

Legal Status of Ex-Tanker Ships According to the International Maritime Organization



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ABSTRACT: This research is entitled Legal Status of Used Tankers Based on the International Maritime Organization. This research uses a normative legal research method, namely research based on laws and regulations that have binding force according to the material discussed. This research is legal research using a statute approach, a conceptual approach, and a case approach. Based on the research methods as mentioned above, it can be concluded: through the Ministry of Trade, the Government is increasingly tightening the import of used ships with the issuance of the Minister of Trade Regulation No. 20 of 2021 concerning Import Policies and Regulations. This provision revokes the Minister of Trade Regulation No. 118 of 2018 concerning Provisions on the Import of Capital Goods in Non-New Condition which has been amended several times. The last amendment was made by the Minister of Trade Regulation No. 40 of 2021 concerning the Third Amendment to the Minister of Trade Regulation No. 118 of 2018.

KEYWORDS: legal status; import of tanker ships; International Maritime Organization

INTRODUCTION

Economic development is always developed in an effort to advance the welfare of its people, as stated in the Preamble to the 1945 Constitution, namely: protecting all Indonesian blood, advancing public welfare, educating the nation's life and participating in implementing world order, in this case including in the tanker transportation service sector.

Indonesia is part of the world in developing sea transportation, including through the import trade of tankers from countries that provide used tankers. The import of shipping trade that is carried out is required to adjust the regulations on the trade of used ship imports to be able to enter Indonesia.

Lately, shipping entrepreneurs have complained, are restless, regarding the restrictions or obstacles faced by entrepreneurs related to the import of used tankers, regarding the trade of used imported goods.

Regarding the Regulation of the Minister of Trade Number 76 of 2019 concerning Amendments to the Regulation of the Minister of Trade Number 118 of 2018 concerning Provisions on the Import of Capital Goods in Non-New Condition, the import of goods in non-new (used) condition, one of the important points is that the maximum age that may be imported is 30 years.

The government has established regulations governing the requirements to be met by purchased vessels before they can operate in Indonesian legal waters. Legislative regulations largely outline the requirements. Article 24 (1) PP No. 51 of 2002 stipulates that ships purchased or acquired from abroad registered in their country of origin must be accompanied by a letter containing a notice of deletion from the list of ships made by the Government of the State of origin of the ship.¹ According to the explanation of the Government Regulations, there are many possible conflicts that may be experienced by the buyer or importer of the ship; one example is the lack of care when purchasing the ship.

The Indonesian government is urged to immediately implement incentives for the maritime sector. The aim is to give incentives to national maritime corporations to be more eager to build domestic ships than to rely on imports. Ministry of Commerce Regulation No. 118 of 2018 on Imports of Ex-Capital Goods will be revised and entered into force on 20 November. According to the Trade Minister's Regulations No. 76 of 2019, the maximum age limit of imported ships has been extended to 30 years. This differs from the previous regulation which only permits imports of used ships from 15 to 20 years of age for certain types of ships.

This phenomenon arises because the cost of domestic shipbuilding is more expensive than the option of importing used ships. Causes include high interest rates in Indonesia, shortened repayment periods of loans, overwhelming tax and customs duties, as well as expensive component prices because most of them are imported goods. As a result, many national shipping companies

¹ Pasal 24 PP Nomor 51 Tahun 2002, konvensi-konvensi yang dihasilkan dalam *International Maritime Organization* (IMO).

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chose to build new ships in China because the cost is comparable to the cost of a 15-20-year-old used ship. These modern ships have minimal repair requirements, so they are not profitable for domestic shipbuilding. Besides, they also do not build ships in this location and do not use the nearby shipyards for docking purposes because their ships are still in excellent condition and need no maintenance. The 2018 118th shipwreck effectively undermined the survival of the local shipyard.

In the field of navigation, the suitability of a vessel is determined by its technical age and compliance with the minimum safety criteria for the construction, equipment, and operation of the vessel as outlined in the SOLAS regulations. (Safety Of Life At Sea). According to statistics obtained from www.equasis.org and Lloyd Register, there is a large number of ships over 30 years old currently operating in developed countries. Both commercial and passenger ships, including cruise vessels, are allowed to import used ships because Indonesia as a maritime state needs a large fleet to support economic activity. Used ships are also in demand because of the expensive cost of building new ships. The national shipping industry is facing obstacles in the acquisition of new vessels in the country due to the low charges of shipping services. Shipping needs to adapt to the very low purchasing power of the population, as well as the deteriorating economic conditions. A 30-year-old ship import policy can provide benefits to the domestic shipbuilding sector, especially in terms of repairs, modifications, overhauls, docking, and similar activities. Routine docking of all vessels is mandatory and must be carried out exclusively at domestic shipyards. Each used ship must comply with the strict navigation rules established by SOLAS and undergo classification. The expenses incurred are considerable and can have a significant impact on the shipyard in its vicinity.

