

Comparative Analysis in the Implementation of Port State Control (PSC) and Port State Measures Agreement (PSMA) in the Preventing IUU Fishing in Indonesia

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Abstract. Indonesia implements the prevention of IUU fishing in ports using the PSM Agreement 2009. In its implementation, the Government of Indonesia designated port of PSMA implementing by establishing four ports, namely 3 fishing ports and 1 public port. The diversity of these types of ports has an impact on differences in the implementation of foreign fishing vessels entering Indonesian jurisdiction. This research is descriptive by using normative and comparative juridical methods. The results of this study reveal that the implementation of PSC in ports uses the Tokyo MoU, and fishing ports are determined using the 2009 PSM Agreement. This difference in legal basis causes confusion in law enforcement for IUU Fishing as a party to the PSM Agreement, so that an integrated legal arrangement is needed between public ports which are the authority of the Ministry of Transportation and fishing ports which are the authority of the Ministry of Maritime Affairs and Fisheries.

1 Introduction

Illegal, unreported and unregulated (IUU) fishing is a threat not only to fisheries management, which can lead to fish scarcity [1, 2, 3, 4], but also to the economy of a coastal country. [5]. Leroy et al. (year) stated that IUU fishing practices result in losses of 10-23 billion dollars annually. This has a significant impact on developing countries, where fisheries play a crucial role in maintaining food security, reducing poverty, and financing long-term development [6].

Various international instruments have been issued to prevent, control, and eradicate IUU fishing, including: (1) United Nations Convention on the Law of the Sea (UNCLOS 1982), which regulates fisheries management activities from a country's territorial waters to the high seas. (2) Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessel on the High Seas 1993 that focus on the fishing

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vessel (FAO Compliance Agreement 1993); (3) the United Nations Agreement for the Implementation of the Provision of the UNCLOS of 19 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks 1995 which focuses on straddling fish stocks and highly migratory species (UN Fish Stock Agreement 1995); and (4) The Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (Port State Measures Agreement 2009) focuses on ports. In the field of fisheries, there are four international provisions that are legally binding. In addition, there are non-legally binding guidelines that must be considered in eradicating IUU fishing. These guidelines include the Code of Conduct for Responsible Fisheries (CCRF 1995), which is an effort to encourage coastal countries and countries with long-distance fishing fleets to comply with the FAO Compliance Agreement 1993 and the UN Fish Stock Agreement 1995.

The latest approach to prevent, counter, and eradicate IUU fishing is port state jurisdiction (PSJ), specifically port state measures (PSM). This is because inspection measures at ports are cheaper and safer than monitoring, pursuing, and inspecting vessels in the middle of the sea. [7-9].

The 2009 Port State Measures Agreement is the first international law to focus directly on preventing, suppressing, and eradicating IUU fishing [10,11,12]. However, the implementation of PSM is an international instrument that can be combined with other approaches to prevent and combat IUU fishing. For instance, tracking vessels suspected of IUU fishing through data exchange from port countries, followed by inspection at fishing ports to ascertain any irregularities, and market action to prevent the landing of illegally caught fish into the international market. It is important to note that PSM is just one of the many approaches that can be used to combat IUU fishing [13].

In Indonesia, the implementation of PSM is hindered by the dualism of PSJ, which consists of PSM and Port State Control (PSC). [14]. Solihin et al. [14] emphasized that the dualism of the Port State Jurisdiction (PSJ) is caused by the existence of fishing ports and public ports that are designated as Port State Measures (PSM) implementing ports. This legal dualism causes repeated inspections by the Port State Control Officer (PSCO) and the PSM Examining Officer.

The IMO (International Maritime Organization) mandates the implementation of PSC due to the frequent occurrence of marine traffic accidents in the shipping industry since the 1970s. These accidents have resulted in the loss of ship assets, casualties, and damage to the maritime environment [15,16,17,18]. In 1982, the IMO introduced the PSC program with the aim of enforcing safety at sea laws worldwide [19,20]. PSM and PSC are port state approaches used to exercise authority over foreign vessels, including fishing vessels, that enter the jurisdiction of a coastal state.

2 Methods

This is a desk study that uses a normative legal approach and includes a legal comparison between PSC based on IMO and PSM based on FAO. Normative analysis is used for mapping the legal substance of each law, and comparative legal analysis is used to compare between the two laws *IMO Resolution A. 1052 (27) adopted on 30 November 2011 concerning Procedures for Port State Control dengan Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing*.

3 Result and Discussion

The implementation of Port State Control (PSC) applies to all ships based on International Maritime Organization (IMO) standards. This is due to the legal basis used IMO Resolution A. 1052 (27) adopted on 30 November 2011 concerning Procedures for Port State Control 2011 dan Memorandum of Understanding on Port State Control in the Asia-Pacific Region (Tokyo MOU 2003) (Fig 1).

