An analysis of the implementation of flag states obligations in Indonesia A case study for flag state performance

Syafiuddin Syafiuddin
*World Maritime University*

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AN ANALYSIS OF THE IMPLEMENTATION OF FLAG STATES OBLIGATIONS IN INDONESIA

A case study for flag State performance

By

SYAFIUDDIN
Republic of Indonesia

A dissertation proposal submitted to the World Maritime University in partial fulfillment of the requirements for the award of the degree of

MASTER OF SCIENCE
In
MARITIME AFFAIRS
(MARITIME SAFETY AND ENVIRONMENTAL ADMINISTRATION)

2016

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Declaration

I certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views, and are not necessarily endorsed by the University.

Signature: Syafuddin

Date: September 19, 2016

Supervised by: LCDR. Megan Drewniak
Armando Graziano, M.Sc.
World Maritime University

Assessor: Prof. Dr. Jens-Uwe Schröder-Hinrichs
Institution/organisation: World Maritime University

Co-assessor: Robert Garcia
Institution/organisation: U.S. Coast Guard, Sector Miami, Florida
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Abstract

Title of Dissertation: An Analysis of the Implementation of Flag States Obligations in Indonesia: A case study for flag State performance

Degree: MSc

The dissertation is an analysis of the implementation of flag States obligations in Indonesia by means of assessing its performance. The study emphasized the flag State duties and responsibilities related to the administrative, social and technical duties as highlighted in the UNCLOS Article 94 and 217.

The parameters utilized by the International Chamber of Shipping [ICS] when assessing flag State performance are contemplated and applied for the Indonesian flag. Such parameters are: (i) the ratification of major international maritime treaties; (ii) the use of Recognised Organisation [RO] complying with resolution A.739(18); (iii) mandatory reporting requirements; (iv) PSC inspection records; and (v) the average age of the fleets. One of the major indicators, the PSC detention record in the Tokyo MoU, positions the Indonesian flag on the “black list” which suggests negative or underperforming implementation and enforcement of flag States obligations.

In detail, the ships detention reports published by the Tokyo MoU were analyzed, from the period of 2012 to 2015. The aspect of delegation authority to the RO is also reviewed. Moreover, the relationship between Maritime Administration (as a flag State enforcer) and the RO with respect to the authorization of delegation, is examined. In lieu of the detainable deficiencies, the author has distinguished the responsible part, whether RO or the flag State itself. The analysis results were collated and evaluated in comparison with the overall data of the Tokyo MoU as a region.

Additionally, related data concerning the aspect of ratification of the international maritime treaties, reporting requirements and the average age of fleets are thoroughly examined. Furthermore, the analysis result is discussed for evaluation and possible improvement.

The concluding chapter illustrates the result of the analysis and discusses the possible advancement measures. Several relevant recommendations are proposed for the potential improvement of Indonesia’s performance at regional and international levels.

KEYWORDS: flag State performance, recognized organization, port State control, Tokyo MoU, delegation authority, ship detention
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<th>Full Form</th>
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<tbody>
<tr>
<td>ABS</td>
<td>American Bureau of Shipping</td>
</tr>
<tr>
<td>BKI</td>
<td>Biro Klasifikasi Indonesia</td>
</tr>
<tr>
<td>BRS</td>
<td>Bulgarian Register of Shipping</td>
</tr>
<tr>
<td>BV</td>
<td>Bureau Veritas</td>
</tr>
<tr>
<td>CASR</td>
<td>Consolidated Audit Summary Report</td>
</tr>
<tr>
<td>COLREG</td>
<td>The Convention on the International Regulations for Preventing Collisions at Sea, 1972</td>
</tr>
<tr>
<td>DGST</td>
<td>Directorate General of Sea Transportation</td>
</tr>
<tr>
<td>Ditkappel</td>
<td>Direktorat Perkapalan dan Kepelautan (Directorate of Shipping and Seafarers)</td>
</tr>
<tr>
<td>DMLC</td>
<td>Declaration of Maritime Labour Compliance</td>
</tr>
<tr>
<td>DnV</td>
<td>Det Norske Veritas</td>
</tr>
<tr>
<td>DOC</td>
<td>Document of Compliance</td>
</tr>
<tr>
<td>EC</td>
<td>European Commission</td>
</tr>
<tr>
<td>FSA</td>
<td>Formal Safety Assessment</td>
</tr>
<tr>
<td>GISIS</td>
<td>Global Integrated Shipping Information System</td>
</tr>
<tr>
<td>GL</td>
<td>Germanischer Lloyd</td>
</tr>
<tr>
<td>GT</td>
<td>Grosse Tonnage</td>
</tr>
<tr>
<td>HSSC</td>
<td>Harmonized System of Survey and Certification</td>
</tr>
<tr>
<td>ICLL</td>
<td>International Convention on Load Lines, 1966</td>
</tr>
<tr>
<td>ICS</td>
<td>International Chamber of Shipping</td>
</tr>
<tr>
<td>Acronym</td>
<td>Description</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
</tr>
<tr>
<td>III Code</td>
<td>IMO Instrument Implementation Code</td>
</tr>
<tr>
<td>ILO</td>
<td>International Labour Organization</td>
</tr>
<tr>
<td>IMO</td>
<td>International Maritime Organization</td>
</tr>
<tr>
<td>ISM</td>
<td>International Safety Management Code</td>
</tr>
<tr>
<td>KNKT</td>
<td>Komite Nasional Keselamatan Transportasi</td>
</tr>
<tr>
<td>LR</td>
<td>Lloyd’s Register of Shipping</td>
</tr>
<tr>
<td>MEPC</td>
<td>Marine Environment and Protection Committee</td>
</tr>
<tr>
<td>MLC</td>
<td>Maritime Labour Convention, 2006</td>
</tr>
<tr>
<td>MoS</td>
<td>Ministry of the State Secretariat</td>
</tr>
<tr>
<td>MoJ</td>
<td>Ministry of Justice and Human Rights</td>
</tr>
<tr>
<td>MoT</td>
<td>Ministry of Transport</td>
</tr>
<tr>
<td>MSC</td>
<td>Maritime Safety Committee</td>
</tr>
<tr>
<td>NCP</td>
<td>National Contact Points</td>
</tr>
<tr>
<td>NIR</td>
<td>New Inspection Regime</td>
</tr>
<tr>
<td>NK</td>
<td>Nippon Kaiji Kyokai</td>
</tr>
<tr>
<td>Polar Code</td>
<td>International Code for Ships Operating in Polar Waters</td>
</tr>
<tr>
<td>PSC</td>
<td>Port State Control</td>
</tr>
<tr>
<td>RINA</td>
<td>Registro Italiano Navale</td>
</tr>
<tr>
<td>RO</td>
<td>Recognized Organization</td>
</tr>
<tr>
<td>RO Code</td>
<td>Code for the Recognized Organization</td>
</tr>
<tr>
<td>SMC</td>
<td>Safety Management Code</td>
</tr>
<tr>
<td>SOLAS</td>
<td>International Convention for the Safety of Life at Sea, 1974 including 1988 Protocol</td>
</tr>
<tr>
<td>STCW</td>
<td>International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended</td>
</tr>
<tr>
<td>SRP</td>
<td>Ship Risk Profile</td>
</tr>
<tr>
<td>TFV</td>
<td>Target Factor Value</td>
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<tr>
<td>UNCTAD</td>
<td>United Nations Conference on Trade and Development</td>
</tr>
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</table>
1. Introduction

1.1 Background of the study

There are many stakeholders that play an important role in the development of international shipping. Among those, the International Maritime Organization [IMO], States, RO, Shipowners/shipping companies and Seafarers. Each stakeholder has their roles and responsibilities; for instance, the IMO as one of the United Nations [UN] specialized agency, is responsible for developing international standards concerning safety as well as the pollution prevention related to ships and shipping activities. On the other hand, States have responsibilities for implementing and enforcing these international standards and regulations (Barchue, 2009).

In terms of maritime safety, security and protection of the marine environment, the roles of the States are divided based on their capacity as flag States, whose ships fly the flag; port States, whose ports or anchorages ships call; and coastal States, whose coasts ships pass. The general obligations and responsibilities of the States are highlighted in the IMO Instrument Implementation Code [III Code] (IMO, 2013a). In detail a Flag State has the primary responsibility to have in place an adequate and effective system to exercise control over ships entitled to fly their flag, and to ensure that they comply with relevant international rules and regulations. Recalling the requirement under the United Nations Convention on the Law of the Sea [UNCLOS] (1982), flag States’ responsibilities are also mentioned in the Articles 94 and 217.

Since most ships operate globally, this may present obstacles for the flag States when exercising and enforcing their obligations over their registered ships. They might face difficulties to effectively and efficiently control their ships. The limited
number of inspectors is considered the main problem for most maritime administrations, especially in developing countries like Indonesia (Fikri, 2007, p. 21). Also, it was noted that in some cases, the capacity and capability of their resources (marine inspectors) to perform all the requirements of the applicable conventions is limited. Indeed, it was recognized that the workload of marine inspectors, particularly in Indonesia was remarkably very high, since the limited number of marine inspectors compared to the amount of flag States obligations may not suffice (Fikri, 2007, p. 32).

A similar figure is still reflected in the current situation of Indonesia. According to the Clarksons report (2016, p. 3), by the end of 2015, there were 7,994 ships registered under Indonesian flag (see Table 1-1). These ships were mainly employed in coastal and inter-islands shipping and operated in 682 ports\(^1\) (Directorate General of Sea Transportation [DGST], 2014, pp. 53-67). Since the number of marine inspectors is (only) 392, not all of the ports possess permanently assigned inspectors. Also, it shows that the ratio between the number of ships compared to the number of marine inspectors was quite high. Considering also the high number of ship’s calls, sea ports involved, and the coverage area of operations, a challenge arises for marine inspectors when they also need to carry out PSC inspections.

\(^{1}\) A total 682 ports comprises of 111 commercial ports and 571 non-commercial ports.
The above description leads to the topic of the implementation of flag State obligations. The practical means of analyzing the implementation of flag State obligations is by assessing its performance through certain indicators since there are
many aspects that could be considered when assessing the flag States performance. For instance, the ICS uses the following indicators:

a) Ratification of major international maritime treaties:
   - International Convention for the Safety of Life at Sea, 1974 including 1988 Protocol [SOLAS];
   - International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended [STCW];
   - International Convention for the Prevention of Pollution from Ships, 1973 as modified by Protocol of 1978 [MARPOL];
   - The International Convention on Load Line, 1966 [ICLL];
   - Maritime Labour Convention, 2006 [MLC]; and

b) The use of RO complying with resolution A.739(18)

c) Mandatory reporting requirements to the IMO and ILO

d) Record of Port State Control inspection of ships [PSC], for instance, Tokyo MoU

e) The average age of the fleet

f) Attendance or participation at IMO meetings

Moreover, ICS (2015) publishes the report of flag State’s performance in tabular form. The performance level is symbolized by the green and red squares. The green squares indicated positive performance indicators while the negative performance is indicated by the red squares. In the above mentioned report, Indonesia’s negative performance is highlighted in several areas. One of the contributing factors that caused its poor performance is the number of ship detentions in the various regional areas (i.e. Tokyo MoU, Paris MoU and U.S. Coast Guard).
According to Tokyo MoU report (2015a, p. 26), during the periods of 2013 – 2015, a total of 546 ships were inspected, of which 85 were detained contributing to a detention factor of 15.15 %. As a result, Indonesia is positioned in the black-list together with twelve other countries. Considering that the list published by the Tokyo MoU is open to the public which follows the ‘name and shame’ attitude of the various MoUs, being on the “black list” gives a bad reputation for the flag States (Fikri, 2007, p. 4). Therefore, some States react positively by seeking possible improvements by setting higher safety standards or by simplifying the administration process. Perhaps, that is why the number of blacklisted flags has decreased continuously over the past few years (Tokyo MoU, 2015a). For many reasons, it is in the interest of all States to maintain their good reputation among other States. By becoming a reputable and quality flag State, it will bring benefits to them not only in technical matters, but also in financial aspects. Therefore, all of these reasons motivates the author to conduct this study.

1.2 Objective and research questions

Following the background information delineated above, there is a need to improve Indonesia’s performance (i.e. deleted from the black list). Therefore, the writer outlined the objectives of this study, which have as a starting point, the analysis of the implementation of flag States obligations in Indonesia. A case study for flag State performance is used as the basis of the analysis. The author views that the improvement of the implementation aspect can be reflected in the improvement of performance levels either at regional or international levels, such as in the Asia-Pacific region. Following that reason, this study also covers the analysis of the relationship between Maritime Administration and RO. Records of PSC inspections in the Tokyo MoU are used as a basis for the analysis.

To achieve the above outlined objectives, the following research questions need to be addressed:

(i) What is the current situation of Indonesia’s performance?
(ii) How does the good relationship between Maritime Administration in Indonesia (as a flag State enforcer) and Classification Societies (as RO) functions in terms of a delegation of authority?

(iii) What are the possible measures for flag States to address issues concerning the implementation of its obligations?

1.3 Scope of study and methodology

It is not the aim of this study to attempt a holistic discussion of enforcement and implementation of flag States obligations. Due to the limitation in source and data availability, this study focuses on the analysis of Indonesia’s performance for the period of 2012 – 2015. The analysis covers all aspects used by the ICS except the aspect of participation in IMO meetings and is mainly performed based on the annual PSC inspection record published by the Tokyo MoU. In addition, the related documents on the reporting requirements are also examined.

With respect to the detention list, the data consists of detention lists of Indonesian flagged vessel’s to include the following information:

- Ship’s particular.
  Provides information about the name of the ship, IMO number, nationality, year of built, gross tonnage [GT], ship type, classification society and company name.
- Deficiencies related to RO.
  Provides information about the responsibility of the RO, concerning the deficiencies found.
- Place of detention, including date of detention and date of release.
- Nature of deficiencies.
  With respect to the nature of deficiencies, information is given in general terms and associated with the specific numbers or codes according to the Tokyo MoU Deficiency Codes.

Furthermore, the collected data was processed and analyzed by using a simple quantitative method with the aid of Microsoft Excel as a tool.
1.4 Structure and organization

In order to effectively accomplish the objective as stated above, this dissertation is arranged in several chapters. The first chapter focuses on the background as to why this study needs to be performed. The objective, the scope, and the methodology used in this study are also elaborated.

Chapter 2 covers a literature review of the roles and responsibility of flag States. The discussion covers the flag States duties in the aspect of administrative, social and technical matters. The overview of the RO and the issues concerning delegation authority as well as the aspect of monitoring schemes (oversight program) are covered.

Chapter 3 provides a discussion related to the PSC. There is a review of the existing PSC regime applied in the Asia-pacific region (Tokyo MoU) and an overview of the black, grey and white list concept. In addition, the mechanism of the selection of ships for inspection, deficiencies, detention and criteria for attributing deficiencies to the RO are also discussed.

Chapter 4 provides the analysis of the current status of Indonesia’s performance with respect to the aspects described in Chapter 2 and 3. Regarding the aspect of PSC inspection, the analysis was carried out based on the detention list issued by the Tokyo MoU, during 2012 to 2015. In addition, the analysis also covers the following factors: (i) who is responsible for the deficiencies, (ii) the most detainable deficiencies, (iii) the distinction of deficiencies, (iv) the average age of detained ship, (v) the most type of ship detained, and (vi) the analysis of the general pattern of deficiencies each year. Furthermore, the analysis results are compared with the data available in the annual report (Tokyo MoU). Chapter 4 also provides a discussion on the nature of the relationship between Maritime Administration and RO. As a complement, the existing relationship between Maritime Administration (as a flag State enforcer) and classification societies (as the RO) in Indonesia are discussed as well.
Chapter 5 specifically provides the discussion of the analysis result. The last chapter (Chapter 6) presents a conclusion and summary of the whole analysis and discussion. Several recommendations are proposed as a complement to the discussion.
2. Flag State and Recognized Organization

2.1 Definition of flag State

It is beyond the scope of this study to have a broad and comprehensive discussion on what is the legal concept and correct definition of a flag State. Instead, the concept of a flag State as related to the international shipping and the international maritime law is used in this study. Mansel (2009, p. 18), highlighted some definitions of flag States by citing the academic work of other relevant authors in the field:

- “the State which has granted to a ship the right to sail under its flag” \(^2\)
- “the State whose nationality the ship possesses” \(^3\)
- “a State whose flag a ship flies and is entitled to fly” \(^4\)
- “the State in whose territory a ship is registered” \(^5\)

Following the above definitions, there is the term “registration” which is normally used to refer to the attribution of national status of the ship. Mukherjee (1993) stated that the concept of the flag in the maritime field is virtually synonymous with ship registration. Hence, very often flag State is denoted by a term of “register”. Once a ship is registered under a specific flag, such flag will issue a set of documents that have functions not only as \textit{prima facie evidence} of title and ownership of the ship, but also as confirmation of nationality and the right to fly the national flag.

