

Alfapalmer Law Firm Insights / Maritime Law

## Q&A: Bunker Claims in Indonesia

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## Q&A: Bunker Claims in Indonesia

- Procedures
- Vessel arrest
- Judicial sales of seized vessels
- counterclaim

### **Is it possible to arrest a vessel in Indonesia?**

The Indonesian Shipping Law does regulate on the arrest of vessel. However in practice it is least possible to exercise such an arrest due to the unavailability of the regulation of the minister as required under the law.

### **Any other alternatives and any time frame to obtain such an arrest?**

Yes by submitting a civil claim and requesting a security seizure over the targeted vessel. Please note that by submitting such a claim the plaintiff and the defendant will have to undergo court hearings which are time consuming. The overall time for the court to conclude whether an arrest is legitimate could probably be 4-6 months or more depending on the number of defendants and adjournments during hearings.

### **What document would it be after requesting for such an arrest?**

If the court opines that the security seizure is reasonable, the judges will issue court stipulation of security seizure (penetapan sita).

### **Is it possible for bunker suppliers to request such a seizure?**

Yes. However, it is vital for the bunker suppliers to not only include the vessel charter to the claim but also the vessel's registered owner. This is to avoid the claim being rejected by the court due to formality defect.

### **Would the suppliers and charterer litigate at the arbitration venue as per the contract?**

No, since this is not a contractual dispute and due to the fact that there will be a third party involved in this case that is the vessel owner

### **Which court shall adjudicate such a case?**

In Indonesia all civil cases shall firstly be examined at the relevant District Court (Pengadilan Negeri). In the case of bunker suppliers, the claim could be examined at one of the following district court:

- court having jurisdiction over the office address of the charterer/owner in Indonesia; or
- court having jurisdiction over the vessel's current location in Indonesia.

To learn how we can help you to solve you IP issues, please contact our firm:

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**Will the bunker supplier have to attend court hearings?**

No need to if it appoints a lawyer.

**Will the Plaintiff need to attend court hearings?**

No need to if it appoints a lawyer.

**Will the Plaintiff need to provide security for such a seizure?**

No

**What issues would counter the vessel seizure request**

In practice such as:

-the value of the vessel is way higher than the bunker itself therefore inappropriate;

The claim is addressed against the wrong charterer since there could be sub-charterers or chain charter

**What is the procedure for judicial sale of the seized vessel?**

The judicial sale may only be carried out after obtaining a final and binding court decision. Following such decision the prevailing party shall submit a petition for court warning, followed by auction petition. The overall process until auction might take at least 6-12 months or more due to lengthy bureaucracy, especially during auction preparation.

**Could there be any legal action that could restrain auction?**

Yes the defeating party could possibly file for an Objection (perlawanan) against the court decision. This type of legal remedy is usually filed by a third party claiming that it is the actual owner of the asset being auctioned. By claiming so, the Court usually halts/adjourn the ongoing auction process. Even though the actual owner is the defeating party, it usually makes use of such a remedy to restrain auction process.

**Is there any official cost for judicial sales?**

Yes the prevailing party shall have to pay for official court fee for judicial sales, these include fee for court summons and auction.

**Is mortgage an issue?**

Auction process shall continue even though the seized vessel is under mortgage. However auction proceeds will firstly have to be distributed among mortgage holders.

**Is it possible that the a particular vessel is seized and auctioned by more than one claimant (separate case)?**

Yes, two or more prevailing parties against the same defendant but in different case may seize the same defendant's vessel. The auction proceeds will be distributed among the prevailing parties,

**Alfapalmer Law Firm** has been assisting ship owners, ship charterers, freight forwarder, and insurers in various situations such as: claiming for compensation and counter claim, applying for seizure and auction, vessel release, filing counter claim and objection, etc.

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### Is it possible for the seized vessel to leave the port?

Yes, if prohibition to sail is not requested. Therefore the prevailing party should also submit a petition for vessel relocation to the court.

### How we can help?

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