to limit liability under any applicable national or international regime such as the Limitation of Liability for Maritime Claim Convention, 1976. \

During the initial discussions in the Legal Committee a number of States were keen to see a separate free standing fund provided by shipowners to be exclusively available to satisfy bunker pollution claims. There was strong opposition to this proposal, particularly from the shipowning and insurance sectors and it was finally agreed that bunker pollution claims would be subject to existing national laws on the limitation of liability. Thus, bunker pollution damage claimants will have to prove their claims against any available limitation fund alongside other property claims arising out of the same incident.³

The imposition of strict liability under the 2001 Bunker Convention resulted in the inclusion of these claims in the property part of the limitation fund under the LLMC 1976 as amended by 1996 Protocol. Therefore, where oil pollution damage from bunker oil together with other property damage occurs, the recovery of other claimants for property damage will be reduced. In essence, the IMO has created strict liability under the 2001 Bunker Convention without creating additional funds that can pay such liability.⁴

Indonesia is not a party to the 1976 LLMC or the 1996 Protocol which amended the 1976 Convention. In addition, Indonesia does not have any national legislation on the limitation of liability. Therefore, in order to ensure legal certainty and conformity between national and international law, the provisions on limitation of liability as mentioned in the 1976 LLMC as amended will be inserted in the implementing legislation of the 2001 Bunker Convention below.

Compulsory Insurance or Financial Security

The 2001 Bunker Convention in article 7 stipulates that this convention applies to the registered owner of a ship having a gross tonnage greater than 1000 registered in a State party. Such registered owner shall be required to maintain insurance or other financial security, to cover the liability for pollution damage in an amount equal to the limits of liability under national law or based on the LLMC 1976 as amended. The

³ Griggs Patrick, International Convention on Civil Liability for Bunker Oil Pollution Damage, www.bmla.org.uk/documents/imo-bunker/convention.doc. The page was visited on November 2008.

⁴ Tsimplis, Op. Cit. P. 126.

amount should not be greater than the amount calculated in accordance with the LLMC 1976 as amended.

The certification requirements are extensively described in article 7 (2). It is clearly stated to be the State party's responsibility to issue ships with a certificate confirming that appropriate insurance or financial security mentioned in the previous paragraph has been complied.

The claim for compensation of oil pollution damage can be made directly against the insurer or other person providing for financial security in accordance with article 7 (10) of the 2001 Bunker Convention, in which case, the insurer may invoke the same defenses as the shipowner even though the shipowner has lost his right to limit his liability. However, the insurer cannot invoke any other defenses that he may invoke in the proceeding between shipowner and the insurer.

State parties are not required to apply the 2001 Bunker Convention to ships operating exclusively within the territorial water or domestic voyage. The question was whether domestic voyages should be defined as voyages starting and finishing within a State's territory or territorial seas or whether it should be extended to include voyages beginning and ending in the much wider area constituted by a State's EEZ. A number of States with complex island or archipelagic waters (such as the Philippines and Indonesia) were keen to see the exclusion extended to the EEZ on the basis that many inter-island voyages go outside the 12 mile limit of the territorial sea. On the other hand a number of Mediterranean countries (Cyprus, Malta and Italy) were keen to restrict the exclusion to territorial seas on the basis that the EEZ of adjacent Mediterranean States overlap and vessels belonging to neighboring States and operating within their EEZ could represent a serious pollution threat.⁵

Time Limit

The right to compensate would extinguish unless the action, which is provided by the 2001 Bunker Convention, is brought within three years from the date when the damage occurred. However, no actions shall be brought after six years from the date of incident that caused the damage. In the situation in which incidents consist of a

⁵ Griggs, Op Cit.

series of occurrences, then the period of six years shall run from the date of the first occurrence.⁶

Jurisdiction

The question of jurisdiction was the subject of extended debate throughout the passage of this instrument through the Legal Committee. It was clearly the desire of delegates to the Diplomatic Conference to give claimants as many options as possible when it comes to the pursuit of claims compensation. In the event no great choice is available, claimants may pursue claims before the courts of the State or States in which the pollution has occurred or where measures to prevent or minimize pollution have taken place. Where security for claims has been posted by the shipowner, insurer, or other person providing security, action may be brought where that security has been provided.⁷

The defendants should be given appropriate notice and the State parties must ensure that its court has jurisdiction to entertain such action for compensation. These provisions are stipulated in article 9 of the 2001 Bunker Convention.

Recognition and Enforcement

Recognition and Enforcement is mentioned in article 10 of the 2001 Bunker Convention in which the court's jurisdiction shall be enforceable in the state of origin where the decision is already final, unless if the judgment was obtained by fraud or the defendant was not given reasonable notice and fair opportunity to present his case. Any judgment made by court shall be enforceable in each state party as soon as the formalities required in that state have been complied with. The formalities shall not permit the merits of the case to be reopened.