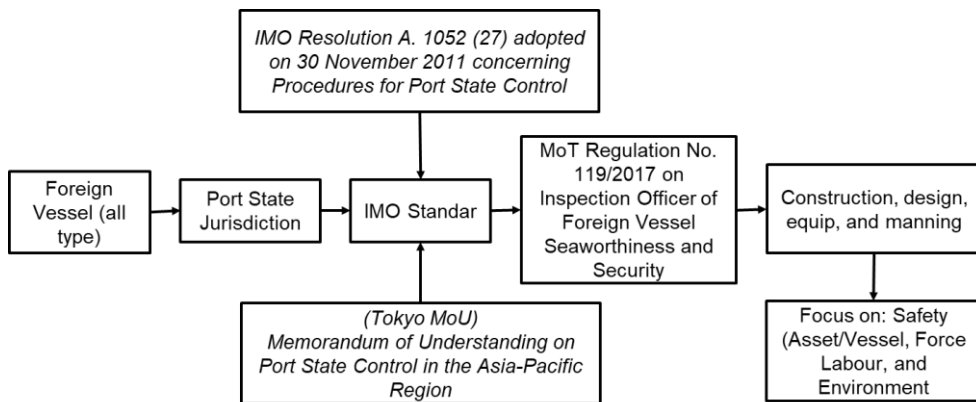


Fig 1. PSC Regime for vessel inspection

According to IMO resolution A. 787 (19) on Port State Control (PSC), the inspection of foreign vessels is divided into two stages: the initial inspection and the more detailed inspection. The initial inspection involves both administrative and physical checks. Administrative inspection involves validating ship certificates and documents based on the type of ship and crew certificate. The purpose of the physical inspection is to verify that the information in the ship's certificate and documents matches the ship's construction, equipment, operations, and crew welfare. If discrepancies are found during the initial inspection, the report will indicate a Detainable Deficiency. A second inspection will follow. The purpose of this inspection is to verify that any deficiencies or detainable deficiencies identified during the initial inspection have been corrected or addressed in accordance with the provisions of the convention (Fig. 2).

The Ministry of Transportation, through Ministry Regulation Number 119/2017 on Inspection Officer of Foreign Vessel Seaworthiness and Security, implements the PSC provisions. The regulation applies to the inspection of buildings, designs, equipment, and crew to ensure the security of assets and vessels, crew welfare, and the environment.

Implementation of Inspection Under the PSC Regime. Meanwhile, the implementation of Port State Measures (PSM) is applied to fishing vessels. This is because the legal basis used is several International Maritime Organization (IMO) standards. Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing 2009 (Fig 3).

Based on the 2009 Port State Measures Agreement, the inspection of foreign fishing vessels is divided into two: **First**, port entry. The port state is obliged to request information before granting permission for the vessel to enter the designated port. The information contains 23 points as contained in annex A, namely: (a) port of destination; (b) port country; (c) estimated date and time of arrival; (d) purpose of arrival; (e) port and date of last port entry permit request; (f) vessel name; (g) vessel flag; (h) vessel type; (i) international radio call code; (j) vessel contact information; (k) vessel owner; (l) identity of registration certificate; (m) IMO vessel identity, if available; (n) External identity, if available; (o) RFMO

identity, if available; (p) 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. Upon receiving the foreign vessel's application, the port state analyzes the application documents.

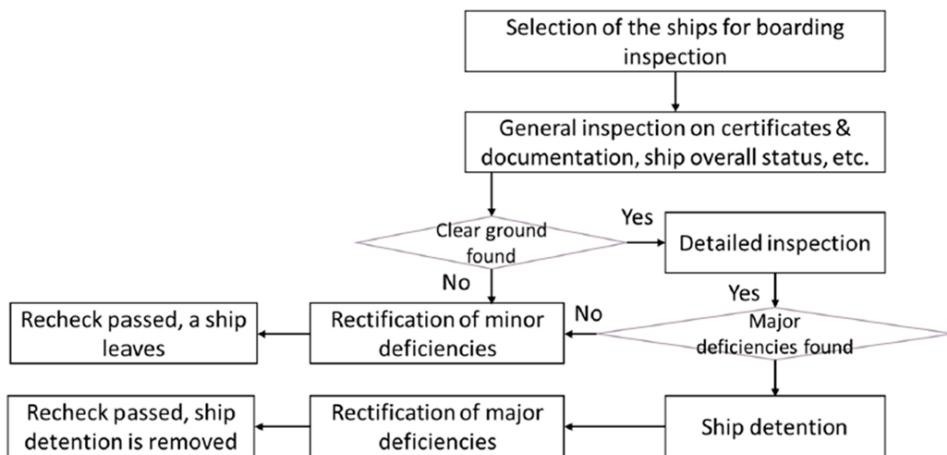


Fig 2. Implementation of Examination under PSC Regime [21]

