

JURIDICAL REVIEW OF LEGAL PROTECTION FOR PARTIES IN SHIP CHARTER AGREEMENTS

(CASE STUDY: SPOB JULVINDA SHIP CHARTER AGREEMENT BETWEEN PT MITHA SAMUDERA WIJAYA AND PT BESTIE HOPER INDONESIA)

Adrian Malik Kusuma ^{a*)}, Fajriawati ^{a)}

^{a)} Universitas Muhammadiyah Sumatera Utara, Medan, Indonesia

^{*)}Corresponding Author: malikusumadrian@gmail.com

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Abstract. This study aims to examine the legal protection of parties in ship charter agreements (charter party) under Indonesian positive law, with a case study of Time Charter Agreement Number /MSW-BHI/TC/X/2024 between PT Mitha Samudera Wijaya as ship owner and PT Bestie Hoper Indonesia as charterer for vessel SPOB Julvinda. This research employs a normative juridical method with statutory and conceptual approaches. The results show that the legal regulation of ship charter agreements in Indonesia is scattered across the Civil Code, Commercial Code, and Law Number 17 of 2008 on Shipping. Legal protection for parties is realized through balanced contractual clauses covering rights and obligations, deposit mechanisms, off-hire provisions, and dispute resolution through the Medan District Court. Default in ship charter agreements can be resolved through litigation or non-litigation (mediation and arbitration). This study recommends the need for a single maritime law codification in Indonesia to ensure legal certainty and balanced protection for all parties.

Keywords: Ship Charter Agreement, Charter Party, Legal Protection, Default, Time Charter.

I. INTRODUCTION

Indonesia is the world's largest archipelagic state, comprising more than 17,000 islands and a maritime territory that vastly exceeds its landmass (Nasution, 2023). This geographical condition positions the maritime sector as the backbone of national mobility for people and goods, as well as the primary driver of national economic growth. Sea transportation plays a strategic role in the national logistics system, international trade, and ocean-based economic development.

Ship charter agreements (charter party) constitute a vital legal instrument in the maritime industry and international trade. In Indonesia, as an archipelagic nation whose maritime territory accounts for two-thirds of its total area, shipping activities carry strategic significance from economic, social, and national defence perspectives. Nevertheless, the legal complexities surrounding ship charter agreements frequently give rise to uncertainty and loss for the parties involved, whether ship owners or charterers (Triwulan, 2021).

In the practice of national shipping business, ship charter agreements often arise from the financial limitations of operators who cannot afford to own their own fleets. This situation has driven the growth of time charter, voyage charter, and bareboat charter practices as viable legal and economic solutions. As a concrete example, the Time Charter Agreement Number /MSW-BHI/TC/X/2024 signed on 31 October 2024

between PT Mitha Samudera Wijaya as ship owner and PT Bestie Hoper Indonesia as charterer for vessel SPOB Julvinda with a capacity of 4,500 KL, exemplifies the complexity of ship charter agreements in practice (Harahap, 2023).

Under Indonesian civil law, ship charter agreements fall within the scope of lease agreements as regulated under Article 1548 of the Civil Code (KUHPPerdata). In addition, ship charter agreements are also subject to the provisions of the Commercial Code (KUHD) and various statutes in the field of shipping, including Law Number 17 of 2008 on Shipping (Sjahdeini, 2023).

In the context of contract law, the legal protection of parties should rest upon fundamental contractual principles, including freedom of contract, consensualism, pacta sunt servanda, and good faith, as governed by Articles 1320 and 1338 of the Civil Code. However, in the practice of ship charter agreements, these principles are often not applied optimally, particularly with respect to the protection of parties who are economically or legally weaker (Fuady, 2021).

Beyond positive law, Islamic legal values also provide a robust normative foundation for legal protection in contractual relationships. Islam regards a contract (akad) as a binding commitment that must be fulfilled with full responsibility and justice. This is affirmed in the Holy Qur'an, Surah Al-Ma'idah verse 1: يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ, which means: "O you who have believed, fulfil [all] contracts" (QS. Al-Ma'idah: 1).

In reality, a significant gap still exists between the existing legal norms and their application in practice. Many ship charter agreements are drafted unilaterally by ship owners, with standard clauses that tend to disadvantage the charterer. Conversely, there are also cases where charterers fail to fulfil their obligations, thereby causing harm to ship owners. This situation underscores the urgent need for more comprehensive regulation and the consistent application of balanced legal protection principles for both parties (Miru, 2021)..

