

April 2024

Developing Standards for PSMA 2009 Implementing Port and Its Implementation in Indonesia

Akhmad Solihin

Department of Utilization of Fishery Resources, Faculty of Fisheries and Marine Sciences, Institut Pertanian Bogor, akhmad_solihin@apps.ipb.ac.id

Darmawan Darmawan

Department of Utilization of Fishery Resources, Faculty of Fisheries and Marine Sciences, Institut Pertanian Bogor, darmawan@apps.ipb.ac.id

Muhammad F.A. Sondita

Department of Utilization of Fishery Resources, Faculty of Fisheries and Marine Sciences, Institut Pertanian Bogor

Ari Purbayanto

Department of Utilization of Fishery Resources, Faculty of Fisheries and Marine Sciences, Institut Pertanian Bogor

Follow this and additional works at: <https://scholarhub.ui.ac.id/ijil>



Part of the [International Law Commons](#)

Recommended Citation

Solihin, Akhmad; Darmawan, Darmawan; Sondita, Muhammad F.A.; and Purbayanto, Ari (2024) "Developing Standards for PSMA 2009 Implementing Port and Its Implementation in Indonesia," *Indonesian Journal of International Law*. Vol. 21: No. 3, Article 1.

DOI: 10.17304/ijil.vol21.3.3

Available at: <https://scholarhub.ui.ac.id/ijil/vol21/iss3/1>

This Article is brought to you for free and open access by the Faculty of Law at UI Scholars Hub. It has been accepted for inclusion in Indonesian Journal of International Law by an authorized editor of UI Scholars Hub.

BUILDING PORT STANDARDS IN IMPLEMENTING PORT STATE MEASURES AGREEMENT 2009 IN INDONESIA

Akhmad Solihin* †, Darmawan, Ari Purbayanto**,
Muhammad Fedi Alfiadi Sondita****

*Department of Utilization of Fishery Resources, Faculty of Fisheries and Marine Sciences,
Institut Pertanian Bogor, Indonesia

**Center for Coastal and Marine Resource Studies, Institut Pertanian Bogor, Indonesia

Correspondence: darmawan@apps.ipb.ac.id

Abstract

The ratified countries of PSMA 2009 are mandated to determine their implementing port without specifying any particular standards. The presence of port standards will ensure the effectiveness of services in preventing and eradicating IUU Fishing. Therefore, standards are needed to optimize the main objectives of the 2009 PSMA, especially in Indonesia, an archipelagic country with diverse fishing port classes and different management systems between general cargo ports and fishing ports. The objectives of this research are (1) to develop service standards for ports implementing PSMA 2009 and (2) to examine the readiness of ports implementing PSMA 2009 to prevent IUU fishing. This research uses content analysis and literature review methods. The results of this study reveal that Indonesia has legally adopted the 2009 PSMA, but there are two port state regimes that prevent and reduce IUU fishing such as Port State Measures and Port State Control. The service standards that must be met by ports designated to implement PSMA 2009 are (1) application services, including service officers receiving application letters and risk analysis officers, and (2) inspection services, including trained officers, authorized officers, English-speaking officers, inter-agency coordination mechanisms, and officer identity. While Benoa General Cargo/Public Port is ready to implement PSMA 2009, its fishing port still needs improvement.

Keywords: Fishing Port, IUU Fishing, PSMA 2009, Standard.

Submitted: 7 January 2024 | Revised: 28 March 2024 | Accepted: 29 April 2024

I. INTRODUCTION

Illegal, Unreported, and Unregulated fishing practices, or IUU fishing,

threaten fisheries management¹ in national and international waters.² IUU fishing threatens fisheries' sustainability and may affect food security, livelihood, and developing countries economically.³

One of the binding international law instruments that addresses the IUU fishing issue is the Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing (PSMA 2009).⁴ PSMA 2009 was the first international agreement focused on IUU fishing.⁵ International instruments can be combined with other approaches to preventing and eliminating IUU fishing, such as tracking vessel suspected of IUU fishing based on data exchange from port countries, inspection at fishing ports to determine irregularities, and market actions to prevent illegal landings of fish catches into the international market.⁶

The Indonesian Government ratified PSMA 2009 with Presidential Regulation No. 43 of 2016.⁷ The main objective of PSMA 2009 is to enhance

¹ Emma Witbooi, "Illegal, Unreported and Unregulated Fishing on the High Seas: The Port State Measures Agreement in Context," *The International Journal of Marine and Coastal Law* 29, no. 2 (2015): 291, doi:10.1163/15718085-12341314. See also, Gohar A. Petrossian, "Preventing Illegal, Unreported and Unregulated (IUU) Fishing: A Situational Approach," *Biological Conservation* 189 (2015): 1, doi:10.1016/j.biocon.2014.09.005; Margaret A. Young, "International Trade Law Compatibility of Market-Related Measures to Combat Illegal, Unreported and Unregulated (IUU) Fishing," *Marine Policy* 69 (2016): 209, doi:10.1016/j.marpol.2016.01.025; and Ganapathiraju Pramod, Tony J. Pitcher, and Gopikhrisna Mantha, "Estimated of Illegal Fishing and Unreported Sea Food Imports to Japan," *Marine Policy* 84 (2017): 42, doi:10.1016/j.marpol.2017.06.032.

² Arron N. Honniball, "What's in a Duty? EU Identification of Non-cooperating Port States and Their Prescriptive Responses," *The International Journal of Marine and Coastal Law* 35 (2020): 20, doi:10.1163/15718085-23341067. See also Lonna Bethel, Henning Jessen, and Johan Hollander, "Implementing the Port State Measures Agreement to Combat Illegal, Unreported and Unregulated Fishing in the Caribbean," *Marine Policy* 132 (2021): 1, doi:10.1016/j.marpol.2021.104643.

³ Ganapathiraju Pramod et al., "Estimates of Illegal and Unreported Fish in Seafood Imports to USA," *Marine Policy* 48 (2014): 102, doi:10.1016/j.marpol.2014.03.019.

⁴ Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing opened for signature 22 November 2009 (entered into force 5 June 2016).

⁵ Judith Swan, "Port State Measures—from Residual Port State Jurisdiction to Global Standards," *The International Journal of Marine and Coastal Law* 31 (2016): 395. doi:10.1163/15718085-12341404. See also Jade Lindley and Erika J. Techera, "Overcoming Complexity in Illegal, Unregulated and Unreported Fishing to Achieve Effective Regulatory Pluralism," *Marine Policy* 81 (2017): 71, doi:10.1016/j.marpol.2017.03.010., and Ety R Agoes, "Development Toward the Adoption of the FAO Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing," *Indonesian Journal of International Law* 8 (2011):202, doi: 10.17304/ijil.vol8.2.1.

⁶ Witbooi, "Illegal, Unreported and Unregulated Fishing," 291.

⁷ Indonesia. *Peraturan Presiden tentang Persetujuan Tentang Ketentuan Negara Pelabuhan untuk Mencegah, Menghalangi, dan Memberantas Penangkapan Ikan yang Ilegal, Tidak Dil-*

the roles of the port of a state in terms of implementing monitoring, controlling, and surveillance (MCS) at ports in order to limit fishing vessels suspected of carrying out IUU fishing or fishing vessels that will carry out IUU fishing activities within the jurisdictional waters of coastal and offshore countries.⁸ Limiting the movement of fishing vessels identified as violating the law can be done because ratifying countries have a list of IUU fishing vessels which is shared by other country members and the Regional Fisheries Management Organization (RFMO). Inspection by authorized officers at fishing ports can save port countries' costs in combating IUU fishing as inspections at ports are cheaper and safer than MCS in the middle of the sea.⁹ Port states that have ratified or acceded to PSMA 2009 are then obliged to designate ports in their jurisdiction to implement the provisions contained in PSMA 2009 and report it to the Food Agriculture Organization (FAO).¹⁰ However, PSMA 2009 does not require specific port standards to implement the provisions outlined in PSMA 2009. It is emphasized that the ports designated and published to FAO must have sufficient capacity to carry out inspection according to PSMA 2009.¹¹ Thus, every PSMA 2009 ratifying state is obliged to appoint and announce any ports conducting PSMA 2009, and those ports must have the capacity to implement PSMA 2009. However, the absence of minimum standards in the forms of characteristics and capabilities of ports implementing PSMA 2009 can be interpreted as a handover of the authority for each country to regulate the necessary adjustments at its ports.

The imperative for establishing port service standards is grounded in the essential requirement to address the prevention, deterrence, and elimination of IUU fishing within port regions, thus requiring careful consideration of bilateral and multilateral port access commitments.¹² The situation underscores the

aporkan, dan Tidak Diatur. Perpres No. 43 Tahun 2016. (*President Regulation on Ratification Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing*, President Regulation No. 43 Year 2016).

⁸ Fadhil Alghifari, "Analisis Faktor-Faktor Penghambat Ratifikasi Port State Measures Agreement oleh Indonesia Periode 2009-2014 [Analysis of Factors Obstructing Ratification of Port State Measures Agreement by Indonesia for the Period 2009-2014]," *Journal of International Relations* 2 (2016): 143, doi: <https://doi.org/10.14710/jirud.v2i4.13526>. See also Callum Musto and Efthymios Papastavridis, "Tackling Illegal, Unreported, and Unregulated Fishing Through Port State Measures," *Melbourne Journal of International Law* 22 (2021): 2, Available at SSRN: <https://ssrn.com/abstract=3930015>.

⁹ Honniball, "What's in a Duty," 20.

¹⁰ Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Article 7 paragraph (1).

¹¹ *Ibid.*, Article 7 paragraph (2).

