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WORLD MARITIME UNIVERSITY

Malmö, Sweden

**CHALLENGES FOR THE RATIFICATION OF
THE HONG KONG CONVENTION
FOR THE SAFE AND ENVIRONMENTALLY SOUND
RECYCLING OF SHIPS, 2009
IN INDONESIA**

By

MONICA AJENG OKTAVIANY
Indonesia

A dissertation submitted to the World Maritime University in partial
fulfilment of the requirement for the award of the degree of

**MASTER OF SCIENCE
in
MARITIME AFFAIRS
MARITIME LAW AND POLICY**

2019

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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.

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Supervisor's affiliation: **World Maritime University**

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Abstract

Title of Dissertation: **Challenges for the Ratification of the Hong Kong Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 in Indonesia**

Degree: **Master of Science**

The dissertation is an analysis of international and national legal frameworks regarding ship recycling activities. The main emphasis of the study is on the analysis of international legal instruments and the national regulations in Indonesia on waste management and ship recycling in order to find the challenges faced by the Government of Indonesia towards the ratification of the Hong Kong Convention.

The study is conducted by analyzing the international regulatory frameworks and the existing national regulations for waste management and ship recycling as well. The research is focused on the preparedness of the Government of Indonesia for the ratification of the Hong Kong Convention by discussing the existing conditions of ship recycling practice in Indonesia and the national regulations pertaining the matter. In regard to the ratification process, a study is also conducted to the national regulations relating to the process of ratification of international conventions and at the same time the roles and obligations of the different Ministries and other stakeholders involved in ship recycling practice and industry in Indonesia are also examined in order to define the which Ministry and institution to undergo the process.

As the final result, the study on the challenges on the ratification process of Hong Kong Convention by the Government of Indonesia is concluded with several recommendations on the ratification and the implementation of the Hong Kong Convention in Indonesia including the preparation of the Inventory of Hazardous Materials as one of the key requirements of the Convention by the Recognized Organization.

KEYWORDS: Indonesia, ship recycling, regulatory framework, legal instruments, ratification process, inventory of hazardous materials.

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List of Abbreviations

BKI	Biro Klasifikasi Indonesia
GT	Gross Ton
HKC	Hong Kong Convention
IHM	Inventory of Hazardous Materials
IMO	International Maritime Organization
IMOGR	IMO Guidelines on Ship Recycling
MARPOL	International Convention for the Prevention of Pollution from Ship
MEPC	Marine Environmental Protection Committee International Convention on Tonnage Measurement of Ships
MLC	Maritime Labour Convention
OECD	Organisation for Economic Co-operation and Development
RO	Recognized Organization
SBRI	Ship Breaking and Recycling Industry
SOLAS	The International Convention for the Safety of Life at Sea
SLOC	Sea lines of Communication
STCW	International Convention on Standards of Training, Certification and Watchkeeping for Seafarers
UNEP	United Nations Environmental Programme
UNCLOS	United Nations Convention on the Law of the Sea

Chapter 1

INTRODUCTION

1.1. Background and Problem Statement

As the largest archipelagic country in the world spanning about 2 million kilometers of land between Asia and Australia and comprising of more than 18,000 islands with more than 90,000 kilometers coastal line and 7.9 million square kilometers of sea area (Cribb & Ford, 2009), Indonesia lies on the most strategic international shipping routes in the world.

Located between the Pacific and the Indian Ocean which are two major oceans in the world, Indonesia is considered as a bridge between the continents of Asia and Australia. This location also places Indonesia as an important part of the international shipping passage where four of the world major maritime Sea Lane of Communication (SLOC) namely the Sunda Strait, Lombok Strait, Makassar Strait and Malacca Strait are situated (Aufiya, 2017).



Figure 1: The Map of Indonesia (U.S. Central Intelligence Agency, 2002)

This geographical location has made maritime sector to play an important role in Indonesia's economy and policies. The importance of maritime sector is also underlying the foreign policy of Indonesia under the government of the Jokowi administration that is Indonesia as "*Poros Maritim Dunia*" or Global Maritime Fulcrum. This policy is designed with the objective to revive and to strengthen Indonesia's maritime identity for the advantages of national interests as well as to establish the role of Indonesia in the global maritime connectivity (Aufiya, 2017).