Based on the description of the above, the author intends to study the practice of importing used tanker ships through the legal writing entitled "The Legal Status of Ex-Tanker Ships According to the International Maritime Organization" and the formulation of the issue of how the legal status of ex-tanker ships is based on the International Marine Organization.

RESEARCH METHODS

This research involves legal or normative research, which specifically focuses on laws and regulations that have legally binding authority related to the subject matter of the language being examined. This study uses a legal research methodology that combines legislative approaches, conceptual approaches and case approaches. Legislative methodology refers to the use of legislative regulations to regulate and regulate specific activities or industries. Normative law research is a systematic scientific method used to reveal truth by examining legal reasoning from a normative perspective. Conceptual approaches are used when researchers stick to existing rules. In this regard, the research is based on the implementation of the Law No. 17 of 2008 on Shipping and the Ministry of Relations Regulation No. 43 of 2021 on the modalities for importers to obtain used vessels.

DISCUSSION

The chronology of this ship has entered the country of Indonesia that has the status of a foreign flag, then entered Indonesia must change the flag, where it must be registered to the maritime service, so that the legal status of the ship belongs to the flag of Indonesia. However, there is a problem in filing in the hubla service because there is no IMO, while the IMO is not a condition for filing a flag change service note. In this case, this is not in accordance with the task of a hubla which should be an organization or a public service. So the legal status of these ships that have entered Indonesia cannot operate in Indonesian waters and thus cause losses to importers.

Ship Import Policy in Indonesia

The Ministry of Commerce of the Republic of Indonesia has finally revised the provisions on imports of used vessels, which had previously been able to make investments of ships very hindered, now the rules on import of used ships are more logical, especially in relation to the requirements for obtaining Import Authorization (PI). The revisions are contained in the Regulation of the Minister of Trade No. 25 of 2022 on Amendments to the Regulations of the Ministry for Commerce No. 20 of 2021 on Import Policies and Regulations. Through this regulation, the management of ship import licences is restored in accordance with Regulation No. 118 of 2018 on the Terms of Import of Capital Goods in a Non-New Condition, in particular in connection with the requirements of management of Import Agreements.

The essence of Permendag No. 25 Year 2022 is to eliminate the management requirement of PI as proof of flag replacement such as national stamps and temporary measures issued by the Ministry of Communications, in particular for Non-New Capital Goods (BMTB) included in Tariff/HS Pos. 89. However, this regulation adds the requirement of a Memorandum of Agreement (MoA) between the seller and buyer of the ship to be imported. This is in line with the proposal of the Indonesian National Shipowners Association (INSA) which has since 2019 requested that the management requirement of PI as proof of flag replacement be removed.

The Ministry of Commerce has been fighting for changes in the requirements of the management license (PI) for imports of used ships for a long time, especially since the Ministry issued the Legislative Decree No. 76 of 2019 on Amendment of Legislation No. 118 of 2018 on the Regulations for the Import of Capital Goods in a Non-New Condition. However, proof of the replacement of the new flag can be provided after the sale of ships and imports. As a result, the policy makes it difficult for

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entrepreneurs to invest in ships through imports because it does not provide investment certainty. In response to these conditions, INSA informed the Minister of Commerce of the Republic of Indonesia by letter numbered DPP-SRT-IX/20/051 dated 15 September 2020 concerning the Revision of Article 7 letter g of the Regulations of the Minister for Commerce No. 76 Year 2019. INSA expressed the importance of revising Article 7 letters g and returned it as Permendag No. 118 Year 2018. According to the INSA, the Flag Change document of the National Signature and Measurement Letter issued by the Ministry of Communications of the Republic of Indonesia is only available after the Ship Sale Agreement and News of Ship Acceptance Event or after the process of import.²

Furthermore, the Ministry of Commerce issued import policies and regulations through Decree No. 20 of 2021 on Import Policies and Regulations. However, the proposal of the Indonesian National Shipowners' Association (INSA) has not been accommodated, so to obtain an Import Agreement (PI), it is still mandatory to attach the scan results of the original document Proof of Flag Change, namely National Sign and Interim Measurement Letter from the Ministry of Relations.

Faced with the increasingly limited availability of ship loading space, INSA stressed the importance of facilitating PI management. In response, the Ministry of Commerce finally revised Permendag No. 20 Year 2021 by issuing Permendog No. 25 Year 2022, which returns the requirements of PI management according to PermendAG No. 118 Year 2018.

