



Legal Alert

The Suez Canal Blockage:
Notable Potential Legal Issues from an
Indonesian Law Perspective

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In March 2021, an unfortunate event unfolded in the artificial waterways of Egypt, specifically Canal Suez, which expends Port Said to Suez and connects the Mediterranean Sea with the Red Sea. Vessel MV EVER GIVEN ("**Vessel**"), one of the largest container ships in the world, ran aground in the Canal resulting in blockage of the lane. Because of this, vessels crossing from both sides were unable to pass ("**Incident**"). This Incident reportedly disrupted global trade,¹ and was observed to contribute to soaring oil prices in United States, under the assumption that the blockage would take weeks² to recover and vessels would take on additional fees for taking a distant detour around Africa.³

The Vessel along with its cargoes onboard was subsequently detained by the Suez Canal Port Authority (SCA). Further, we understand that the Vessel was scheduled for release on 7 July 2021 in view of the agreement reached between the owners of the Vessel and the SCA.⁴

In this article, we will discuss several notable potential legal issues from an Indonesian law perspective that may arise due to the Incident. While the discussion will be based on general provisions under Indonesian law, please note that the parties involved may have entered into a specific agreement, e.g. Bill of Lading or Charter Party, wherein different provisions and/or limitations of liability could be applied.

General Average and Cargo Lien

We understand that the shipowners had declared General Average related to the Incident, i.e. requires all cargo owners to contribute to the costs of any cargo loss or damage due to the Incident in a proportional manner.⁵

In relevance with Indonesian law, while currently Indonesia has yet to ratify the York-Antwerp Rules, the Indonesian Commercial Code (*Wetboek van Koophandel voor Indonesië, Staatsblad 1847 : 23*) ("**Commercial Code**") provides several conditions for the general average to be applicable, including *inter alia*: (i) loss and damage sustained by goods, which in the situation of emergency, is loaded onto a small or normal ship; and (ii) all losses voluntarily incurred in an emergency

¹ "Suez Canal starts work to extend double lane after Ever given grounding". The Guardian, 17 May 2021. <https://www.theguardian.com/world/2021/may/17/suez-canal-starts-work-to-extend-double-lane-after-ever-given-grounding> (accessed on 19 July 2021).

² Cho, Sharon. "Suez canal blockage sends oil prices rebounding after sell-off". Aljazeera, 24 March 2021. <https://www.aljazeera.com/economy/2021/3/24/bb-suez-canal-blockage-sends-oil-prices-rebounding-after-sell-off> (accessed on 14 June 2021).

³ Longley, Alex et al. "Africa-bound: Ships set for costly detour amid Suez blockage". Aljazeera. 26 March 2021. <https://www.aljazeera.com/economy/2021/3/26/bb-africa-bound-ships-set-for-costly-detour-amid-suez-blockage> (accessed on 14 June 2021).

⁴ Lestari, Reni. "Berbulan-bulan Ditahan Otoritas Suez, Kapal Tanker Raksasa Ever Given Segera Dibebaskan". Kabar24, 5 July 2021. <https://kabar24.bisnis.com/read/20210705/19/1413777/berbulan-bulan-ditahan-otoritas-suez-kapal-tanker-raksasa-ever-given-segera-dibebaskan> (accessed on 16 July 2021).

⁵ Leonard, Matt. "Ever Given, General Average And Why Shippers Will Share The Costs Of A Ship's Rescue". SupplyChainDive, 8 April 2021. <https://www.supplychaindive.com/news/ever-given-general-average-shipper-cost/597994/> (accessed on 16 July 2021).

situation and sustained as a direct cause thereto, as well as the cost that is paid in the same situation for common safety and benefit of the vessel and its cargo.

With regards to the possibility to impose cargo lien in the event of outstanding contribution in general average, practically, under contract of carriage, the parties may stipulate/govern that the shipowner/carrier has the right to exercise lien upon all cargoes and/or freight for such outstanding amount.