¹² Andrew Serdy, "The Shaky Foundations of the FAO Port State Measures Agreement: How Watertight Is the Legal Seal against Access for Foreign Fishing Vessels?" *The International Journal of Marine and Coastal Law* 31 (2016): 428.

significance of collaboration and communication with relevant stakeholders as it constitutes a vital prerequisite for obtaining data and information concerning the practices of IUU fishing carried out by fishing vessels. As articulated by Najemi and Winanda,¹³ the ramifications of endorsing PSMA 2009 are evident in disclosing information and subsequent alterations about port infrastructure development, human resources, and the harmonization of PSMA 2009 with domestic regulations and institutions. Furthermore, Kusumawati and Afriansyah¹⁴ emphasized that the execution of the PSMA 2009 demands concerted efforts from governmental entities, including the Marine Security Agency, Indonesian Navy, Ministry of Maritime Affairs and Fisheries (MoMAF), Marine Police, Directorate General of Customs, and other pertinent elements. Witbooi¹⁵ issued a cautionary note, asserting that the port-state approach must be combined with additional measures, including those that are complementary and market-related. In the light of this, the formulation of service standards at ports implementing PSMA 2009 necessitates a meticulous consideration of the development of infrastructure, improvement of human resource capabilities, collaborative efforts among stakeholders, and the reinforcement of cooperation among state institutions.

Although there is no standard for the ports designated as PSMA 2009 implementers, the Ministry of Marine Affairs and Fisheries (MoMAF) has designated four ports to implement PSMA 2009 based on The Decree of the Minister of Marine Affairs and Fisheries.¹⁶ In implementing the provisions of the 2009 PSMA, the designated ports must have equal capacity and performance between one another so that the provisions in the PSMA 2009 can be applied consistently with the same service standards. With consistent implementation

¹³ Andi Najemi and Winanda Kusuma, “Implementasi Ratifikasi Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing dalam Pemberantasan Penangkapan Ikan Ilegal di Indonesia [Implementation of the Ratification of the Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing in Combating Illegal Fishing in Indonesia],” *Inovatif: Jurnal Ilmu Hukum* (2018): 182.

¹⁴ Gurnita Ning Kusumawati and Arie Afriansyah, “Evaluasi Keanggotaan Indonesia dalam Port State Measure Agreement (PSMA) 2009 dalam Menghadapi IUU Fishing [Evaluation of Indonesia’s Membership in Port State Measure Agreement (PSMA) 2009 in the Face of IUU Fishing],” *Negara Hukum* 12 (2021): 281.

¹⁵ Witbooi, “Illegal, Unreported and Unregulated Fishing,” 320.

¹⁶ Indonesia. *Keputusan Menteri Kelautan dan Perikanan tentang Pelabuhan Tempat Pelaksanaan Ketentuan Negara Pelabuhan untuk Mencegah, Menghalangi, dan Memberantas Penangkapan Ikan Secara Ilegal, Tidak Dilaporkan, dan Tidak Diatur*, Kepmen KP 52/Kepmen-KP/2020. (Ministerial Decree of Marine Affairs and Fisheries on Ports Where Port State Provisions are implemented to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Ministerial Decree of Marine Affairs and Fisheries, 52/Kepmen-KP/2020).

of the provisions of PSMA 2009 in various designated fishing ports, the trust in implementing prevention, obstruction, and eradication of IUU fishing in Indonesia may continue. Otherwise, different standards in implementing PSMA 2009 may provide leeway for foreign fishing vessels to commit IUU fishing. Based on this, there is a need for a standard to operationalize ports implementing PSMA 2009. This standard must then be examined to measure the feasibility and operational readiness of the ports implementing PSMA 2009 as designated by MoMAF. Based on the issues, the objectives of this research are (1) to develop service standards for ports implementing PSMA 2009 and (2) to examine the readiness of ports implementing PSMA 2009 to prevent IUU fishing.

II. PORT STATE JURISDICTION

A. PORT STATE AUTHORITY IN THE INSPECTION OF FOREIGN VESSELS

Every port state has the authority to inspect foreign vessels that enter its ports. Many International Maritime Organization (IMO) Conventions contain provisions for governments to inspect foreign vessels visiting their ports to ensure compliance with IMO regulations. The inspection of foreign vessels is due to the frequent occurrence of marine traffic accidents in the shipping industry since the 1970s, resulting in the loss of ship assets, casualties, and damage to the maritime environment.¹⁷ Hence, the IMO introduced the Port State Control (PSC) program in 1982, which is vital in enforcing safety of the law of the sea worldwide.¹⁸

In detail, the implementation of the state authority in PSC is contained in IMO Resolution A. 1052 (27), adopted on 30 November 2011, concerning Procedures for Port State Control.¹⁹ Apart from that, the provision concerning PSC is also contained in 10 Memorandums of Understanding (MoU) applied across 116 states/regions,²⁰ one of which was the Memorandum of

¹⁷ Mohd T. Osman et al. "Empirical Analysis on Port State Control Inspection for Foreign-Registered Ships in Malaysian Ports," *The Asian Journal of Shipping and Logistics* 37 (2021): 127, doi: [10.1016/j.ajsl.2020.10.004](https://doi.org/10.1016/j.ajsl.2020.10.004).

¹⁸ Shuaian Wang, Ran Yan, and Xiaobo Qu, "Development of a Non-Parametric Classifier: Effective Identification, Algorithm, and Applications in Port State Control for Maritime Transportation," *Transportation Research Part B: Methodological* 128 (2019): 129, doi: [10.1016/j.trb.2019.07.017](https://doi.org/10.1016/j.trb.2019.07.017).

¹⁹ "Port State Control," IMO, accessed 25 December 2023, <https://www.imo.org/en/OurWork/HIS/Pages/Port%20State%20Control.aspx>.

²⁰ Yi Xiao et al., "The Effectiveness of the New Inspection Regime for Port State Control:

Understanding on Port State Control in the Asia-Pacific Region (Tokyo MoU) on 1 December 1993.²¹ The Indonesian Government adopted both international instruments through the Ministerial Regulation of Transportation.²²

Port State Control is an international instrument for inspecting foreign vessels based on conventions and protocols, which are formed to identify vessels according to specific criteria.²³ Therefore, PSC aims to inspect foreign vessels at the port of origin to ensure that their construction, design, equipment, and manning meet international conventions.²⁴ The increase in ship traffic since the 1970s has increasingly endangered ship assets, the lives of the crew, and the maritime environment.²⁵ Thus, PSC is more about vessel safety.²⁶

Ship safety and security are the duties and functions of the harbormaster. The state—in this case, the harbormaster—by its responsibilities and functions, is authorized to inspect the seaworthiness and safety of foreign vessels at the port.²⁷

Based on the IMO Resolution A.787(19) on Procedures for Port State Control (PSC), foreign ship inspection is divided into two:

a. Initial Inspection

The initial inspection is carried out through administrative and physical examination. The administrative examination will validate ship certificates and documents based on the type of ship and crew certificate. At the same time, the physical examination is carried out to ensure compliance of the

Application of the Tokyo MoU,” *Marine Policy* 115 (2020) 103857, doi: 10.1016/j.marpol.2020.103857.

²¹ “Welcome to Tokyo MOU,” Tokyo MoU, accessed 25 December 2023, <https://www.tokyo-mou.org/>

²² Indonesia. *Peraturan Menteri Perhubungan tentang Pejabat Pemeriksa Kelaiklautan dan Keamanan Kapal Asing*, Permenhub No. 119 Tahun 2017. (*Ministerial Regulation of Transportation on Inspection Officials of Seaworthiness and Safety of Foreign Ship*, Ministerial Regulation of Transportation No. 119 Year 2017).

²³ Jihong Chen et al., “Factor and Trend Analysis of Total-Loss Marine Casualty Using a Fuzzy Matter Element Method,” *International Journal of Disaster Risk Reduction* 24 (2017): 383, doi: 10.1016/j.ijdrr.2017.07.001. See also Zhisen Yang, Zaili Yang, and Angelo Palos Teixeira, “Comparative Analysis of the Impact of New Inspection Regime on Port State Control Inspection,” *Transport Policy* 92 (2020): 65, doi:10.1016/j.tranpol.2020.04.009; and Yi Xiao et al., “Efficiency of Port State Control Inspection Regimes: A Comparative Study,” *Transport Policy* 106 (2021): 165, doi: 10.1016/j.tranpol.2021.04.003.

²⁴ Osman, “Empirical Analysis,” 128.

²⁵ Jihong Chen et al., “Identification of Key Factors of Ship Detention Under Port State Control,” *Marine Policy* 102 (2019): 21, doi: 10.1016/j.marpol.2018.12.020.

²⁶ Wang, “Development of A Non-Parametric Classifier,” 129.

²⁷ Indonesia. *Undang-Undang tentang Pelayaran*, UU No. 17 Tahun 2008. (*Law on Shipping*, Law No. 17 Year 2008), Article 218 paragraph (2).

information stated in the certificates and documents with the conditions of shipbuilding construction, operational equipment and ship equipment, and crew welfare. Suppose the results of the initial inspection reveal discrepancies in the fulfillment of the requirements of the provisions of the Conventions²⁸, IMO Resolution A.1052(27), and Tokyo MOU guidelines. In that case, the result of inspection is declared as Detainable Deficiency because the condition of the ship does not meet the requirements of these provisions, which results in the detention of the departure of the ship.

b. The Following Inspection

A re-inspection is carried out to ensure the fulfillment of the follow-up to the results of the initial inspection if there are deficiency or detainable deficiency findings that have been corrected and fulfilled according to the Convention's provisions. Deficiency or non-conformity results from an inspection in the form of findings of ship conditions that do not meet the requirements of the Convention's provisions.