\(^2\) Cited from Churchill and Lowe (1999, p.208)
\(^3\) Cited from Akehurst (1988, p.182)
\(^4\) Cited from Convention on Conditions for the Registration of Ships 1986, Article 2
\(^5\) Cited from United Nation Convention on the Law of the Sea (UNCLOS) 1982, Article 91(1)
The basic understanding of the flag State concept should be assumed as similar with the concept of two sides of the same coin, since it has the rights on the one side and the obligations on the other. This dualistic concept is reflected in the provisions of the UNCLOS Article 90, 91 and 94. On the one hand, Article 90 and 91 stated that by attributing the nationality to the ships, flag States have given “the right to sail ships flying its flag on the high seas” and the right to “fix conditions for the grant of its nationality and registering ships in its territory.” On the other hand, under Article 94, the flag State is bound by duty to “effectively exercise its jurisdiction and control over administrative, technical and social matters over ships flying its flag.”

To effectively analyze the flag State responsibility, it is necessary to look at the various types of flag States. A broad discussion concerning the issues in the description and categorization of flag States has evolved. One of the categorizations was proposed by Mansel (2009, p. 101), who grouped the flag States into four categories: National flag State, Quasi-National flag State, International flag State and Pseudo-National flag State. According to the Ministry of Transport [MoT] (2006), Indonesia is deemed to be classified as a National flag State whose register is available only to Indonesian citizens or entities established under Indonesian law and domiciled in Indonesia. Moreover, such register is operated by Maritime Administration namely the “Directorate General of Sea Transportation” [DGST].

2.2 Flag State duties and responsibilities

There are many treaties that deal with flag States duties (Takei, 2013, p. 101). However, it is not practicable to enumerate each of them exhaustively since it is out of the scope and purpose of this study. Instead, along with the objectives stated before, this study will analyze the basic structure of flag State duties and responsibility as described in the UNCLOS under Article 94 and 217. In order to make the discussion flow smoothly, it is necessary to distinguish the flag State responsibility into three categories: administrative, social and technical.
2.2.1. Flag State administrative duties

2.2.1.1. Ratification of major international treaties

It has been determined that a majority of flag States are Member States of the IMO, and most of them have ratified the major IMO conventions. Concerning the administrative matters, ratification of the IMO instruments is considered as the one aspect of the flag State duties. This argument was based on the provision in the SOLAS Article I(b), which required that “The Contracting Government undertake to promulgate all laws, decrees, orders and regulation and to take all other steps which may be necessary to give the present Convention full and complete effect, ...” (IMO, 1974).

In addition, such provision was also highlighted in the UNCLOS Article 94(2)(b), which mentioned that “every State shall assume jurisdiction under its internal law ...” Moreover, a similar provision also emanated in the III Code Part I, which was adopted under Resolution A.1070(28). It is required that if any IMO instruments entered into force, the State must take initial actions to implement and enforce its provisions and also give complete effect through the adoption into its national legislation (IMO, 2013a). However, in the implementation of those provisions, the question is, therefore, raised about how the State should transform the international treaties into its national legislation.

To answer the above question, in fact, there are two basic theories concerning the relationship between the international and domestic or national law that are generally applied by States. According to Malanczuk (1997, p. 63), the first doctrine called the “monistic” theory, which has a unitary perception that both -the international and national law- are forming one part of unity and being in the same legal order. It means that once the international treaties have been ratified, it does not need to be incorporated into the national law, since it has effectuated automatically to

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6 IMO currently has 171 Member States and 3 Associate Members. Indonesia accepted as IMO Member States since 1961. See http://www.imo.org/en/About/Membership/Pages/MemberStates.aspx
the national legislation. The second doctrine is called “dualistic” theory, which assumes that the international law and national law are two separate legal systems independent each other. Hence, even though such State has ratified the international treaties, it will not be binding unless it has been incorporated into its national law.

2.2.1.2. Mandatory reporting requirement

Another element that is also considered as the part of flag State administrative duties is mandatory reporting to the IMO and ILO. Considering the fact that information covering the extent to which flags have complied with certain reporting requirements is not always available in the public domain, such reports are certainly needed by the IMO and ILO as a means to encourage the implementation of the Conventions. In addition, such reports can also be used by the IMO and ILO as tools to assess the effectiveness of the implementation of the Convention and for statistical purpose.

Meanwhile, as an indicator to the assessment of flag State performance, ICS only used the aspect of submitted reports required by the ILO. However, to make the analysis in this study more comprehensive, both aspects of the reporting requirement (reporting to IMO and ILO) are discussed proportionally.

2.2.1.2.1. Mandatory reporting requirement to the IMO

This part discusses the categories that are mandatory to be reported to the IMO:

1. Mandatory reporting requirement under MARPOL

The reporting requirement under MARPOL emanated under the following parts:

- Articles 8, 11 and 12,
- Annex I: Regulation 38,
- Annex II: Regulation 18,
- Annex IV: Regulation 12,
• Annex V: Regulation 7, and
• Annex VI: Regulation 17

As guidance, flag States should refer to the Circular MEPC/Circ.318, which contains the format for a mandatory reporting system under MARPOL (IMO, 1996). According to this Circular, flag States are requested to submit their reports by 30 September, annually.

2. Mandatory reporting requirement regarding casualty investigation

This requirement described under SOLAS Regulation 21, MARPOL Article 12 and also under ICLL Article 23, which mentioned that:

“Each Contracting Government undertakes to supply the Organization with pertinent information concerning the findings of such investigations...”

Moreover, obligations concerning accidents and casualty investigations are also highlighted in the UNCLOS Article 94(7). Furthermore, this provision is also recalled in the III Code (IMO, 2013a) by stating that the investigation of a marine casualty and marine incident should be conducted in accordance with the Casualty Investigation Code (IMO, 2008a). It is noted under Chapter 6 of this Code that the safety investigation shall be conducted into every “very serious accident.” The aims of such investigation are to prevent marine casualties and incidents from reoccurring in the future. Regarding the reporting requirement, it was also noted under Chapter 14 of this Code that:

“The marine safety investigating State(s) shall submit the final version of a marine safety investigation report to the Organization for every marine safety investigation conducted into a very serious marine casualty.”

Furthermore, Paragraph 41 of the III Code requires that the complete investigation report including observations found shall be forwarded to the IMO
through the Global Integrated Shipping Information System [GISIS]\(^7\) and it becomes an integral part of compliance with the Conventions. The purpose is: (i) to analyze the report to produce lessons to be learned, (ii) to detect potential trends on safety issues, and (iii) to take proper actions in order to prevent recurrence of marine casualties and incidents in the future. The IMO (2015a) has listed several results of lessons learned from each particular accident type.

Moreover, according to the IMO (2012), the analysis result of the investigation reports can also contribute to the development of a rule-making process or rule amendments. For instance, the analysis result can be used as a basis for performing the Formal Safety Assessment [FSA]. One example of IMO regulations developed by using the FSA approach is the International Code for Ships Operating in Polar Waters [Polar Code] (IMO, 2014a).

3. Mandatory reporting requirement concerning flag State authorization to the RO

This requirement described under SOLAS Regulation 6 and ICLL Article 23 which mentioned that:

“The Administration shall notify the Organization of the specific responsibilities and conditions of the authority delegated to nominated surveyors or recognized organizations.”

The implementation of the above provision should refer to the MSC/Circ.1010-MEPC/Circ.382.\(^8\) According to this Circular, flag States are requested to submit the specific report to the IMO, which consists of the information regarding responsibilities and conditions of the authorization. However, many States argued that the existing reporting mechanism -by sending the report to the IMO office- were considered to be ineffective and also inefficient. To overcome this issue, IMO

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\(^7\) GISIS module on marine casualties and incidents, see https://gisis.imo.org/Members/MCI/Default.aspx

\(^8\) MSC/Circ.1010-MEPC/Circ.382 Communication of information on the authorization of Recognized Organizations (ROs).
established a computer system which enables the mechanism of the direct reporting system, namely GISIS (IMO, 2009).

4. Mandatory reporting requirement under STCW Convention

This requirement is described under STCW Convention Article IV and STCW Code Part A Section A-I/7. It is required that States shall communicate the report to the IMO Secretary-General, detailing their actions regarding compliance with the STCW Convention. Following to these Provisions, Regulation I/7 paragraph 2 requires that when such information has been received and confirmed, the Secretary-General shall submit the evaluation report to the MSC.

Furthermore, as mandated by Regulation I/7 paragraph 5, the Secretary-General shall maintain a list of so-called “competent persons” who may be called upon to assist him/her in evaluating the report submitted by States, as well as in the preparation of the evaluation report to the MSC. Subsequently, MSC approved the list of a competent person and circulated in the MSC/Circ.797 which is revised periodically. The last revision of the list of competent persons was contained in the MSC.1/Circ.797/Rev.27 which was issued on 20 July 2015 (IMO, 2015b).

2.2.1.2.2. Reporting requirement to the ILO

This requirement is described under ILO Constitution Article 19, 22 and 35.9 It is required that:

“Each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of Conventions to which it is a party.”

In accordance with the decision taken by the ILO Governing Body, the reports should be sent to the ILO Office between 1 June and 1 September of each year (ILO, 2015, p. 13). Furthermore, the information and reports that have been submitted will

be examined by the ILO Committee of Experts.\textsuperscript{10} Furthermore, this Committee will produce the annual report on the application of Conventions and Recommendations. As such, the compliance in submitting the required reports was used by the ICS as an indicator when assessing the flag State performance.

2.2.2. Flag State social duties

The provision concerning social duties of flag State is described in the UNCLOS Article 94(3)(b) which required the State to take certain measures concerning \textit{“the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments.”} The Convention which deals with this provision is MLC 2006 (ILO, 2006). The MLC 2006 covers the safety standards, social security measures, and shipboard conditions of employment and living arrangements.

Article V of MLC 2006 contains the clause of \textit{“no more favorable treatment.”} It means that ships flying the flag of the State that has ratified the Convention will not be placed at a competitive disadvantage as compared to the ships flying the flag of non-ratified States (ILO, 2006). As such, this principle will ensure that the \textit{“level playing field”} is maintained. For instance, in the case of Indonesia, even though MLC has not yet ratified, Indonesian ships will receive similar treatment as the ship of the State that has already ratified the Convention.

2.2.3. Flag State technical duties

The provision concerning the technical duties of a flag State are enumerated in the UNCLOS Article 94(3)(a)(b)(c) and Article 94(4). Those provisions deal with the safety aspect of the ship which covers, \textit{inter alia}, the construction, equipment and seaworthiness; the manning of the ship as well as the training of crews; the use of

signals; the maintenance of communications; the prevention of collision and the prevention, reduction and control of marine pollution.

It is required that flag States shall take necessary measures to ensure safety at sea by performing surveys periodically by utilizing their qualified surveyors, as mandated by UNCLOS Article 94(4)(a). Furthermore, in performing such measures, according to Article 94(5), States are also required to conform to the “generally accepted” international regulations, procedures and practices. SOLAS is one example of a Convention that is considered as a “generally accepted” Convention (IMO, as cited in Takei, 2013, p. 117). The aspect concerning the safety at sea, particularly with respect to the survey and certification requirements are enumerated in SOLAS Chapter I, Regulation 6 to 20.

2.3 Delegation of flag State responsibility to the RO

The provision of UNCLOS Article 94(4)(a) required that ships must be surveyed periodically at the specific interval by qualified flag State surveyors; a task which is generally delegated to ROs due to lack of personnel and resources. In relation to the delegation of authority, however, there is a general indication that some States do not always perform satisfactorily (Takei, 2013, p. 98) and not in accordance with IMO Resolution A.739(18) which will be discussed further below. This is also reflected in the annual report on flag State performance published by the ICS periodically (ICS, 2015). As seen in Table 2-1, it is shown that many States still indicate negative performance. Lack of control by flag States over their ships is considered one of the main factors that contributed to its poor performance. Since, as discussed in Chapter 1.1, it was noted that some States have issues concerning lack of capacity and capability of their resources.
Table 2-1: Flag States performance, as of 1 December 2015

<table>
<thead>
<tr>
<th>SQUARES SUGGEST POSITIVE PERFORMANCE INDICATORS</th>
<th>PORT STATE CONTROL</th>
<th>RATION OF CONVENTIONS</th>
<th>AGE</th>
<th>REPORTS</th>
<th>IMO</th>
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<tr>
<td>ALBANIA</td>
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<td>ALGERIA</td>
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<td>ANTIGUA &amp; BARBUDA</td>
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<td>ARGENTINA</td>
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<td>AUSTRALIA</td>
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<td>BAHAMAS</td>
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<td>BARBADOS</td>
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<td>BELGIUM</td>
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<td>BENIN</td>
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<td>BRAZIL</td>
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<td>BRITISH VIRGIN ISLANDS</td>
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<td>BULGARIA</td>
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<td>CANADA</td>
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<td>CYPRUS</td>
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<td>DWCAL PEOPLES REP KOREA</td>
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<td>DRC DR CONGO</td>
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<td>DENMARK</td>
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<td>EQUATORIAL GUINEA</td>
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<td>HONG KONG (CHINA)</td>
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<td>IRAN</td>
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<td>ISRAEL</td>
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<td>KENYA</td>
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Source: ICS (2015)
In addition, the development of “open registry” is also considered as a contributing factor to that condition. When most of the ships are operated globally, the flag State might face difficulties in effectively and efficiently controlling their registered ships. Furthermore, the development of open registries also raised an enormous burden on the flag States in the implementation and enforcement of their duties and responsibilities. UNCTAD (2015, p. 41) reported that about seventy percent of the total world tonnage is registered under open registries. All of these issues, therefore, became a basic argument for the implementation of the delegation authority.

In fact, many flag States used the provisions of SOLAS Regulation I/6; ICLL Article 13, MARPOL Annex I Regulation 4 and Annex II regulation 10; and Tonnage Convention Article 6 as a legal basis to delegate their duties and responsibilities to the RO. In practice, it was accepted among states that delegation of authority is not only widely applied but also legitimate.

As a guideline for the flag States in the implementation of delegation authorities, the IMO adopted Resolutions A.739(18) and A.789(19). Furthermore, to enhance the existing resolutions, the IMO adopted Resolution MSC.349(92) on 21 June 2013 (IMO, 2013b). This code is called the RO Code and it became mandatory under the amendments of SOLAS Chapter XI-1/1, which entered into force on 1 January 2015. Hence, from 1 January 2015, this code came into effect and replaces the previous resolutions (Resolution A.739(18) and A.789(19)).

Following the above description, it was described that the flag State delegated and authorized its duties and responsibilities to the organizations, which is called RO. However, it should be emphasized that, not all organizations can be considered and defined as RO. The definition of RO is provided in the RO Code:

“Recognized organization (RO) means an organization that has been assessed by a flag State, and found to comply with this part of the RO Code.”
Under this Code, several requirements must be fulfilled by the organization before being recognized as RO. This Code also provides the guidelines which contain minimum criteria against which organizations are assessed towards recognition and authorization and also provides guidelines for the oversight program. The code consists of three main parts:

i. the mandatory requirements that the organization shall fulfill to be recognized by the flag State (part 1);

ii. the mandatory requirements that RO shall fulfill when performing statutory certification and services on behalf of flag State and the mandatory requirements that flag State shall adhere to when performing authorization to the RO (part 2);

iii. guidelines for the oversight program to the RO (part 3).

By considering the provisions in the RO Code, Mansell (2009, p. 139) opined that the organizations which are prone to be satisfied and complied with those requirements are mostly Classification Societies.