It is also worth to mention that in line with the said facts, since becoming a member of the International Maritime Organization (IMO) in 1961 and as a member of IMO Council under Category "C", Indonesia has been actively participating in various IMO's activities, in particular to promote the development of international cooperation in maritime safety, security and marine environment protection. This is reflected in the efforts to internalize the IMO conventions and treaties into national regulations in order to take part in supporting the IMO's goal for a safe, secure and efficient shipping on clean oceans. Indonesia has ratified the United Nations Convention on the Law of the Sea, 1982 (UNCLOS 1982) with the Law No. 17 Year 2009 on Shipping as the primary law for maritime sector as well as 32 other IMO conventions including the 4 pillars of the international maritime law, namely the International Convention for the Prevention of Pollution from Ships, 1973 and Protocol of 1978 relating thereto (MARPOL 73/78) with the Presidential Decree No. 46 Year 1986 on the Ratification of MARPOL, Annex I & II and Presidential Decree No. 29 Year 2012 on the Ratification of MARPOL Annex III, IV, V & VI; the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74) with Presidential Decree No. 65 Year 1980 on the Ratification of SOLAS 1974; the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW Convention 78) with Presidential Decree No. 60 Year 1986 on the Ratification of STCW 78;

and the Maritime Labour Convention, 2006 (MLC 2006) with the Law No. 15 Year 2016 on the Ratification of MLC 2006.

The fact of being the largest archipelagic country with the ocean covers most of its area, maritime transport plays a great role in Indonesia and shipping becomes a large sector in the economy. Indonesia has more than 80,000 of shipping fleets in 2019 (MOT, 2019) and contributed to 1.08 % of world total dead-weight tonnage (UNCTAD, 2018). This number of fleet is essentially an effect of the implementation of the *cabotage* policy enacted by the Presidential Instruction No. 5 Year 2005 which resulted in the increase from 6,041 fleets on March 2005 to 14,036 fleets on July 2014 or a total of 132.34% of increase of the total number of registered Indonesian-flagged ships in the period of 2005 to 2014 (Widagdo, 2017). The increase in the number of fleets was not coming from new ship construction but mostly due to the procurement of old ships from abroad. It is stated by Sunaryo (2015), that as much as 70% of Indonesian fleets are old ships that are needed to be replaced by newer ships.

According to a study by Fariya (2018), based on IMO regulations, ships of more than 25 years of age cannot be deployed for operational purposes. This regulation is based on the potential risks of accidents and damages as well as the reasons that the ships with the age older than 25 years would require high maintenance cost and should be replaced in order to maintain the business process to be profitable. To retain the economic value of old ships, one of the promising way is to recycle them and take as well as process the used materials into new commodities that have higher value such as steel (Fariya, 2018).

Considering the increasing number of old ships in Indonesia, the existence of standardized ship recycling activities and facilities are significant to able to serve the needs of ship owners and to support of the compliance of Indonesia to the IMO regulations especially in marine environmental protection. Aside from the number of ships that need to be recycled, Indonesia has 3 ship recycling yards that are applying simple methods in their operations. The ship

recycling yards are Tanjung Jati, Madura; Cilincing, North Jakarta; and Tanjung Uncang, Batam (Akriananta, 2017).

Fariya (2017) stated that ship recycling activities must be in compliance with all regulations and take into account the safety of its workers and ensure that all the activities are environmentally friendly especially in terms of pollution to the sea and soil in the area that come from harmful and dangerous wastes by applying decent procedures and suitable facilities.

In order to set the regulation on ship recycling activities, several international regimes have been established to serve as the guidelines for ship recycling operational activities relating to the safety, security and environmental issues. The United Nations Environmental Programme (UNEP) has sponsored the establishment of The Basel Convention on the Control of Transboundary Movement of Wastes and their Disposal, 1991 which main objective is to control the generation of harmful wastes in order to protect human being and the environment from the damaging effects. In line with the Basel Convention, IMO has also established the Hong Kong Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 which aims for the design, construction, operation of recycling facilities standards and the requirements of ships to be recycled.