According to Appendix III of Decree No. 25 of 2022, the requirements for the management of the Import Agreement are as follows:

1. Business license issued by an authorized agency in accordance with the provisions of laws and regulations, which permits the company to conduct business activities other than trading.
2. Import plan signed and approved by the company's management, including description of goods, Tariff Post/HS 8 digits, quantity and units of goods, country of loading, and port of destination.
3. Statement letter stating that the imported Non-New Capital Goods (BMTB) will not be traded or used as scrap, with a maximum age of 15, 20, or 25 years.
4. Statutory Certificate, such as Nationality Certificate, Tonnage Certificate, Load Line Certificate, Safety Construction Certificate, Safety Equipment Certificate, and Class Certificate that are still valid, issued by the country of origin of the ship or a classification body recognized by the country of origin of the ship's flag.
5. Memorandum of Agreement (MoA) between the seller and buyer of the ship.

Government policies are requested to immediately realize incentives for the maritime industry. This is done so that national shipping companies are interested in building ships domestically rather than importing.

This condition occurs because building ships domestically is more expensive than importing used ones. The causes include high interest rates in Indonesia and short loan repayment periods, tax and import duties, and expensive component prices because most are imported.

In the shipping world, the eligibility of a ship is seen from its technical age or fulfillment of minimum safety standards for construction, equipment and ship operations as regulated in SOLAS (Safety Of Life At Sea). Based on data from www.equasis.org and Lloyd Register, currently there are still many ships over 30 years old in developed countries that are operating. Not only merchant ships, but also passenger ships such as cruise ships. For example, MV Forest (1966) Cyprus, MV Queenie (1960) Italy, roro cargo Queen of Sydney (1960), Twinkling Star (1964) Hong Kong, ferry Goshoura (1972) Japan, and War Artist (1918) owned by the US Navy.

The policy of importing 30-year-old ships can actually provide benefits for the domestic shipbuilding industry, such as for repairs, modifications, overhauls, docking, and so on. All ships are required to be docked routinely and must be in a domestic shipyard. All used ships must follow strict standards in shipping according to SOLAS and enter class. The costs are quite large and can have an economic impact on local shipyards.

If the national economy and people's purchasing power are strong, imports of new or used ships can be limited so that the domestic shipbuilding industry becomes the host in its own country. To accelerate this goal, the government must immediately realize incentives for the shipbuilding industry.

In order to prevent the flood of imported used ships, the government can limit it by maintaining a balance between supply and demand because ships entering the country must obtain permission from the Ministry of Transportation.

The government is increasingly tightening the import of used ships through the Regulation of the Minister of Trade No. 20 of 2021 concerning Import Policy and Regulation. This provision revokes the Regulation of the Minister of Trade No. 118 of 2018 concerning Provisions for the Import of Capital Goods in Non-New Condition which has been amended several times. The last amendment was by the Regulation of the Minister of Trade No. 40 of 2021 concerning the Third Amendment to the Regulation of the Minister of Trade No. 118 of 2018.

² Admin, 2022, *Harmonisasi Kebijakan Impor Kapal Akan Gairahkan Investasi*,

http://dppinsa.com/content/detail/harmonisasi_kebijakan_impor_kapal_akan_gairahkan_investasi_, diakses 01 Juli 2024, pukul 09:30 WIB.

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The Regulation of the Minister of Trade was promulgated on April 1, 2021, in accordance with article 55, this regulation comes into effect after 228 days from the date of promulgation or precisely starting from November 15, 2021.

Several things that need to be considered by members of the Indonesian National Shipowners' Association are as follows:

1. Minister of Trade Regulation No. 20 of 2021 regulates that ship imports are divided into two groups with certain age limits, namely Group C for ships with a maximum age of 15 years when imported with the type of ship being a cruise ship, excursion ship, ferry, cargo ship, barge and water vehicle for transporting passengers and goods, tanker ships under 5,000 GT and yachts and water vehicles for pleasure and sports or other types. Then Group C for ships with a maximum age of 20 years when imported, namely for tankers and other types of ships exceeding 5000 GT and tankers with a tonnage not exceeding 5,000 GT only for gas carrier tankers, asphalt tankers and chemical tankers. Previously, based on Minister of Trade Regulation No. 76 of 2019 concerning Amendments to Minister of Trade Regulation No. 118 of 2018, especially article 4, the import of ships for groups A and B is a maximum age of 20 years, while group C is a maximum age of 30 years. In Minister of Trade Regulation No. 20 of 2021, the Government does not clarify the reference for determining the age of ships that may be imported, so it is feared that it will trigger problems when implemented. This is different from Permendag No. 118 of 2018 which provides a reference for determining the age of ships starting from the completion date of the classification survey (completion survey) stated in the Class Certificate.
2. import of used tugboats is only permitted for ships with a capacity above 4,000 Horse Power and is not permitted for ships below 4,000 Horse Power. This is the same as the previous regulation.
3. imported ships are not traded or used as scrap. Referring to Article 18 of Permendag No. 20 of 2021, ships can be traded and/or transferred to other parties if they have been used by the importer for more than four years. The exit clause in Permendag No. 20 of 2021 states that the sale and purchase/transfer carried out for less than four years is only if in a force majeure condition, namely a compelling condition. This is different when referring to Permendag No. 118 of 2018 where there are no restrictions for owners to sell or transfer ships. Regarding selling or transferring ships after being imported, the provisions of Permendag No. 20 of 2021 are in line with Permenkeu No. 41 of 2020 concerning Requirements and Procedures for Importing and Handing Over Certain Transportation Equipment and Handing Over and Utilizing Taxable Services Related to Certain Transportation Equipment that are not subject to VAT. Article 15 explains that VAT payable on the import of certain transportation equipment that has received facilities free of VAT must be paid if within four years of being imported, the imported goods are used not for their original purpose and are transferred to another party.
4. The requirements for submitting an Import Approval Letter (SPI) to the Ministry of Trade for the two groups still require proof of flag change in the form of a National Identity Certificate and Temporary Measurement Letter from the Ministry of Transportation (Kemenhub) for BMTB included in HS 89 (cruise ships, excursion ships, ferries, cargo ships, barges and similar water vehicles for transporting people or goods). This is the same as the previous regulation which also stated that it is mandatory to attach proof of Flag Change in the form of a National Identity Certificate and Temporary Measurement Letter issued by the Ministry of Transportation.
5. There are requirements in submitting an SPI, namely that the company must attach a Statement Letter in accordance with the BMTB Group being imported, either with a maximum age of 15 years when imported or 20 years. This is the same as the previous regulation.