With respect to the relationship between the flag State and RO, both of them should make an effort to fulfill their mandatory requirements in accordance with the RO Code. For instance, flag States, prior to giving authorization to the RO, shall confirm that such RO has the capability and capacity to exercise the delegated task(s) in compliance with the international and national legislation. The flag State shall not authorize functions beyond the RO’s capabilities.

In addition, a flag State is obliged to establish the legal basis in which the authorization is administered, for instance, by providing formal written agreement with the RO that contains the detailed scope of authorization. Concerning the element to be included in the agreement, flag State may refer to the Appendix 3 of RO Code and MSC/Circ.710-MEPC/Circ.307 (IMO, 1995).
2.4 Requirement of monitoring scheme of the RO

Following the above discussion, a key factor in assessing the effectiveness of the delegation of authority is the ‘monitoring’ aspect. The provision regarding a monitoring scheme over RO is provided in part 3 of RO Code section 5.1 which stated that:

“The flag State should establish or participate in an oversight programme with adequate resources for monitoring of, and communication with, its RO(s) in order to...”

Monitoring activities are needed to confirm that the RO is performing the delegated task(s) in accordance with the agreement that has been made and also in compliance with the international standards.

Further, a monitoring scheme is one of the flag State’s obligations that was raised when they have delegated their authority to the RO. Concerning the implementation of the monitoring scheme, IMO (2013a) explained that means of monitoring could be performed in several ways, for instance, in the form of audits, inspections and audit observations.

There are at least two underlying reasons behind the requirement of a monitoring scheme for RO. They are:

1. Classification societies as the RO could perform dual functions: private and public functions

   Once the classification societies -as the RO- obtains authorization from the Administration, the classification society may still perform a dualistic and ambiguous function (Lagoni, as cited in Takei, 2013, p. 122). It can be assumed that such classification society could become the extension hand of the Administration. In other words, the classification society will be performing a public function. Meanwhile, the same classification society could also perform its class tasks for shipowners, which is considered as a private function.
People from classification societies believe that this dualism concept is advantageous for the reason of simplicity and efficiency. Moreover, some authors stated that this is a compromise since all parties involved will mutually benefit. The Administrations with their limited resources can still perform their duties, whilst shipowners will be easily accessing the required surveyors with a worldwide network, and subsequently, the classification society receives substantial revenue for its performances (Fikri, 2007, p. 10).

However, other authors stated that there is a potentially unhealthy relationship between those parties since a classification society might still perform simultaneously as a public and private entity (Mansell, 2009, p. 128). In addition, Barchue (2009) claimed that some ROs also have other business interests with ships registered in the flag State that has authorized such RO. This condition leads to the intensification of commercial pressures on the RO concerned, which sometimes create conflicts between the role of the flag State’s inspector and his commercial interest as the class surveyor of the ship.

Irrespective of the pros and cons discussed before, the flag State should remain aware of the provision of SOLAS regulation I/6(d) which stated that:

“in every case, the Administration shall fully guarantee the completeness and efficiency of the inspection and survey, and shall undertake to ensure the necessary arrangements to satisfy this obligations.”

It means that even though the flag States delegated their duties to the RO, the ultimate responsibility for such delegation remains to the flag State. Hence, it could be said that developing an appropriate monitoring scheme over RO is a necessity for the flag State. The purpose is to confirm that RO performs the delegated task in accordance with the assigned authority based on the agreement made and that it is also in compliance with international standards.
2. RO’s performance determines the flag State’s performance

Tokyo MoU (2015a), has tabulated the performance of RO, which was derived from the number of RO-related deficiencies. In this data, there is a note ‘RO responsible’ which indicates whether the RO has contributed to those deficiencies. The data showed that there is still a variant level of RO’s performance (see Table 2-2). This condition was also perceived by the European Commission [EC] together with the 27 other European Countries when they submitted a proposal regarding the development of the RO Code. In their proposal, they stated that the evidence from different port State control activities indicates that a significant number of ships were detained or found with some deficiencies soon after being surveyed by the RO (IMO, 2008b). Hence, they argued that the monitoring scheme over RO is needed to continuously maintain and improve the RO’s performance, which in turn could also improve the flag State performance.
Table 2-2: Performance of ROs

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<tbody>
<tr>
<td>Sing-Lloyd</td>
<td>419</td>
<td>8</td>
<td>14</td>
<td>3</td>
<td>0.46</td>
<td>Medium</td>
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<td>SingClass International Pte Ltd</td>
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<td>Polski Rejestr Statkow</td>
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<td>Universal Maritime Bureau</td>
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<td>27</td>
<td>12</td>
<td>0.09</td>
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<td>Korea Classification Society (former Jinson Classification Society)</td>
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<td>Union Bureau of Shipping</td>
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<td>Global Marine Bureau</td>
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<td>1,185</td>
<td>7</td>
<td>32</td>
<td>15</td>
<td>-0.87</td>
<td></td>
</tr>
<tr>
<td>Intermaritime Certification Services, S.A.</td>
<td>1,464</td>
<td>6</td>
<td>39</td>
<td>20</td>
<td>-1.22</td>
<td></td>
</tr>
<tr>
<td>Russian Maritime Register of Shipping</td>
<td>1,262</td>
<td>3</td>
<td>34</td>
<td>17</td>
<td>-1.49</td>
<td></td>
</tr>
<tr>
<td>Isthmus Bureau of Shipping</td>
<td>1,517</td>
<td>4</td>
<td>40</td>
<td>21</td>
<td>-1.49</td>
<td></td>
</tr>
<tr>
<td>Vietnam Register</td>
<td>2,330</td>
<td>6</td>
<td>58</td>
<td>35</td>
<td>-1.58</td>
<td></td>
</tr>
<tr>
<td>CR Classification Society</td>
<td>889</td>
<td>1</td>
<td>25</td>
<td>10</td>
<td>-1.63</td>
<td></td>
</tr>
<tr>
<td>DNV GLAS</td>
<td>4,249</td>
<td>8</td>
<td>100</td>
<td>69</td>
<td>-1.73</td>
<td></td>
</tr>
<tr>
<td>Bureau Veritas</td>
<td>10,255</td>
<td>15</td>
<td>229</td>
<td>181</td>
<td>-1.82</td>
<td></td>
</tr>
<tr>
<td>Germanischer Lloyd</td>
<td>8,827</td>
<td>12</td>
<td>199</td>
<td>154</td>
<td>-1.83</td>
<td></td>
</tr>
<tr>
<td>American Bureau of Shipping</td>
<td>9,987</td>
<td>13</td>
<td>223</td>
<td>176</td>
<td>-1.84</td>
<td></td>
</tr>
<tr>
<td>Nippon Kaiji Kyokai</td>
<td>30,187</td>
<td>43</td>
<td>644</td>
<td>563</td>
<td>-1.84</td>
<td></td>
</tr>
<tr>
<td>Det Norske Veritas</td>
<td>10,545</td>
<td>5</td>
<td>235</td>
<td>187</td>
<td>-1.94</td>
<td></td>
</tr>
<tr>
<td>Lloyd’s Register</td>
<td>12,855</td>
<td>6</td>
<td>284</td>
<td>230</td>
<td>-1.94</td>
<td></td>
</tr>
<tr>
<td>Korean Register of Shipping</td>
<td>8,973</td>
<td>3</td>
<td>202</td>
<td>157</td>
<td>-1.95</td>
<td></td>
</tr>
<tr>
<td>Registro Italiano Navale</td>
<td>2,564</td>
<td>0</td>
<td>63</td>
<td>39</td>
<td>-1.97</td>
<td></td>
</tr>
<tr>
<td>China Classification Society</td>
<td>8,206</td>
<td>1</td>
<td>185</td>
<td>143</td>
<td>-1.98</td>
<td></td>
</tr>
</tbody>
</table>

Source: Tokyo MoU, 2015a, p. 45
3. Port State Control

3.1 What is PSC?

As described in Chapter 1, the PSC inspection record is one aspect used by the ICS in determining flag States performance. This section provides the discussion on the explanation of PSC. In addition, for a more comprehensive discussion, a review of the existing PSC regime is covered as well. The review focuses on the following aspects: (i) the relevant instruments used as a basis for PSC activities; (ii) the selection of ships to be inspected; (iii) deficiencies and detention; and (iv) the concept of a black, grey and white-list.

IMO describes PSC as:

“the inspection of foreign ships in national ports to verify that the condition of the ship and its equipment comply with the requirements of international regulations and that the ship is manned and operated in compliance with these rules.” 11

In fact, the contemporary PSC regime is originated from the “control” provisions emanated in some relevant Conventions, for instance, SOLAS and MARPOL.12 As such, those Conventions provide a legal basis for the port States to undertake the inspection of the foreign vessels visiting their port. Furthermore, as the follow-up to that provision, the first regional agreement was concluded and signed in

11 See: http://www.imo.org/en/OurWork/MSAS/Pages/PortStateControl.aspx
12 The following Conventions are the legal basis of “control” provisions: SOLAS: Chapter I Regulation 19, Chapter IX Regulation 6, Chapter XI-1 Regulation 4, Chapter XI-2 Regulation 9; ICLL: Article 21; MARPOL: Article 5, Article 6, Annex I Regulation 11, Annex II Regulation 16, Annex III Regulation 8, Annex IV Regulation 13, Annex V Regulation 8, Annex VI Regulation 10; STCW: Article X, Regulation I/4; Tonnage Convention: Article 12; ILO Convention No. 147: Article 4; and MLC: Article V.
the Hague in 1978 (Kasoulides as cited in Cariou, P. et al., 2007, p. 1) shortly followed by the Paris MoU in 1982 setting common regional standards for ship inspection procedures and detention criteria.

In implementing this Memorandum, the port State officers will carry out the inspections, which consists of a visit onboard the ship to verify the following: a) the validity of the relevant certificates and other documents, b) the overall condition of the ship, and c) the compliance of equipment and crew with the above relevant instruments. In addition, such inspection should be carried out according to the PSC Procedures (IMO, 2011a).

3.2 PSC regime in the Asia–Pacific region

The PSC regime applied in the Asia-Pacific region is the Tokyo MoU, which was formed in Tokyo on 1 December 1993. By 2016, it has 20 full member Authorities consisting of Australia, Canada, Chile, China, Fiji, Hong Kong (China), Indonesia, Japan, the Republic of Korea, Malaysia, the Marshall Islands, New Zealand, Papua New Guinea, Peru, the Philippines, Russian Federation, Singapore, Thailand, Vanuatu and Viet Nam. In addition, the Tokyo MoU also has one cooperating member Authority, which is Panama.13 Indonesia signed the Memorandum on 1 April 1996.

This Memorandum used the following instruments as the basis of PSC activities:

- ICLL 66, including 1988 Protocol
- SOLAS 74, including 1878 and 1988 Protocols
- MARPOL 73/78
- STCW 78
- Collision Regulation 1972

3.2.1. Selection of ships for inspection

In selecting the ships to be inspected, a ship targeting system was initially used (Tokyo MoU, 2004). This initial system used several elements to calculate the target factor value [TFV] of the ship. The TFV value is determined by several factors, for instance, ship age, ship flag and classification society. Each TFV corresponds to a certain point value (see Table 3-1). The sum of total points of TFV will, therefore, determine the target factor of the ship by converting it into the priority level. The higher value of TFV means the higher priority of the ships to be targeted for the inspection (see Table 3-2).

On 1 January 2014, the Tokyo MoU introduced the new inspection regime [NIR] which used ship risk profile [SRP] in determining the targeted ship (see Table 3-3). Related to the use of Table 3-3, the Tokyo MoU published lists of flags and ROs meeting the criteria of low-risk ships, annually. Hence, flags on the Tokyo MoU white-list that have completed the IMO Member State Audit Scheme [IMSAS] are requested to notify the Secretariat in order to be properly recognized in the NIR calculation.

In addition, the definition of Company in this particular case is similar to the Company as defined in the ISM Code. Its performance takes into account the detention and deficiency history of all ships, which is counted daily by the Tokyo

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14 This system was adopted by Tokyo MoU Committee at its 12th meeting in Chile on March 2003.
15 Flags who’s total number of inspections over a 3 years period does not reach the minimum 30 are not included in the list. ROs who’s total number of inspections over a 3 years period does not reach the minimum 60 are not included in the list.
MoU on the basis of a running 36-month period (see Table 3-4 & 3-5). Accordingly, a Company with no inspections in the last 36 months will be given a “medium performance”.

Table 3-1: Calculation of Target Factor Value [TFV]

<table>
<thead>
<tr>
<th>Element</th>
<th>Target Factor Value (TFV)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ship Age</td>
<td>0 - 5 years: 0 point 6 - 10 years: 5 points 11 - 15 years: 10 points 16 - 20 years: 10 + 1 point for each year exceeding 15 years 20 - 20 years: 15 + 2 points for each year exceeding 20 years</td>
</tr>
<tr>
<td>Ship type</td>
<td>4 points for ships with type codes 13, 30, 40, 55, 60, 61, 70, 71 and of 15 years of age and over 0 points for all others</td>
</tr>
<tr>
<td>Ship flag: Excess of average detention, based upon 3 year rolling average figure</td>
<td>+1 for each percentage point in excess (decimal number rounded up)</td>
</tr>
<tr>
<td>Deficiencies</td>
<td>0.4 points for each deficiency found in last 4 initial inspections or follow up with new deficiency (decimal number rounded up)</td>
</tr>
<tr>
<td>Detentions</td>
<td>Depending on number of detentions in last 4 initial inspections or follow-up inspections with new deficiencies: 1 detention - 15 points 2 detentions - 30 points 3 detentions - 60 points 4 detentions - 100 points</td>
</tr>
<tr>
<td>Classification Society: non IACS</td>
<td>10 points</td>
</tr>
<tr>
<td>Outstanding deficiencies</td>
<td>2 points for each outstanding deficiency</td>
</tr>
<tr>
<td>Time since last initial inspection: 6 - 12 months 12 - 24 months Over 24 months or never inspected in TMU region (including new ships)</td>
<td>3 points 6 points 50 points</td>
</tr>
</tbody>
</table>


Table 3-2: Calculation of priority level

<table>
<thead>
<tr>
<th>Target Factor Value</th>
<th>Priority Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>&gt; 100</td>
<td>Priority 1 (very high)</td>
</tr>
<tr>
<td>41 - 100</td>
<td>Priority 2 (high)</td>
</tr>
<tr>
<td>11 - 40</td>
<td>Priority 3 (medium)</td>
</tr>
<tr>
<td>0 - 10</td>
<td>Priority 4 (low)</td>
</tr>
</tbody>
</table>

Table 3-3: Calculation of ship risk profile

<table>
<thead>
<tr>
<th>Parameters</th>
<th>Profile</th>
<th>High Risk Ship (HRS) (When sum of weighting points ≥4)</th>
<th>Standard Risk Ship (SRS)</th>
<th>Low Risk Ship (LRS)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Criteria</td>
<td>Weighting points</td>
<td>Criteria</td>
<td>Criteria</td>
</tr>
<tr>
<td>Type of Ship</td>
<td>Chemical tanker, Gas Carrier, Oil tanker, Bulk carrier, Passenger ship</td>
<td>2</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Age of Ship</td>
<td>All types &gt; 12y</td>
<td>1</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Fshg</td>
<td>Black</td>
<td>1</td>
<td>White</td>
<td>-</td>
</tr>
<tr>
<td>Recognized Organization</td>
<td>RO of Tokyo MOU</td>
<td>-</td>
<td>Yes</td>
<td>-</td>
</tr>
<tr>
<td>Performance</td>
<td>Low</td>
<td>1</td>
<td>High</td>
<td>-</td>
</tr>
<tr>
<td>Company performance</td>
<td>Low, Very Low</td>
<td>2</td>
<td>High</td>
<td>-</td>
</tr>
<tr>
<td>Deficiencies</td>
<td>Number of deficiencies recorded in each inspection within previous 36 months</td>
<td>How many inspections were there which recorded over 5 deficiencies</td>
<td>No. of inspections which recorded over 5 deficiencies</td>
<td>All inspections have 5 or less deficiencies (at least one inspection within previous 36 months)</td>
</tr>
<tr>
<td>Detentions</td>
<td>Number of Detention within previous 36 months</td>
<td>3 or more detentions</td>
<td>1</td>
<td>No detention</td>
</tr>
</tbody>
</table>

