



## **ARMA Update 11 February 2022**

*(English Version)*

### **Minister of Transportation Regulation No. 2 of 2021: Approval for the Use of Foreign Ships for Activities Other Than Transporting Passengers and Goods**

#### **General Overview**

Law No. 17 of 2008 concerning Shipping (“**Shipping Law**”) is the legal basis for the Cabotage principle which provides protection for domestic shipping. The application of the Cabotage principle is reflected in Article 8 of the Shipping Law which states that sea transportation activities in Indonesian waters can only be carried out by Indonesian flagged vessels and manned by Indonesian crew members.

In practice, there is no adequate number of Indonesian vessels that are available enough to carry out activities that do not include carrying passengers and goods, so the use of foreign vessel is allowed on the condition that the vessel have the Approval for the Use of Foreign Vessels (*Persetujuan Penggunaan Kapal Asing* or "**PPKA**"). What is meant as a foreign vessel is a ship with a flag other than the Indonesian flag and not recorded in the list of Indonesian ships.

The obligation to have PPKA serves as the manifestation of the Cabotage principle to avoid foreign vessels from dominating Indonesian waters.

The latest PPKA regulation has been amended as contained in the Minister of Transportation Regulation No. 2 of 2021 concerning Procedures and Requirements for the Granting of Approval for the Use of Foreign Vessels for Other Activities in Indonesian Waters that are Not Included in the Activities of Transporting Passengers and Goods (“**MoT Reg 2/2021**”).

This ARMA update will discuss the general requirements for the issuance of PPKA and its legal implications.

#### **Issuance of PPKA**

Regulations regarding the provision of PPKA began to be regulated in 2018 with the issuance of MoT Reg 92/2018 as last amended by MoT Reg 46/2019. Until now, the latest PPKA is regulated in MoT Reg 2/2021 which revokes the two initial regulations.

In essence, the changing legal framework regulates similar object, namely how foreign vessels can carry out activities in Indonesian waters for other activities that do not include passengers and/or goods. The one thing that distinguishes the regulations issued from year to year is the type of foreign vessels that are allowed to receive PPKA. It shall be noted that PPKA based on MoT Reg 2/2021 is valid until an unspecified date, and can be revoked at any time when the latest regulation is issued.



According to MoT Reg 2/2021, the activities allowed for foreign vessels to operate include:<sup>1</sup> (a) oil and gas survey; (b) drilling; (c) offshore construction; (d) offshore operations support; (e) dredging; (f) salvage and underwater work.

In addition, foreign vessels can also carry out electrical activities and other activities related to the pier construction. Before entering the territorial waters of Indonesia, foreign vessels intended to carry out the activities as referred above require PPKA. The responsibility to have PPKA must be carried out by the National Sea Transportation Company as the operator of the foreign vessels until the foreign vessels leave the Indonesian territory.<sup>2</sup>

Specifically in MoT Reg 2/2021, there is an amendment on the types of vessels that are allowed to receive PPKA from the earlier regulation, namely the addition of Supporting Vessels for Offshore Operations or Offshore Vessels as one of the types of foreign vessels allowed to operate in Indonesia. Foreign vessels for offshore activities are allowed because the availability of these vessels is difficult to fulfil from Indonesian-flagged vessels since their procurement requires a large investment, complex technology, limited in number, global and mobile use, with short and unsustainable usage.

### **Application of PPKA**

To obtain PPKA, the National Sea Transportation Company that rents foreign vessels submits a written application to the Minister of Transportation (“**MoT**”) through the Director General of Sea Transportation (“**Director General of Sea Transportation**”) of the Ministry of Transportation of the Republic of Indonesia (“**Ministry of Transportation**”) by attaching the following requirements:<sup>3</sup>

- a. a work plan which includes a schedule of activities, scope of work which is equipped with justification for the needs of the ship, and a work area marked with geographical coordinates;
- b. a work contract between the Employer and the National Sea Transportation Company and/or a letter of appointment from the Employer to the National Sea Transportation Company;
- c. charter party agreement between the National Sea Transportation Company and the owner of the Foreign Vessel;
- d. a copy of the Sea Transportation Company's Business License or standard certificate of sea transportation that has been approved;
- e. copy of registration certificate and foreign vessel nationality;
- f. copy of Foreign Vessel's measurement letter;
- g. a copy of the classification certificate that is still valid;
- h. a copy of a foreign vessel safety and security certificate that is still valid;
- i. a copy of a foreign vessel safety management certificate that is still valid;

<sup>1</sup> Article 2 clause (6) MoT Reg 2/2021

<sup>2</sup> Article 3 clause (1) MoT Reg 2/2021

<sup>3</sup> Article 4 MoT Reg 2/2021



- j. list / certificate of foreign vessel crew signed by the captain of the ship;
- k. proof of announcement of the procurement of Indonesian-flagged vessels; and
- l. a certificate from the owner of a foreign vessel explaining that he is willing to accept and place cadets and/or cadets of marine practice from the national shipping school.

PPKA is given for a period of 6 months, and can be extended if there is still an unfinished work by attaching justification, minutes of the Evaluation Team, and the requirements stated above.

### Supervision

National Sea Transportation Companies that have received PPKA must provide regular reports every month to the Director General of Sea Transportation through the Director of Traffic and Sea Transportation.<sup>4</sup>

Meanwhile, those authorized to supervise the seaworthiness and security of foreign vessels are the Port State Control Officers (“**PSCO**”) who are Civil Servants (*Aparatur Sipil Negara*) under the Directorate General of Sea Transportation who is appointed by the Harbormaster.

However, the overlapping authority for supervising shipping activities in Indonesia is still a problem that may hinder the implementation of supervision of foreign vessels' activities. Foreign vessel operators are expected to communicate and describe their operational problems at any time to the authorities and the implementation of PPKA does not violate the requirements as stipulated in MoT Reg 2/2021 or other related regulations.

### Sanctions

In the event that there is a discrepancy in the working area, type, and technical specifications of the Foreign Vessel with the PPKA, the PPKA will be revoked. In addition to the revocation of the PPKA, the National Sea Transportation Company as the operator of the foreign vessel may be subject to administrative sanctions.<sup>5</sup> Administrative sanctions to the National Sea Transportation Company can be in the form of a written warning, suspension of business licenses, or revocation of business licenses which given gradually. The administrative sanction was given by the Director General of Sea Transportation on behalf of the MoT.

Besides the administrative sanctions mentioned above, the vessel's departure can be delayed by the PSCO. This manoeuvre is called Detainable Deficiency. Detainable Deficiency is carried out if the PSCO found that the condition of the vessel does not meet the requirements and can threaten the safety of the vessel, human life, and/or the maritime environment. Furthermore, failure to comply with this regulation may result in the vessel being unseaworthy and thus being detained by the authorities.

---

<sup>4</sup> Article 15 MoT Reg 2/2021

<sup>5</sup> Article 16 MoT Reg 2/2021



Please contact Aryo Baskoro ([aryo.baskoro@arma-law.com](mailto:aryo.baskoro@arma-law.com)) for further information.

***Disclaimer:***

*This ARMA Update is the property of ARMA Law and is intended to provide general information and should not be treated as legal advice, nor shall it be relied upon by any party for any circumstance. ARMA Law has no intention to provide specific legal advice with regard to this ARMA Update.*