In order to support the compliance to the IMO regulations and to the development of national maritime sector, Indonesia has ratified the Basel Convention on the Control of Transboundary Movements of Wastes and their Disposal, 1991 with the Presidential Decree No. 61 Year 1993. The government of Indonesia has also enacted several national regulations concerning ship recycling activities, they are the Law No. 17 year 2009 as the major law on maritime sector, the Government Regulation No. 21 Year 2010 on Maritime Environment Protection and the Ministerial Decree No. 29 Year 2014 on Maritime Environmental Pollution Prevention which specifically regulates the standards and certification of ships as well as the facilities for ship recycling.

Although Indonesia has established various regulations regarding ship recycling activities, Indonesia has not yet ratified the Hong Kong Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 which is essential for the standardization of ships and ship recycling yards at the international level and there are no national regulations that is specifically regulating the standards of ship recycling facilities in place. The problem underlying this matter is that there are conflicting regulations and authorizations between several ministries and agencies involved in the regulations of ship recycling activities. In details, the problem lies in the roles and obligations of different ministries and other government agencies in regulating the certifications of ships and ship yards. The certification of ship to be recycled lies under the authority of the Ministry of Transport while the authorization for ship construction and yards lies under the Ministry of Industry. Another crucial problem is in the regulation of ship recycling yard where the regulations regarding all the specifications are established under the Ministry of Industry but the certificate of compliance is issued by the Ministry of Transportation.

The above mentioned problem has become the challenges for the government of Indonesia to begin the ratification process of the Hong Kong Convention (HKC) to be adopted into national regulation.

1.2. Objectives, Expected Results, and Research Questions

1.2.1. Objectives and Expected Results

This dissertation aims to give a comprehensive overview on the legal framework for ship recycling activities in Indonesia and to align the international regulations regime with the existing national regulations in Indonesia for the purpose of its compliance to the international standards.

In line with the main aims of the dissertation, the objectives of this research are:

1. To identify the need to ratify the Hong Kong Convention for Indonesia.
2. To identify the existing national regulations on ship recycling activities in Indonesia.
3. To identify different government institutions and other stakeholders on the practice of ship recycling in Indonesia.
4. To identify the challenges faced by Indonesia for the ratification of Hong Kong Convention.
5. To determine the competent authority for the ratification process of Hong Kong Conventions.

With these objectives, it is expected that this research will make a contribution to the process of policy making in ship recycling sector in order to support the improvement of the effort of the Government of Indonesia in tackling environmental issues resulting from maritime transport and to determine which ministry or government agency should be responsible to undergo the ratification process.

1.2.2. **Research Questions**

To be able to achieve the objectives, there are several questions that need to be addressed, as follows:

1. What is the urgency of the ratification of Hong Kong Convention for Indonesia?
2. Does the national regulations relating to ship recycling enacted in Indonesia in compliance with international regime?
3. What is the most suitable legal instrument to be deployed on the ratification process of Hong Kong Convention in Indonesia?
4. What are the steps and processes that the competent authority has to take in the ratification process?
5. Which ministry or government agency is responsible to undergo the ratification process?

1.2.3. **Scope and Limitation**

This research on the challenges in the process of ratification of the Hong Kong Convention focuses only to the process of policy making according to the law and regulations established in Indonesia by examining the roles and authorization of different ministries and government agencies involved in ship recycling sector. The scope of research will be limited only to the policy making process in order to form the most suitable legal instrument to be enacted as the legal basis of ship recycling activities and operations to be able to comply with international standards.

This research does not analyze the specific design and construction of ships and ship recycling facilities to be implemented in Indonesia. It will only assess the preparedness of the government of Indonesia and the stakeholders and how far the national regulations align with international regulations on ship recycling.

1.3. **Research Methodology**

This research will be conducted through literature review by gathering data and information as well as the facts on the international and national regulations regarding ship recycling from academic writings, journals and reports. As addition, the research will study the sources available in the form of official records and public documents from various government agencies and ministries in Indonesia including the national law and regulations on maritime transport and industry.