Source: Tokyo MoU (2014)

Table 3-4: Calculation of deficiency and detention index

<table>
<thead>
<tr>
<th>Deficiency Index</th>
<th>Deficiency points per inspection</th>
</tr>
</thead>
<tbody>
<tr>
<td>Above average</td>
<td>&gt; 1 above Tokyo MOU average</td>
</tr>
<tr>
<td>Average</td>
<td>Tokyo MOU average +/- 1</td>
</tr>
<tr>
<td>Below average</td>
<td>&gt; 1 below Tokyo MOU average</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Detention Index</th>
<th>Detention rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Above average</td>
<td>&gt; 1% above Tokyo MOU average</td>
</tr>
<tr>
<td>Average</td>
<td>Tokyo MOU average +/- 1%</td>
</tr>
<tr>
<td>Below average</td>
<td>&gt; 1% below Tokyo MOU average</td>
</tr>
</tbody>
</table>

Deficiency ratio = \( \frac{\text{No. of ISM deficiencies} \times 5 + \text{No. of non-ISM deficiencies} \times 1}{\text{No. of inspections}} \)

Detention ratio = \( \frac{\text{No. of detentions}}{\text{No. of inspections}} \)

Source: Tokyo MoU (2016a)
Table 3-5: Company performance matrix

<table>
<thead>
<tr>
<th>Detention Index</th>
<th>Deficiency Index</th>
<th>Company Performance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Above average</td>
<td>Above average</td>
<td>Very Low</td>
</tr>
<tr>
<td>Above average</td>
<td>Average</td>
<td>Low</td>
</tr>
<tr>
<td>Above average</td>
<td>Below average</td>
<td></td>
</tr>
<tr>
<td>Average</td>
<td>Above average</td>
<td>Medium</td>
</tr>
<tr>
<td>Average</td>
<td>Below average</td>
<td></td>
</tr>
<tr>
<td>Below average</td>
<td>Above average</td>
<td></td>
</tr>
<tr>
<td>Average</td>
<td>Average</td>
<td></td>
</tr>
<tr>
<td>Below average</td>
<td>Average</td>
<td></td>
</tr>
<tr>
<td>Below average</td>
<td>Below average</td>
<td>High</td>
</tr>
</tbody>
</table>

Source: Tokyo MoU (2016a)

As a result, by inputting all the above parameters into Table 3-3, the SRP of the ship will be obtained. Furthermore, based on the obtained SRP, the frequency and priority of inspections are determined (see Figure 3-1):

i. Priority I: ships must be inspected because a time window has closed.

ii. Priority II: ships may be inspected because they are within a time window of inspection.

Figure 3-1: Inspection window

Source: Tokyo MoU (2016a)
Additionally, there is also a provision on the “overriding priority” which might trigger an inspection outside the above illustrated periodic inspections.\footnote{Regardless of the NIR, the following ships will be considered to have \textit{overriding priority} for inspection:}

\subsection*{3.2.2. Deficiencies and detention}

Following the PSC inspection, if a deficiency is found and such deficiency poses a hazard to the safety, the Authority will ensure that the hazard is removed before the ship is allowed to proceed to sea, which may include the “detention” of the ship (IMO, 2011b). The deficiencies that caused the detention of the ship are so-called “detainable deficiencies.” In fact, the concept of ship detention to foreign ships is not a novelty in maritime history. It was introduced \textit{imprimis} in the United Kingdom through Merchant Shipping Act 1876, where a provision of ship detention existed in the case of overloading (Mansell, 2009b, p. 1).\footnote{Merchant Shipping Act 1876: A foreign ship (which) has taken on board all or any part of her cargo at a port in the United Kingdom, and is whilst at that port unsafe by reason of overloading or improper loading the provisions of this Part with respect to detention of ships shall apply to that foreign ship as if she were a British ship.}
IMO (2011b) grouped the deficiencies found during the inspections into several areas according to the aforementioned relevant instruments, for instance, deficiencies under the group of SOLAS, ICLL and MARPOL. In particular, with respect to the nature of deficiencies, Tokyo MoU provides a deficiency code that contains a list of a specific codes/numbers associated with the categories of each deficiency. For instance, according to the Tokyo MoU (2015b), a deficiency related to the ISM documentation is coded by 15110 and deficiencies related to the ventilators and air pipes are coded by 03108.

In the case of ship detention, the Authority is required to notify the flag State immediately by sending the report or writing notification. IMO required that such reports should be sent to the National Contact Points [NCP] for PSC matters as outlined in the MSC-MEPC.6/Circ.14 (IMO, 2015c). Further, if such detention is related to the RO, such RO should also be notified as appropriate. According to the information in GISIS, the NCP for Indonesia (as a flag State for PSC matters) is the Directorate of Shipping and Seafarers (in Indonesia, called as Ditkappel).  

### 3.2.3. Criteria for attributing deficiencies to the RO

An RO-related deficiency means the RO that carried out the relevant survey or that issued certification had a responsibility in relation with the deficiencies that led to the ship detention. According to the Tokyo MoU (2016b), the RO is responsible for a deficiency only if the following criteria are met (see Table 3-6):

- **i.** The deficiency covers a statutory certificate that has been issued or endorsed by the RO with a date of survey; and

- **ii.** The RO has carried out the last survey or verification audit for the relevant certificate(s).

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19 Detail information of NCP for another contact types also available in GESIS module, see https://gisis.imo.org/Public/CP/Browse.aspx?List=SICI&Authority=IDN
Also, according to the Tokyo MoU (2016b), there are several conditions that should be considered when deciding whether the RO was responsible for such deficiencies (see Appendix A).  

Table 3-6: Attribution of RO responsibility

<table>
<thead>
<tr>
<th>Issued by</th>
<th>Annual/intermediate survey or verification audit carried out by</th>
<th>Can RO responsibility be assigned (if other criteria are met)?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flag</td>
<td>None</td>
<td>NO</td>
</tr>
<tr>
<td>Flag</td>
<td>Flag</td>
<td>NO</td>
</tr>
<tr>
<td>Flag</td>
<td>RO</td>
<td>YES</td>
</tr>
<tr>
<td>RO</td>
<td>None</td>
<td>YES</td>
</tr>
<tr>
<td>RO</td>
<td>Flag</td>
<td>NO</td>
</tr>
<tr>
<td>RO</td>
<td>RO</td>
<td>YES</td>
</tr>
</tbody>
</table>

Source: Tokyo MoU (2016b)

3.3 The concept of black-list, grey-list and white-list

The Tokyo MoU used a specific formula in assessing flag state performance based on the statistical data collected every three year period (Tokyo MoU, 2015a).

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20 A detainable deficiency is associated with the RO if it is:

i. a serious structural deficiency including corrosion, wastage, cracking and buckling, unless it is clear that the deficiency has occurred since the last survey conducted by the RO; or

ii. a serious deficiency in equipment or non-structural fittings (such as fire main, air pipes, cargo hatches, etc.) AND it is less than 90 days since the last survey conducted by the RO, unless it is clear that the deficiency has occurred since the last survey conducted by the RO; or

iii. a serious deficiency in equipment or non-structural fittings which clearly would have existed at the time of the last survey; or

iv. a serious deficiency associated with out-of-date equipment which was out-of-date at the time of the last survey; or

v. a missing approval or endorsement of Plans and Manuals which clearly would have existed at the time of the last survey; or

vi. a major non-conformity where there is clear evidence of a lack of effective and systematic implementation of the ISM Code AND it existed at the last audit conducted by the RO provided that the audit took place within the last 90 days;

vii. a detainable MLC-deficiency where there is clear evidence of a lack of implementation of a requirement of the MLC with respect to the accommodation and recreation facilities detailed in Regulation 3.1 in Title 3 and that it existed at the last inspection conducted by the RO.

A detainable deficiency is not associated with the RO if it is:

i. the result of accidental or voyage damage;

ii. missing equipment that is likely to have been stolen; or

iii. an expired certificate unless the certificate was improperly issued by the RO.
Such formula sets the limits which are the “black-to-grey” and “grey-to-white” (see Figure 3-2).

\[ U_{black \rightarrow grey} = N \cdot p + 0.5 + z \cdot \sqrt{N \cdot p \cdot (1-p)} \]

\[ U_{white \rightarrow grey} = N \cdot p - 0.5 - z \cdot \sqrt{N \cdot p \cdot (1-p)} \]

Note:  
- \( N \) = number of inspections
- \( p \) = allowable detention limit “yardstick” (set to 7 %)
- \( z \) = significance requested (\( z = 1.645 \))
- \( u \) = allowed number of detention for the black or white list

Figure 3-2: Formula to determine “u” factor

Source: Tokyo MoU (2015a)

The flag State who’s total number of detentions fall above “\( u\) black-to-grey”, means that its performance is worse than the average (black list). On the contrary, if the total number of detentions fall below “\( u\) white-to-grey”, it means that its performance is better than the average (white list). If the total number of detentions fall between “\( u\) black-to-grey” and “\( u\) white-to-grey”, it means that its performance is on the grey list. However, this formula is only applicable for the flag State where its ships were involved in 30 or more PSC inspections over a three-year period.

In order to make the flag State performance comparable, the Tokyo MoU introduced the excess factor \([ef]\), which shows the indication of the number of times the yardstick “\( p\)” has to be altered and recalculated. The size of the increment and decrement “\( q\)” is set at 3 %. According to the Tokyo MoU (2014, p. 56), “\( ef\)” is calculated by the following formula:

\[ ef = \frac{(Detentions - white to grey limit)/(grey to black limit - white to grey limit)} \]

Hence, to determine the new value for “\( p\)”, “\( q\)” has to multiply with “\( ef\)” value. The outcome has to be added to the normal value for “\( p\)”. The new “\( p\)” value is then used to calculate the new “\( u\)” limit by using the above principles.
4. Analysis of Indonesia’s Performance

A broad explanation concerning the flag States’ duties and responsibilities as well as the aspect of delegation authority has been presented in Chapter 2. In addition, the rational of PSC and its related aspects have also been discussed comprehensively in Chapter 3.

Specifically, this session discusses the analysis of the performance of the Indonesian flag by taking into account all aspects and indicators discussed in the previous Chapters.

4.1 Ratification of international maritime treaties

The first aspect to take into consideration is the ratification of the international maritime conventions. In particular, the analysis focused on the seven main Conventions as described in Chapter 1.1. The analysis is performed by examining the ratification process for each Convention first and then linking them with the information outlined in the document of depository instruments which has been collated by the IMO (IMO, 2016).

As already described in Chapter 2.2.1.1, there are two mechanisms applied by States in ratifying the international treaties, which are a monistic and dualistic concept. In the case of Indonesia, it is the dualistic theory that is reflected in the actual practice. Since, as stipulated under Article 2 of the Constitution of the Republic of Indonesia Number 24 (2000), ratification of international treaties into national legislation should be consulted and approved by the parliament in advance before it becomes binding and give effect.
1) SOLAS 74 including 1988 Protocol

SOLAS 74 was adopted on 1 November 1974 and entered into force on 25 May 1980. Indonesia was a signatory party to this Convention and has ratified this Convention through the enactment of President Decree no. 65/1980 on 9 December 1980 (Ministry of the State Secretariat [MoS], 1980). Furthermore, Indonesia has deposited the Instrument to the IMO on 17 February 1981. Worldwide, the Convention has been ratified by 162 States/Parties comprising of 98.53 % of the gross tonnage of the world’s merchant fleet.

Furthermore, the 1988 Protocol of SOLAS Convention was adopted on 11 November 1988 and entered into force on 3 February 2000. This Protocol has been ratified by 109 States/Parties comprising of 95.35 % of the world tonnage. However, Indonesia was neither a signatory party nor ratified the Convention.

2) STCW 78 including 2010 amendments

This Convention was adopted on 7 July 1978 and entered into force on 28 April 1984. Indonesia was a signatory party to this Convention and has ratified this Convention through the enactment of President Decree no. 60/1986 on 4 December 1986 (MoS, 1986a). Furthermore, Indonesia has deposited the Instrument to the IMO on 27 January 1987. This Convention has been ratified by 161 States/Parties comprising of 98.76 % of the gross tonnage of the world’s merchant fleet.

Concerning the 2010 amendment, the so-called “Manila Amendment,” Indonesia was one of the parties that participated in the Conference which was held in Manila, the Philippines from 21 to 25 June 2010. Indonesia was deemed as having accepted the amendment since Indonesia had not sent the notification for the objection to the amendment.

Under Article VII of the STCW Convention, a transitional period of a maximum of five years was put into place. Since the Manila amendments entered into force on 1 January 2012, they will be fully operational on 1 January 2017.
3) MARPOL 73/78 Annexes I – II

The MARPOL 73/78 Convention was adopted on 17 February 1978 and entered into force on 2 October 1983. Indonesia ratified this Convention through the enactment of President Decree no. 46/1986 on 9 September 1986 (MoS, 1986b). However, Indonesia deposited the Instrument on 21 October 1986 with the declaration of exception to the Annexes III, IV and V. 21 This Convention has been ratified by 154 States/Parties comprising 98.73 % of the gross tonnage of the world’s merchant fleet.

4) MARPOL 73/78 Annexes III – VI

In accordance with Article 14(1) of the Convention, a State/Party may declare that it does not accept any one or all of Annexes III to VI. That is the reason why these annexes are so-called the “Optional Annexes.” As mentioned before (in the point 3), when Indonesia deposited the Instrument of Accession MARPOL 73/78, it declared the non-acceptance of the provisions of the Annexes III, IV and V. Also, it was mentioned under Article 14(2) of the MARPOL 73/78, a State/Party which has declared not being bound by the Optional Annexes, may at any time accept such Annexes by depositing the instrument at the IMO. Therefore, each of these Optional Annexes might enter into force on a different date.

In the case of Indonesia, these Optional Annexes were ratified simultaneously through the enactment of President Decree no. 29/2012 on 20 March 2012 (Ministry

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21 According to IMO (2016, p. 127), the instrument of accession of the Republic of Indonesia contained the following declarations (in the English language):

(i) In accordance with the provisions of article 14(1) of the International Convention for the Prevention of Pollution from Ships, 1973, the Government of the Republic of Indonesia declares that it does not accept all provisions of Annexes III, IV and V of the present Convention.

of Justice and Human Rights [MoJ], 2012). Moreover, Indonesia deposited the Instrument to the IMO on 24 August 2012.

(i) MARPOL Annex III

This Annex entered into force on 1 July 1992. This Convention has been ratified by 146 States/Parties comprising of 98.15 % of the gross tonnage of the world’s merchant fleet.

(ii) MARPOL Annex IV

This Annex entered into force on 27 September 2003. This Convention has been ratified by 138 States/Parties comprising of 90.96 % of the gross tonnage of the world’s merchant fleet.

(iii) MARPOL Annex V

This Annex entered into force on 31 December 1988. This Convention has been ratified by 151 States/Parties comprising of 98.32 % of the gross tonnage of the world’s merchant fleet.

(iv) MARPOL Annex VI

This Annex entered into force on 19 May 2005. This Convention has been ratified by 87 States/Parties comprising of 95.69 % of the gross tonnage of the world’s merchant fleet.

5) ICLL 66 including 1988 Protocol

The ICLL 66 Convention was adopted on 5 April 1966 and entered into force on 21 July 1968. Indonesia ratified this Convention through the enactment of President Decree no. 47/1976 on 2 November 1976 (MoS, 1976). Furthermore, Indonesia deposited the Instrument at the IMO on 17 January 1977. This Convention
has been ratified by 161 States/Parties comprising of 98.52% of the gross tonnage of the world’s merchant fleet.

Furthermore, the 1988 Protocol of Load Line Convention was adopted on 11 November 1988 and entered into force on 3 February 2000. This Protocol has been ratified by 103 States/Parties comprising of 95.28% of the world tonnage. However, Indonesia was neither a signatory party nor did it ratify the Convention.