D. Resolutions of the Conference

⁶ Article 8 of the 2001 Bunker Convention

⁷ Griggs, Op Cit.

The Conference which adopted the Bunker Convention also adopted three resolutions that support the effectiveness of the 2001 Bunker Convention⁸:

1. Resolution on limitation of liability

The resolution urges all States that have not yet done so, to ratify, or accede to the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976 as amended. The 1996 LLMC Protocol raises the limits of liability and therefore amounts of compensation payable in the event of an incident, compared to the 1976 Convention. The LLMC Protocol will enter into force 90 days after being accepted by 10 States - it has received four acceptances to date.

2. Resolution on promotion of technical co-operation

The resolution urges all IMO Member States, in co-operation with IMO, other interested States, competent international or regional organizations and industry programmes, to promote and provide directly, or through IMO, support to States that request technical assistance for:

- (a) the assessment of the implications of ratifying, accepting, approving, or acceding to and complying with the Convention;
- (b) the development of national legislation to give effect to the Convention;
- (c) the introduction of other measures for, and the training of personnel charged with, the effective implementation and enforcement of the Convention.

The resolution also urges all States to initiate action without awaiting the entry into force of the Convention.

3. Resolution on protection for persons taking measures to prevent or minimize the effects of oil pollution

⁸ http://www.imo.org/Conventions?contents.asp?topic_id=256&doc_id=666, Web page was accessed on 8 December 2008.

The resolution urges States, when implementing the Convention, to consider the need to introduce legal provision for protection for persons taking measures to prevent or minimize the effects of bunker oil pollution. It recommends that persons taking reasonable measures to prevent or minimize the effects of oil pollution be exempt from liability unless the liability in question resulted from their personal act or omission, committed with the intent to cause damage, or recklessly and with knowledge that such damage would probably result. It also recommends that States consider the relevant provisions of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, as a model for their legislation.

E. Brief Introduction to Indonesian Law

Indonesia is the largest archipelagic State in the world and lies between the Indian Ocean and Pacific Ocean, sprawling over 17,850 islands, occupying a land area of 1,826,440 square kilometers, and with coastlines of over 81,290 kilometers in length. Indonesia's total territory is about 7,8 million square kilometer, out of which more than five million square kilometer are sea area (including the exclusive economic zone). The total sea area can be divided into 0,3 million square kilometer of territorial sea, 2,905,743 square kilometers of archipelagic waters, and 2,707,092 square kilometers of the exclusive economic zone. Indonesia's population is more than two hundred million scattered across some six thousand inhabited islands. Amongst those islands there are five main islands such as Sumatera (473,606 square kilometers), Java (132,107 square kilometers), Kalimantan (the Indonesian territory in Borneo Island with 539,460 square kilometers), Sulawesi (182,216 square kilometers) and Papua (421,981 square kilometers)⁹.

For some years, Indonesia has been experiencing severe environmental problems resulting from uncontrolled deforestation and burning of forests, degradation of its land and marine resources, air and water pollution from industrial wastes and contamination from the mining industry, and pollution of the marine environment. For

⁹ www.indonesia.go.id, The web was visited in November 2008.

Indonesian people, natural resources are substantial; there are forty million people that depend directly on the forest, marine, coastal and agricultural ecosystem for their livelihood.

Furthermore, the Indonesian biodiversity is among the richest in the world. There are at least forty two distinct natural terrestrial ecosystems and five marine ecosystems. Indonesia is the home of 17% of total world species, including 37% of the global fish species.¹⁰ The facts given certainly explain how fragile the Indonesia's environment towards the pollution damage and especially pollution damage from ship.

The maritime sector in Indonesia is definitely playing an important role, since sea transport is the most used and affordable means of transportation for Indonesian and also for international trade because some parts of Indonesia's territorial water are the most strategic shipping routes between Japan, Australia and the Europe. With the opening of Suez Canal, especially in the Straits of Malacca and Singapore the number of ships flying these waters can reach 400,000 ships each year. According to these facts, there is a strong need for Indonesia to harmonize its legislation with the international regulations, especially in the sector of safety of navigation and the protection of marine environment.