B. THE URGENCY OF STANDARD DEVELOPMENT OF PSMA 2009 IMPLEMENTING PORT

As an archipelagic state, Indonesia has four classes of fishing ports carrying out governmental and business functions to support fisheries management efforts throughout the fisheries management area of the Republic of Indonesia.²⁹ The functions of the Government at the port are to carry out the regulation, guidance, control, supervision, as well as security and safety of Fishing Vessel Operations at Fishing Ports:³⁰ (a) mooring and docking services for fishing vessels, (b) training services and quality control of fishing activities, (c) collection of catch and fisheries data, (d) implementation of operational activities of fishing vessels, which include arrangements for departure, arrival, and activities of fishing vessels at fishing ports, (e) implementation of operational safety and security of fishing vessels and

²⁸ Port State Control (PSC) is a ship inspection program whereby foreign vessels entering a sovereign state's waters are boarded and inspected to ensure compliance with various major international maritime conventions, namely: International Convention for the Safety of Life at Sea (SOLAS), International Convention for the Prevention of Pollution from Ships (MARPOL), International Convention on Standards of Training Certification and Watchkeeping for Seafarer (STCW), Load Lines (LL), Convention on the International Regulations for Preventing Collisions at Sea (COLREG) and International Labour Organization Convention No. 147 Merchant Shipping (Minimum Standards) (ILO 147), Accessed 25 December 2023, <https://caribbeanmou.org/content/port-state-control-psc-guidelines>

²⁹ Indonesia. *Peraturan Pemerintah tentang Penyelenggaraan Bidang Kelautan dan Perikanan*, PP No. 27 Tahun 2021. (*Government Regulation on Implementation of Marine and Fisheries Sector*, Government Regulation No. 27 Year 2021), Article 184, paragraph (1).

³⁰ *Ibid.*, Article 184, paragraph (4).

assisting the control of fish resources, (f) implementation of environmental control at fishing ports, which includes cleanliness, security, orderliness, aesthetics, and safety of work, (g) implementation of operational publications of fishing ports, the results of berthing and docking services for fishing vessels and fisheries patrol vessels, (h) implementation of monitoring the coastal areas and marine tourism, (i) facilitation of the location for conducting supervision and control of the fish resources, (j) facilitation of the location for conducting counseling and development of fishing communities, (k) facilitation the location for conducting fish quarantine, (l) facilitation the place for publication of marine and fisheries research results, (m) facilitation of health infrastructure, (n) facilitation the customs infrastructure, and (o) facilitation of immigration infrastructure. Meanwhile, the business function is to run business by providing services for fishing vessels and related services at fishing ports,³¹ including: (a) fish loading and unloading service, (b) fisheries product processing service, (c) fish marketing and distribution, (d) the use and utilization of facilities at fishing ports, (e) fishing vessel docking and shipyard service, (f) logistics services and supplies for fishing vessels and their crew, (g) organizing marine tourism, (h) facilitation of place for financial institution service, and (i) provision and other services by the provisions of laws and regulations.³²

All classes of ports perform governmental and business functions. The class of fishing ports is determined based on two criterias:³³ (1) technical criteria, including: (a) operational areas of anchored fishing vessels, (b) mooring facilities, (c) the length of the jetty, (d) the width of the area, (e) the depth of the pond, and (f) storage capacity of fishing vessels; and (2) operational criteria, including: (a) the amount of average production, and (b) processing industry and other supporting industries (Table 1).

³¹ *Ibid.*, Article 184, paragraph (6).

³² *Ibid.*, Article 184, paragraph (7).

³³ *Ibid.*, Article 192.

Table 1. Classification of Fishing Ports in Indonesia³⁴

Criteria	Ocean Fishing Port	Archipelago Fishing Port	Coastal Fishing Port	Fish Landing Base
A. Technical				
Operational areas of anchored fishing vessels	Indonesian waters, Indonesian Exclusive Economic Zone (IEEZ), and offshore	Indonesian waters, IEEZ, and offshore	Indonesian waters, IEEZ	Indonesian waters, IEEZ
Mooring facilities	Vessel capacity \geq 60 GT	Vessel capacity \geq 30 GT	Vessel capacity \geq 10 GT	Vessel capacity = 10 GT
Length of jetty	\geq 300 m	\geq 150 m	\geq 100 m	\geq 13 m
Width of the area	\geq 20 ha	\geq 10 ha	\geq 10 ha	\geq 1 ha
Depth of the pond	\geq - 3 m	\geq - 3 m	\geq - 2 m	\geq - 1 m
Storage capacity of fishing vessels	\geq 100 units or Σ 6.000 GT	\geq 75 units or Σ 2.250 GT	\geq 30 units or Σ 300 GT	\geq 15 units or Σ 75 GT
B. Operational				
Fish loading and unloading and fish product marketing	50 tonnes/day (partially for export purposes)	15 tonnes/day	5 tonnes/day	0,5 tons/day
Processing industry and other supporting industries	Exist	Exist	Exist	Does not exist

³⁴ Government Regulation on Implementing Marine and Fisheries Sector.

Based on the classification of fishing ports, only seven fishing ports are designated as class A (ocean fishing port), 18 ports of class B (archipelago fishing port), 42 ports of class C (coastal fishing port), and 47 ports of class D (fish landing base). 478 fishing ports do not have a class, namely: (a) prospective fishing ports, which are under preparation, and (b) fishing ports, which only have limited facilities (see Figure 4 and Table 7). Ports of classes A and B are managed by the Central Government (Ministry of Marine Affairs and Fisheries), and ports of classes C and D, as well as prospective fishing ports and fishing ports, are managed by the Provincial Government.

Meanwhile, from the existing port classes, the Government of Indonesia, through the Ministry of Marine Affairs and Fisheries, established four ports implementing PSMA 2009, namely PPS³⁵ Nizam Zachman Jakarta, PPS Bungus West Sumatra, PPS Bitung North Sulawesi, and Benoa Public Port Bali. The designation of the four ports for the implementation of the 2009 PSMA reflects better the representation of areas facing the Indian Ocean (PPS Bungus and Benoa Public Port) and the Pacific Ocean (PPS Nizam Zachman Jakarta and PPS Bitung).

Determining the facility and service standards of ports implementing PSMA 2009 is the main requirement for the Ministry of Transportation (MoT) and the MoMAF to exercise their authority in preventing, deterring, and eliminating IUU fishing as contained in PSMA 2009.

The facility and service standards of PSMA implementing ports contain general standards applicable to each commercial and fishing vessel type, as well as specific standards related to preventing, deterring, and eradicating IUU fishing. The facility and service standards include administrative, technical, procedural, and reporting requirements developed from international and national standards, as well as specific aspects of handling IUU fishing at PSMA implementing ports. Therefore, with the standards of port implementing PSMA 2009, the Government of Indonesia, in this case, MoT and MoMAF, can fulfill the obligations contained in the PSMA 2009.

C. ANALYSIS OF STANDARDS REQUIRED FOR PSMA 2009 IMPLEMENTING PORTS

The PSC regime, which only emphasizes vessel safety (design, equipment, and manning), has yet to accommodate fisheries management, so fishing vessels are not included in the PSC regime due to differences in design and

³⁵ PPS is an abbreviation for *Pelabuhan Perikanan Samudra*, it is interpreted in English as Ocean Fishing Port.

operation.³⁶ Therefore, the presence of PSMA 2009 is expected to overcome the problem of IUU fishing. Ports implementing PSMA implement both international law and national law.³⁷ The applicability of the national law of the port state is based on the principle that foreign vessels have no right of access to ports and inland waters belonging to a coastal state because of the inherent legal regime of sovereignty.³⁸ Based on this, PSMA ratifying countries must establish PSMA 2009 implementing ports.³⁹

The designation of ports implementing PSMA 2009 requires a systematic standard, so that the function of preventing and eradicating IUU fishing can run well in the designated ports. As an archipelagic country with different characteristics from one region to another, different classes of fishing ports, and different functions between fishing ports and general ports, the regulation of Government of Indonesia should be the standard.⁴⁰ PSMA 2009 is imposed on foreign vessels, including fish-carrying vessels that transport captured fish, which have never been or have been landed in a country, and conduct fishing activities.⁴¹ However, the imposition of PSMA 2009 exempts container ships that are not transporting fish or have been landed before, provided that the container ship is suspected of not conducting IUU fishing activities.⁴² The operation mechanism and requirements of PSMA 2009 are presented in Figure 1.

³⁶ Witbooi, "Illegal, Unreported and Unregulated Fishing," 292.

³⁷ Cedric Ryngaert and Henrik Ringbom, "Introduction: Port State Jurisdiction: Challenges and Potential," *The International Journal of Marine and Coastal Law* 31 (2016): 379, doi: 10.1163/15718085-12341405.

³⁸ United Nations Convention on the Law of the Sea, opened for signature 10 December 1982, 1836 UNTS 3 (entered into force 16 November 1994), Article 2, Article 11, and Article 25 paragraph (2).

³⁹ Swan, "Port State Measures," 396.

⁴⁰ Indonesia. *Peraturan Menteri Kelautan dan Perikanan tentang Pelaksanaan Ketentuan Negara Pelabuhan untuk Mencegah, Menghalangi, dan Memberantas Penangkapan Ikan Secara Ilegal, Tidak Dilaporkan, dan Tidak Diatur*, Permen KP No. 39/Permen-KP/2019. (*Ministerial Regulation of Marine Affairs and Fisheries on Implementation of Port State Provisions to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing*, Ministerial Regulation of Marine Affairs and Fisheries No. 39/Permen-KP/2019), Article 4 paragraph (1).

⁴¹ *Ibid.*, Article 4 paragraph (3).