Problem Formulation

Based on the background described above, the research problems in this study are formulated as follows:

1. How is the ship charter agreement (charter party) regulated under the prevailing laws and regulations of Indonesia?
2. What forms of legal protection are available to the parties (ship owner and charterer) in a ship charter agreement, as reflected in the Time Charter Agreement between PT Mitha Samudera Wijaya and PT Bestie Hoper Indonesia?
3. What dispute resolution mechanisms are available in the event of a breach of contract in a ship charter agreement in Indonesia?

Research Objectives

1. To examine the legal regulation of ship charter agreements (charter party) under the prevailing laws and regulations of Indonesia.
2. To analyse the forms of legal protection available to the ship owner and charterer in a ship charter agreement, based on the case study of the Time Charter Agreement between PT Mitha Samudera Wijaya and PT Bestie Hoper Indonesia.
3. To explain the dispute resolution mechanisms applicable in the event of a breach of contract in a ship charter agreement in Indonesia.

1. General Overview of Contracts

A contract is one of the most important and fundamental legal institutions in the Indonesian civil law system. Normatively, Article 1313 of the Civil Code defines a contract as an act by which one or more persons bind themselves to one or more other persons. This definition affirms that a contract creates a legal bond that gives rise to rights and obligations for the parties involved (Panggabean, 2022).

Under Indonesian positive law, the regulation of contracts is found in Book III of the Civil Code, which adopts an open system (Fajrawati, 2020).

This freedom is reflected in the principle of freedom of contract as stipulated in Article 1338 paragraph (1) of the Civil Code, which provides that all contracts validly concluded have the force of law between the parties who made them (Salim, 2021).

2. General Overview of Lease Agreements

A lease agreement is one of the nominate contracts expressly regulated in the Civil Code, specifically under Articles 1548 through 1600. The lessor is obliged to deliver the leased object in good condition, to guarantee that it may be used for its intended purpose, and to carry out any necessary repairs during the lease term. Conversely, the lessee is obliged to pay the agreed rent on time, to maintain the leased object, and to use it in good faith (Satrio, 2021).

3. Ship Charter Agreements (Charter Party)

A ship charter agreement or charter party is a specialised form of lease agreement whose subject matter is a sea vessel. In practice, several types of ship charter agreements are recognised, namely voyage charter, time charter, and bareboat charter. The differences between these types of agreements have implications for the allocation of responsibilities between the ship owner and the charterer, particularly with regard to vessel operation, crewing, and risks arising during the charter period (Puspitawati, 2021).

Under a time charter, the charterer hires the vessel together with its full crew for a fixed period. The ship owner retains responsibility for the vessel's operation and maintenance, while the charterer has the right to determine the route and cargo. This is reflected in the Time Charter Agreement between PT Mitha Samudera Wijaya and PT Bestie Hoper Indonesia, in which PT Mitha Samudera Wijaya provides the vessel SPOB Julvinda along with its crew, while PT Bestie Hoper Indonesia bears operational costs such as fuel, port fees, and crew bonuses (Harahap, 2023).

4. Legal Regulation of Ship Charter Agreements in Indonesia

The legal regulation of ship charter agreements in Indonesia is fragmented across various statutes. The Civil Code governs general contractual principles, the Commercial Code regulates commercial and maritime aspects, while Law Number 17 of 2008 on Shipping addresses safety, liability, and shipping business activities. This fragmented regulatory landscape frequently gives rise to practical difficulties, particularly concerning legal certainty and legal protection for the parties involved (Manalu, 2021).

5. Legal Protection of the Parties

According to Satjipto Rahardjo, legal protection is an effort to safeguard the interests of a person by granting that person the authority to act in order to protect those interests. Legal protection functions not only as a repressive remedy after a dispute has arisen, but also as a preventive instrument to forestall legal violations from the very outset of the legal relationship (Rahardjo, 2020).

Law Number 17 of 2008 on Shipping also provides a legal foundation for the protection of parties in ship charter agreements. This law requires ship owners and operators to comply with safety and seaworthiness standards. Such obligations indirectly protect the interests of charterers and third parties who use shipping services (Puspitawati, 2022).