Indonesia has been trying to pace up with the legislative developments of the international community, especially the IMO Conventions since the conventions are playing significant role to ensure the safety of navigation and the preservation of marine environment. In relation to IMO Conventions, Indonesia has ratified several international conventions that were adopted by the IMO as follows:

- The United Nations Convention on the Law of the Sea, 1982 (UNCLOS 1982)
- The International Conventions for the Prevention of Pollution from ships, 1973 as modified by the protocol of 1978 and 1997 (MARPOL 73/78)
- The International Convention on Safety of Life at Sea, 1974, (SOLAS)
- The International Convention on Load Lines,

¹⁰ Agoes, Etty R., Indonesia's laws and Regulations Concerning Pollution of the Sea by Oil: Case Studies on Compensation for Oil Pollution Damages, in Books of Prevention and Compensation of Marine Pollution Damage: Recent Development in Europe, China and the US, Kluwer Law International, 2006. P.99-117.

- The International Convention on Standards of Training, Certification and Watchkeeping (STCW), 1995.
- The International Convention for Civil Liability on Oil Pollution Damage 1969 and the Protocol of 1992
- The Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREG)
- Special Trade Passenger (STP) Agreement 1971 and Protocol of 1973
- INMARSAT Convention
- Convention on Facilitation of International Maritime Traffic, 1965 (FACILITATION Convention)

Some of these conventions have been incorporated in the Law No. 17 Year 2008 on Navigations which regulates matters such as the empowerment of national shipping, shipping support services, port services, mortgage and liens, marine environment protection, seaworthiness, navigation, salvage, human resources, navigation information system, community's roles, sea and coast guard.

Besides the adoption of the aforementioned international conventions, Indonesia has also promulgated several laws on the protection of marine environment such as:

- Law No. 23 of 1997 concerning the Management of Living Environment,
- Law No. 17 of 2008 concerning Navigation
- Law No. 6 of 1996 concerning Indonesia Territorial waters
- Law No. 22 of 1999, amended by Law No. 32 of 2004 on Provincial Government.
- Government Regulation No. 19 of 1999 on Marine Pollution Control.
- Presidential Regulation No. 109 Year 2006 on the Preparedness of Emergency Oil Spill Emergency in the Sea.

As already stated Indonesia is situated between routes of international navigations and this fact constitutes a serious threat for the country to being exposed to different types of pollutions by ships. There have been several cases related to oil pollution but the enforcement process has not been conducted properly, mostly due to lack of

understanding and knowledge of the requirements of the international conventions, as well as the non existence of national regulations on that matter.

By adopting the 2001 Bunker Convention, the imminent threat to the marine environment could be suppressed since the shipowners and shipping company would be more careful when they are passing through the Indonesian archipelagic waters, and the protection of marine environment would be more certain and enforceable.

F. The Process of Ratification based on Indonesian Law

The process of ratification of an international treaty into national law is not mentioned explicitly in the 1945 Indonesian Constitution albeit its 4 amendments. The 1945 Constitution stipulates in article 11 that the President of the Republic of Indonesia with the consent of House of Representative could declare war, peace and conclude treaties with other states. If the treaty or agreement with the other States has wide-ranging effects and is related to State's financial issues, and/or should be made by changing or enacting the Law, it shall always be concluded with the consent of the House of Representatives.

The Law that construed the 1945 Constitution regarding the making of international agreement or treaty is The Law No. 24 of 2000 on International Treaties. In Chapter III 'Ratification of Treaties', article 9 paragraph 1 mentions that ratification by the Government of the Republic of Indonesia shall be conducted provided it is required by the treaty. In addition, paragraph 2 of the same article stipulates that the ratification mentioned in paragraph 1 shall be conducted by way of law or a presidential Decree. However, according to the Law No. 10 of 2004 on the Establishment of Indonesian Legislation, the process of ratification shall be conducted through Presidential Regulations. This is a national effort to uniform and clearly define all the procedures to be followed in Indonesia in terms of regulations since there has been confusion regarding the making of legislation in Indonesia.

The adoption of the 2001 Bunker Convention would thus be concluded by Presidential Regulations based on article 11 of the Law No. 24 of 2000 which regulates the ratification of a treaty which is not stipulated in article 10.¹¹

Nowadays, in Indonesia is going on a big debate regarding the theory of the relationship between international law and national law. The 1945 Constitution does not give any reference on these matters. However, some scholars like Prof. Mochtar Kusumaatmadja, consider Indonesia to be a monist country, which means that once Indonesia ratifies or accedes to international convention then the convention would become part of the national law. On the other hand, some prominent Indonesian lawyers consider that Indonesia is a dualist country because further regulations are needed in order to ensure the applicability of international convention into Indonesian national law. This never ending debate has made confusion in the national level.