⁴² *Ibid.*, Article 4 paragraph (2).

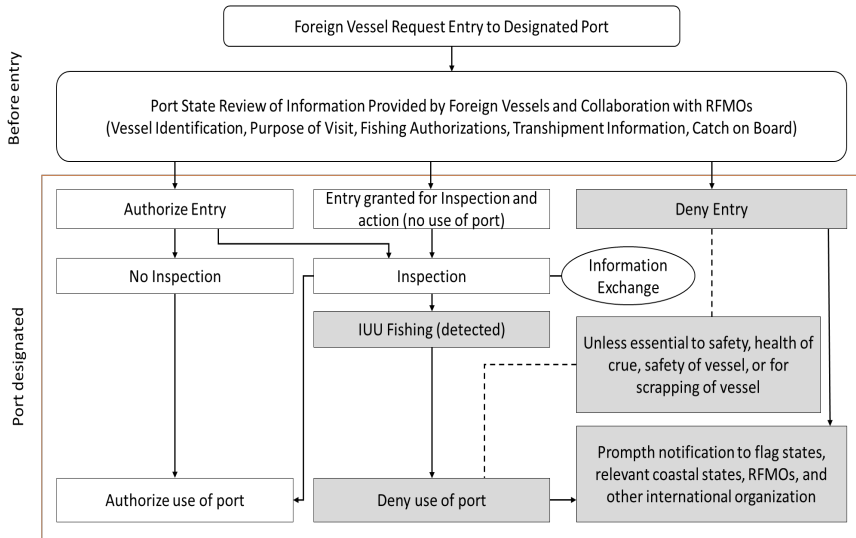


Figure 1. Operation Mechanism and PSMA requirements (modification from Matthew Camilleri)⁴³

Note: Research object

Accordingly, two main points are analysed in the process of foreign fishing vessels using the designated port, as follows:

a. Entering the Port

The port state must request information before granting a vessel entry permit to a designated port.⁴⁴ The information contains 23 points as included in annex A, namely: (a) port of destination, (b) port state, (c) estimated date and time of arrival, (d) purpose of arrival, (e) port and date of last port entry clearance request, (f) ship name, (g) ship flag, (h) ship type, (i) international radio call code, (j) ship contact information, (k) ship owner, (l) identity of the registration certificate, (m) IMO vessel identity, if available, (n) External identity, if available, (o) RFMO identity, if available, (p) Vessel Monitoring System (VMS), (q) vessel dimensions, (r) name and nationality of the skipper, (s) relevant fishing licenses, (t) relevant transshipment licenses, (u) transshipment information regarding the donor vessel, (v) total catch on board, and (w) catch to be offloaded.

⁴³ “The FAO Port State Measures Agreement,” Chatham House, accessed 25 December 2023, <https://www.chathamhouse.org/sites/default/files/Matthew%20Camilleri.pdf>.

⁴⁴ Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Article 8 paragraph (1).

Thus, every foreign fishing vessel entering the port implementing PSMA 2009 must submit an initial application, as stated in the Ministerial Regulation of MoMAF,⁴⁵ where the port entry application is made in writing addressed to the Secretariat of the PSM Authority. The port entry application is submitted within seven (7) x twenty four (24) hours before the foreign vessel enters.⁴⁶ The request is for study the information as early as possible.⁴⁷

After receiving the foreign vessel's application, the port country analyzes the document.⁴⁸ During the analysis process of the application documents, the Government of Indonesia, through the PSM Authority Secretariat, may request additional information from the Flag State, coastal states, other port states, RFMOs, and relevant international organizations.⁴⁹ Analysis results are a decision to approve or reject the initial application.⁵⁰ The PSM Authority Secretariat submits the entry approval or rejection to the skipper, ship owner, or their representative in Indonesia within not later than 3 x 24 hours before the ship arrives at the port.⁵¹ Moreover, the PSM Authority Secretariat also submits entry approval or refusal to the PSM Inspection team, flag state, coastal state, RFMO, and relevant international organizations.⁵² The approval is the implementation of PSMA 2009.⁵³ If a foreign vessel is allowed to enter the port, the skipper, ship owner, or their representative in Indonesia must show the entry approval to the PSM Inspection team at the time of entry into the port,⁵⁴ which is the implementation of PSMA 2009.⁵⁵ At the stage where the ship will enter the port, at least several standards are required to be met by the port designated as the PSMA 2009 implementer, namely: application service,

⁴⁵ Ministerial Regulation of Marine Affairs and Fisheries on Implementation of Port State Provisions to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Article 8 paragraph (1).

⁴⁶ *Ibid.*, Article 8 paragraph (3).

⁴⁷ Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Article 8 paragraph (2).

⁴⁸ *Ibid.*, Article 9 paragraph (1). Ministerial Regulation of Marine Affairs and Fisheries on Implementation of Port State Provisions to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Article 9 paragraph (1).

⁴⁹ Ministerial Regulation of Marine Affairs and Fisheries on Implementation of Port State Provisions to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Article 9 paragraph (2).

⁵⁰ *Ibid.*, Article 10 paragraph (1).

⁵¹ *Ibid.*, Article 10 paragraph (2).

⁵² *Ibid.*, Article 10 paragraph (3).

⁵³ Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Article 9 paragraph (3).

⁵⁴ Ministerial Regulation of Marine Affairs and Fisheries on Implementation of Port State Provisions to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Article 12 paragraph (1).

⁵⁵ Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Article 9 paragraph (2).

application form, service personnel, analysis base, additional information, analysis decision and force majeure (emergency) conditions.

b. Inspection

After a foreign vessel is allowed to enter the port, an inspection is carried out by PSM officers according to the procedure,⁵⁶ which is the implementation of PSMA 2009.⁵⁷ Inspection is carried out to prove foreign vessels' physical suitability and documents.⁵⁸ Suppose discrepancies are found between the physical and documents of the foreign ship. In that case, the PSM Officer submits an inspection report to the coordinator of the PSM inspection team, and the foreign ship will then be denied permission to use the port facilities.⁵⁹ However, if no evidence of IUU Fishing is found, the PSM Officer submits the inspection report to the PSM Inspection team coordinator to allow the foreign vessels to use port facilities.⁶⁰

Concerning inspection, the capacity of inspectors is a concern. The capacity of inspectors is mentioned in the PSMA 2009, which states that each port state shall ensure that inspectors carry out the functions listed in Annex B with minimum standards.⁶¹ Therefore, the Indonesian Government mandates PSM education and training for the PSM Implementation Unit.⁶² At the vessel inspection stage, at least several standards are required to be met by the port designated as the PSMA 2009 implementer, which are: (a) trained officers, (b) the legality of officer, (c) the officer's English proficiency, (d) agency coordination, and (e) officer's attributes.

D. STANDARD CONSTRUCTION OF PSMA 2009 IMPLEMENTER PORT

Based on the legal mapping of the implementation of PSC and PSMA 2009, along with the implementing regulations in Indonesia (Table 2), several concerns arise when the ship is about to enter the port, namely: (1) application

⁵⁶ Ministerial Regulation of Marine Affairs and Fisheries on Implementation of Port State Provisions to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Article 12 paragraph (2).

⁵⁷ Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Article 11.

⁵⁸ Ministerial Regulation of Marine Affairs and Fisheries on Implementation of Port State Provisions to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Article 12 paragraph (3).

⁵⁹ *Ibid.*, Article 12 paragraph (4).

⁶⁰ *Ibid.*, Article 12 paragraph (7).

⁶¹ Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Article 13 paragraph (1).

⁶² Ministerial Regulation of Marine Affairs and Fisheries on Implementation of Port State Provisions to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Article 16.

service, in which there is a difference between PSC, which uses an application system, and PSM, which uses manual letters; (2) application form, in which PSC is more concerned with the safety of shipping and the welfare of the crew, while PSM is more concerned with tracing IUU fishing practices; (3) service officer, which is conducted by the Port State Control Officer (PSCO) attached to the port harbormaster and the PSM authority located in MoMAF; (4) analysis basis, which is aimed at mitigation in the examination for PSC using the precautionary principle; (5) additional information, which is used by PSM to obtain information related to the track record of vessel violations addressed to other port states, flag states, coastal states, RFMOs and IMO—for PSM—as well as flag states, Asia Pacific Computerized Information System (APCIS), and IMO—for PSC; (6) analysis decision by harbor master, in the implementation of PSC only decides on acceptance with improvements, but in PSM decides on acceptance or refusal of service by PSM authority; and (7) *force majeure* conditions, in which all regimes allow foreign vessels to enter the port.

Meanwhile, several things must be considered when the ship enters the port for inspection: (1) PSC trained officers are stringent in discussing PSCO, but its implementation in Indonesia is translated with the need for education and training; (2) the legality of officers, in which PSCO officers go through inauguration from a series of training stages, while PSM is only a determination; (3) English language skills, which is required in the PSC regime; (4) coordination between agencies, which is a concern in the implementation of PSMA 2009; and (5) the officer identity, which is a concern for both PSC and PSM.