This research will also analyze the relevant information on the regulations enacted by related government agencies in Indonesia using analytical approach. The analysis will focus on the works of the Directorate General of Sea Transport of the Ministry of Transportation, the Ministry of Industry, the Coordinating Ministry of Maritime Affairs, the Ministry of Foreign Affairs, Indonesian Classification Society and other related stakeholders in Indonesia to determine their respective roles on the ratification process.

It is mentioned that the existence of IMO instruments become the underlying basis for the mission for the ratification process. Therefore, this research will also thoroughly study and review related IMO instruments and guidelines, especially the Hong Kong Convention and the related IMO Guidelines on Ship Recycling to enable the accomplishment of the research objectives.

1.4. Timeline

No	Activity	2019							
		Feb	Mar	April	May	June	July	Aug	Sept
1	Research Proposal								
2	Literature Review								
3	Data Collection								
4	Progress Report								
5	Data Analysis								
6	Final Submission								

Chapter 2

SHIP RECYCLING INDUSTRY

2.1. Development of Ship Recycling Industry

Ship breaking, scrapping, dismantling or in other words, ship recycling is the method or process of disposing the end-of-life ships (Zhao, 2014). According to the World Bank (2010), the ship breaking and recycling industry (SBRI) provides the sustainable way for the environment to dispose old vessels which converts end-of-life ships into recyclable items which are derived from the machine complex and the hull to be recycled and reused as scrap metal. The hull steel derived from a ship can be processed into reusable steel which requires less energy in its production than the steel produced from raw materials (Zhao, 2014). Other than that, other parts of the ship that is being scrapped can be transformed into other use, for instance, the batteries and generators can be reused and the hydrocarbons involved in the ship can be recycled as fuel (Zhao, 2014). Therefore, ship recycling process can be said as the most sustainable way to dismantle and to dispose of old ships.

Ships consist of about 80-90% steel and are usually will up for dismantling to recover the steel after sailing through about 25-30 years of economic life (Mukherjee, 2009). Jain (2017) argues that ship recycling is being done to remove inefficient ships which in turn will tackle the oversupply of ships in the market and generate cash flow for the ship owners. The reason for this is, that it is considered necessary for the renewal of shipping fleets and the older ships in service have to be removed because of their incurring high maintenance costs and due to the changes in regulatory framework, retro-fitting is found to be too expensive.

Buxton (1991) and Stopford (2009) as cited by Jain (2017), argue that a ship is decided to be recycled according to the factors as follows:

1. Obsolescence;
2. Current earnings;

3. Future market expectations; and
4. Scrap prices.

The above-mentioned factors are the ones regulating the demand and supply dynamics of freight market and ship recycling market. The reason underlying it is due to the majority of ships being taken out from the freight market and consequently supplied to the recycling market (Jain, 2017).

The growing numbers of obsolete ships aged 25-30 years has made the ship recycling industry to be developed rapidly in various countries considering its benefits for the shipping industry from the life-cycle assessment point of view. Nevertheless, for financial and economic reasons, this industry has shifted towards the countries with weak occupational safety regulations, limited environmental protection enforcement and low cost of labour such as Bangladesh, India and Pakistan. This shift has also raised concerns on its effects on the environment and the humans involved because of the hazards coming from the process of the dismantling of ships that may have severe effects if they are not being handled in proper ways (Watkinson, 2010).

Based on the underlying background described above, this section will discuss about the development of global ship recycling industry and the growth of the industry in several major countries as well as its development and existing condition in Indonesia as the core discussion of this dissertation.

2.1.1. International Ship Recycling Industry

International ship breaking industry has been a geographically shifted market since it is continually in search for the higher regional demand for steel and the lowest labour cost. This industry was substantially emerged after the Second World War to dismantle damaged ships resulting from the war which was mainly located in industrialized countries, such as the United States, United Kingdom, and Japan (Stopford, 2009) and due to the limited environmental protection laws and labour safety regulations, the industry then shifted to the Mediterranean countries such as Turkey and Spain (Jain, 2017). In the 1970s,

the industry began to shift towards the regions of Asia which was dominated by China, Taiwan and South Korea and from the era of 1980s, it was gradually moving to South Asia with India, Bangladesh and Pakistan as the major players alongside China which is remaining as one of them (Karagrakis, 2016).