However, to ensure the effectiveness of the 2001 Bunker Convention, despite the debate regarding the monistic or dualistic approach, the ratification of this Convention will be complemented with the adoption of Presidential Regulations on the implementation of the 2001 Bunker Convention, which can be found in the second part of this paper. This effort need to be done since Indonesia as mentioned above is not a state party to the 1976 LLMC and 1996 Protocol, and does not have any national law regarding the limitation of liability. It is considered also necessary to add the provisions regarding the limitation of liability of shipowner that has polluted the Indonesian waters to ensure the legal certainty of national regulation. Moreover, the convention does not exclude the persons taking measures to prevent or minimize the effects of oil pollution as mentioned in the resolution on protection of persons taking measures to prevent or minimize the effects of oil pollution that was adopted in the same IMO conference on 23 March 2001.

¹¹ Article 10 of the Law No.24 of 2000 gives the description of the ratification which shall be conducted by way of Law if in respect of the following:

- a. Matters pertaining to politics, peace, defense and state security;
- b. Alteration to or delimitation of the territory of the Republic of Indonesia;
- c. Sovereignty or sovereign rights of a state;
- d. Human rights and the environment;
- e. The formation of a new legal norm (law making treaty);
- f. Foreign loans and/or grants aid.

With the adoption of these Presidential Regulations, a uniform procedure to obtain the prompt, effective and adequate compensation could be achieved for victims of pollution caused by the bunker oil pollution.

For the uniformity of law, the fourth part of this legal drafting is the Ministerial Regulations which regulate the certification process of the insurance or other financial security in accordance with the 2001 Bunker Convention. The minister that would promulgate these regulations is the Minister of Transportation. By adopting these Ministerial regulations, it is expected that the 2001 Bunker Convention will be effectively enforced in Indonesia.

II. Presidential Regulation on The Ratification of the Bunker Convention

PRESIDENTIAL REGULATION OF THE REPUBLIC OF INDONESIA
NUMBER OF

ON

THE RATIFICATION OF THE INTERNATIONAL CONVENTION ON CIVIL
LIABILITY FOR BUNKER OIL POLLUTION DAMAGE, 2001

THE PRESIDENT OF THE REPUBLIC OF INDONESIA

Considering:

- a. Whereas, having been convened in London, United Kingdom, on 23 March 2001 the adoption of the International Convention on Civil Liability for Bunker Oil Pollution Damage as the outcome of the deliberation between the delegates of the member states of the International Maritime Organization;
- b. Whereas, in accordance with the considerations as referred to in point (a), and in accordance with the Law No. 24 of 2000 on the International Treaties, it is deemed necessary to ratify the Convention by Presidential Regulation;

In view of:

1. Article 4 paragraph (1) and article 11 of the 1945 Constitution of the Republic of Indonesia;
2. Law No. 24 Year 2000 on International Treaties

3. Law No. 10 Year 2004 on Establishment of National Legislation

HAS DECIDED TO:

Stipulate: PRESIDENTIAL REGULATION OF THE REPUBLIC OF INDONESIA NUMBER.... OF ON RATIFICATION OF INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE, 2001

Article 1

The International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, which is a result of deliberations between the delegates of the member states of the International Maritime Organization on 23 March 2001 in London, United Kingdom, is ratified. The original version in English and the translations in Indonesian are attached to this Presidential Regulation.

Article 2

Whereas the difference of interpretation occurs between the translation in Indonesia and the original version in English as referred to in Article 1, then the original version in English shall prevail.

Article 3

This Presidential Regulations shall take effect on the date of its enactment.

In order that every person may know of it, the promulgation of these Presidential Regulations is ordered by placement in the State Official Gazette of the Republic of Indonesia.

Enacted in Jakarta

On

PRESIDENT OF THE REPUBLIC OF INDONESIA

(Signed)

DR. H. SUSILO BAMBANG YUDHOYONO

Promulgated in Jakarta

On.....

MINISTER OF JUSTICE AND HUMAN RIGHTS
THE REPUBLIC OF INDONESIA

(Signed)

ANDI MATTALATTA

STATE GAZETTE OF THE REPUBLIC OF INDONESIA OF NUMBER

**III. Presidential Regulation on the Implementation of the Civil Liability for
Bunker Oil Pollution Damage**

DRAFT

PRESIDENTIAL REGULATION NO.... YEAR...

ON

IMPLEMENTATION OF THE CIVIL LIABILITY FOR BUNKER OIL
POLLUTION DAMAGE

THE PRESIDENT OF THE REPUBLIC OF INDONESIA

Considering:

- a. Whereas, in accordance with the need to protect marine environment from oil pollution caused by pollution resulting from the escape or discharge of bunker oil from ships.
- b. Whereas, in accordance with considerations concerning the development of national and international strategic environment to harmonize national legislation with international convention dealing with the oil pollution in particular with the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001.
- c. Whereas, the importance of establishing strict liability for all forms of oil pollution is linked to an appropriate limitation of the level of liability and complementary measures are necessary to ensure the payment of adequate, prompt and effective compensation for damage caused by pollution resulting from the escape or discharge of bunker oil from ships.
- d. Whereas, upon the considerations mentioned in points (a), (b) and (c) it is necessary to promulgate Presidential Regulation on the Implementation of the Civil Liability for Bunker Oil Pollution Damage.