Table 2. Identification result of port facilities and services standard

No	Analysis Instrument	PSMA 2009	IMO Reg	MoU Tokyo	Permen KP 39/2019	Permenhub 117/2017
A	Before entering					
	1. Application service	✓	✓	✓ (APCIS)	✓ PSM authority	✓ PSCO
	2. Application form	✓ Vessel identity, legality, travel information, fish, manning	✓ Construction, design, equipment, manning	✓ Construction, design, equipment, manning	✓ Vessel identity, legality, travel information, fish, manning	✓ Construction, design, equipment, manning
	3. Service officer				✓ PSM authority	✓ PSCO
	4. Analysis base		✓ Risk	✓ Risk		✓ Risk
	5. Additional information	✓ RFMO, Coastal State, Flag State, IMO	✓ Flag State, APCIS, IMO	✓ Flag State, APCIS, IMO	✓ RFMO, Coastal State, Flag State, IMO	✓ Flag State, APCIS, IMO
	6. Analysis decision	✓ Accept/ Reject	✓ Accept/ Revision	✓ Accept/ Revision	✓ Accept/ Reject	✓ Accept/ Revision

	7. Force majeure	✓ Accept	✓ Accept	✓ Accept	✓ Accept	✓ Accept
B	Entering the port (Inspection)					
	1. Trained officer	✓	✓ Training	✓ Training	✓ Training	✓ Training
	2. Legality officer	✓ Authorized	✓ Authorized	✓ Authorized	✓ Establishment	✓ Inauguration
	3. An officer with English skill		✓			✓ Training requirement
	4. Institution coordination				✓ Internal and external	
	5. Officer identity	✓			✓ Attribute	✓ Attribute

Based on the mapping results in Table 2, the following standards are required to prevent IUU fishing at PSMA implementing ports: First, application services, including service officers in receiving application letters and risk analysis officers. Second, inspection services, including trained officers, authorized officers, English-speaking officers, inter-agency coordination mechanisms, and officer identity. The strengthening of the role of ports implementing PSMA 2009 increases the Indonesian Government's efforts to prevent, deter, and eliminate IUU fishing. This also helps maintain Indonesia's good reputation in implementing the provisions of port state jurisdiction for fishing ports, particularly public ports that have obtained whitelist legality from IMO. Providing periodic and consistent training is crucial for the PSM Inspection Team's capacity building, as the impacts of such training are inseparable.

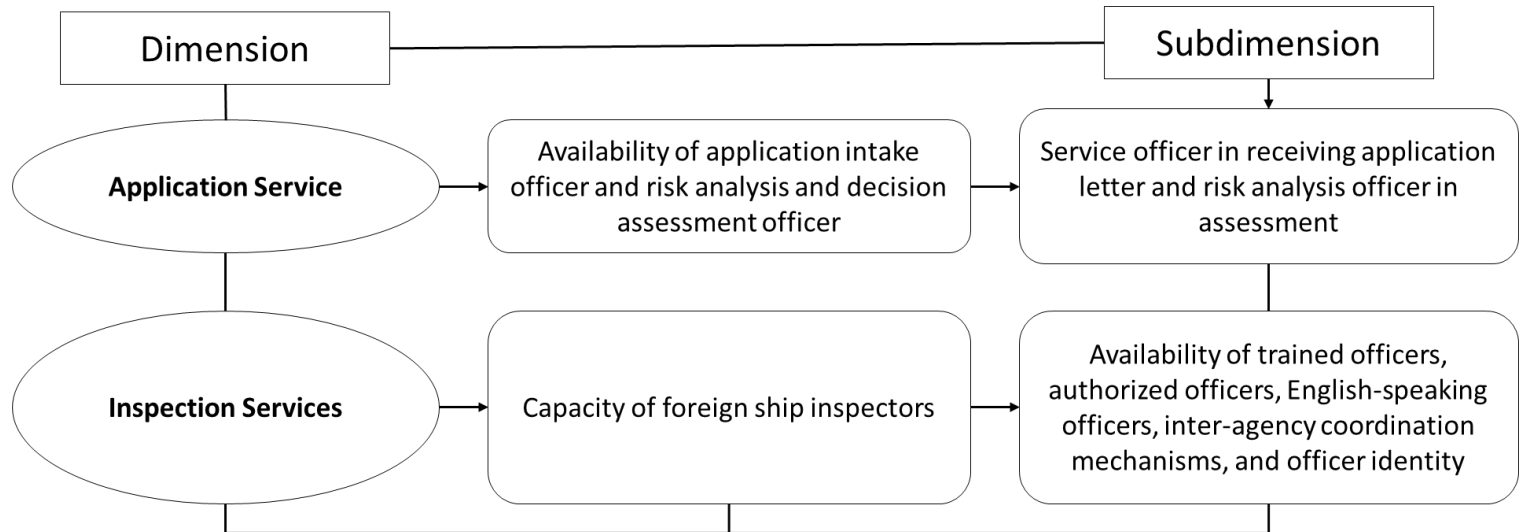


Figure 2. Criteria of PSMA 2009 Implementing Port Standard

III. EVALUATION OF PSMA 2009 IMPLEMENTING PORT READINESS

A. IMPLEMENTATION OF PSMA 2009 AT FISHING PORTS

The implementation of the 2009 PSMA in Indonesia refers to Ministerial Regulation of Marine Affairs and Fisheries No. 39 of 2016. Based on the regulation, there are two essential parts to implementing PSMA: the stage before the fishing vessel enters the designated port and when the fishing vessel enters the designated port. The two stages of PSMA 2009 implementation based on legal translation in Indonesia are presented in Figure 3. These provisions apply to fishing ports designated as implementing ports of the PSMA 2009.

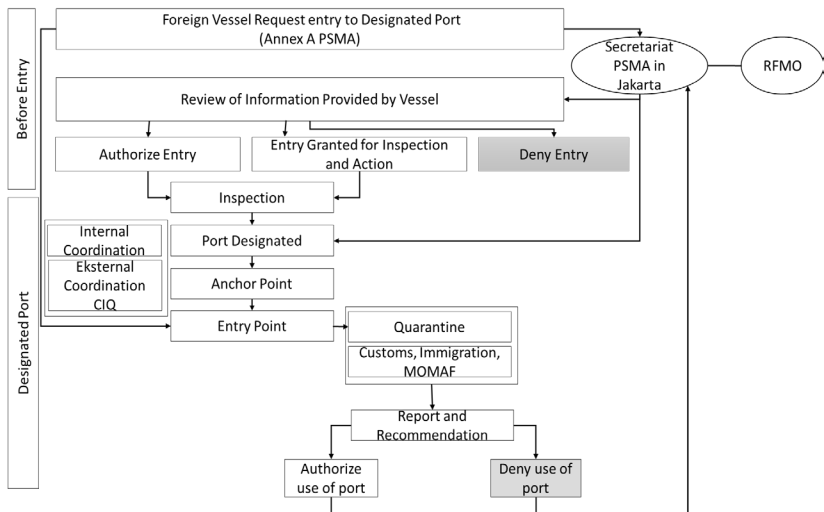


Figure 3. PSMA 2009 implementer in fishing ports

Based on Figure 3 above, the stages can be explained below:

(1) Prior to the Stage of Entering the Port

At this stage, several things should be of concern to both the PSMA 2009 Secretariat and foreign vessels entering the port, which are:

a. Application to Enter the Port

Every foreign vessel that will enter the port submits an application in writing to the PSM Authority Secretariat.⁶³ The application letter is sent through the PSM Authority Secretariat via email: indonesia.psm@kkp.go.id or indonesia.psm@gmail.com. Several documents must accompany the application letter,⁶⁴ which are:

- (a) Nationality/Registry Certificate, which is a certificate declaring the nationality mark of a vessel granted by the Flag State;
- (b) International Tonnage Certificate, which is a certificate or letter of measurement that describes the most critical measures of the vessel, such as the length of the vessel (Length Over All/LOA), Width of the vessel (Breadth/B), Depth of the vessel (Depth/D), as well as the Net Weight of the vessel (Dead Weight Tonnage/DWT) and Gross Weight of the vessel (Gross Tonnage/GT);
- (c) Transshipment Declaration (for vessels transferring cargo on the high seas), which is a declaration of transfer signed by the observer;
- (d) Last Port Clearance, which is a sailing approval letter issued by the local harbor master at the port where the ship made its last port call;
- (e) Relevant Fishing Authorization, which is a fishing and/or fish transportation permit; and
- (f) Manifest of the goods transported.

b. Application Analysis

Following the submission of application by the foreign vessel, the PSM Authority Secretariat analyzes the submitted documents.⁶⁵ The Secretariat of the PSM Authority is headed by the Director of Fishing Ports (Directorate General of Capture Fisheries – MoMAF) and its members come from representatives of the Directorate General of Marine Resources and Fisheries Monitoring (MoMAF), Fish Quarantine, and Quality Control Agency (MoMAF), Directorate of Fish Resources Management (MoMAF), and Directorate of Licensing and Service (MoMAF).

The initial documents are analyzed by verifying the documents sent previously. During the process of verifying the document, the PSM Authority Secretariat may request additional information from several sources such as flag states, coastal states, other port states, RFMOs (Indian Ocean Tuna Commission/IOTC, Commission for the Conservation of Southern Bluefin

⁶³ *Ibid.*, Article 8 paragraph (1).

⁶⁴ *Ibid.*, Article 8 paragraph (2).

⁶⁵ *Ibid.*, Article 9 paragraph (1).

Tuna/CCSBT, and Western and Central Pacific Fisheries Commission/WCPFC), and relevant international organizations (IMO).

c. Risk Determination

The initial document analysis aims to confirm that the vessel, its owner, or its skipper has been or may be involved in IUU Fishing and ascertain the risk level. Risk assessment is a control tool utilized to provide action and document decisions made during the port entry request process, as well as to execute precautionary measures in vessel inspection conducted by the inspection team.

d. Stipulation of Approval or Rejection

The approval or rejection letter is sent to the skipper, shipowner, or their representative in Indonesia within 3 x 24 hours (three times twenty-four hours) before the ship arrives at the port.⁶⁶ The PSM Authority Secretariat also submits the approval or rejection letter to the PSM Inspection team, flag state, coastal state, RFMO, and relevant international organizations.⁶⁷ However, if IUU fishing activities are found on the foreign vessel that submits the application, the foreign vessel may be allowed to enter the port for inspection.⁶⁸

(2) Stages during the Time Fishing Vessels Enter the Port

When a fishing vessel enters the port, based on information from Training and Extension Center (MoMAF) and the Standard Operational Procedure (SOP) for the inspection of foreign vessels, several activities are carried out, such as:

a. Receiving Ship Arrival Information

Based on the results of the initial analysis of foreign vessel's documents, the PSM Authority Secretariat submits a letter to the Head of Port implementing PSMA 2009 to prepare for the inspection. Based on the Decree of the Directorate General of Capture Fisheries–MoMAF,⁶⁹ the Head of the Port Authority (KSOP) is the coordinator of the inspection team for the implementation of PSM in public ports, while the Head of the Fishing Port is the coordinator of the inspection team for the implementation of PSM in

⁶⁶ *Ibid.*, Article 9 paragraph (2).