6) MLC 2006

This Convention was adopted on 23 February 2006 and entered into force on 20 August 2013. According to the ILO website, by July 2016, MLC 2006 has been ratified by 79 member States representing over 80% of the world’s global shipping tonnage. Algeria is the latest member State which ratified the Convention on 22 July 2016. For the ratifying States, it means that all commercial ships of 500 GT or above, flying their flag and sailing on international voyages, will need to carry a Maritime Labour Certificate and Declaration of Maritime Labour Compliance [DMLC]. It should also be noted that these two documents are subject to PSC inspection. To facilitate the inspection process, the ILO (2008), provides the guidelines which can be used by the PSC officers when carrying out the inspections under MLC 2006.

Indonesia has not yet ratified this Convention. However, as already mentioned in Chapter 2.2.2, the rule of “no more favorable treatment” that existed in this Convention would apply accordingly. This means that every ship would be subject to the same level of inspection with respect to the working and living conditions for the seafarers onboard. Hence, in fact, these conditions are putting Indonesia in a disadvantageous position. Although the MLC has not yet been ratified, Indonesian flagged vessels serving the international trade, will receive similar treatment as any ships of a State that has already ratified the Convention.

7) CLC/FUND 92

CLC/FUND 92 Convention consists of two different Conventions, which are:
(i) International Convention on Civil Liability for Oil Pollution Damage 1969 [CLC 69], including 1992 Protocol [CLC 92]

The CLC 69 Convention was adopted on 29 November 1969 and entered into force on 19 June 1975. Indonesia was a signatory party to this Convention and ratified this Convention through the enactment of President Decree no. 18/1978 on 2 November 1976 (MoS, 1978a). Furthermore, Indonesia deposited the Instrument at the IMO on 1 September 1978. This Convention has been ratified by only 34 States/Parties comprising of 2.74 % of the gross tonnage of the world’s merchant fleet.

Furthermore, the Protocol 1992 of CLC Convention [CLC 92] was adopted on 27 November 1992 and entered into force on 30 May 1996. This Protocol has been ratified by 136 States/Parties comprising of 97.00 % of the world tonnage. Indonesia also ratified this Convention through the enactment of President Decree no. 52/1999 on 28 May 1999 (MoS, 1999). Furthermore, Indonesia deposited the Instrument to the IMO on 6 July 1999.


This Convention was adopted on 18 December 1971 and entered into force on 16 October 1978. Indonesia was a signatory party to this Convention and ratified this Convention through the enactment of President Decree no. 19/1978 on 1 July 1978 (MoS, 1978b). Furthermore, Indonesia deposited the Instrument on 1 September 1978, coinciding with the deposition of the CLC 69.

However, on 26 June 1998, Indonesia submitted the document of denunciation to this Convention, which means that Indonesia no longer ratified the Convention. In fact, there were several States which also denounced this Convention, leading the member States of this Convention to fall to only 24 States. As a consequence,
according to the IMO (2016, p. 270), this Convention ceased to be in force on 24 May 2002.

Subsequently, 1992 Protocol of FUND Convention [FUND 92] was adopted on 27 November 1992 and entered into force on 30 May 1996. This Protocol has been ratified by 114 States/Parties comprising of 94.04 % of the world tonnage. However, Indonesia is neither a signatory party nor has ratified this Convention.

8) 1988 Protocol of SOLAS and Load Line Convention

These Protocols were adopted by the International Conference on the Harmonized System of Survey and Certification [HSSC], which was held in London from 31 October to 11 November 1988. The main outcome of this Conference was the adoption of Protocol 1998 to SOLAS and the Load Line Convention which introduced the HSSC. Since these two Protocols entered into force on 3 February 2000, the HSSC would also be applied from that date accordingly.

Regarding the implementation of the harmonized system, flag States should refer to the global and uniform implementation of the HSSC as described in the Resolution A.883(21) (IMO, 2000a). In addition, concerning the surveys that have to be performed and the certificates that have to be issued, flag States should refer to the survey guidelines under the HSSC as set out under the Resolution A.1053(27) (IMO, 2011b). In brief, IMO has provided the diagrammatic survey arrangement in accordance with the provisions of the HSSC (see Appendix B).

As similar to the description in Chapter 2.2.2, these two Protocols also contain the provision of “no more favorable treatment”. This clause was contained in the Article I of the Protocols. The HSSC which was introduced under these Protocols covers the following provisions:

- ✓ 1988 SOLAS Protocol Chapter I:
  - Part A (definitions): Regulation 2
4.2 Delegation authority complying with Resolution A.739(18)

This section specifically analyzes the aspect of delegation authority. According to the ICS (2015), the following indicators were used when considering a flag State as a good performance flag:

(i) Flag States that authorized an RO which is an IACS members or, flag States that authorized not more than six ROs that are not IACS members 22

(ii) Flag States that submitted the report concerning the authorization to the IMO

4.2.1. Authorization to RO (IACS vs. non-IACS)

Considering the fact that the recognition of classification societies which are not a member of IACS does not mean that the flag is in any way deficient (ICS, 2015), the ICS noted that some ROs, not a member of IACS, also fully meet the standards required by the IMO. Nevertheless, ICS (2015) also viewed that if a flag State recognizes large numbers of ROs that are not a member IACS, there might be a reason to doubt whether all of these ROs comply with the IMO requirements. On the other hand, ICS assumes that classification societies which are members of IACS naturally comply with the RO Code. Obviously, that was the reason why the recognition of IACS members was labelled as a positive indicator.

As described in Chapter 2.1, Indonesia as a flag State discharged its duties and responsibilities through the Maritime Administration namely DGST. In addition, DGST had authorized one RO, which is BKI. Indeed, such authorization to BKI was based on the stipulation of a decision of the Director of Sea Transportation no. PK.204/1/3/DJPL-16 dated 21 April 2016.

22 IACS members: ABS, BV, CCS, CRS, DnV-GL, IRS, KR, LR, NK, PRS, RINA and RS.
Subsequently, the analysis of the detention lists showed that BKI was not the only one organization recognized by DGST. The analysis revealed that from 2012 to 2015, at least nine ROs were discovered, which are: ABS, BRS, BV, DnV, GL, DnV-GL,\(^{23}\) NK, LR and RINA (see Figure 4-1). All of them were IACS members, except BKI and BRS. As such, these facts confirmed the good performance of Indonesia in complying with the first indicator, as described in Chapter 4.2.

![Figure 4-1: Lists of ROs authorized on behalf of Indonesia (2012 - 2015)](image)

### 4.2.2. **Reporting requirement related to flag State authorization to RO**

In order to comply with this requirement, the flag State is obliged to inform the IMO about the report concerning the responsibilities and conditions for authorization through GISIS system.

\(^{23}\) DnV-GL is a merger group company between DnV and GL and became operational since 12 September 2013. See https://www.dnvgl.com/about/in-brief/our-history.html
Meanwhile, the information provided in the GISIS was considered out of dated since not all States had updated their detailed information there (Mansell, 2009a, p. 113). Also, Indonesia belongs to those who did not notify IMO since other ROs had been performing surveys and audits, and also issuing the statutory certificates on behalf of Indonesian. The information obtained directly from ships during PSC inspection revealed the existence of other ROs besides BKI. This information was evidenced by the record of ship’s detention published by the Tokyo MoU annually. However, on 5 August 2016, Indonesia updated the information in the GISIS list of RO-related information. It is shown that Indonesia assigned the authorization to the only one RO, which is BKI. As such, these facts also confirmed the good performance of Indonesia in complying with the second indicator as described in Chapter 4.2.

4.3 Mandatory reporting requirement to the IMO and ILO

4.3.1. Reporting requirement under MARPOL

Under the requirement stipulated in the MEPC/Circ.318, flag States are requested to submit their reports to the IMO by 30 September each year. The data collected from this report is useful to assess the effectiveness of MARPOL implementation and also for the statistical purposes. The IMO carried out the analysis and evaluation with respect to this report for the period of 5 years during 2008 to 2012. The analysis concluded that the rate of reporting was still low, with an average of 25.5 % (IMO, 2014b). As seen in Figure 4-2, the highest reporting rate took place in 2009 with the value of 26.7 %.

IMO also collated the States/Parties that had submitted the required reports and listed them in the Annex. In addition, the Annex also indicates whether such States had submitted the report within the reporting interval as stated before (by 30

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25 Data for the period of 2012 onwards were not available
September each year). In the case of Indonesia, as seen in Figure 4-3, there were not any reports submitted to the IMO during that period.

![Figure 4-2: The rate of reporting by flag States](image)

Source: IMO (2014b, p. 4)
Figure 4-3: Status of reporting under MARPOL from 2008 to 2012 (as of 23 June 2014)

Source: IMO (2014b, Annex 2, p. 3)
4.3.2. Reporting requirement regarding casualty investigation

As mentioned in Chapter 2.2.1.2, a casualty investigation should be performed in accordance with the Casualty Investigation Code (IMO, 2008a). Chapter 14 of this Code deals with the provision concerning the reporting requirement of the casualty investigation report. It is required that such report should be made comprehensively based on the objective evidence found during the investigation process to be further analyzed by IMO. The information related to marine casualties and incidents as well as safety investigation reports, which have been submitted to the IMO, were available in the GISIS casualty module.

Apart from the importance of investigation reports, there is another important aspect concerning the safety investigation, which is the independence and the objectivity of the investigators. It should be ensured that the investigators performing marine casualty investigations should be impartial and objective. In other words, to collect credible findings and acceptable recommendations, the investigators should be free from external influences. Also, they should not conduct the investigation with a potential conflict of interest.

In fact, there are several discussions concerning the issue of conflict of interest. One of them was highlighted by Reason as cited in Ghirxi (2003, p. 44) who considered the conflict of interest as a threat to safety. He had pointed out that:

“...the investigation is inevitably constrained by the inter organizational relations existing between the regulatory body and the regulated company. These, in turn, lead to relationships based more upon bargaining and compromise than threats and sanctions.”

Therefore, it could be a possibility if the Maritime Administration -as the regulator- conducts the casualty investigation, a conflict of interest might exist. Since the Administration might have a relationship with the entities being investigated (shipowners and RO), this could prevent its independence and objectivity. Reason’s principle mentioned above, was adopted by most of flag States when forming the
structure of their investigating body, including Indonesia. That was the reason casualty investigations in Indonesia are conducted by a specific institution which is independent and also separated from the Maritime Administration. This institution is called [KNKT] ‘Komite Nasional Keselamatan Transportasi’ (National Transportation Safety Committee). This committee was established on 1 September 1999 under the enactment of President Decree no. 105/1999 (MoS, 1999b). Although KNKT is under the responsible of the Ministry of Transport, the Minister has no vested power to interfere with the output of the investigation.

Concerning the investigation reports that have been submitted by the flag States, the IMO has carried out the analysis regularly. During 1 January 2010 to 31 March 2015, there were 776 accidents which were grouped as very serious casualties, of which 366 accidents were provided with the investigation reports which resulted in a reporting rate of 47.16 % (IMO, 2015d). In the case of Indonesia, during the same period (1 January 2010 to 31 March 2015), a total of 33 very serious casualties were recorded. However, only four investigation reports were submitted to the IMO corresponding to the reporting rate of 12.12 %, which is still below the global reporting rate.

With respect to the above condition (the low reporting rate), it is important to recognize that the success of the casualty investigation is determined by the investigator’s skill. Such skills covered both technical and non-technical (soft skills) matters such as skill in collecting evidence and writing a report. Probably, this was the reason for the IMO under the III Code which required the States to develop and implement the control and monitoring program and ensure that their investigators are trained accordingly.

Concerning the investigator’s qualification and knowledge, it is emphasized that the investigators should have the proper qualification and sufficient knowledge related to the accidents and casualties being investigated. This qualification might be related to the experience, such as a certain period of time, a professional with a
maritime background (e.g. ship’s officer, marine engineer, naval architect) possesses (IMO, 2013a). The motivation is that the knowledge and skills of the investigators, including their experience in managing the investigation tasks effectively, can substantially determine the success of the investigation which includes completing the investigation reports.

4.3.3. Mandatory reporting requirement under the STCW Convention

As discussed in Chapter 2.2.1.2.1, States are required to communicate the report concerning the compliance with the STCW Convention to the IMO Secretary-General, who will further analyze such report with the assistance of the approved competent persons. According to the IMO (2015b, p.17), as of 20 July 2015, Dr. Takeshi Nakazawa (Professor of the World Maritime University, Malmö, Sweden) is the approved competent person for Indonesia, which also covers the area of Japan, the Philippines, and Viet Nam.

With respect to the report submitted by the Secretary-General to the MSC, there is a term the so-called “STCW white list” that is used to identify the States that have demonstrated the full and complete effect to the provisions of the STCW 95 Convention. The ICS used this term (STCW white list) as an indicator when assessing flag States’ performance. The assessment was performed based on the list published by the IMO through the MSC Circular which has been updated from time to time.

In fact, the so-called “white list” initially appeared at the IMO-MSC meeting during its seventy-second session, which was held on 17 to 26 May 2000 (IMO, 2000b, p.7). As a follow-up to the previous meeting, MSC at its seventy-third session (27 November to 6 December 2000) concluded to publish MSC/Circ 978 which contained the list of States considered as the initial “STCW white list” countries (IMO, 2000c). The last updated STCW white list Parties/States was contained in the MSC.1/Circ.1163/Rev.9, which was issued on 15 June 2015 (IMO, 2015e). As evidenced in the prescribed MSC Circulars, which were regularly revised, Indonesia
has been included in that list since the initial publication in 2000 and has maintained it consistently until 2015. Hence, based on this reason, the ICS recognized Indonesia as a good performance State.

4.3.4. Mandatory reporting requirement to the ILO

The analysis on this aspect was carried out according to the Report of the Committee of Experts on the Application of Conventions and Recommendations during 2012 to 2015.

1. Analysis for the period year 2012

   The analysis showed that, a total of 2,393 reports were requested to be submitted to the ILO office and 1,664 reports had been received (ILO, 2013, p.16). This figure corresponds to the global reporting rate of 69.53 %. In the case of Indonesia, there were eight reports requested and all of them have been received by the ILO, giving the reporting rate of 100 % (ILO, 2013, p.866).

2. Analysis for the period year 2013

   The analysis showed that, a total of 2,319 reports were requested to be submitted to the ILO office and 1,719 reports had been received (ILO, 2014, p.14). This figure corresponds to the global reporting rate of 74.12 %. In the case of Indonesia, there were three reports requested and all of them have been received by the ILO, giving the reporting rate of 100 % (ILO, 2014, p.594).

3. Analysis for the period year 2014

   The analysis showed that, a total of 2,383 reports were requested to be submitted to the ILO office and 1,709 reports had been received (ILO, 2015, p.13). This figure corresponds to the global reporting rate of 71.71 %. In the case of Indonesia, there were six reports requested, five of which have been received by the ILO. There was one report which was not received by the ILO. These figures correspond to the reporting rate of 83.3 % (ILO, 2015, p.521).
4. Analysis for the period year 2015

The analysis showed that a total of 2,336 reports were requested to be submitted to the ILO office and 1,628 reports were received (ILO, 2016, p.11). This figure corresponds to the global reporting rate of 69.7 %. In the case of Indonesia, there were nine reports requested and all of them have been received by the ILO, giving the reporting rate of 100 % (ILO, 2016, p.568).

It was noticeably from the above analysis that during 2012 to 2015, Indonesia fulfilled the reporting requirement to the ILO.

4.4 Record of PSC inspection

This section provides the analysis of the Indonesian flagged vessels that have been detained as a result of PSC inspection in the Tokyo MoU region. The analysis was performed based on the records of ship detention for the period of 2012 to 2015.

4.4.1. Analysis of the ship detention list

The analysis in this part covers the detention list for the period of 2012 to 2015. The analysis was carried out for each year and compared to the regional figures in the Tokyo MoU region.

1. Detention list of the year 2012

According to the Tokyo MoU (2012, p.12), a total of 30,929 inspections were carried out in 2012, of which 19,250 inspections corresponds to 62.24 % were found with deficiencies. Regarding the ship detention, a total of 1,421 ships were detained corresponds to the detention rate of 4.59 %.

In the case of Indonesia, a total of 179 inspections were carried out, of which 164 were found with deficiencies. It means that in 91.62 % of the inspections deficiencies were found. Among those ships, 31 were detained, giving a detention
ratio of 17.32%. This detention rate was considerably higher compared to the regional average, which was 4.59%.