The Indonesian National Shipowners' Association has asked all its members to pay attention to the Implementation of Permendag No. 20 of 2021. This is because this regulation does not answer the problems that have arisen and been complained about by shipping entrepreneurs as in the previous regulation. Regarding Permendag No. 118 of 2018 and its amendments, the Indonesian National Shipowners' Association has repeatedly urged the Ministry of Trade to issue a new policy that is an improvement or revision.

This is inseparable from the many complaints from members who are being held up in their ship import plans to meet domestic needs or rejuvenate the fleet after the issuance of Article 7 letter g of Permendag No. 76 of 2019 concerning the second amendment to Permendag No. 118 of 2018.

Article 7 of the Regulation of the Minister of Trade No. 76 of 2019 states that Direct User Companies that will import BMTB must submit an electronic import approval application to the Directorate General of Foreign Trade by including a description of the goods, 8-digit tariff post/HS, quantity and units of goods, country of loading, port of destination and attaching scans of a number of original documents.

In letter g of Article 7, it is stated that one of the documents that must be attached to process Import Approval is a scan of the original document of Proof of Flag Change in the form of a National Identity Certificate and Temporary Measurement Letter issued by the Ministry that organizes government affairs in the transportation sector.

Due to this condition, the Indonesian National Shipowners' Association wrote to the Minister of Trade of the Republic of Indonesia. The letter numbered DPP-SRT-IX/20/051 dated September 15, 2020 concerning the Revision of Article 7 letter g of Regulation of the Minister of Trade No. 76 of 2019 conveys the importance of Article 7 letter g to be revised immediately.

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According to the Indonesian National Shipowners' Association, the Change of Flag documents in the form of a National Identity Certificate and Measurement Certificate issued by the Ministry of Transportation of the Republic of Indonesia, are only available after the Ship Sale and Purchase Agreement and Ship Handover Minutes or after the import process has taken place.

Technical Requirements for Importing Vessels According to The Regulations of The Applicable Legislation

The Ministry of Industry has imposed strict requirements on the import of used capital goods as stated in Ministerial Regulation No. 14 of 2016 concerning Technical Criteria for Import of Used Capital Goods. The regulation was issued as a follow-up to Ministerial Regulation No. 127 of 2015 which allows the import of used goods.

The regulation, which was ratified on February 23, 2016 by Minister of Industry Saleh Husin, regulates the technicalities of importing used goods for various sectors, including the machinery, telecommunications, electricity, transportation equipment, and shipping industries.

According to this regulation, direct user companies, reconditioning companies, and remanufacturing companies are allowed to import used goods as long as they meet the specified technical requirements. For transportation equipment and machinery industry goods, import recommendations are issued by the Director General of Metal, Machinery, Transportation Equipment, and Electronics Industry (ILMATE), while for shipping, recommendations are issued by the Directorate of Maritime Industry Development.

Article 1 of Ministerial Regulation No. 14 of 2016 states that technical considerations are an absolute requirement for companies wishing to import used goods. These technical considerations include recommendations from the relevant Director General after going through a survey process. This survey includes administrative requirements related to trade and industrial permits, as well as inspections of repair facilities and storage areas for imported goods.