⁶⁷ *Ibid.*, Article 9 paragraph (3).

⁶⁸ *Ibid.*, Article 9 paragraph (4).

⁶⁹ Indonesia. *Surat Keputusan Direktorat Jenderal Perikanan Tangkap tentang Susunan dan Keanggotaan Unit Pelaksana Port State Measures*, SK Dirjen Perikanan Tangkap No. 17 Tahun 2023. (*Directorate General of Capture Fisheries Decree on the Composition and Membership of the PSM Implementation Unit*, Directorate General of Capture Fisheries Decree No. 17 Year 2023).

fishing ports. In the decree, all Heads of Fishing Ports at PPS Nizam Zachman Jakarta, PPS Bitung North Sulawesi, and PPS Bungus West Sumatra become coordinators. In contrast, for Benoa Public Port, the coordinators are KSOP, and the Head of Bali's Archipelagic Fishing Port (PPN Pengambangan) is the Team Leader.

The coordinator oversees the preparation of foreign vessel facilities that have obtained port entry approval from the Secretariat of the PSM Authority and the coordination of the implementation of joint inspections. Meanwhile, the PSM Inspection Team Leader assigns PSM officers to conduct inspections, grants approval or denial of the use of port facilities based on inspection reports from PSM officers, and reports the results of inspections carried out by PSM officers to the PSM Authority Secretariat.

This decree raises the question of whether the coordinator is also the team leader at the fishing port. Because the Head of the Fishing Port is only designated as a coordinator rather than a team leader, the head of the port prepares facilities for foreign vessels. It is not tasked with reporting as mandated for a Team Leader.

b. Stipulation of Inspection Team

As Permen KP No. 39 of 2019 and Director General of Capture Fisheries Decree No. 17 of 2023, PSM officers have duties of: (1) organizing inspection plan, (2) verifying foreign vessel identification documents as well information regarding ownership, (3) verifying foreign vessel flag and mark, (4) verifying the permit of fishing activities related to fishing, (5) checking on other related documents on foreign vessels, (6) checking on the compliance of fishing equipment on foreign vessels, (7) checking on the compliance between type of fish caught and the permit given; (8) checking on quantity and composition of the fish, (9) evaluating the evidence of involvement allegation of foreign vessels in IUU Fishing or any activities related to IUU Fishing, (10) preparing inspection result report, including any further actions that may be taken, (11) being signed the form by the inspector and skipper, (12) reporting the foreign vessels inspection result to PSM inspection team coordinator, and (13) conducting other duties related to PSM ordered by PSM inspection team coordinator.

c. Preparation for Foreign Vessel Inspection

Preparation for the inspection of foreign vessels is carried out through a coordination meeting, which is conducted in two parts, namely: First, the internal meeting, which involves the Fishing Port, the Marine Resources and Fisheries Monitoring Base, and the Fish Quarantine and Quality Control

Center. Second, the external meetings, which involve the Health Quarantine (Ministry of Health), Immigration (Ministry of Law and Human Rights), and Customs (Ministry of Finance).

d. Foreign Vessel Inspection

Before conducting a foreign vessel inspection, PSM officers must prepare a duty warrant and PSM officer identity. The duty warrant is issued by the Head of the Unit of the respective agency, while the identity of PSM officers is presented in the form of official clothes and attributes. In addition, PSM Officers are also equipped with protective clothing to prevent injuries due to lack of awareness and attitude at work. At a minimum, protective clothing consists of safety shoes, reflective jackets, special clothing when entering the freezer, gloves, protective headgear/helmet, and personal flotation equipment.

e. Inspection Result

As described above, the inspection is followed up with a discussion by the Inspection Team. If discrepancies are found between the documents and the inspection results, the Inspection Team makes a note according to Appendix C of PSMA 2009 and clarifies it with the skipper. The results of clarification are then further coordinated with the flag state, the owner of the vessel, and or the company/agent operating the vessel as outlined.⁷⁰

Suppose the skipper cannot convince the suitability of the data in the clarification. In that case, the PSM Officer submits the inspection report results to the PSM Inspection Team coordinator to refuse foreign vessels to further use of port facilities. Furthermore, based on the inspection report from the PSM Officer, the Inspection Team Coordinator reports the results of the inspection and rejection of the foreign vessel to the Secretariat of the PSMA Authority 2009 in Jakarta.⁷¹ Based on the report of the PSM Inspection team coordinator, the PSM Authority Secretariat submits the refusal of Foreign Vessels to use port facilities to the flag state, coastal state, RFMO, and relevant international organizations.⁷² Suppose the inspection result does not find evidence of IUU Fishing. In that case, the PSM officer submits the inspection report to the PSM Inspection team coordinator to allow the foreign vessel to use port facilities.⁷³

⁷⁰ Ministerial Regulation of Marine Affairs and Fisheries on Implementation of Port State Provisions to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Article 18 paragraph (1).

⁷¹ *Ibid.*, Article 12 paragraph (4).

⁷² *Ibid.*, Article 12 paragraph (5).

⁷³ *Ibid.*, Article 12 paragraph (6).

B. IMPLEMENTATION OF PSMA 2009 AT PUBLIC PORT

As a public port, Benoa Public Port implemented PSC while also implementing PSMA 2009. In other words, Benoa Public Port implements dualistic port state jurisdiction (PSJ) for foreign fishing vessels. Therefore, harmonization and clarity of authority are needed. The dualism in implementing PSJ between PSC and PSMA is still found at Benoa Public Port, as presented in Figure 6.

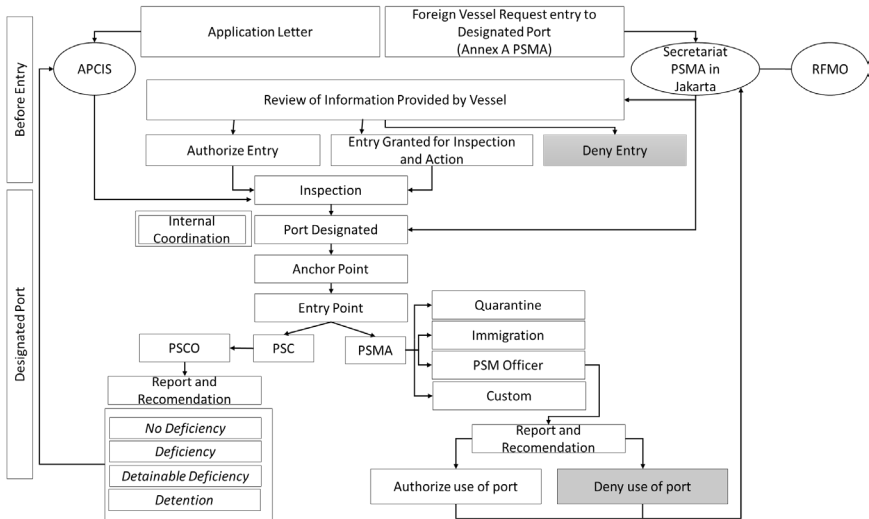


Figure 6. Implementation of PSC and PSMA 2009 at Benoa Port

Some differences in the implementation of PSMA 2009 in Public Ports are as follows:

(1) Prior to the Fishing Vessel Entering the Port

At the stage before a foreign vessel enters Benoa Port, the skipper, ship owner, or agent sends a letter to the Benoa Public Port KSOP and submits a request to enter Benoa Public Port into the existing system, namely APCIS (Asia Pacific Computerized Information System), which is connected across the world. At the same time, the skipper, shipowner, or agent submits an application to the Secretariat of the PSM Authority in Jakarta based on the form Appendix A of PSMA 2009.

(2) Inspection

Based on the applicable provisions, the foreign ship inspectors are PSCOs (Port State Control Officers) civil servants of the Directorate General of

Sea Transportation assigned as harbormaster.⁷⁴ In other words, a PSCO is a harbormaster who, after training and certification, is authorized to board and inspect foreign vessels. The PSCO examines the seaworthiness and safety of foreign vessels,⁷⁵ which is a form of fulfillment of the convention governing the PSC. The examination of foreign vessels is based on two things, that are:

a. The New Inspection Regime (NIR) is a guideline for determining the period for examining the seaworthiness and safety of foreign vessels based on the Tokyo MOU, which is carried out according to the risk level of the vessel, including:⁷⁶

(a) *the low-risk level* for the period of 9 up to 18 months;

(b) *the standard risk level* for the period of 5 up to 8 months; or

(c) *the high-risk level* for the period of 2 up to 4 months.

b. Clear Grounds is information or evidence of the seaworthiness and safety of the ship, in written or unwritten form, that is different from the ship's documents and certificates and the fulfillment of the requirements of the convention's provisions. Clear Grounds can be:⁷⁷

(a) reports or complaints from crew members, pilotage officers, or other countries;

(b) requests/information from interested organizations and/or countries; and/or

(c) physical observation by the harbormaster and/or PSCO of the general condition of the vessel.