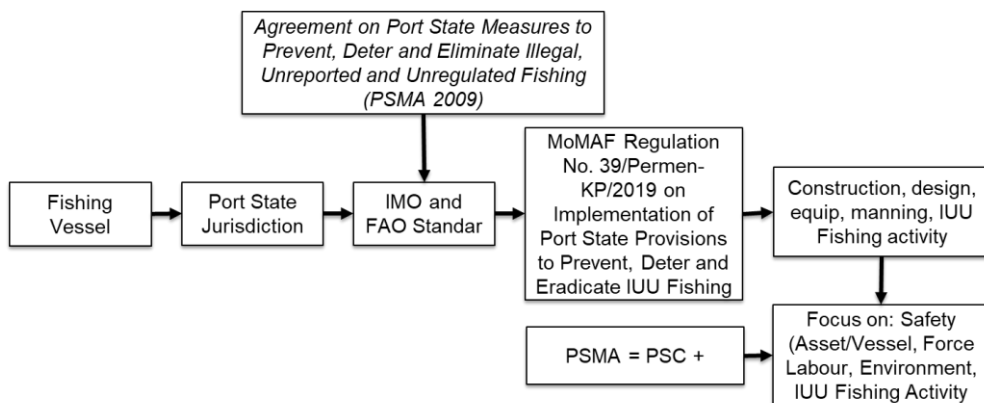


Fig 3. PSC Regime for fishing vessel inspection.

Second, inspection. After a foreign fishing vessel is allowed to enter the port, an inspection is conducted by PSM officers. The inspection is conducted to prove the physical conformity and documents of the foreign vessel. Related to the inspection, the capacity of the inspecting officer is a concern. This is as stated in Article 13 paragraph (1) of PSMA 2009 that each port state shall ensure that the inspectors perform the functions listed in Appendix B of the Port State Measures Agreement 2009 as a minimum standard. Third, the follow-up of inspection results. The results of the inspection refer to Annex C of the Port State Measures Agreement 2009.

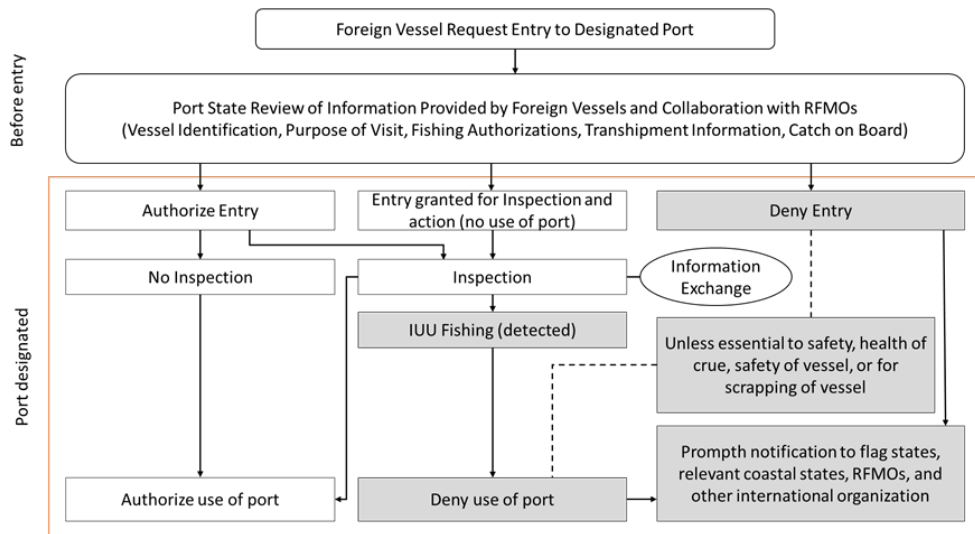


Fig 4. Implementation of Examination based on PSM Regime [22]

The Ministry of Marine Affairs and Fisheries of the Government of Indonesia implements the PSM provisions through the Minitrial Regulation of Marine Affairs and Fisheries on Implementation of Port State Provisions to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. This regulation applies to the inspection of the vessel's construction, design, equipment, and crew. To ensure security for assets and vessels, crew welfare, and the environment, as well as to prevent IUU fishing, measures must be taken.

4 Conclusion

The implementation of Port State Jurisdiction in Indonesia faces dualism between port state control and port state measures. The concept of Port State Jurisdiction is based on the authority of the Ministry of Transportation, which utilizes IMO Resolution A. 1052 (27) adopted on November 30, 2011, concerning Procedures for Port State Control 2011, and the Memorandum of Understanding on Port State Control in the Asia-Pacific Region. The Ministry of Marine Affairs and Fisheries, on the other hand, relies on the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing 2009. In summary, the Ministry of Transportation exclusively employs laws from IMO, whereas the Ministry of Maritime Affairs and Fisheries utilizes laws from FAO and IMO.

The Indonesian government, through the Coordinating Ministry for Maritime Affairs and Investment, must address the issue of dualism in maritime services, particularly regarding foreign fishing vessels that dock at public ports designated as PSM implementing ports, such as Benoa Public Port in Bali.

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