Nevertheless, it is worth noting that Article 493 of the Commercial Code specifically states that the carrier is not entitled to retain cargo as a security of payment payable to the carrier in relation to carriage and as a contribution to general average. In this line, any contract containing such condition will be void. Thus, under Indonesian Law perspective a lien upon cargo cannot be exercised/enforced by the carrier.

Salvage Claim and Detention of Vessel

We understand that the shipowners were facing a claim for salvage operations from the SCA.

Under Indonesian law perspective, a salvage reward shall be paid for any salvage operations (according to Article 560 of the Commercial Code). Article 568 of the Indonesian Commercial Code states that for salvage conducted upon a vessel and her passengers and cargo, the salvage fee must be paid by the shipowner.

With regard to detention of vessel in Indonesia, legally speaking, it may only be exercised if the vessel is involved in a criminal investigation or civil claim. However, it is worth to note that under General Regulation for the Ports and Waters of the Shipping in Indonesia of 1925 ("**Port Regulation 1925**"), the Harbor Master may delay the issuance of Port Clearance of the vessel (at the port within the Harbor Master's jurisdiction) that still has outstanding payment obligation arising from a collision, which would cause 'detention' i.e. delays for the vessel's departure from the relevant port.

Force Majeure Event

We noted that a contributing factor of the Incident was allegedly rough weather conditions.⁶ Please note that in order to be excused from their liability to compensate damages under Indonesian law due to a force majeure event, the shipowners shall establish that the Incident occurred due to an unforeseeable event beyond their control in pursuant to Article 1244 and Article 1245 of the Indonesian Civil Code (*Burgerlijk Wetboek, Staatsblad 1847:23*) ("**Civil Code**"), i.e. that the non-fulfillment or unpunctual fulfillment of the contractual obligations is caused by an occurrence of unforeseeable circumstances outside of the responsibility of one of the parties, without any element of bad faith.

⁶ Oanh Ha, K., et.al. "How a Desert Wind Blew \$10 Billion of Global Trade Off Course". Bloomberg, March 27, 2021. <https://www.bloomberg.com/news/articles/2021-03-27/how-a-desert-wind-in-suez-canal-blew-global-trade-off-course> (accessed on 21 July 2021).

If the party who was prevented to perform its contractual obligation due to a force majeure event (defaulting party), is able to prove that its default stemmed from the force majeure event, then the defaulting party may be exempted from responsibilities arising from the non-performance of contractual obligations. In practice, it may be challenging for the shipowners to rely on a force majeure event unless they can provide *prima facie* evidence to prove the existence of force majeure event as stipulated under the Civil Code.

Delay on Delivery of Cargo

Another consequences of the Incident will certainly include delay on delivery of the cargoes onboard the Vessel.

Legally speaking, Article 486 of the Commercial Code provides that the carrier shall maintain the safety of the delivered goods from the receipt of goods until its delivery. Article 40 of Shipping Law provides that a carrier shall be responsible for the safety and security of the cargo onboard its vessel.

Please keep in mind that a 1 (one) year time bar is applicable in Indonesia for any claim against the carrier arising from a carriage of goods pursuant to Article 741 paragraph (3) of the Commercial Code. The time bar, however, may be extended through the parties' agreement.

Conclusion

It is no doubt that there are plenty of legal issues attached to the Incident. In order to avoid exposure of such event and accordingly protect the parties' interest in carriage/shipment of cargo, prior to entering into a contract (of carriage), it is paramount to understand the governing law of the contract as well as to include the appropriate clauses under the contract, e.g. regarding general average and cargo lien. Such precautionary measures are often disregarded, considering the use of a generally available template for the carriage through sea transportation. For instance, a template of charter party provided by the Baltic and International Maritime Council (BIMCO) is used without being properly tailored to the parties' conditions/interests.

If a similar unfortunate event like the Incident had occurred, it is necessary to understand the applicable laws within the location where the incident occurred. Further, to prevent further losses/delays/legal issues that may arise due to the incident (including claim from local authorities and compliance with local regulations), we recommend for the involving parties in the incident (particularly the shipowners) to immediately engage and consult with a qualified local lawyer/legal counsel.

The authors would like to acknowledge the contribution of our Junior Associate, Melisa Febriani in preparing this legal alert.



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