6. Breach of Contract and Dispute Resolution

Breach of contract (wanprestasi) under Indonesian civil law refers to a situation in which a party fails to perform its obligation, performs the obligation but not in the manner required, performs the obligation but with undue delay, or performs an act that the contract expressly prohibits (Panggabean, 2022). This concept of breach of contract serves as the basis upon which the aggrieved party may seek legal protection.

Legal protection may also be reinforced through the use of alternative dispute resolution (ADR) mechanisms, such as mediation and arbitration. These mechanisms provide more effective and efficient legal protection compared to court proceedings, particularly in ship charter agreement disputes

that are often complex and involve significant commercial interests (Siregar, 2021).

II. RESEARCH METHOD

This research employs a normative juridical method, which focuses on the examination and analysis of legal materials comprising statutes, legal doctrines, and applicable agreements (Soekanto, 2022). The approaches used are a statutory approach and a conceptual approach. Data sources are drawn from secondary data encompassing primary legal materials (statutes and regulations), secondary legal materials (legal literature, journals, and scholarly works), and tertiary legal materials (legal dictionaries and encyclopaedias). Data analysis is conducted qualitatively (Hanifah, 2020).

III. RESULT AND DISCUSSION

1. Legal Regulation of Ship Charter Agreements in Indonesia

The legal regulation of ship charter agreements in Indonesia rests on three principal pillars. First, the Civil Code as the general contractual foundation, particularly Article 1548, which defines a lease as an agreement in which one party binds itself to grant the enjoyment of a thing to another party for a fixed period in exchange for payment of a price. Second, the Commercial Code, which governs specific aspects of shipping and maritime commerce. Third, Law Number 17 of 2008 on Shipping, which requires ship owners and operators to comply with safety and seaworthiness standards (Puspitawati, 2022).

The Time Charter Agreement Number /MSW-BHI/TC/X/2024 between PT Mitha Samudera Wijaya and PT Bestie Hoper Indonesia has substantively accommodated the aforementioned legal provisions. The agreement contains clauses covering the specifications of vessel SPOB Julvinda (GT 2,876; capacity 4,500 KL), a charter term of one (1) year, the sailing area (Sumatra, Java, Kalimantan, and Sulawesi), a charter hire of IDR 1,600,000,000 per month, and detailed payment mechanisms (Nasution, 2023). PT Mitha Samudera Wijaya, as the First Party, has fulfilled the formal requirements as a shipping operator by holding a Sea Transport Business Licence (SIUPAL) No. B XXXIV – 496/AT.54 issued by the Ministry of Transportation of the Republic of Indonesia. This reflects compliance with the licensing requirements stipulated under the Shipping Law (Manalu, 2021).

2. Legal Protection of the Parties in the Time Charter Agreement

Preventive legal protection in the Time Charter Agreement between PT Mitha Samudera Wijaya and PT Bestie Hoper Indonesia is realised through the following mechanisms:

a. Deposit Mechanism — The agreement requires PT Bestie Hoper Indonesia to pay a deposit equivalent to 100% of the monthly charter hire (IDR 1,600,000,000) no later than one (1) day after the agreement is signed. This deposit serves as a financial guarantee for PT Mitha Samudera Wijaya and shall be refunded within seven (7) working days following the expiry of the charter period. This mechanism provides concrete legal protection for the ship owner (Kristiyanti, 2022).

b. Off-Hire Clause — Should the vessel suffer mechanical failure, certificate expiry, or a crew shortage causing a delay

exceeding 3x24 hours, the vessel shall be declared off-hire and the period shall not count toward the charter term. This protects PT Bestie Hoper Indonesia from paying charter hire for a vessel that is unable to operate (Ahmadi, 2021).

c. Clear Allocation of Responsibilities — The agreement clearly delineates the responsibilities of each party. PT Mitha Samudera Wijaya is responsible for lubricating oil, supervision costs, marine hull insurance, crew salaries and meal allowances, and vessel maintenance. PT Bestie Hoper Indonesia, on the other hand, bears the costs of fuel, port fees, pilotage, towage, and crew bonuses of IDR 30,000,000 per month (Salim, 2021).

d. Late Payment Penalty Clause — Should PT Bestie Hoper Indonesia fail to pay charter hire on time, a penalty of 0.1% per day of the outstanding charter hire shall be imposed. PT Mitha Samudera Wijaya also has the right to suspend vessel operations until the payment obligation is discharged. This mechanism provides legal certainty and promotes payment compliance (Widodo, 2022).

e. Sub-Charter Prohibition Clause — The agreement prohibits PT Bestie Hoper Indonesia from sub-chartering the vessel to any third party without the prior written consent of PT Mitha Samudera Wijaya. Any violation of this clause may give rise to legal claims and claims for material damages (Muru, 2021).

f. Force Majeure Clause — The agreement sets out in detail the force majeure conditions, which include natural disasters, war, civil unrest, and government economic policy measures. The affected party is required to provide written notice within seven (7) days. This clause provides legal certainty in extraordinary circumstances and protects both parties from unforeseeable liabilities (Fuady, 2021).