For the import of used ships, there are special requirements such as shipbuilding certificates and gross tonnage certificates that must be met, in addition to ownership of repair facilities and quality warranties. As for land transportation, only goods transport vehicles or trucks with a gross vehicle weight (GVW) of 25 tons and above and exceeding 45 tons, using diesel or semi-diesel engines, are permitted to be imported, in accordance with the provisions of the Minister of Trade Regulation No. 127 of 2015.

The following is my experience as an entrepreneur from PT. Gading Cakra Loka based on the Notarial Deed of Ria, Dewanti, S.H. with Notarial Deed No. 93 dated March 16, 2017, whose office address is at Jl. Gadang No. 8, Sungai Bambu, Tanjung Priuk, North Jakarta, Indonesia, herewith we as citizens of the Republic of Indonesia would like to submit a request for a Legal Opinion and Legal Protection related to the problem of the request to change the flag of a foreign ship to an Indonesian-flagged ship for the Yosei Maru 15 and Yosei Maru 30 ships at the Directorate of Shipping and Maritime Affairs, Ministry of Transportation of the Republic of Indonesia, with the following basis and reasons:

1. That on November 19, 2021, PT. Gading Cakra Loka as the Buyer entered into a Sale and Purchase Agreement with JY SNP CO. LTD as the Seller, having its address at RM. 406. #20, KWANGBOK-RO 97, BEON-GIL. JUNG-GU, on: Ship: M/T. YOSEI MARU 15; Flag: TANZANIA; Survey Society: TANZANIA; Launch Date: 2012, JAPAN; Gross Register Tonnage: 499 tons; Ship Type: MOTOR VESSEL; Price: The Purchase of the Vessel shall be USD 1,350,000.00 (say one million and three hundred fift thousand us dollar only).
2. That on December 23, 2021, PT. Gading Cakra Loka also purchased a vessel from the same party in accordance with the evidence of the Sale and Purchase Agreement with JY SNP CO. LTD as Seller, with the vessel name M/T. Yoseimaru 15 and M/T. Yoseimaru 30 with specifications: Ship: M/T. YOSEI MARU 30; Flags: TANZANIA; Survey Society: TANZANIA; Launch Date: 2013, KOREA; Gross Register Tonnage: 1595 tons; Ship Type: MOTOR VESSEL; Price: The Purchase of the Vessel shall be USD 2,300,000.00 (say two million and three hundred thousand us dollars only).
Which includes original documents consisting of: Memorandum of Agreement Code Name: NIPPON SALE 1993 M/T YOSEIMARU 15 and YOSEIMARU 30; Delection Certificate M/T YOSEIMARU 15 and YOSEIMARU 30; Protocol of Delivery and Acceptance M/T YOSEIMARU 15 and YOSEIMARU 30; Bill of Sale M/T YOSEIMARU 15 and YOSEIMARU 30; Ship Certificate of Country of Origin; General Arrangement (GA) M/T YOSEIMARU 15 and YOSEIMARU 30; Classification Certificate M/T YOSEIMARU 15 and YOSEIMARU 30; Owner's Identity (KTP/Approval from the Indonesian Minister of Law and Human Rights).
3. Line Certificate; Safety Equipment Certificate; Safety Construction That on July 28, 2022 based on all ORIGINAL documents obtained from the Seller, then through the agent PT. Pelayaran Hub Maritim Indonesia has submitted an application for PI (Import Approval) to the Ministry of Trade through the innapornet system for the Yosei Maru 15 and Yosei Maru 30 ships with the following requirements: Invoice and packing list; B/L; Notarial Certificate and Bill of Sale; Cargo Manifest; Inventory List; MOA (Memorandum of Agreement); Ship Particular; Builder Certificate; General Arrangement; Nationality Certificate; Registry Certificate; Tonnage Certificate; Load Certificate; Class Certificate; Protocol of Delivery Accepted.
4. That the application for Import Approval (PI) submitted by PT. Gading Cakra Loka for the Youseimaru 15 and Yoseimaru 30 vessels mentioned above has received approval from the Minister of Trade of the Republic of Indonesia based on the Approval

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for Import of Goods in Non-New Condition (BMTB) Direct User Group C (15 Years) Number: 04.PI-02.22.1508 and Number: 04.PI-02.22.1499


 Menteri Perdagangan Republik Indonesia

Persetujuan Impor Barang Modal dalam Keadaan Tidak Baru (BMTB) Pemakai Langsung Kelompok C (15 Tahun)
 NOMOR: 04.PI-02.22.1508

Nama : PT GADING CAKRA LOKA
Alamat : JL. GADANG NO.8, RT.010, RW.02, SUNGAI BAMBUI, TANJUNGPRIK, Kota Jakarta Utara, Prop. DKI Jakarta
NIB : 9120303830175