The implementation of NIR inspection includes initial inspection and/or follow-up/re-inspection.⁷⁸ Meanwhile, the implementation of inspection based on Clear Grounds is carried out by verifying the truth to the skipper.⁷⁹ If the verification result is proven, the inspection will continue based on the initial inspection.⁸⁰ However, if the verification result is not proven, the inspection based on the initial inspection is not carried out.⁸¹ The initial inspection is

⁷⁴ Ministerial Regulation of Transportation on Inspection Officials of Seaworthiness and Safety of Foreign Ship, Article 3, paragraph (2).

⁷⁵ *Ibid.*, Article 4, paragraph (1).

⁷⁶ *Ibid.*, Article 4, paragraph (3).

⁷⁷ *Ibid.*, Article 3, paragraph (3).

⁷⁸ *Ibid.*, Article 5, paragraph (1).

⁷⁹ *Ibid.*, Article 5, paragraph (2).

⁸⁰ *Ibid.*, Article 5, paragraph (3).

⁸¹ *Ibid.*, Article 5, paragraph (4).

carried out through:⁸²

(a) Administrative inspection, including:

(1) to carry out an opening meeting with the skipper or appointed skipper substitute (Substitute Master), and

(2) to inspect vessel certificates and document validation according to vessel and crew certificate types in the form of a Notification of Orderly Inspection.

(b) Physical inspection, which is carried out to ensure compliance between the information mentioned in the certificate and the vessel document under the following:

(1) vessel construction;

(2) operational of vessel equipment; and

(3) crew welfare.

Meanwhile, follow-up/re-inspection is carried out to ensure the fulfillment of the results of the initial inspection in the form of deficiency or detainable deficiency findings that have been corrected and/or fulfilled in accordance with the convention's provisions.⁸³ The inspection mentioned above is conducted by a PSCO whom the Director General appoints after fulfilling the requirements which include: (a) PSC education and training completion and pass as proven by a certificate; (b) has a seafarer expertise certificate ANT-I (Level 1 Nautical Expert or ATT-I (Level 1 Technician Expert) or a Bachelor of Shipping Engineering diploma with Senior Marine Inspector qualifications; (c) possess practical or theoretical knowledge of ships and their operations to apply the provisions of the convention attached to the inspected foreign ship; (d) possess integrity, professionalism, and transparency; and (e) owns an identity card issued by the Director General of Sea Transportation.⁸⁴ Furthermore, the PSCO appointed by the Director General is placed in the directorate in charge of the duties of orderly shipping or in designated ports open to foreign trade. Thus, the PSCO will only carry out duties at international ports.

⁸² *Ibid.*, Article 6.

⁸³ *Ibid.*, Article 7.

⁸⁴ *Ibid.*, Article 9.

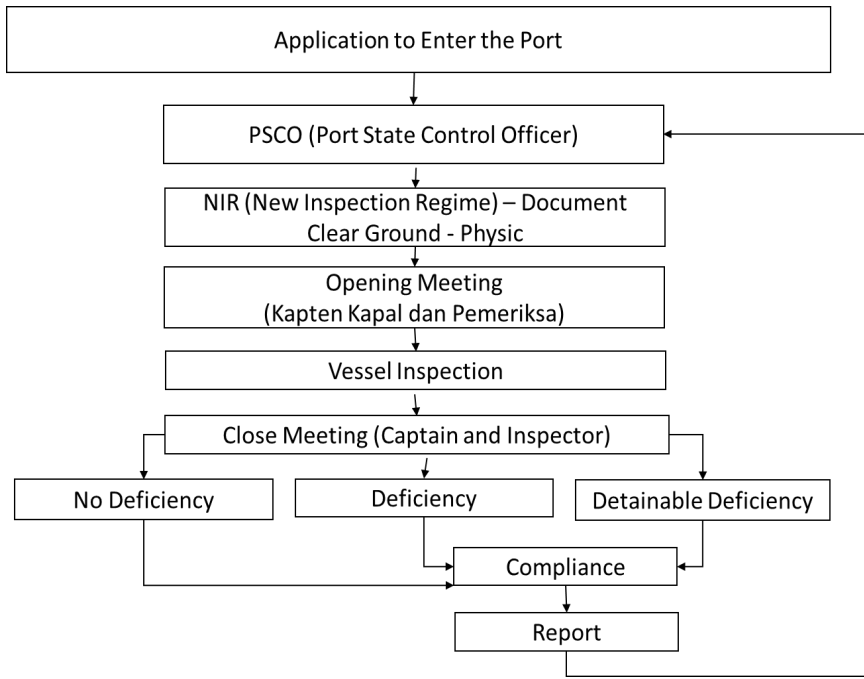


Figure 6. Implementation of PSC at Bena port

Additionally, in carrying out their duties, PSCOs must be equipped with personal safety equipment and supplies to prevent risks that may occur while inspecting the seaworthiness and safety of foreign vessels.⁸⁵ Personal safety equipment and supplies includes:⁸⁶ head protection (safety helmet), which complies with Indonesian National Standard (SNI); foot protection (safety shoes); hand protection (safety gloves); eye protection (safety goggles); ear protection (safety ear plugs); working vest; specified field work uniform; a multi-gas detector that does not cause an explosion; lighting aids in the form of flashlights made of materials that are safe against explosive gases (explosive proof); portable communication tool, if needed; and recorder, such as camera, audio, or recorder (explosive proof).

Based on the description above, all applicable provisions in Permen KP No. 39 of 2019 are still implemented by the PSM Inspection Team at Bena

⁸⁵ *Ibid.*, Article 20, paragraph (1).

⁸⁶ *Ibid.*, Article 20, paragraph (2).

Public Port. However, Benoa Public Port also carries out PSC to determine the status of foreign vessels in terms of corrective actions. Some field findings that require attention include:

a. The Request for an Application Letter

The skipper, shipowner, and agent submit the application letter to two agencies electronically through the PSM Authority Secretariat email (MoMAF) and the KSOP of the Ministry of Transportation.

b. Determination of the Anchorage Location

The KSOP of Benoa General Port is authorized to set anchoring points for foreign vessels. Only the Health Quarantine Agency (MoH) has the right to inspect this anchorage point. Furthermore, vessels which are given a yellow mark will go to the designated location for inspection, either at the anchorage area or the berthing dock, according to available capacity.

If a berthing location at the pier is unavailable, the parties will continue the inspection—in this case, the Immigration, PSM, and Customs. These three representatives will be facilitated with vessels operated by KPLP (Sea and Coast Guard Unit), Ministry of Transportation. However, if the port dock is empty, the foreign fishing vessel will be directed to the dock.

c. Inspection Coordination

Inspection coordination is only carried out by the PSM, namely the Marine Resources and Fisheries Monitoring Base, the Fish Quarantine and Quality Control Center, and the Fishing Port. Based on the interview results, there was no coordination between agencies such as Immigration, Customs, and Health Quarantine. The absence of coordination happens because each agency has its duties and functions, and the report is submitted to each leader.

C. PSMA 2009 IMPLEMENTING PORT READINESS

Benoa Public Port exhibits the highest level of readiness in implementing PSMA 2009. Nevertheless, there is room for improvement, particularly regarding external coordination with the Health Quarantine Agency, Immigration, and the PSM Inspection Team. As for fishing ports, essential preparations include the appointment of request-receiving officers and risk analysis officers, whose responsibilities have been executed by the PSM secretariat at the central level. However, fishing ports encounter challenges, such as a limited number and capacity of officers who have undergone training, a shortage of English-speaking officers, as well as weak coordination among agencies in implementing PSMA 2009.

Table 3. Evaluation of PSMA 2009 impementation readiness

No.	Standard	PPS NZJ	PPS Bitung	PPS Bungus	PU Benoa
A	Application service				
	Application reception officer	(-)	(-)	(-)	(+)
	Risk analysis officer	(-)	(-)	(-)	(+)
B	Inspection service				
	Trained officer	(-)	(-)	(-)	(+)
	Authorized officer	(+)	(+)	(+)	(+)
	English-speaking officer	(+)	(-)	(-)	(+)
	Coordination mechanism among the agencies	(-)	(-)	(-)	(-)
	Officer identity	(+)	(+)	(+)	(+)

Note: (+) Ready, (-) Not Ready

IV. CONCLUSION

This paper reveals that Indonesian law has followed the PSMA 2009. Meanwhile, the standards that must be met by the port implementing PSMA 2009 are (1) application services, including service officers in receiving application letters and risk analysis officers; and (2) inspection services, including trained officers, authorized officers, English-speaking officers, coordination mechanisms between agencies, and officer identity.

PSMA 2009 has not yet been implemented at fishing ports despite having structured regulations, ranging from the initial application to enter the port to the examination and reporting mechanism. The implementation of PSMA 2009 was conducted simultaneously with PSC at Benoa Public Port (dualism of PSJ regime). The reason for this issue is that Fishing Ports under MMAF adhere to FAO standards, as per PSMA 2009, while Public Ports under the Ministry of Transportation follow IMO standards, in accordance with IMO Regulation and Tokyo MoU. This discrepancy creates challenges in the enforcement of PSMA 2009 on fishing vessels that visit public ports. The existence of these two systems reflects the needs to integrate the implementation of IUU Fishing prevention at the port implementing PSMA 2009.