3. Dispute Resolution for Breach of Contract in Ship Charter Agreements

Breach of contract in ship charter agreements may take various forms, including: delayed payment of charter hire, failure to deliver the vessel at the agreed time, the vessel's condition not conforming to the agreed specifications, and violation of the sub-charter prohibition clause. In the Time Charter Agreement between PT Mitha Samudera Wijaya and PT Bestie Hoper Indonesia, the dispute resolution mechanism has been structured in a hierarchical manner (Widodo, 2022).

First, resolution through mutual deliberation (*musyawarah mufakat*) between the parties within a period of 30 (thirty) days from the date of the dispute arising. This represents the application of the principle of good faith in the performance of agreements as regulated under Article 1338 paragraph (3) of the Civil Code (Kristiyanti, 2022).

Second, should the deliberation fail to reach a consensus within 30 (thirty) days, the parties have agreed to resolve the dispute through the Medan District Court. The explicit and unambiguous selection of a dispute resolution forum provides legal certainty for the parties and avoids jurisdictional uncertainty. In addition to litigation, the parties may also pursue alternative channels, namely mediation or arbitration through the Indonesian National Arbitration Board (BANI), as permitted under Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution (Yahya, 2021).

The agreement also expressly excludes the application of Articles 1266 and 1267 of the Civil Code, which require a court

decision for the termination of a contract. Consequently, the parties may terminate the agreement directly by mutual consent without awaiting a court judgment, thereby providing greater legal flexibility (Siregar, 2021).

IV. CONCLUSIONS

Based on the research findings and discussion, the following conclusions may be drawn. First, the legal regulation of ship charter agreements in Indonesia is fragmented across the Civil Code, the Commercial Code, and Law Number 17 of 2008 on Shipping. This fragmented state demands a comprehensive understanding from shipping operators in order to conclude valid agreements that provide balanced protection (Manalu, 2021). Second, the legal protection of parties in the Time Charter Agreement between PT Mitha Samudera Wijaya and PT Bestie Hoper Indonesia has been realised through various contractual clauses, encompassing a deposit mechanism, an off-hire clause, a clear allocation of responsibilities, a late payment penalty clause, a sub-charter prohibition, and force majeure provisions (Rahardjo, 2020). Third, dispute resolution for breach of contract in ship charter agreements may be pursued through two channels, namely mutual deliberation as a non-litigation channel, and the Medan District Court as a litigation channel, in accordance with the choice of law agreed upon by the parties (Yahya, 2021). Based on the conclusions above, the researchers recommend the following: first, the government should urgently codify Indonesian maritime law into a single, comprehensive statute to resolve the problems arising from fragmentation and regulatory overlap. Second, shipping operators should ensure that every ship charter agreement contains clear, detailed, and balanced clauses, particularly with respect to vessel specifications, allocation of responsibilities, payment mechanisms, and dispute resolution. Third, the arbitration mechanism should be more widely promoted as an alternative dispute resolution method that is faster, more efficient, and more conducive to preserving business confidentiality than litigation (Siregar, 2021).