In view of:

1. Article 4 paragraph (1) and article 11 of the 1945 Constitution of the Republic of Indonesia;
2. Law No. 5 Year 1983 on Exclusive Economic Zone
3. Law No. 17 of 1985 on the Ratification of United Nations Convention on the Law of the Sea.
4. Law No. 6 of 1996 concerning Indonesia Waters.
5. Law No. 23 of 1997 concerning the Management of Living Environment,
6. Law No. 22 of 1999, amended by Law No. 32 of 2004 on Provincial Government.
7. Law No. 24 Year 2000 on International Treaties
8. Law No. 10 Year 2004 on Establishment of National Legislation

9. Law No. 17 of 2008 concerning Navigation
10. Law No. 43 Year 2008 on the State Territory.
11. Government Regulation No. 19 of 1999 on Marine Pollution Control.
12. Presidential Regulation No.... Year... on the Ratification of the International Convention on Civil Liability for Bunker Pollution Damage

HAS DECIDED TO:

Stipulate: PRESIDENTIAL REGULATION OF THE REPUBLIC OF
INDONESIA NUMBER.... OF ON THE IMPLEMENTATION OF CIVIL
LIABILITY FOR BUNKER OIL POLLUTION DAMAGE,

CHAPTER I GENERAL PROVISION

Article 1

1. "Ship" means any seagoing vessel and seaborne craft, of any type whatsoever.
2. "Person" means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.
3. "Shipowner" means the owner, including the registered owner, bareboat charterer, manager and operator of the ship.
4. "Registered owner" means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the ship's operator, "registered owner" shall mean such company.

5. "Bunker oil" means any hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of the ship, and any residues of such oil.
6. "Preventive measures" means any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage.
7. "Incident" means any occurrence or series of occurrences having the same origin, which causes pollution damage or creates a grave and imminent threat of causing such damage.
8. "Pollution damage" means:
 - (a) loss or damage caused outside the ship by contamination resulting from the escape or discharge of bunker oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and
 - (b) the costs of preventive measures and further loss or damage caused by preventive measures.
9. "Gross tonnage" means gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex 1 of the International Convention on Tonnage Measurement of Ships, 1969 as ratified by the Presidential Decree No. 5 Year 1969.
10. "Minister" means the Minister who is responsible for the navigational issues.
11. "Government" means the Government of The Republic of Indonesia.
12. "Unit of accounts" means the Special Drawing Rights as referred to by the International Monetary Fund.

CHAPTER II
SCOPE OF APPLICATION

Article 2

This Regulation shall apply exclusively:

- (a) to pollution damage caused:
 - (i) in territory of Indonesia, including archipelagic waters, internal waters and the territorial sea of the Republic of Indonesia and
 - (ii) in the exclusive economic zone of the Republic of Indonesia.
- (b) to preventive measures, wherever taken, to prevent or minimize such damage.
- (c) any ship registered in the Republic of Indonesia wherever it may be.

Article 3

1. This Presidential Regulation shall not apply to pollution damage as defined in the Presidential Decree No. 18 Year 1978 on Ratification of International Convention Civil Liability on Oil Pollution Damage 1969 and the Presidential Decree No. 52 Year 1999 on Protocol of 1992 to Amend the International Convention on Civil Liability 1969, whether or not compensation is payable in respect of it under these legislation.
2. Except as provided in paragraph 3, the provisions of this Presidential Regulation shall not apply to warships, naval auxiliary or other ships owned or operated by a State and used, for the time being, only on Government non-commercial service.
3. With respect to ships owned by a Government and used for commercial purposes, the Government's institution dealing with the ship shall be subject to suit in the respective jurisdiction and shall waive all defenses based on its status as a sovereign state.

CHAPTER III

LIABILITY OF SHIPOWNER

Article 4

1. Except as provided in paragraphs 3 and 4, the shipowner at the time of an incident shall be liable for pollution damage caused by any bunker oil on board or originating from the ship, provided that, if an incident consists of a series of occurrences having the same origin, the liability shall attach to the shipowner at the time of the first of such occurrences.