Recalling the “$u$” factor formula as described in Chapter 3.3, by including all of those facts, Indonesia has the “$u_{\text{white-to-grey}}$” factor = 6 and “$u_{\text{black-to-grey}}$” = 19. Since the number of detention is 31, Indonesia has been included in the black list position with the excess factor of 2.53.

Concerning the deficiencies found, for the 179 ships inspections, a total of 1,208 deficiencies were found of which 141 were considered as the so-called “detainable deficiencies” as prescribed in Chapter 3.2.2.

With regard to the categories of deficiencies, the composition of each category for Indonesia was slightly different compared to the regional composition. In the Tokyo MoU, it was noted that fire safety system, safety of navigation and life-saving appliances, were the top three categories discovered on-board with the compositions of 20 %, 17 % and 12 % respectively. Differently, for the Indonesian flag the top frequent deficiencies fell in the category of fire safety system followed by certificate and documentation and life-saving appliances, which accounted for 21 %, 18 % and 14 % respectively (see Table 4-1 and Figure 4-4).

In addition, recalling the discussion on the responsible parties for the deficiencies discovered on board, the analysis showed that there was only one deficiency attributed to the RO, which is BKI. Such deficiency is particularly related to the oil filtering equipment which falls into the category of pollution prevention. Thus, the RO responsibility for the deficiency corresponds to 0.71 % and the remaining of 99.29 % is still attributed to the Administration or the shipowners.
Table 4-1: Detainable deficiencies, 2012

<table>
<thead>
<tr>
<th>Nature of deficiencies</th>
<th>2012 Indonesia</th>
<th>2012 Tokyo MoU</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>%</td>
</tr>
<tr>
<td>Cert. &amp; documentation</td>
<td>25</td>
<td>18%</td>
</tr>
<tr>
<td>Fire safety</td>
<td>29</td>
<td>21%</td>
</tr>
<tr>
<td>Life-saving appl.</td>
<td>20</td>
<td>14%</td>
</tr>
<tr>
<td>ISM related</td>
<td>6</td>
<td>4%</td>
</tr>
<tr>
<td>Load lines</td>
<td>9</td>
<td>6%</td>
</tr>
<tr>
<td>Radio comm.</td>
<td>10</td>
<td>7%</td>
</tr>
<tr>
<td>Safety of nav.</td>
<td>9</td>
<td>6%</td>
</tr>
<tr>
<td>Emergency system</td>
<td>10</td>
<td>7%</td>
</tr>
<tr>
<td>Pollution prevention</td>
<td>14</td>
<td>10%</td>
</tr>
<tr>
<td>Structural cond.</td>
<td>5</td>
<td>4%</td>
</tr>
<tr>
<td>Propulsion &amp; Aux. Mach.</td>
<td>1</td>
<td>1%</td>
</tr>
<tr>
<td>Alarms</td>
<td>3</td>
<td>2%</td>
</tr>
<tr>
<td>MLC (work &amp; living cond.)</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Dangerous goods</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Cargo operation</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Others</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Total deficiencies</td>
<td>141</td>
<td>100%</td>
</tr>
</tbody>
</table>

Figure 4-4: Composition of the detainable deficiencies, 2012
2. Detention list of the year 2013

According to the Tokyo MoU (2013, p.13), a total of 31,018 inspections were carried out in 2013, of which 18,790 inspections, corresponding to 60.58 %, were found with deficiencies. Regarding the detention of ships, a total of 1,395 ships were detained, corresponding to the detention rate of 4.50 %.

In the case of Indonesia, a total of 159 inspections were carried out, of which 132 were found with deficiencies. It means that 83.02 % of the inspections had found deficiencies. Among those inspected ships, 24 of which were detained, gave the detention percentage of 15.09 %. This detention rate was considerably higher compared to the regional average, which was 4.50 %. By putting all of those facts, Indonesia has the “\( u_{\text{white-to-grey}} \)” factor = 5 and “\( u_{\text{black-to-grey}} \) = 17. Since the number of detention is 24, Indonesia has been included in the black list position with the excess factor of 2.81.

Concerning the deficiencies found, for the 159 inspections that have been performed, a total of 959 deficiencies were found of which 102 were considered as detainable deficiencies. Since there was no record of deficiency attributed to the RO, this means that the Administration itself or the shipowners were responsible for 100 % of the deficiencies discovered.

With regard to the nature of deficiencies, the composition of each category for Indonesia was similar with the regional composition. In the Tokyo MoU, it was noted that the composition of the top three categories were similar to the 2012 figures (see Table 4-2 and Figure 4-5). The identical figures also reflected in the case of Indonesia, where the top three categories were still the same as in the previous year. In addition, the top three categories represented more than 50 % of the total number of deficiencies.
Table 4-2: Detainable deficiencies, 2013

<table>
<thead>
<tr>
<th>Nature of deficiencies</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Indonesia</td>
</tr>
<tr>
<td></td>
<td>Number</td>
</tr>
<tr>
<td>Cert. &amp; documentation</td>
<td>13</td>
</tr>
<tr>
<td>Fire safety</td>
<td>25</td>
</tr>
<tr>
<td>Life-saving appl.</td>
<td>13</td>
</tr>
<tr>
<td>ISM related</td>
<td>6</td>
</tr>
<tr>
<td>Load lines</td>
<td>0</td>
</tr>
<tr>
<td>Radio comm.</td>
<td>7</td>
</tr>
<tr>
<td>Safety of nav.</td>
<td>7</td>
</tr>
<tr>
<td>Emergency system</td>
<td>8</td>
</tr>
<tr>
<td>Pollution prevention</td>
<td>6</td>
</tr>
<tr>
<td>Structural cond.</td>
<td>7</td>
</tr>
<tr>
<td>Propulsion &amp; Aux. Mach.</td>
<td>3</td>
</tr>
<tr>
<td>Alarms</td>
<td>4</td>
</tr>
<tr>
<td>MLC (work &amp; living cond.)</td>
<td>0</td>
</tr>
<tr>
<td>Dangerous goods</td>
<td>1</td>
</tr>
<tr>
<td>Cargo operation</td>
<td>1</td>
</tr>
<tr>
<td>Others</td>
<td>0</td>
</tr>
<tr>
<td>Total deficiencies</td>
<td>101</td>
</tr>
</tbody>
</table>

Figure 4-5: Composition of the detainable deficiencies, 2013
3. Detention list of the year 2014

According to the Tokyo MoU (2014, p.11), a total of 30,405 inspections were carried out in 2014, of which 19,029 inspections were found with deficiencies, corresponding to 62.59 %. Regarding the detention of ships, a total of 1,203 ships were detained corresponding to the detention rate of 3.96 %.

In the case of Indonesia, a total of 190 inspections were carried out, of which 176 were found with deficiencies. It means that 92.63 % of the inspections had deficiencies. Among those inspected ships, of which 25 were detained, gave the detention percentage of 13.16 %. This detention rate was considerably higher compared to the regional average, which was 3.96 %.

For this period, Indonesia recorded the “\( u_{\text{white-to-grey}} \)” factor = 7 and “\( u_{\text{black-to-grey}} \)” = 20. Since the number of detention is 25, Indonesia is considered being in the black-list position with the excess factor of 2.89. Furthermore, concerning the deficiencies found for the 190 inspections that had been performed, a total of 1,393 deficiencies were found, 72 of which were considered as detainable deficiencies. Since there was no deficiency attributed to the RO, this means that 100 % of deficiencies were attributed to the Administration itself or the shipowners.

With regard to the nature of deficiencies, the composition of categories for Indonesia was slightly different compared with the regional composition. In the Tokyo MoU, it was noted that the composition of the top three categories was similar to the previous year. The fire safety system, safety of navigation and life-saving appliances were still found to be the top categories frequently discovered onboard (see Table 4-3 and Figure 4-6). Differently, in the case of the Indonesian flag, the top three categories were certificate and documentation, ISM-related and pollution prevention. Although the total number of deficiencies were lower compared to 2012 and 2013, the category of certificate and documentation still noted the highest percentage, accounting for 18 % of the total deficiencies.
Table 4-3: Detainable deficiencies, 2014

<table>
<thead>
<tr>
<th>Nature of deficiencies</th>
<th>2014 Indonesia</th>
<th></th>
<th>2014 Tokyo MoU</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>%</td>
<td>Number</td>
<td>%</td>
</tr>
<tr>
<td>Cert. &amp; documentation</td>
<td>12</td>
<td>17</td>
<td>10,395</td>
<td>12</td>
</tr>
<tr>
<td>Fire safety</td>
<td>8</td>
<td>11</td>
<td>16,654</td>
<td>19</td>
</tr>
<tr>
<td>Life-saving appl.</td>
<td>6</td>
<td>8</td>
<td>10,515</td>
<td>12</td>
</tr>
<tr>
<td>ISM related</td>
<td>12</td>
<td>17</td>
<td>2,699</td>
<td>3</td>
</tr>
<tr>
<td>Load lines</td>
<td>2</td>
<td>3</td>
<td>5,812</td>
<td>6</td>
</tr>
<tr>
<td>Radio comm.</td>
<td>3</td>
<td>4</td>
<td>2,259</td>
<td>3</td>
</tr>
<tr>
<td>Safety of nav.</td>
<td>9</td>
<td>13</td>
<td>14,231</td>
<td>16</td>
</tr>
<tr>
<td>Emergency system</td>
<td>3</td>
<td>4</td>
<td>5,093</td>
<td>6</td>
</tr>
<tr>
<td>Pollution prevention</td>
<td>10</td>
<td>14</td>
<td>5,267</td>
<td>6</td>
</tr>
<tr>
<td>Structural cond.</td>
<td>1</td>
<td>1</td>
<td>2,671</td>
<td>3</td>
</tr>
<tr>
<td>Propulsion &amp; Aux. Mach.</td>
<td>2</td>
<td>3</td>
<td>4,549</td>
<td>5</td>
</tr>
<tr>
<td>Alarms</td>
<td>0</td>
<td>0</td>
<td>634</td>
<td>1</td>
</tr>
<tr>
<td>MLC (work &amp; living cond.)</td>
<td>2</td>
<td>3</td>
<td>7,100</td>
<td>8</td>
</tr>
<tr>
<td>Dangerous goods</td>
<td>0</td>
<td>0</td>
<td>183</td>
<td>0</td>
</tr>
<tr>
<td>Cargo operation</td>
<td>0</td>
<td>0</td>
<td>613</td>
<td>1</td>
</tr>
<tr>
<td>Others</td>
<td>2</td>
<td>3</td>
<td>885</td>
<td>1</td>
</tr>
<tr>
<td>Total deficiencies</td>
<td>72</td>
<td>100</td>
<td>89,560</td>
<td>100</td>
</tr>
</tbody>
</table>

Figure 4-6: Composition of the detainable deficiencies, 2014
4. Detention list of the year 2015

According to the Tokyo MoU (2015a, p.11), a total of 31,407 inspections were carried out in 2015, of which 19,142 inspections (corresponding to 60.95 %) were found with deficiencies. Regarding the detentions, a total of 1,153 ships were detained resulting in a detention rate of 3.67 %.

In the case of Indonesia, a total of 197 inspections were carried out, of which 163 were found with deficiencies. It means that 82.74 % of the inspections had deficiencies. Among those inspected ships, 36 were detained, resulting in a detention percentage of 18.27 %. This detention rate was considerably higher compared to the regional average, which was 3.67 %. This year Indonesia noted the “$u_{\text{white-to-grey}}$” factor = 7 and “$u_{\text{black-to-grey}}$” = 20. Since the number of detention is 36, Indonesia has been included in the black list position with the excess factor of 3.03.

Concerning the deficiencies found, for the 197 inspections that have been performed, a total of 1,053 deficiencies were found of which 115 were considered detainable deficiencies and two deficiencies attributed to the RO. In this particular case, the responsible RO was BKI and the deficiencies found were related to the water/weather-tightness conditions of the load line items. It means, the percentage of RO responsible deficiency was 1.74 % and the remaining of 98.26 % still attributed to the Administration itself or the shipowners.

With regard to the nature of deficiencies, the composition of categories for Indonesia was similar with the regional composition. In the Tokyo MoU, a total of 83,606 deficiencies were recorded during the inspection in 2015. It was noted that the composition of the top three categories was still similar to the previous year. The fire safety system, safety of navigation and life-saving appliances were the top frequent categories discovered onboard (see Table 4-4 and Figure 4-7). On the other hand, the different figures reflected in the case of Indonesia, i.e., the deficiencies in the category of certificate and documentation, fire safety system and life-saving appliances were the top three categories.
Additionally, the increasing number of deficiencies found also coincided with the increasing number of the most detainable deficiencies. As seen in Figure 4-7, the deficiencies in the category of certificate and documentation accounted for 27% and followed by fire safety system and life-saving appliances with the percentage of 22% and 17% respectively. These three categories deficiencies represented more than 60 percent of the total deficiencies.

Table 4-4: Detainable deficiencies, 2015

<table>
<thead>
<tr>
<th>Nature of deficiencies</th>
<th>2015</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Indonesia</td>
<td>Tokyo MoU</td>
<td>Number</td>
<td>%</td>
<td>Number</td>
<td>%</td>
</tr>
<tr>
<td>Cert. &amp; documentation</td>
<td>31</td>
<td>8,003</td>
<td>27</td>
<td>10</td>
<td>8,003</td>
<td>10</td>
</tr>
<tr>
<td>Fire safety</td>
<td>25</td>
<td>15,143</td>
<td>22</td>
<td>18</td>
<td>15,143</td>
<td>18</td>
</tr>
<tr>
<td>Life-saving appl.</td>
<td>20</td>
<td>11,213</td>
<td>17</td>
<td>13</td>
<td>11,213</td>
<td>13</td>
</tr>
<tr>
<td>ISM related</td>
<td>6</td>
<td>2,803</td>
<td>5</td>
<td>3</td>
<td>2,803</td>
<td>3</td>
</tr>
<tr>
<td>Load lines</td>
<td>8</td>
<td>5,584</td>
<td>7</td>
<td>7</td>
<td>5,584</td>
<td>7</td>
</tr>
<tr>
<td>Radio comm.</td>
<td>0</td>
<td>2,231</td>
<td>0</td>
<td>0</td>
<td>2,231</td>
<td>0</td>
</tr>
<tr>
<td>Safety of nav.</td>
<td>5</td>
<td>12,619</td>
<td>4</td>
<td>15</td>
<td>12,619</td>
<td>15</td>
</tr>
<tr>
<td>Emergency system</td>
<td>8</td>
<td>5,771</td>
<td>7</td>
<td>7</td>
<td>5,771</td>
<td>7</td>
</tr>
<tr>
<td>Pollution prevention</td>
<td>6</td>
<td>5,067</td>
<td>5</td>
<td>6</td>
<td>5,067</td>
<td>6</td>
</tr>
<tr>
<td>Structural cond.</td>
<td>2</td>
<td>2,422</td>
<td>2</td>
<td>3</td>
<td>2,422</td>
<td>3</td>
</tr>
<tr>
<td>Propulsion &amp; Aux. Mach.</td>
<td>1</td>
<td>4,137</td>
<td>1</td>
<td>5</td>
<td>4,137</td>
<td>5</td>
</tr>
<tr>
<td>Alarms</td>
<td>0</td>
<td>577</td>
<td>0</td>
<td>1</td>
<td>577</td>
<td>1</td>
</tr>
<tr>
<td>MLC (work &amp; living cond.)</td>
<td>2</td>
<td>6,462</td>
<td>2</td>
<td>8</td>
<td>6,462</td>
<td>8</td>
</tr>
<tr>
<td>Dangerous goods</td>
<td>1</td>
<td>352</td>
<td>1</td>
<td>0</td>
<td>352</td>
<td>0</td>
</tr>
<tr>
<td>Cargo operation</td>
<td>0</td>
<td>500</td>
<td>0</td>
<td>1</td>
<td>500</td>
<td>1</td>
</tr>
<tr>
<td>Others</td>
<td>0</td>
<td>722</td>
<td>0</td>
<td>1</td>
<td>722</td>
<td>1</td>
</tr>
<tr>
<td>Total deficiencies</td>
<td>115</td>
<td>83,606</td>
<td>100</td>
<td>100</td>
<td>83,606</td>
<td>100</td>
</tr>
</tbody>
</table>
4.4.2. Analysis of the most detainable deficiencies

Following the above discussion, it was noted that there were six main categories of deficiencies frequently discovered during the PSC inspection onboard. Such categories were: 1) Fire safety system, 2) Safety of navigation, 3) Life-saving appliances, 4) Certificate and documentation, 5) ISM related and 6) Pollution prevention (see Figure 4-8 and 4-9).