Nomor Pengajuan Intrade : 47718INATRADE/08/2022 Tanggal : 03 Agustus 2022

DASAR HUKUM **MEMPERHATIKAN**

PERATURAN MENTERI PERDAGANGAN REPUBLIK INDONESIA NOMOR 20 TAHUN 2021 TENTANG KEBIJAKAN DAN PENGATURAN IMPOR, BERSERTA PERUBAHANNYA

1. Izin usaha yang diberikan kepada perusahaan untuk melakukan kegiatan usaha selain perdagangan yang dikeluarkan oleh instansi berwenang sesuai dengan ketentuan peraturan perundang-undangan Nomor BXIV-1541/AL/38 Tanggal 17 April 2022
2. Surat pernyataan yang menyatakan bahwa BMTB yang dimpor tidak akan diperjualbelikan atau dijadikan scrap dan usia paling lama 15 (lima belas) tahun Nomor 57/GCLJK/VI/2022 Tanggal 02 Agustus 2022
3. Rencana impor yang ditandatangani dan diandatangani oleh pimpinan perusahaan, yang memuat uraian barang, Pos TarifHS 8 (delapan) digit, jumlah dan satuan barang, negara muat, dan perubahan tujuan Nomor 55/GCLJK/VI/2022 Tanggal 02 Agustus 2022
4. Statutory Certificate antara lain Nationality Certificate, Tonnage Certificate, Load Line Certificate, Safety Construction Certificate, Safety Equipment Certificate dan Class Certificate yang masih berlaku yang diterbitkan oleh Negara asal kapal atau badan klasifikasi yang diakui oleh Negara penerima asal kapal Nomor 8770422-CL Tanggal 01 April 2022
5. Memorandum of Agreement (MOA) antara penjual dan pembeli Nomor Memorandum of Agreement MT. YOSEI MARU 15 Tanggal 19 November 2021

KETENTUAN

1. Menadi ketentuan-ketentuan yang berlaku dalam PERATURAN MENTERI PERDAGANGAN REPUBLIK INDONESIA NOMOR 20 TAHUN 2021 TENTANG KEBIJAKAN DAN PENGATURAN IMPOR, BERSERTA PERUBAHANNYA
2. Impor bertanggung jawab penuh terhadap kebenaran dan kesesuaian dokumen persyaratan, dan data informasi yang disampaikan serta segala akibat hukum yang timbul disebabkan oleh perbuatan, tindakan, pelanggaran baik disengaja atau tidak disengaja, dan/atau kelalaian yang tidak sesuai dengan ketentuan peraturan perundang-undangan atas pelaksanaan impor.
3. Menyampaikan permohonan perubahan setiap perubahan data Perizinan Impor melalui sistem INSW paling lama 30 (tiga puluh) hari sejak tanggal perubahan tersebut sesuai dengan ketentuan dan persyaratan sebagaimana tercantum dalam Lampiran III PERATURAN MENTERI PERDAGANGAN REPUBLIK INDONESIA NOMOR 20 TAHUN 2021 TENTANG KEBIJAKAN DAN PENGATURAN IMPOR, BERSERTA PERUBAHANNYA




Dokumen ini sah, diterbitkan oleh Kementerian Perdagangan secara elektronik melalui sistem INTRADE dan tidak memerlukan cap dan tanda tangan basah
PROSES PEMOHONAN SAMPAI DENGAN PENENTAN PERUBAHAN/PERSETUJUAN TIDAK DIKENAKAN BIAYA

Figure 1
Approval for Import of Capital Goods in Non-New Condition (BMTB)
Direct User Group C (15 Years) NUMBER: 04.PI-02.22.1508


 Menteri Perdagangan Republik Indonesia

Persetujuan Impor Barang Modal dalam Keadaan Tidak Baru (BMTB) Pemakai Langsung Kelompok C (15 Tahun)
 NOMOR: 04.PI-02.22.1499

Nama : PT GADING CAKRA LOKA
Alamat : JL. GADANG NO.8, RT.010, RW.02, SUNGAI BAMBUI, TANJUNGPRIK, Kota Jakarta Utara, Prop. DKI Jakarta
NIB : 9120303830175

Nomor Pengajuan Intrade : 47526INATRADE/08/2022 Tanggal : 02 Agustus 2022

DASAR HUKUM **MEMPERHATIKAN**

PERATURAN MENTERI PERDAGANGAN REPUBLIK INDONESIA NOMOR 20 TAHUN 2021 TENTANG KEBIJAKAN DAN PENGATURAN IMPOR, BERSERTA PERUBAHANNYA