2. Where more than one person is liable in accordance with paragraph 1, their liability shall be joint and several.
3. No liability for pollution damage shall attach to the shipowner if the shipowner proves that:
 - (a) the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
 - (b) the damage was wholly caused by an act or omission done with the intent to cause damage by a third party; or
 - (c) the damage was wholly caused by the negligence or other wrongful act of any Government that responsible for the maintenance of lights or other navigational aids in the exercise of that function.
4. If the shipowner proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the shipowner may be exonerated wholly or partially from liability to such person.
5. No claim for compensation for pollution damage caused by bunker operation shall be made against the shipowner otherwise than in accordance with this Presidential Regulation.
6. Subject to paragraph 7, no claim for compensation for damage under this Regulation may be made against:
 - (a) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;
 - (b) any person taking reasonable measures to prevent or minimize the effects of bunker oil pollution; and
 - (c) the servants or agents of persons mentioned in (a) and (b);unless the liability in question resulted from their personal act or omission, committed with the intent to cause damage, or recklessly and with knowledge that such damage would probably result.
7. Nothing in this Presidential Regulation shall prejudice any existing right of recourse of the owner against any third party, including the persons indicated in paragraph 6.
8. Nothing in this Presidential Regulation shall prejudice any right of recourse of the shipowner which exists independently of this Presidential Regulation.

Article 5

When an incident involving two or more ships occurs and pollution damage results therefrom, the shipowners of all the ships concerned, unless exonerated under article 4, shall be jointly and severally liable for all such damage which is not reasonably separable.

Article 6

1. Nothing in this Presidential Regulation shall affect the right of the shipowner and the person or persons providing insurance or other financial security to limit their liability.
2. The limit of liability for claims arising under this Presidential Regulation, shall be calculated as follows:
 - (i) 1 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,
 - (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):
 - for each ton from 2,001 to 30,000 tons, 400 Units of Account;
 - for each ton from 30,001 to 70,000 tons, 300 Units of Account; and
 - for each ton in excess of 70,000 tons, 200 Units of Account.
3. For the purpose of this Regulation the ship's tonnage shall be the gross tonnage calculated in accordance with Presidential Decree No. 5 Year 1969 on the Ratification of the International Convention on Tonnage Measurement of Ship, 1969.
4. The value of national currency in terms of the Special Drawing Rights shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operation and transaction.

CHAPTER IV
COMPULSORY INSURANCE AND FINANCIAL SECURITY

Article 7

1. The registered owner of any ship having a gross tonnage of 1000 and above entering the territorial sea and Exclusive Economic Zone of the Republic of Indonesia shall be required to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover the liability of the registered owner for pollution damage in an amount equal to the limit of liability mentioned in article 6.
2. The registered owner of a ship registered in the Republic of Indonesia having a gross tonnage of 1000 and above wherever it may be shall be required to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover the liability of the registered owner for pollution damage in an amount equal to the limit of liability mentioned in article 6.
3. A certificate attesting that insurance or other financial security for ship registered in the Republic in Indonesia is in force in accordance with this Presidential Regulation shall be issued to each ship after the institution authorized for this purpose by the Government has determined that the requirements of paragraph 2 have been complied with. With respect to a ship not registered in a State Party to the International Convention on Civil Liability for Bunker Oil Pollution, 2001, a certificate attesting that insurance or other financial security is in force in accordance with the provisions of this article may be issued or certified by the authorized official of the Government or institution that has been given authorization by the Government.
4. The certificate shall be in the *Bahasa Indonesia*. The text of the certificate shall include a translation into English language.
5. The certificate shall be carried on board the ship and a copy shall be deposited with the issuing or certifying institution authorized for this purpose by the Government.

6. An insurance or other financial security shall not satisfy the requirements of this article if it can cease, for *reasons other than* the expiry of the period of validity of the insurance or security specified in the certificate under paragraph 1 and/or paragraph 2 of this article, before three months have elapsed from the date on which notice of its termination is given to the authorized official of the Government or institution that has been given authorization by the Government, unless the certificate has been surrendered to the authorized official of the Government or institution that has been given authorization by the Government or a new certificate has been issued within the said period. The foregoing provision shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this article.
7. Further provisions regarding the conditions and validity of certificate shall be stipulated by Ministerial Regulation.
8. Any claim for compensation for pollution damage may be brought directly against the insurer or other person providing financial security for the registered owner's liability for pollution damage. In such a case, the defendant may invoke the defenses (other than bankruptcy or winding up of the shipowner) which the shipowner would have been entitled to invoke, including limitation pursuant to article 6. Furthermore, even if the shipowner is not entitled to limitation of liability according to article 6, the defendant may limit liability to an amount equal to the amount of the insurance or other financial security required to be maintained in accordance with paragraph 1. Moreover, the defendant may invoke the defense that the pollution damage resulted from the intentional act of the shipowner, but the defendant shall not invoke any other defense which the defendant might have been entitled to invoke in proceedings brought by the shipowner against the defendant. The defendant shall in any event have the right to require the shipowner to be joined in the proceedings.
9. The Government shall not permit a ship under Indonesian flag to which this article applies to operate at any time, unless a certificate has been issued under paragraphs 3 or 11.