As seen in Figure 4-9, the Tokyo MoU figures show the consistent pattern in general. Conversely, for the case of Indonesia, each of these categories shows the individual fluctuation pattern. Also, since the proportion of each category during 2012 to 2015 fluctuated, the general trend of the deficiencies could not be simply drawn. This condition was a contradiction if compared to the regional Tokyo MoU pictures, which showed a stable condition and the trend also slightly decreased. Figures 4-10 to 4-15 show the trend for each category of deficiency for the Indonesian ships compared with the Tokyo MoU figures.
Figure 4-8: Composition of the most detainable deficiencies, Indonesia

Figure 4-9: Composition of the most detainable deficiencies, Tokyo MoU
Figure 4-10: The trend of deficiencies in the category of fire safety system

Figure 4-11: The trend of deficiencies in the category of safety of navigation

Figure 4-12: The trend of deficiencies in the category of life-saving appliances
Figure 4-13: The trend of deficiencies in the category of certificate and documentation

Figure 4-14: The trend of deficiencies in the category of ISM-related

Figure 4-15: The trend of deficiencies in the category of pollution prevention
The author views that, the deficiencies found in the category of certificate and documentation was interesting to be highlighted and discussed. Since as seen in Figures 4-8 and 4-13, deficiencies in this category shows the highest portion, and during 2012 to 2015, the trend for this category was increased. Above all, this category was hit the highest percentage in 2015 accounting for 27 % of the total deficiencies. Likewise, the deficiencies in the category of ISM-related were also considerably higher compared to the Tokyo MoU figures. Even in 2014, the deficiencies in this category accounted for 17 %, while only 3 % was recorded in the Tokyo MoU.

4.4.3. Detention by ship types and age

The analysis results from the ship detention lists revealed that the general cargo ship and bulk carrier were the most detained ship types during 2012 to 2015 (see Figure 4-16). Concerning the average age, approximately 40 % fell into the group of 15 to 24 years old and roughly 50 % fell into the group of 25+ years old (see Figure 4-17).

![Detention by ship type chart](image)

Figure 4-16: Category of ship types mostly detained in the Tokyo MoU region
Figure 4-17: The average age of Indonesian ships detained in the Tokyo MoU region
5. Discussion of the analysis results

This section provides the discussion of all of the analysis results of Indonesia’s performance discussed in Chapter 4. The discussion focuses on answering the research questions to meet the objectives of this study as stated earlier in Chapter 1.2.

5.1 Ratification of international maritime treaties

In determining flag State performance concerning the ratification of international conventions, the ICS only refers to the criteria whether the seven main Conventions have been ratified (ICS, 2015). It means that the ICS does not view the enforcement aspect at all. Accordingly, as long as States have ratified the Convention, the positive indicator will be labeled to such flag. Nonetheless, the ICS (2015) also noted that although such instruments have been ratified by a State, it does not necessarily affirm that those instruments are being properly enforced. That is why the author views that it is also important to check what is the reason behind the non-ratification of such Conventions.

Concerning this aspect, the ICS labeled Indonesia as a negative or under-performance flag because Indonesia has not yet ratified the following Conventions: (i) SOLAS Protocol 88; (ii) ICLL protocol 88; (iii) MLC 2006 and (iv) FUND 71 including FUND 92. In addition, Indonesia has recorded a low speed in the ratification of the other conventions. In general, Indonesia ratified the Convention after such Convention had entered into force (see Table 5-1).

26 The ICS use the data of “Status of Conventions” available at IMO website (www.imo.org) and ILO website (www.ilo.org).
Table 5-1: Summary of the ratification of conventions

<table>
<thead>
<tr>
<th>No</th>
<th>Instrument</th>
<th>Adopted</th>
<th>Entry into force</th>
<th>No. of States</th>
<th>% world tonnage</th>
<th>Ratified by Indonesia?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>SOLAS 1974</td>
<td>01-Nov-74</td>
<td>25-May-80</td>
<td>162</td>
<td>98.53</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>SOLAS Protocol 1988</td>
<td>11-Nov-88</td>
<td>03-Feb-00</td>
<td>109</td>
<td>95.35</td>
<td>No</td>
</tr>
<tr>
<td>2</td>
<td>STCW 1978, incl 2010 Amendments</td>
<td>07-Jul-78</td>
<td>28-Apr-84</td>
<td>161</td>
<td>98.76</td>
<td>Yes</td>
</tr>
<tr>
<td>3</td>
<td>MARPOL (Annex I/II)</td>
<td>17-Feb-78</td>
<td>02-Oct-83</td>
<td>154</td>
<td>98.73</td>
<td>Yes</td>
</tr>
<tr>
<td>4</td>
<td>MARPOL (Annex III)</td>
<td>01-Jul-92</td>
<td>146</td>
<td>98.15</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>MARPOL (Annex IV)</td>
<td>27-Sep-03</td>
<td>138</td>
<td>90.96</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>MARPOL (Annex V)</td>
<td>31-Dec-88</td>
<td>151</td>
<td>98.32</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>MARPOL (Annex VI)</td>
<td>19-May-05</td>
<td>87</td>
<td>95.69</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>ICLL 1966</td>
<td>05-Apr-66</td>
<td>21-Jul-68</td>
<td>161</td>
<td>98.52</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>ICLL Protocol 1988</td>
<td>11-Nov-88</td>
<td>03-Feb-00</td>
<td>103</td>
<td>95.28</td>
<td>No</td>
</tr>
<tr>
<td>6</td>
<td>MLC 2006</td>
<td>23-Feb-06</td>
<td>20-Aug-13</td>
<td>79</td>
<td>+80</td>
<td>No</td>
</tr>
<tr>
<td>7</td>
<td>CLC 1969</td>
<td>29-Nov-69</td>
<td>19-Jun-75</td>
<td>34</td>
<td>2.74</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>CLC Protocol 1992</td>
<td>27-Nov-92</td>
<td>30-May-96</td>
<td>136</td>
<td>97.00</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>FUND 1971</td>
<td>18-Dec-71</td>
<td>16-Oct-78</td>
<td>Cease to be in force on 24 May 2002</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>FUND Protocol 1992</td>
<td>27-Nov-92</td>
<td>30-May-96</td>
<td>114</td>
<td>94.04</td>
<td>No</td>
</tr>
</tbody>
</table>

In fact, there are many factors that influenced the willingness of the States to ratify the specific Convention. Mansel (2009, p. 155) stated that very often the political priorities, which are determined by the general condition of the shipping of the States, had become the reason constraining the ability of the States to bring the Convention into effect through their national legislation. In the author’s opinion, this
rationale could also be the case for Indonesia, particularly concerning the non-ratification of the 1988 Protocol to SOLAS and the Load Line Conventions, which introduced the provision of the HSSC system. Since as seen in Table 1-1 (Chapter 1), although the share of the Indonesian fleets, in terms of tonnage, was only 1.15% of the world total tonnage, the number of ships which were registered under the Indonesian flag, in terms of number, was quite high and even the second biggest in the world, below Panama. It means that most of the Indonesian ships were relatively small in terms of size. Table 1-1 also shows that the average age of Indonesian fleets was 19.3 years old. In addition, in line with the characteristic of Indonesia as an archipelagic country, those ships were largely employed in coastal and inter-island shipping.

Probably, by looking into these facts, Indonesia views that the 1988 Protocol of the SOLAS and Load Line Conventions could not be applied to the Indonesian fleets in entirety. A similar view was also noted by UNCTAD (2015, p. 37), which stated that generally, the ships in the above category do not necessary fall under the umbrella of the IMO regulations. Therefore, instead of ratifying the above-mentioned Protocols, Indonesia has enforced the national legislation concerning the seaworthiness of the ships under the enactment of the Constitution of Republic Indonesia no. 17/2008, which supersedes the Constitution of Republic Indonesia no. 21/1992. Subsequently, this Constitution has been followed by the stipulation of the Government Regulation no. 51/2002 (MoS, 2002). In the implementation aspect, the above Regulation (Government Regulation) was followed by the stipulation of the following regulations:

(i) the Regulation of Ministry of Transport no. PM 20/2015, which mainly regulates the aspect of the safety standard in shipping (MoT, 2015). This regulation was followed by the stipulation of Regulation of the Director of DGST no. HK.103/2/19/DJPL-16, which covers the aspect of seaworthiness of the ships (DGST, 2016).
(ii) the Regulation of Ministry of Transport no. PM 39/2015, which supersedes the Regulation no. KM 3/2005. This Regulation covers the provision related to the Load Line of the ships (MoT, 2016).

According to the above Regulations, Indonesia has continued maintaining its “conservative way” and no harmonization concept has been implemented in the issuance of those certificates. Practically, all certificates will be issued with the validity of a maximum one year except the Load Line certificate, which is valid for up to five years.27 With regard to the harmonized survey and certification system as set out in the 1988 Protocol of the SOLAS and Load Line Convention, all certificates for cargo ships should be valid for a maximum of five years and twelve months for the passenger ship safety certificate (see Appendix B).

In addition, the author also views that the economic reason was also considered as the logic behind the low rates of the State’s willingness to ratify the new Convention. Very often the cost is always associated with the regulatory compliance to the Convention, which incurred not only in the initial phase of the implementation but also during the operational phase. The real example of this case was reflected in the case of the FUND 71 Convention including its 1992 Protocol which has not been ratified by Indonesia. On 10 March 1998, Indonesia enacted the President Decree no. 41/1998, which revoked the President Decree no. 19/1978 (MoS, 1998). In the basic clause of President Decree no. 41/1998, it was clearly stated that the reason for Indonesia no longer having ratified the Convention was because:

✓ being a Party to this Convention was made Indonesia burdened by a contribution which could aggravate the country’s budget.
✓ Indonesia has already been a member State of the CLC 69, including Protocol 1992.

27 The writer used the word of “conservative way” to demonstrated the custom practically implemented in Indonesia concerning the issuance of certificates by the DGST; which is three months for the short-term certificates and maximum one year for the permanent certificates.
5.2 Delegation authority complying with Resolution A.739(18)

During the period from 2012 to 2015, the ICS labeled Indonesia as a good performance flag in this particular aspect. This recognition was given based on the fact that Indonesia has fulfilled (only) the aspects and indicators used by the ICS as described in Chapter 4.2. Hence, it does not necessarily affirm that the compliance with those indicators also confirmed the full compliance with Resolution A.739(18). There is also one aspect which is important to determine, namely the formal written agreement between the Maritime Administration and RO. As described in Chapter 2.3, flag State may refer to the Appendix of RO Code and also MSC/Circ.710-MEPC/Circ.307 (see Appendix C). In the case of Indonesia, this agreement has not yet been made. The data available in GISIS only provides the information on the recognition of BKI as the RO for the Indonesian flagged vessels.

Subsequently, the analysis result has shown that all of the organizations which have been authorized by Indonesia were the classification societies, either the national classification society or the IACS members. In fact, the recognition of these groups of classification societies as the RO -national and IACS members- was also reflected in the Indonesian policy concerning the obligation to register the ship. Under Article 3 of the Regulation of Ministry of Transport no. 61/2014 (MoT, 2014), it is stated that Indonesian ships are obliged to be registered into the classification societies, either:

(i) National classification society (BKI), or
(ii) Foreign classification societies which are IACS members

Meanwhile, according to Chapter 4.2.1, analysis of the detention ship list during 2012 to 2015 showed that the proportion of BKI as the RO recognized by Indonesia was dominant, where approximately sixty percent of Indonesian ships were authorized to BKI. Such figures were also reflected in the overall statistics of
Indonesian ships inspected in the Tokyo MoU region,\textsuperscript{28} where it showed a similar pattern. Indeed, BKI as the RO shared almost fifty percent of the authorization and the remaining authorized were spread out under IACS members (see Figure 5-1). Figure 5-1 also shows that approximately six percents of Indonesian ship that have been detained were not authorized by the classification societies. It means that the survey and certification process for these ships were carried out by the Administration itself.

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{Composition_of_RO.png}
\caption{Composition of RO: BKI vs. IACS members}
\end{figure}

The dominant portion of the authorization by BKI was not surprising for Indonesia, since BKI was recognized as a national classification society. Indeed, the relation between DGST and BKI had existed for a long time, even since its establishment on 24 August 1964 (MoS, 1964). Considering the fact that, although BKI is not an IACS member, the Tokyo MoU has considered and included BKI in the group of high-performance ROs (Tokyo MoU, 2015a). Therefore, the author views that it is reasonable if Indonesia assumed BKI as its national asset and gain “special recognition”, of course, by considering the aspect of professionalism.

\textsuperscript{28} The statistics were collated from the Tokyo MoU database in the APCIS (Asia Pacific Computerized Information System).
In addition, the analysis result from the Tokyo MoU database has shown an interesting finding. From 2012 to 2015, a total 1,137 Indonesian fleets were inspected in the region and of 626 ships (corresponding to 55 %) were authorized by BKI. Among those 626 ships, 393 ships (corresponding to 63 %) were also registered under BKI (see Figure 5-2). Even, ninety percent of the ships inspected in the Tokyo MoU, registered under ABS, were also identified using ABS as their RO. This figure has demonstrated that it is customary in Indonesia that the classification society of the ship was often also recognized as the RO.

Figure 5-2: The trend in Indonesia: the ship’s class also recognized as the RO

5.3 Mandatory reporting requirement to the IMO and ILO

Regarding the aspect of reporting requirement to the IMO, a good performance has been achieved by Indonesia in general. Indeed, concerning the reporting requirement to the ILO, during the period of 2012 to 2015, the reporting rate of Indonesia was recorded to be higher compared to the global reporting rate. Also, Indonesia has noted to be consistent in the STCW white list, even since the first list was published. Nonetheless, there is still lack and shortcomings in other aspects. Particularly, Indonesia has failed to conform to the mandatory reporting requirement under MARPOL and SOLAS. As seen in Table 5-2, the reporting rate of Indonesia
was still below the global reporting rate. Although these aspects (reporting under MARPOL and SOLAS) were not taken into account by the ICS when determining the flag State performance, it is, nevertheless, still important for Indonesia to recognize them as a means of self-assessment for the future improvement.

Table 5-2: Summary of the status of reporting requirement to the IMO and ILO

<table>
<thead>
<tr>
<th>No</th>
<th>Mandatory reporting requirements</th>
<th>Reporting rate</th>
<th>Note/Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>MARPOL (Annex I &amp; II)</td>
<td>25.50%</td>
<td>no report (0 %) 2008 - 2012</td>
</tr>
<tr>
<td>2</td>
<td>SOLAS (Casualty Investigation)</td>
<td>47.16%</td>
<td>12.12% 1 Jan. 2010 - 31 March 2015</td>
</tr>
<tr>
<td>4</td>
<td>STCW Convention</td>
<td>-</td>
<td>white list 2000 - 2015</td>
</tr>
<tr>
<td>5</td>
<td>Reporting requirement to the ILO</td>
<td>69.53%</td>
<td>100% 2012</td>
</tr>
<tr>
<td></td>
<td></td>
<td>74.12%</td>
<td>100% 2013</td>
</tr>
<tr>
<td></td>
<td></td>
<td>71.71%</td>
<td>83.30% 2014</td>
</tr>
<tr>
<td></td>
<td></td>
<td>69.70%</td>
<td>100% 2015</td>
</tr>
</tbody>
</table>

5.4 Record of PSC inspection

Regarding this aspect, it was clearly seen that the status of Indonesia as on the black-list flag was the main reason for Indonesia being considered as a negative or under performing flag by the ICS (see Table 5-3).