Taiwan was the first country to enter this industry in the 1970s, followed by China and South Korea respectively and by the mid 1980s, the later two countries subsequently become the leading buyers of the end-of-life ships to be scrapped (Jain, 2017). It is on this decade that the scrapping industry reached its peak in these countries where they took over approximately three-quarter of the ship breaking business globally (Stopford, 2009). Jain (2017) argues that in the late 1980s, the labour cost in Taiwan was increased in line with the growth in its economy which in turn made the industry to be no longer attractive and caused the closing of most of its yards in the early 1990s while at the same time due to the raise of wage and the expansion of shipbuilding industry, the ship breaking industry in South Korea has also declined. During that time, despite of the decline in the market share caused by the establishment of its government regulations regarding the environmental protection and the control of currency for the procurement of ships, China continued to operate its ship breaking yards (Stopford, 2009).

It was after the withdrawal in the above-mentioned countries, the ship breaking industry gradually shifted towards the South Asia subcontinent and continues to expand its market share over the last three and a half decades (Jain, 2017). The five main countries, such as China, Bangladesh, India, Pakistan and Turkey has been showing the growth trends in the international ship recycling industry since 1993 with Turkey placed as the the smallest of the five in terms of the annual tonnage that is being recycled (Jain, 2017). Mikhelis (2013b) in Jain (2017) further discussed that the activity level of these countries varies depending on the availability of ships to be recycled with the regular share of 97-98% of the end-of-life ship share in the last 15-20 years.

The industry in most Asian developing countries has become an important part of their economies to serve the demand of the reused steel but on the other hand, they are also facing some challenges in its practice due to the lack of environmental and labour standards (Du et.al., 2018). Therefore, the major challenge that has to be encountered by the stakeholders in the industry and the government agencies is to establish an environmentally friendly ship recycling industry especially by operating the facilities with good waste management system and better protection for the workers and other human involved as well as through more efficient law enforcement.

2.1.2. Major Ship Recycling Countries in the World

As briefly mentioned in the previous subsection, the centre of global ship breaking and recycling industry has moved to the South Asia region with Bangladesh, India and Pakistan as the leading countries. These three South Asian countries undertake approximately 70-80% of the global ship breaking market, followed by China and Turkey which take account for most of the rest while the other countries share only 5% of the industry (Watkinson 2010).

Based on the data from the report by the OECD (2019) shown on Figure 2, until September 2017, as much as 91% of the gross tonnage (GT) of the ship recycling business is located in China, India, Bangladesh and Pakistan, and Turkey undertake 6% of global recycling volume. Since 2017, the Chinese ship recycling market share has been showing a steady decline. It is further mentioned that the four Asian countries contributed to 16 million gross tons (GT) of the total global recycled sea-going vessels (OECD, 2019).

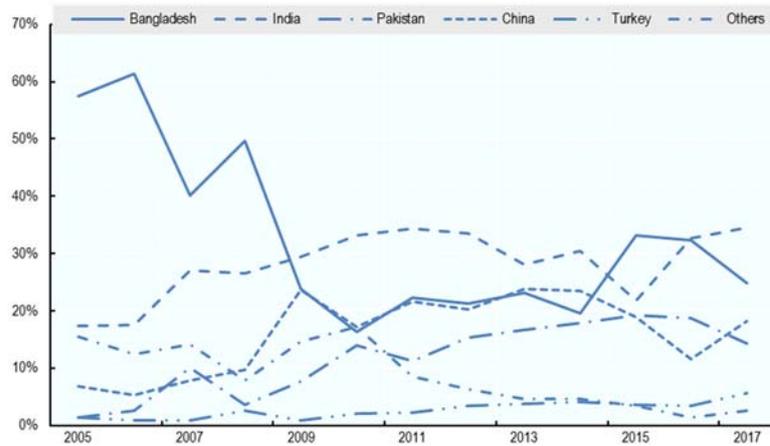


Figure 2. Annual demolition volumes as % of global gross tons by ship recycling country (Source: Clarkson World Fleet Register, 2017)

It is described by Jian (2017) that the ship recycling sites in the major countries are performed in clusters in specific areas. The activities in China is located along the Yangtze River near Shanghai and along the Pearl River in Guangdong Province while in Turkey, the recycling sites are mainly located in Aliaga by the North of Izmir Port. In Bangladesh, the main area that become the centre of the ship recycling activities is in the coastal strip of Sitakunda by the North of Chittagong Port while in Pakistan, the sites are located at Gadani Beach near Karachi, and in India, the main area of ship recycling activities are carried out in Alang of the State of Gujarat (Jain, 2017).