1. Izin usaha yang diberikan kepada perusahaan untuk melakukan kegiatan usaha selain perdagangan yang dikeluarkan oleh instansi berwenang sesuai dengan ketentuan peraturan perundang-undangan Nomor BXIV-1541/AL/38 Tanggal 17 April 2022
2. Surat pernyataan yang menyatakan bahwa BMTB yang dimpor tidak akan diperjualbelikan atau dijadikan scrap dan usia paling lama 15 (lima belas) tahun Nomor 55/GCLJK/VI/2022 Tanggal 02 Agustus 2022
3. Rencana impor yang ditandatangani dan diandatangani oleh pimpinan perusahaan, yang memuat uraian barang, Pos TarifHS 8 (delapan) digit, jumlah dan satuan barang, negara muat, dan perubahan tujuan Nomor 55/GCLJK/VI/2022 Tanggal 02 Agustus 2022
4. Statutory Certificate antara lain Nationality Certificate, Tonnage Certificate, Load Line Certificate, Safety Construction Certificate, Safety Equipment Certificate dan Class Certificate yang masih berlaku yang diterbitkan oleh Negara asal kapal atau badan klasifikasi yang diakui oleh Negara penerima asal kapal Nomor 8770422-CL Tanggal 01 April 2022
5. Memorandum of Agreement (MOA) antara penjual dan pembeli Nomor MEMORANDUM OF AGREEMENT MT. YOSEI MARU 30 Tanggal 23 Desember 2021

KETENTUAN

1. Menadi ketentuan-ketentuan yang berlaku dalam PERATURAN MENTERI PERDAGANGAN REPUBLIK INDONESIA NOMOR 20 TAHUN 2021 TENTANG KEBIJAKAN DAN PENGATURAN IMPOR, BERSERTA PERUBAHANNYA
2. Impor bertanggung jawab penuh terhadap kebenaran dan kesesuaian dokumen persyaratan, dan data informasi yang disampaikan serta segala akibat hukum yang timbul disebabkan oleh perbuatan, tindakan, pelanggaran baik disengaja atau tidak disengaja, dan/atau kelalaian yang tidak sesuai dengan ketentuan peraturan perundang-undangan atas pelaksanaan impor.
3. Menyampaikan permohonan perubahan setiap perubahan data Perizinan Impor melalui sistem INSW paling lama 30 (tiga puluh) hari sejak tanggal perubahan tersebut sesuai dengan ketentuan dan persyaratan sebagaimana tercantum dalam Lampiran III PERATURAN MENTERI PERDAGANGAN REPUBLIK INDONESIA NOMOR 20 TAHUN 2021 TENTANG KEBIJAKAN DAN PENGATURAN IMPOR, BERSERTA PERUBAHANNYA



Dokumen ini sah, diterbitkan oleh Kementerian Perdagangan secara elektronik melalui sistem INTRADE dan tidak memerlukan cap dan tanda tangan basah
PROSES PEMOHONAN SAMPAI DENGAN PENENTAN PERUBAHAN/PERSETUJUAN TIDAK DIKENAKAN BIAYA

Figure 2
Import Approval of Capital Goods in Non-New Condition (BMTB)
Direct User Group C (15 Years) NUMBER: 04.PI-02.22.1508

5. That on June 3, 2022, through an agent, an application for a Flag Change Service Note was submitted to the Director of Shipping and Maritime Affairs at the Directorate General of Sea Transportation, Ministry of Transportation of the Republic of Indonesia through the innapornet/online system, including documents consisting of: Copy of Memorandum of Agreement Code Name: NIPPON SALE 1993 M/T YOSEIMARU 15 and YOSEIMARU 30; Copy of Delection Certificate M/T YOSEIMARU 15 and YOSEIMARU 30; Copy of Protocol of Delivery and Acceptance M/T YOSEIMARU 15 and YOSEIMARU 30; Copy of Bill of Sale M/T YOSEIMARU 15 and YOSEIMARU 30; Copy of Certificate of Ship of Country of Origin; Copy of General Arrangement (GA) M/T YOSEIMARU 15 and YOSEIMARU 30; Copy of Classification Certificate M/T YOSEIMARU 15 and YOSEIMARU 30; Copy of Owner's Identity (KTP/Confirmation from the Indonesian Minister of Law and Human Rights).

That subsequently on June 17, 2022, received a response from Dirkapel that the application for the Service Note was REJECTED on the grounds that, according to verification through IMO GISIS, the age of the ship exceeded the provisions for Import of Capital Goods in Non-New Condition/BMTB.

6. That subsequently on August 31, 2022, through the agent re-submitted the application for the Change of Flag Service Note to the Directorate of Shipping and Maritime Affairs by attaching documents in accordance with the following technical regulations: Application Letter; Bill of Sale M/T Yoseimaru 15 and M/T Yoseimaru 30; Protocol of Delivery M/T Yoseimaru 15 and M/T Yoseimaru 30; Builder Certificate M/T Yoseimaru 15 and M/T Yoseimaru 30; Company Deed of Establishment and Articles of Association; Company Profile from the Ministry of Law and Human Rights; Ratification of Articles of Association from the Ministry of Law and Human Rights; Director/Owner's ID card; Delection Certificate/Letter of Undertaking M/T Yoseimaru 15 and M/T Yoseimaru 30; Registry Certificate M/T Yoseimaru 15 and M/T Yoseimaru 30; Tonnage Certificate M/T Yoseimaru 15 and M/T Yoseimaru 30; Pollution Prevention Certificate; Ship Safety Certificate; Load Line Certificate; Class Certificate M/T Yoseimaru 15 and M/T Yoseimaru 30; Import Approval Letter from the Indonesian Ministry of Trade; General Arrangement (GA) Ship Image M/T Yoseimaru 15 and M/T Yoseimaru 30.