10. Notwithstanding the provisions of paragraph 5, the Government may exclude the requirement to carry on board or to produce the certificate required by paragraph 2, when entering or leaving ports or arriving at or leaving from offshore facilities in Indonesian territory, provided that the authorized official of the Government or institution that given authorization by the Government which issues the certificate required by paragraph 2 has maintained records in an electronic format, accessible and attesting the existence of the certificate and enabling the Republic of Indonesia to discharge its obligations under paragraph 7.
11. If insurance or other financial security is not maintained in respect of a ship owned by the Government, the provisions of this article relating thereto shall not be applicable to such ship, but the ship shall carry a certificate issued by the authorized official of the Government or institution that given authorization by the Government stating that the ship is owned by the Government of the Republic of Indonesia and that the ship's liability is covered within the limit prescribed in accordance with paragraph 1.

CHAPTER V

TIME BAR

Article 8

Rights to compensation under this Presidential Regulation shall be extinguished unless an action is brought thereunder within three years from the date when the damage occurred. However, in no case shall an action be brought more than six years from the date of the incident which caused the damage. Where the incident consists of a series of occurrences, the six-year' period shall run from the date of the first such occurrence.

CHAPTER VI

JURISDICTION

Article 9

Where an incident has caused pollution damage in the territory, including the territorial sea, or in an area referred to in article 2 (a) (ii), or preventive measures have been taken to prevent or minimize pollution damage in such territory, including

territorial sea, or in such area, actions for compensation against the shipowner, insurer or other person providing security for the shipowner's liability may be brought only in the Court of the Republic of Indonesia.

CHAPTER VII
CLOSING PROVISIONS

Article 10

The Minister shall address the authorized official of the Government or institution that has been given authorization within maximum 6 (six) months after this Presidential Regulation enter into force by related Ministerial Regulation.

Article 11

This Presidential Regulation shall take effect on the date of its enactment.
In order that every person may know of it, the promulgation of this Presidential Regulation is ordered by placement in the State Official Gazette of the Republic of Indonesia.

Enacted in Jakarta

On

PRESIDENT OF THE REPUBLIC OF INDONESIA

(Signed)

DR. H. SUSILO BAMBANG YUDHOYONO

Promulgated in Jakarta

On.....

MINISTER OF JUSTICE AND HUMAN RIGHTS
THE REPUBLIC OF INDONESIA

(Signed)

ANDI MATTALATTA

STATE GAZETTE OF THE REPUBLIC OF INDONESIA OF NUMBER

IV. Ministerial Regulation on the Certification of Insurance or other Financial Security in Respect of Civil Liability for Bunker Oil Pollution Damage

MINISTER OF TRANSPORTS REGULATION

NO.

ON

THE CERTIFICATION OF INSURANCE OR OTHER FINANCIAL
SECURITY IN RESPECT OF CIVIL LIABILITY FOR BUNKER OIL
POLLUTION DAMAGE

Considering :

- a. Whereas, in accordance with the need to protect marine environment from oil pollution caused by pollution resulting from the escape or discharge of bunker oil from ships.
- b. Whereas, in accordance with the Presidential Regulation No.... Year... on the Implementation of Civil Liability for Bunker Oil Pollution Damage that requires ship to maintain insurance while sailing in Indonesian waters,
- c. Whereas, upon consideration as stipulated in paragraph (a) and (b), it is deemed necessary to promulgate the Ministerial Regulation on Certification of Insurance or Other Financial Security in Respect of Civil Liability for Bunker Oil Pollution Damage.

In view of:

1. Law No. 6 of 1996 concerning Indonesia Waters.
2. Law No. 17 of 2008 concerning Navigation
3. Law No. 43 Year 2008 on the State Territory.

4. Government Regulation No. 19 of 1999 on Marine Pollution Control.
5. Presidential Regulation No.... Year... on the Implementation of Civil Liability for Oil Bunker Pollution Damage.