Bangladesh, Pakistan and India share the similar socio-economic conditions such as the large number of population with high level of poverty, high level of unemployment and illiteracy, unskilled human resources, natural resources degradation, the limited law enforcement, severe level of environmental pollution and similar tidal conditions (Puthucerril, 2010). Those conditions are among the contributing factors to the growth of ship breaking industry in the countries where cheap labour are widely available and the provision of environmental protection is weak.

Among the three major countries, Bangladesh undoubtedly is the leader in ship recycling industry which carry out over 70% of the dismantling and ship breaking business (Puthucerril, 2010). Bangladesh has been heavily relying on the ship breaking industry to fulfil the national demand of steel because it does not have any domestic production of iron or steel. The ship breaking industry contribute to 80% of its national demand of steel per year which in turn becomes the booster for the rapid growth of this industry (Watkinson, 2010).

Pakistan was the first country in Asia that established ship dismantling industry to be a separated industry from ship building and it was marked by the measures taken by the government in the 1980s to enable Gadani as one of the leading ship breaking sites in the world (Puthucerril, 2010). The contribution of the scrap produced by Gadani to the steel production and consumption of Pakistan measure up to an average of 500,000 tons per year or 15% of its national steel production (Watkinson, 2010). Puthucerril (2010) further stated that despite of the fact that Gadani provides the cheapest labour force in Asia comparing to the other countries, the ship breaking industry in Pakistan has been showing a decline due to the high import duties set up by the government and the rising prices of scrap.

India, on the other hand, is the most advanced country among the three in terms of efforts by the government to facilitate the growth of ship breaking industry (Puthucerril, 2010). The largest ship dismantling area is stretched approximately 10 kilometres along the coast of Alang with 154 yards which have undergone the ship breaking practices to approximately 239 ships or 5,980,514 GT in 2017 (Ship Breaking Platform, 2017). The average number of end-of-life ships engaged in the recycling and dismantling process in Alang is more than 400 ships and this industry has been producing 4.5 million tons of steel annually (Shahnawaz, 2017).

2.2. Ship Recycling Industry in Indonesia

Along with the establishment of Global Maritime Fulcrum Policy, the Government of Indonesia has launched 5 (five) major pillars on its program, namely to rebuild the Indonesian maritime culture, to preserve and to manage marine resources, to give priority for maritime connectivity and infrastructure development (by developing deep seaport, Sea Toll, logistics as well as shipping and shipbuilding industry), to strengthen maritime diplomacy and to develop maritime defense power (Haidir et.al., 2015).

As one of the major pillars, the development of shipping and shipbuilding industry is among the sectors that has not been fully developed in Indonesia, despite of its many potentials especially in serving the demand of ships for domestic shipping. The Government has been striving to support the industry by, among others, enacting the Presidential Instruction Number 5 Year 2005 on National Shipping Industry Empowerment which sets out the *cabotage* principle for Indonesian ships as well as the related policies on the measures in accordance to the roles and obligations of related institutions in the empowerment of Indonesian national shipping industry, one of which is the ship yard industry (Nuzula, 2016).

Furthermore, Nuzula (2016) argues that the positive impacts of the *cabotage* policy is the rise of national ship yard industry as the result of the increase in the demand for fleet production. The increase of demand to the national ship yard industry will also increase the demand for domestic human resources which in turn will boost the economic growth as well as address other existing social problems (Nuzula, 2016).