BIBLIOGRAPHY

Journal Articles and Periodicals

- Agoes, ETTY R. "Development Toward the Adoption of the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing," *Indonesian Journal of International Law*: (2011): 202-218. doi: 10.17304/ijil.vol8.2.1.
- Alghifari, Fadhil. "Analisis Faktor-Faktor Penghambat Ratifikasi Port State Measures Agreement oleh Indonesia Periode 2009-2014 [Analysis of Factors Obstructing Ratification of Port State Measures Agreement by Indonesia for the Period 2009-2014]. *Journal of International Relations* 2, (2016): 143–152. doi: <https://doi.org/10.14710/jirud.v2i4.13526>.
- Bethel, Lonna, Henning Jessen, and Johan Hollander. "Implementing the Port State Measures Agreement to Combat Illegal, Unreported and Unregulated Fishing in the Caribbean." *Marine Policy* 132 (2021): 1-9. doi:10.1016/j.marpol.2021.104643.
- Chen Jihong, Zhang Fangwei, Yang Chen, Zhang Changjiang, Luo Lihua. "Factor and Trend Analysis of Total-Loss Marine Casualty Using a Fuzzy Matter Element Method." *International Journal of Disaster Risk Reduction* 24, (2017): 383–390. doi: 10.1016/j.ijdrr.2017.07.001.
- Chen Jihong, Zhang Shuanghong, Xu Lang, Wan Zheng, Fei Yijie, Zheng Tianxiao. "Identification of Key Factors of Ship Detention Under Port State Control." *Marine Policy*, 102 (2019): 21–27. doi: 10.1016/j.marpol.2018.12.020.
- Honniball, Arron N. "What's in a Duty? EU Identification of Non-cooperating Port States and Their Prescriptive Responses." *The International Journal of Marine and Coastal Law* 35 (2020): 19–54. doi:10.1163/15718085-23341067.
- Kusumawati, Gurnita Ning and Arie Afriansyah. "Evaluasi Keanggotaan Indonesia dalam Port State Measure Agreement (PSMA) 2009 dalam Menghadapi IUU Fishing [Evaluation of Indonesia's Membership in Port State Measure Agreement (PSMA) 2009 in the Face of IUU Fishing]." *Negara Hukum* 12 (2021): 263-284.
- Lindley, Jade and Erika J. Techera. "Overcoming Complexity in Illegal, Unreported and Unreported Fishing to Achieve Effective Regulatory Pluralism." *Marine Policy* 81 (2017): 71-79. doi:10.1016/j.marpol.2017.03.010.
- Musto, Callum and Efthymios Papastavridis. "Tackling Illegal, Unreported, and Unregulated Fishing Through Port State Measures." *Melbourne Journal of International Law* 22 (2021): 1-44. Available at SSRN: <https://ssrn.com/abstract=3930015>.
- Najemi, Andi and Winanda Kusuma. "Implementasi Ratifikasi Agreement on Port State Measures To Prevent, Deter, And Eliminate Illegal, Unreported, And Unregulated Fishing dalam Pembertasan Penangkapan Ikan Ilegal di Indonesia [Implementation of the Ratification of the Agreement On Port State Measures To Prevent, Deter, And Eliminate Illegal, Unreported, And Unregulated Fishing in Combating Illegal Fishing in Indonesia]." *Inovatif: Jurnal Ilmu Hukum* (2018): 174-189.
- Osman, Mohd T., et al. "Empirical Analysis on Port State Control Inspection for Foreign-Registered Ships in Malaysian Ports." *The Asian Journal of Shipping and Logistics* 37 (2021): 127-139. doi: 10.1016/j.ajsl.2020.10.004.

- Petrossian, Gohar A. “Preventing Illegal, Unreported and Unregulated (IUU) Fishing: A Situational Approach.” *Biological Conservation* 189 (2015): 39–48. doi:10.1016/j.biocon.2014.09.005.
- Pramod, Ganapathiraju, et al. “Estimates of Illegal and Unreported Fish in Seafood Imports to USA.” *Marine Policy* 48 (2014): 102–113. doi:10.1016/j.marpol.2014.03.019.
- Pramod, Ganapathiraju, Tony J. Pitcher, and Gopikhrisna Mantha. “Estimated of Illegal Fishing and Unreported Sea Food Imports to Japan.” *Marine Policy* 84 (2017): 42-51. doi:10.1016/j.marpol.2017.06.032.
- Ryngaert, Cedric and Henrik Ringbom. “Introduction: Port State Jurisdiction: Challenges and Potential.” *The International Journal of Marine and Coastal Law* 31 (2016):379-394, doi: 10.1163/15718085-12341405.
- Serdy, Andrew. “The Shaky Foundations of the FAO Port State Measures Agreement: How Watertight Is the Legal Seal against Access for Foreign Fishing Vessels?” *The International Journal of Marine and Coastal Law* 31 (2016): 422–441.
- Swan, Judith. “Port State Measures—from Residual Port State Jurisdiction to Global Standards.” *The International Journal of Marine and Coastal Law* 31 (2016): 395–421. doi:10.1163/15718085-12341404.
- Wang, Shuaian, Ran Yan, and Xiaobo Qu. “Development of A Non-Parametric Classifier: Effective Identification, Algorithm, and Applications in Port State Control for Maritime Transportation.” *Transportation Research Part B: Methodological* 128 (2019): 129-157. Doi: 10.1016/j.trb.2019.07.017.
- Witbooi, Emma. “Illegal, Unreported and Unregulated Fishing on the High Seas: The Port State Measures Agreement in Context.” *The International Journal of Marine and Coastal Law* 29, no. 2 (2015): 290–320. doi:10.1163/15718085-12341314.
- Xiao Yi, Wang Grace, Lin Kun-Chin, Qi Guangqiu, Li Kevin X. “The Effectiveness of the New Inspection Regime for Port State Control: Application of the Tokyo MoU.” *Marine Policy* 115 (2020): 103857 doi: 10.1016/j.marpol.2020.103857.
- Xiao Yi, Qi Guangqiu Jin Mengjie, Yuen Kum Fai, Chen Zhuo, Li Kevin X. “Efficiency of Port State Control Inspection Regimes: A Comparative Study.” *Transport Policy* 106 (2021): 165-172. doi: 10.1016/j.tranpol.2021.04.003.
- Yang, Zhisen, Zaili Yang, and Angelo Palos Teixeira. “Comparative Analysis of the Impact of New Inspection Regime on Port State Control Inspection.” *Transport Policy* 92 (2020): 65-80. doi:10.1016/j.tranpol.2020.04.009.
- Young, Margaret A. “International Trade Law Compatibility of Market-Related Measures to Combat Illegal, Unreported and Unregulated (IUU) Fishing.” *Marine Policy* 69 (2016): 209–219. doi:10.1016/j.marpol.2016.01.025.

Treaties

- United Nations Convention on the Law of the Sea. 1836 UNTS 3 (opened for signature 10 December 1982, entered into force 16 November 1994).
- Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing (opened for signature 22 November 2009, entered into force 5 June 2016).

Legal Documents

- Indonesia. Undang-Undang tentang Pelayaran, UU No. 17 Tahun 2008. (Law on Shipping, Law No. 17 Year 2008).
- Indonesia. Peraturan Presiden tentang Persetujuan Tentang Ketentuan Negara Pelabuhan untuk Mencegah, Menghalangi, dan Memberantas Penangkapan Ikan yang Ilegal, Tidak Dilaporkan, dan Tidak Diatur. Perpres No. 43 Tahun 2016. (Presiden Regulation on Ratification Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing, Presiden Regulation No. 43 Tahun 2016).
- Indonesia. Peraturan Menteri Perhubungan tentang Pejabat Pemeriksa Kelaiklautan dan Keamanan Kapal Asing, Permenhub No. 119 Tahun 2017. (Ministerial Regulation of Transportation on Inspection Officials of Seaworthiness and Safety of Foreign Ship, Ministerial Regulation of Transportation No. 119 Tahun 2017).
- Indonesia. Peraturan Menteri Kelautan dan Perikanan tentang Pelaksanaan Ketentuan Negara Pelabuhan untuk Mencegah, Menghalangi, dan Memberantas Penangkapan Ikan Secara Ilegal, Tidak Dilaporkan, dan Tidak Diatur, Permen KP No. 39/Permen-KP/2019. (Ministerial Regulation of Marine Affairs and Fisheries on Implementation of Port State Provisions to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Ministerial Regulation of Marine Affairs and Fisheries No. 39/Permen-KP/2019).
- Indonesia. Keputusan Menteri Kelautan dan Perikanan tentang Pelabuhan Tempat Pelaksanaan Ketentuan Negara Pelabuhan Untuk Mencegah, Menghalangi, dan Memberantas Penangkapan Ikan Secara Ilegal, Tidak Dilaporkan, dan Tidak Diatur, Kepmen KP 52/Kepmen-KP/2020. (Ministerial Decree of Marine Affairs and Fisheries on Ports Where Port State Provisions Are Implemented to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Ministerial Decree of Marine Affairs and Fisheries 52/Kepmen-KP/2020).
- Indonesia. Surat Keputusan Direktorat Jenderal Perikanan Tangkap tentang Susunan dan Keanggotaan Unit Pelaksana Port State Measures, SK Dirjen Perikanan Tangkap No. 17 Tahun 2023. (Directorate General of Capture Fisheries Decree on the Composition and Membership of the PSM Implementation Unit, Directorate General of Capture Fisheries Decree No. 17 Tahun 2023).

Web sources

- IMO. "Port State Control." Accessed 25 December 2023, <https://www.imo.org/en/OurWork/IHS/Pages/Port%20State%20Control.aspx>.
- Chatham House. "The FAO Port State Measures Agreement." Accessed 25 December 2023, <https://www.chathamhouse.org/sites/default/files/Matthew%20Camilleri.pdf>.
- Tokyo MoU. "Welcome to Tokyo MOU." Accessed 25 December 2023, <https://www.tokyo-mou.org/>.