HAS DECIDED TO:

Stipulate: MINISTER OF TRANSPORTATION REGULATION
ON THE CERTIFICATION OF INSURANCE OR OTHER
FINANCIAL SECURITY IN RESPECT OF THE CIVIL LIABILITY FOR
BUNKER OIL POLLUTION DAMAGE

CHAPTER 1

INSURANCE CERTIFICATE

Article 1

For the purpose of this Ministerial Regulation:

- a. Insurance Certificate means a certificate attesting an insurance or other financial security such as the guarantee of a bank or similar financial institution, to cover liability of the registered owner for pollution damage.
- b. Convention means the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001.
- c. Presidential Regulations means Presidential Regulation No.... Year on the Implementation of Civil Liability for Bunker Oil Pollution Damage.
- d. Contracting state means a state party to the Convention
- e. Authority is the Directorate General of Sea Transportation

Article 2

1. Ships of a tonnage of 1000 GT and above shall maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, which covers the liability of the registered owner for pollution damage as, defined

in the Presidential Regulation.

2. Certificate attesting that insurance or other financial security as mentioned in paragraph (1) shall be issued to each ship by the Authority.

CHAPTER 2

PROCEDURES OF APPLICATION

Article 3

1. The registered owner of a ship that is registered in Indonesia or in a State that is not a Contracting State may apply to the Authority for the issue or certification of an insurance certificate for the ship.
2. The application as mentioned in paragraph (1) above, could be conducted in the central office of Directorate General of Sea Transport or in the following ports:
 - a. Ambon
 - b. Bagan Siapi-api
 - c. Balikpapan
 - d. Banjarmasin
 - e. Batam
 - f. Belawan
 - g. Bengkulu
 - h. Bena
 - i. Bitung
 - j. Cilacap
 - k. Cirebon
 - l. Donggala
 - m. Dumai
 - n. Gorontalo
 - o. Jambi
 - p. Jayapura
 - q. Kendari
 - r. Kupang
 - s. Lembar
 - t. Lhokseumawe

- u. Luwuk
- v. Makassar
- w. Manado
- x. Manokwari
- y. Maumere
- z. Meneng
- aa. Merauke
- bb. Palembang
- cc. Panjang
- dd. Pekanbaru
- ee. Pontianak
- ff. Sabang
- gg. Samarinda
- hh. Sampit
- ii. Sibolga
- jj. Sorong
- kk. Tanjung Emas
- ll. Tanjung Perak
- mm. Tanjung Pinang
- nn. Tanjung Priok
- oo. Teluk Bayur
- pp. Ternate
- qq. Tual

3. The certificate mentioned in paragraph (1) is issued by the Authority on satisfaction of the requirements stipulated in the Presidential Regulation.

Article 4

1. The Certificate shall be in the form of the model set out in Annex 1 of this Regulation.
2. An insurance certificate comes into force the day stated in the certificate and remains in force until the expiration of the day stated in the certificate.

Article 5

1. On application for the certificate the registered owner must submit to the authority the following documents:
 - a. Ship Certificate documents
 - b. Certificate concerning the Tonnage of the Ship
 - c. The insurance police or other financial security in the amount based on the tonnage of the ship.
 - d. Name of Guarantor
2. In relation to each application, the Authority shall issue or certify an insurance certificate that will cover the limit of liability as mentioned in Presidential Regulations No.... Year.... On Implementation of Civil Liability for Bunker Oil Pollution Damage if the insurance or financial security has been satisfied.
3. The Authority shall refuse to issue or certify the application of insurance if the requirements mentioned in paragraph (1) are not fulfilled.

Article 6

1. The authority may temporarily extend the certificate if:
 - a. a ship for which an insurance certificate has been issued or certified is not at a port in the Republic of Indonesia at the time when the certificate expires; and
 - b. the Authority is satisfied that, after the day stated in the certificate as the day until which it is to remain in force, there will be in force a contract of insurance or other financial security for the ship in an amount that will cover the limits of liability prescribed by Presidential Regulation.
2. Once the ship arrives in the port of the Republic of Indonesia, the temporary extension will expire and the shipowner shall apply for the extension of the certificate to one of the registration center mentioned in article 3 paragraph (2) complemented with the required documents in the certification process.

CHAPTER 2

CLOSING

							registered owner
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This is to certify that there is in force, in respect of the above-named ship, a policy of insurance or other financial security satisfying the requirements of article 7 of the international convention on liability for Bunker oil pollution damage, 2001.

Type of Security
.....

Duration of Security

Name and address of the insurer(s) and/or guarantor(s)

Name.....

Address.....

This certificate is valid
until.....

Issued or certified by the Government
of.....

(Full designation of the State)

OR

The following text should be used when a State Party avails itself of article 7, paragraph 3:

The present certificate is issued under the authority of the Government
of.....

(full designation of the State) by (name of institution
or organization)

At On

(Place)

(Date)

.....
(Signature and Title of issuing or certifying official)

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