Table 5-3: Summary of PSC inspection records, 2012 – 2015

<table>
<thead>
<tr>
<th>No.</th>
<th>Aspects</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Indonesia</td>
<td>Tokyo MoU</td>
</tr>
<tr>
<td>1</td>
<td>Total inspection</td>
<td>179</td>
<td>30,929</td>
</tr>
<tr>
<td></td>
<td>Inspection with deficiency</td>
<td>164</td>
<td>19,250</td>
</tr>
<tr>
<td></td>
<td>Percentage (%)</td>
<td>91.62</td>
<td>62.24</td>
</tr>
</tbody>
</table>

29 As discussed in Chapter 4.2.2
Furthermore, Figure 5-3 shows the areas where the Indonesian ships were detained from 2012 to 2015, which are: China, Singapore, Australia, Vietnam, Malaysia, Republic of Korea, Thailand and Papua New Guinea. In addition, Figure 5-3 also shows that China, Singapore and Australia were noted as the top three areas where Indonesian ships were mostly detained. Indeed, during 2015, more than 40% of the Indonesian ships were detained in Singapore, while in 2013, more than 50% were detained in China. Australia also recorded a high detention rate, particularly in 2014 when approximately 40% of the Indonesian ships were detained there.

Meanwhile, these Authorities also carried out the PSC inspection on foreign vessels visiting their ports. The information concerning the detention rate produced by each Authority was provided by the Tokyo MoU in its annual report. The overall detention rate produced by all authorities will give the average detention rate in the regional Tokyo MoU. As seen in Figure 5-4, Indonesia still recorded a higher detention rate compared to the detention rate produced by each Authority.
Figure 5-3: Composition of the detention area

Figure 5-4: Comparison of detention rate: Indonesia vs. Regional Authority
Subsequently, Figure 5-5 shows the comparison of the detention rate between Indonesia and the regional average in the Tokyo MoU. It is shown that, from 2012 to 2015, Indonesia recorded a higher detention rate as compared to the regional average. Additionally, Figure 5-5 also indicates that from 2012 to 2015, the Tokyo MoU recorded a decreasing trend of the detention percentage. Similarly, Indonesia also noted a similar pattern from 2012 to 2014. Indeed, the detention rate was recorded at 17% in 2012 and then continuously decreased to 13% in 2014. However, in 2015 the detention rate increased to 18%. The author views that the implementation of NIR applied by the Tokyo MoU in 2014 was the reason behind this high increment. According to the Tokyo MoU (2015a, p. 2), the inspection percentage of the high-risk ship [HRS] increased during this period. Indeed, there were approximately 34% of the total 31,407 ships inspected in 2015 that were classified as the HRS (Tokyo MoU, 2015a, p. 25).

![Detention rate (%)](image)

Figure 5-5: Comparison of the detention rate: Indonesia vs. Tokyo MoU regional average

Subsequently, with respect to the category of deficiencies, it was noted that there were six main categories of deficiencies that were frequently discovered during the PSC inspection. The interesting finding for Indonesia was the deficiencies in the category of certificate and documentation. As seen in Figure 5-6 and 5-7, deficiencies in this category show the highest value which is opposite to the regional value in the Tokyo MoU. From 2012 to 2015, the trend for this category was
increased and above all, this category hit the highest point in 2015, accounting for 27% of the total deficiencies. Conversely, in the Tokyo MoU, the deficiencies in this category have ranged only between nine to twelve percent.

Figure 5-6: Composition of the most detainable deficiencies, Indonesia

Figure 5-7: Composition of the most detainable deficiencies, Tokyo MoU
To enhance the finding in this aspect (the most category of the deficiencies), the analysis was extended into all the Indonesian ships that have been inspected in the Tokyo MoU region. Interestingly, the analysis result indicated a similar pattern. As seen in Figure 5-8, the category of certificate and documentation was still the category which resulted in the highest number of deficiencies per category during the PSC inspection. In addition, the deficiencies in this category also showed a similar trend (see Figure 5-9).

Figure 5-8: The most detainable deficiencies found for all of the Indonesian ships that have been inspected in the Tokyo MoU
According to the deficiency codes (Tokyo MoU, 2015b), the deficiency in the category of certificate and documentation was divided into three sub-categories: ship certificates, crew certificates and ship documents. Furthermore, the analysis indicates that there was a linkage between the non-ratification of the 1988 Protocol of SOLAS and the Load Line Convention with high number of findings in this category. This linkage was reflected by the analysis result which showed that the majority of deficiencies found in this category had fallen in the sub-category of ship certificates - which are related to the HSSC provision-. Indeed, the number of deficiencies that have been found in this sub-category were higher compared to the other sub-categories (see Figure 5-10).

Figure 5-9: The trend of deficiencies in the category of certificate & documentation: Detention list vs. All Indonesian ships inspected in the Tokyo MoU region
Likewise, the deficiencies in the category of ISM-related was also considerably high. Even in 2014, the deficiencies in this category accounted for 17 % (nearly tripled from the previous year), while only 3 % was recorded in the regional Tokyo MoU. In fact, this steep increment was the impact of the concentrated inspection campaign [CIC] on propulsion and auxiliary machinery, which was conducted from 1 September to 30 November 2013. According to the 2014 detention list, the majority of the deficiencies found in this category were covered in the aspect of maintenance and operational of the ship, which is related to the implementation of the ISM Code. Therefore, PSC inspectors associated these deficiencies to the ISM-related category.

Apart from those six categories, there is another finding which invokes interest, and is related to the deficiencies in the MLC-related category. As described in Chapter 2.2.2 and Chapter 4.1, the MLC 2006 convention has the clause of “no more favourable treatment.” The impact of this clause has been experienced by Indonesia since 2014, wherein 2014 and 2015 approximately three percent of the Indonesian ships were detained in the Tokyo MoU region due to the findings in this area.
Lastly, with respect to the responsible party to the deficiencies found as described in Chapter 3.2.3, the analysis results showed that less than three percent of the deficiencies were attributed to the RO. Even in 2013 and 2015, none of the RO’s responsible for the deficiencies were recorded (see Figure 5-11). Furthermore, in relation with the most detainable deficiencies as seen in Figure 5-6, the analysis result showed that none of them were attributed to the RO. In the author’s opinion, the above condition was closely related to the mechanism applied by Indonesia in delegating its authority since it was recognized that Indonesia had implemented the so-called “partial authorization” where authorizations were given on a case-by-case basis. In practice, this condition means that:

(i) RO may only issue the interim or short-term certificate. The Administration will issue the permanent certificate following the reports submitted by the RO.

(ii) The survey and audit including the endorsement of certificates can be carried out by the Administration at any time.

Figure 5-11: Composition of responsible party to the detainable deficiencies
5.5 Ship type and age of fleet

With respect to the flag performance, it is strongly emphasized that the age of ships is not the indicator of the quality of the ship. However, ICS (2015) noted that flags that have a concentration of younger fleets are probably more prone to quality ships. Therefore, as a positive indicator, ICS sorted 90% of the flags that have the lowest average age in terms of ship numbers and included them in the list of good performance flags. From 2012 to 2015, Indonesia has been included in this list. In addition, as described in Chapter 4.4.3, the general cargo ship and bulk carrier were the most detained ship types from 2012 to 2015. This finding was not surprising for Indonesia, since a similar pattern was also found in the Tokyo MoU. For the same period, these two ship types were also recorded as the the most detained ship type in the region.

Concerning the age of fleets, the analysis discovered that the average age of the general cargo ship and bulk carrier detained mostly fell in the group of 25+ years old. Indeed, more than sixty percent of the bulk carriers and approximately forty percent of general cargo ships fell in this category (see Figure 5-12). This figure was coincident with the statistic published by the Equasis, concerning the average age of the ship inspected from 2012 to 2014 in the PSC region (Equasis, 2014, p. 71).

![Average age (gen. cargo & bulk carrier)](image)

Figure 5-12: Composition of ship age for general cargo ship and bulk carrier
6. Conclusion and recommendations

Considering the research questions outlined in Chapter 1, this dissertation has demonstrated that Indonesia’s performance is not only determined by the position of Indonesia as a black-list country in the Tokyo MoU but also by other factors such as the non-ratification of international conventions. In addition, this study has explained the relationship between maritime administration in Indonesia and ROs regarding the delegation authority. A possible measure to address several issues discovered in the analysis is proposed as the recommendation.

6.1 Summary

To summarize, this study demonstrated that Indonesia had shown a good performance in general, certainly with drawbacks and scarcity in some aspects. First of all, concerning the ratification of the Convention, Indonesia still experiences a delay in the speed at which ratification occurs. In detail, the following Conventions have not yet been ratified by Indonesia: (i) Protocol 88 of SOLAS; (ii) Protocol 88 of Load Line; (iii) MLC 2006 and (iv) FUND 71/92 Convention. This study has argued that the political and economic constraints may be the main reason for Indonesia to lag behind in the ratification process.

Secondly, with respect to the aspect of delegation authority to the RO, Indonesia has recorded its compliance to the IMO regulation, specifically Resolution A.739(18). From 2012 to 2015, Indonesia delegated its authority to the organizations which are mainly classification societies, either national (BKI) or foreign classification societies (IACS members). BKI, which was known as the national classification society, was the most authorized RO with the sharing about fifty
percent and the remaining fifty percent shared was spread out among the other classification societies which are the IACS members. In addition, this study also revealed that, as a customary in Indonesia, the classification society of the ship is often also identified as the ship’s RO.

The third aspect discussed in this study was the reporting requirement to the IMO and ILO. Indonesia still recorded a low reporting rate about reporting to the IMO. For instance, Indonesia has recorded a low reporting rate concerning SOLAS and even worse, the failure to submit any reports as required under MARPOL. Instead, a good performance regarding reporting under STCW Convention has been indicated, where Indonesia was considered as one of the STCW white list countries from 2000 to 2015. Furthermore, with regard to the reporting requirement on the delegation authority to the RO, Indonesia has updated the necessary information through GISIS. Indonesia also showed its compliance concerning the reporting requirement to the ILO by noting a higher reporting rate compared to the global rate.

Subsequently, concerning the record of PSC inspections in the Tokyo MoU, the inclusion of Indonesia on the black-list was deemed to be the main reason behind its poor performance level. Additionally Indonesia has recorded a higher detention rate compared to the regional average. In addition, this study determined China, Singapore and Australia as the top three detention areas which have recorded deficiencies in the category of certificate and documentation as the most detainable deficiencies which was frequently discovered during PSC inspection.

Furthermore, this study has identified that, the Administration (or shipowners) itself, was the most responsible party of the detainable deficiencies found during the PSC inspection. The analysis has manifested that less than three percent of the deficiencies were attributed to the RO. Instead, no RO-responsible deficiency was found in 2013 and 2015. The study has argued that this figure corresponds to the condition of the so-called “partial authorization” implemented by Indonesia in delegating its authority. Moreover, this study has indicated that the general cargo ship and bulk carrier were the most common ship types detained in the region from
2012 to 2015. Moreover, the average age of those ships were in the range of 25+ years old.

Lastly, this study has also indicated the relationship between the impact of non-ratification of the 1988 Protocols of SOLAS and Load Line Convention with the tremendous findings in the category of certificate and documentation. Also there is a linkage between the impact of non-ratification of the MLC 2006 with the findings in the category of MLC-related. Indeed, the existence of “no more favourable treatment” clause in these conventions contributed to the numerous deficiencies found during PSC inspections.

To conclude, it has been demonstrated by this study that the performance of flag States was not determined by a single aspect individually. Nonetheless, all aspects have contributed to each other. Therefore, the measures for improvement should not be performed partially. Instead, such measures should be carried out in a comprehensive way by considering every aspect altogether.

6.2 Recommendations

As a complement, several recommendations have been proposed as a follow-up to the analysis and discussion performed in the previous chapters. Referring to the objective as outlined before, it was the purpose of this study to find the possible measure to improve the effectiveness of Indonesia (as a flag State) in exercising its obligations. Therefore, several measures which could be implemented by Indonesia for the future improvement are proposed in the following:

a) Ratifying the 1988 SOLAS Protocol, the 1988 Load Line Protocol and the MLC 2006

As described in the summary, ratification of these Conventions will in turns have an impact on the PSC inspection result. Specifically, by ratifying these Conventions, the number of related deficiencies will be reduced accordingly.
b) Enhancing the flag State inspection

This measure could be applied by implementing stricter flag State inspections and also by conducting regular training to flag State inspectors.

c) Implementing full authorization to the RO

Considering its limitations and shortcomings in terms of resources, implementing the full authorization to the RO would make Indonesia be more focused on the implementation aspect of the IMO instrument as required by the III Code. Certainly, such authorization should be followed by the consistent monitoring aspect (oversight program). In the end, this condition will foster the professionalism of RO when performing delegated tasks according to the formal written agreement that has been made.

d) Providing the familiarization to the shipowners on the importance of ship maintenance in accordance with the ISM Code

By providing the familiarization to the shipowners will encourage their awareness that the condition of the individual ship is ultimately determined by the standard of ship maintenance.

e) Restricting the age of national fleets

This measure could be implemented by setting the national policy in promoting the new building ships in the country and establishing the threshold age for the imported existing ships. As such, close cooperation between all stakeholders (Indonesia as the government and the shipowners/shipping industry) is obviously needed for the success of this policy.
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Appendices

Appendix A: Flow chart of the criteria for attribution of RO responsibility (Tokyo MoU, 2016b)
Appendix B: Diagrammatic arrangement of the Harmonized System of Survey and Certification, HSSC (IMO, 2011b, p. 169)

Code of types of survey:

- R  –  Renewal
- P  –  Periodical
- In –  Intermediate
- A  –  Annual
Appendix C: Elements to be included in an agreement between Maritime Administration and RO (IMO, 2013b, Appendix 3)

ELEMENTS TO BE INCLUDED IN AN AGREEMENT

A formal written agreement or equivalent between the flag State and the RO should, as a minimum, cover the following items:

1 Application
2 Purpose
3 General conditions
4 The execution of functions under authorization:
   1 Functions in accordance with the general authorization
   2 Functions in accordance with special (additional) authorization
   3 Relationship between the organization’s statutory and other related activities
   4 Functions to cooperate with port States to facilitate the rectification of reported port State control deficiencies or the discrepancies within the organization’s purview
5 Legal basis of the functions under authorization:
   1 Acts, regulations and supplementary provisions
   2 Interpretations
   3 Deviations and equivalent solutions
6 Reporting to the flag State:
   1 Procedures for reporting in the case of general authorization
   2 Procedures for reporting in the case of special authorization
   3 Reporting on classification of ships (assignment of class, alterations and cancellations), as applicable
   4 Reporting of cases where a ship did not in all respects remain fit to proceed to sea without danger to the ship or persons on board or presenting unreasonable threat of harm to the environment
   5 Other reporting
7 Development of rules and/or regulations — Information:
   .1 Cooperation in connection with development of rules and/or regulations — liaison meetings
   .2 Exchange of rules and/or regulations and information
   .3 Language and form
8 Other conditions:
   .1 Remuneration
   .2 Rules for administrative proceedings
   .3 Confidentiality
   .4 Liability¹
   .5 Financial responsibility
   .6 Entry into force
   .7 Termination
   .8 Breach of agreement
   .9 Settlement of disputes
   .10 Use of subcontractors
   .11 Issue of the agreement
   .12 Amendments
9 Specification of the authorization from the flag State to the organization:
   .1 Ship types and sizes
   .2 Conventions and other instruments, including relevant national legislation
   .3 Approval of drawings
   .4 Approval of material and equipment
   .5 Surveys

¹ ROs and its employees who are involved in or responsible for delivery of statutory certification and services may be required by the law of the flag State to be covered by professional indemnity or professional liability insurance in the event that liability is finally and definitively imposed on the flag State for loss or damage which is proved in a court of law to have been caused by any negligent act or omission by its RO. In this connection, the flag State may also consider placing a limitation on the level of liability and indemnification to be covered under that insurance or other compensation arrangements.
.6 Issuance of certificates
.7 Corrective actions
.8 Withdrawal of certificates
.9 Reporting

10 The flag State’s supervision of duties delegated to the organization:
.1 Documentation of quality assurance system
.2 Access to internal instructions, circulars and guidelines
.3 Access by the flag State to the organization’s documentation relevant to the flag State’s fleet
.4 Cooperation with the flag State’s inspection and verification work
.5 Provision of information and statistics on, e.g. damage and casualties relevant to the flag State’s fleet.