7. That on September 12, 2022, received a return letter for the request for a Flag Change Service Note with the following response:

SHIP MT. YOSEI MARU 15: 1. Based on the IMO Ship particular database in IMO for the Yosei Maru 15 ship is not registered or not found; 2. Confirmation has been made via electronic mail to the flag State of the ship's origin, but until now no answer has been received; 3. That in connection with points 1 and 2, in the context of implementing the change of the ship's flag, your application cannot be processed.

Legal Status of Ex-Tanker Ships According to the International Maritime Organization

- SHIP MT YOSEI MARU 30: 1. Based on the IMO Ship particular database, for the Yosei Maru 30 ship as referred to in your letter, there was a difference in the year of construction of the ship, namely according to the IMO database it is 1993, but in the Provisional Certificate of the Registry and Interim Certificate of Classification it is written that the year of construction is 2013; 2. That confirmation has been made via electronic mail to the flag State of the ship, but until now no answer has been received; 3. That in connection with points 1 and 2, in the context of implementing the change of the ship's flag, your application cannot be processed.
8. That subsequently on December 31, 2022, the Directorate of Sea Transportation through the Director of Shipping and Maritime Affairs sent a letter to PT. Pelayaran Hub Maritim Indonesia as the agent, regarding: Notification of Follow-up to the Request for Issuance of a Letter of Instruction for the Implementation of Change of Ship Flag, which in essence states that the request for a Flag Change Service Note can be processed if the year of construction of the ship for MT. Yosei Maru 15 in 1992, while for the ship MT. Yosei Maru 30 in 1993.
9. That the letter above follows up on the results of the inspection or verification related to the year of construction of the ship carried out by the Team of the Directorate of Shipping and Maritime Affairs together with the Team from the Main Harbor Master's Office of Tanjung Perak Surabaya and the Team from PT. Biro Klasifikasi Indonesia (Persero), with the findings that:
10. The ship MT. Yosei Maru 15 and Yosei Maru 30, some spare parts of the ship indicate the year 1991 and 1993.
11. In connection with points 1 and 2, the application to change the flag of the Oil Tanker ship named YOSEI MARU 15 and the Oil Tanker ship named YOSEI MARU 30 can be processed, if the year of construction of the ship refers to the actual year of construction of the ship.

CLOSING

CONCLUSION

Based on the discussion of the problems as mentioned above, where the conclusion as an answer is as follows: Through the Ministry of Trade, the Government is increasingly tightening the import of used ships with the issuance of Minister of Trade Regulation No. 20 of 2021 concerning Import Policy and Regulation. This provision revokes Minister of Trade Regulation No. 118 of 2018 concerning Provisions on Imports of Capital Goods in Non-New Condition which has been amended several times. The last amendment was by Minister of Trade Regulation No. 40 of 2021 concerning the Third Amendment to Minister of Trade Regulation No. 118 of 2018.

SUGGESTION

A more conducive and cooperative regulation (regeling) of procedures for purchasing imported used ships is needed to provide protection for importers.

REFERENCES

- 1) Kitab Undang-Undang Hukum Dagang.
- 2) Undang-Undang Nomor 17 Tahun 2008 tentang Pelayaran.
- 3) Peraturan Pemerintah Nomor 51 Tahun 2002 tentang Perkapalan.
- 4) Peraturan Menteri Nomor 8 Tahun 2013 tentang Pengukuran Kapal.
- 5) Undang-Undang Nomor 32 Tahun 2014 tentang Kelautan.
- 6) Peraturan Menteri Nomor 39 Tahun 2017 tentang Pendaftaran dan Kebangsaan Kapal.
- 7) Peraturan Menteri Nomor 43 Tahun 2021 tentang Tata Cara Pengadaan Kapal.
- 8) IMO. "International Convention on Tonnage Measurement of Ships." Tahun 1969.
- 9) UNCLOS 1982 tentang Konvensi Hukum Laut Internasional.
- 10) Admin, 2022, Harmonisasi Kebijakan Impor Kapal Akan Gairahkan Investasi, http://dppinsa.com/content/detail/harmonisasi_kebijakan_impор_kapal_akan_gairahkan_investasi, diakses 01 Juli 2024, pukul 09:30 WIB.
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