REFERENCES

- [1] Ahmadi, M. (2021). *Contract Law and Contract Drafting*. Jakarta: Rajawali Pers.
- [2] Fuady, M. (2021). *Contract Law: From a Business Law Perspective*. Bandung: Citra Aditya Bakti.
- [3] Hanifah, I. (2020). *Guidelines for Student Final Paper Writing*. Medan: CV. Pustaka Prima.
- [4] Miru, A. (2021). *Contract Law and Contract Drafting*. Jakarta: Rajawali Pers.
- [5] Rahardjo, S. (2020). *Legal Science*. Bandung: Citra Aditya Bakti.
- [6] Salim, H. (2021). *Contract Law: Theory and Contract Drafting Techniques*. Jakarta: Sinar Grafika.
- [7] Satrio, J. (2021). *Law of Obligations: Lease Agreements*. Jakarta: Kencana.
- [8] Sjahdeini, S. R. (2023). *Law of Marine Insurance and Carriage Agreements*. Jakarta: Kencana.
- [9] Soekanto, S. (2022). *Introduction to Legal Research*. Jakarta: UI Press.
- [10] Sugiyono. (2020). *Quantitative, Qualitative, and R&D Research Methods*. Bandung: Alfabeta.
- [11] Triwulan, T. (2021). *Maritime Law: Sea Transportation and Marine Resource Exploitation*. Jakarta: Kencana Prenada Media Group.
- [12] Yahya, M. (2021). *Arbitration and Alternative Dispute Resolution*. Jakarta: Sinar Grafika.
- [13] Fajriawati, F., & Harisman, H. (2020). Application of the gallery walk method to increase activities and learning achievement of law students in Pancasila Education Courses. *International Journal Reglement & Society (IJRS)*, 1(2), 86-92.
- [14] Harahap, R. (2023). Implementation of Ship Charter Agreement Law (Time Charter) at Shipping Companies in Belawan Port. *Jurnal Ilmiah Hukum dan Keadilan [Scientific Journal of Law and Justice]*, pp. 45-60.
- [15] Kristiyanti, C. T. (2022). The Existence of the Freedom of Contract Principle in the Indonesian Contract Law System as an Instrument of Legitimation for Modern Economic Activity. *Jurnal Hukum dan Pembangunan [Journal of Law and Development]*.
- [16] Manalu, D. P. (2021). Fragmentation of Charter Party Legal Regulation in Indonesia: Problems of Legal Certainty and Efforts Toward Normative Harmonisation. *Jurnal Ilmu Hukum Prima [Prima Journal of Legal Science]*, pp. 98-113.
- [17] Nasution, M. I. (2023). Implementation of Ship Charter Agreement Law (Time Charter) at Shipping Companies in Belawan Port. *Jurnal Ilmiah Hukum dan Keadilan [Scientific Journal of Law and Justice]*, pp. 45-60.
- [18] Panggabean, H. S. (2022). The Concept of Breach of Contract in Indonesian Contract Law and Its Application as Grounds for Claims in Commercial Contract Disputes. *Jurnal Hukum dan Peradilan [Journal of Law and the Judiciary]*, pp. 201-218.
- [19] Panggabean, H. S. (2022). Legal Protection of Ship Owners and Charterers in Carriage of Goods by Sea Agreements in Cases of Breach of Contract. *Jurnal Hukum Maritim Indonesia [Indonesian Maritime Law Journal]*, pp. 112-128.
- [20] Puspitawati, D. (2021). The Legal Characteristics of Charter Party Agreements: Between Ordinary Lease and Maritime Carriage Contracts. *Jurnal Hukum Maritim Indonesia [Indonesian Maritime Law Journal]*, pp. 55-71.
- [21] Puspitawati, D. (2022). Implementation of Vessel Seaworthiness Obligations Under Law No. 17 of 2008 as a Form of Legal Protection for Charterers and Third Parties. *Jurnal Hukum Maritim Indonesia [Indonesian Maritime Law Journal]*, pp. 55-71.
- [22] Siregar, M. F. (2021). The Effectiveness of Arbitration as a Dispute Resolution Mechanism for Charter Party Disputes in the Indonesian Shipping Industry. *Jurnal Hukum Bisnis dan Penyelesaian Sengketa [Journal of Business Law and Dispute Resolution]*, pp. 201-215.

- [23] Widodo, B. (2022). Interpretation of Article 1238 of the Civil Code on Breach of Contract by Operation of Law in Modern Business Contracts. *Jurnal Hukum Ius Quia Iustum*, pp. 289-306.
- [24] Civil Code (Burgerlijk Wetboek voor Indonesië) [Indonesian Civil Code].
- [25] Commercial Code for Indonesia (Wetboek van Koophandel voor Indonesië) [Indonesian Commercial Code].
- [26] Law Number 17 of 2008 on Shipping.
- [27] Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution.
- [28] Ministerial Regulation of the Ministry of Transportation No. 61 of 2020 on Procedures for the Registration of Commercial Vessels.
- [29] Ship Charter Agreement (Time Charter) Number /MSW-BHI/TC/X/2024 between PT Mitha Samudera Wijaya and PT Bestie Hoper Indonesia, 31 October 2024.