Despite of the positive impacts, there has been a significant increase in the number of ships operating in Indonesian waters. According the data of the Ministry of Transportation, the total number of registered Indonesian-flagged ships is 81,555 fleet or 46,399,667 GT in 2019 which consists of passenger ships, fishing vessels and container ships (MOT, 2019). While the production capacity of domestic ship building yards is still unable to serve the demand for

ships (Nuzula, 2016), Indonesian shipping companies are opted to purchase used ships from abroad. Sunaryo (2017), stated that approximately 70% of the ships operating in Indonesia are on the age of 25-30 years that will need to be replaced in less than 5 years of time.

Considering of this existing condition, one of the way to retain the economic value of the ships is by scrapping and recycling to process and to derive the materials from the ships to be utilized in other industries (Fariya, 2016). Referring to the data provided by the Indonesia's National Shipowners Association, about 5,000 from 13,000 units of national ships are oil tankers and container vessels in the range of 3,000 dwt to 50,000 dwt and it is assumed that 50% of them will be needed to be recycled in 5 years (Sunaryo, 2017). With the said facts and existing numbers of Indonesian fleets, it can be concluded that ship breaking or ship recycling is a promising industry to be developed in Indonesia (Sunaryo, 2016).

2.2.1. Existing Conditions

Despite of its significance, the existing ship breaking activities in Indonesia until today is conducted through the simple method of beaching without any consideration to the environment and also the working condition is considered to be dangerous and harmful for the workers (Fariya, 2016).

According to Fariya (2016), there are 3 (three) major ship breaking yards, namely:

1. Tanjung Jati, Kamal, Madura Island;
2. Cilincing, North Jakarta;
3. Cape Uncang, Batam.

The ship breaking activities that are being undertaken in these yards are considered to be ship scrapping and breaking practice rather than ship recycling. They implement simple methods and apply low technology, therefore the yards are perceived to be more of the place to cut the parts of a ship using beaching

method with no consideration towards its impacts to the environment and the safety for the workers (Fariya, 2016).

In the practice of ship breaking in Indonesia, the materials derived from the old ships are needed to be scrapped to be processed into newer, stronger and more sustainable materials (Widagdo, 2017). The final result of the ship breaking production process in Indonesia is scrap metal and old iron that subsequently will be sold to the providers of raw materials of steel producing industry (Fariya, 2016). According to the data from the Indonesian Iron Steel Association, the demand of imported scrap steel to support domestic steel production industry in Indonesia is amounting to 5-6 million tons per year and the scrap steel produced by ship breaking industry will be able to save the national budget expenses to USD 100 per ton because the billet production is being undertaken domestically (Ministry of Industry, 2019).

The ship breaking practice in Indonesia does not put any concern to the safety and health of the workers as well as does not place any precautions regarding the pollution it may incur to the water and land. The equipment and facilities being used in the process of ship breaking are not in accordance to the international standards of the safety of work and environmental protection. According to the study conducted by Fariya (2016), the working space in the ship breaking yards in Indonesia is not arranged in a proper manner and there is no specific location for each working processes which increase the danger for the workers. The ship breaking activities are located by the beach with no dividing line between the ships that are being scrapped with the sea which causes the dangerous and hazardous substances to be released directly into the waters (Fariya, 2016)

The working condition of the workers is also a major concern in the ship recycling industry. The workers in the ship breaking yards in Indonesia are mostly working without any protective equipment in undergoing their everyday tasks. Furthermore, the workers have low awareness regarding hazardous and dangerous materials from ships that has to be handled properly. In the process

of ship dismantling, the workers are not capable to distinguish the materials which contain harmful substances that may contaminate the environment and cause a threat to their lives (Fariya, 2016). In the long term, this careless practice of ship breaking may cause damage to the environment, such as increased pollution in the water resulting from harmful or toxic substance, hazardous contamination to the water sediment, the damage or loss of marine habitats, coastal and waters ecological damages, coastal erosion, and toxic hydrocarbon contamination from oil spill which will be absorbed by the marine organisms as well as by humans and in the long run may cause harmful impacts to human health (Akriananta, 2017).

In general, the existing conditions of ship breaking yards in Indonesia is managed and runs in a very simple manner and without any consideration towards the safe and sound recycling of ships. Therefore, the industry is considered to be unfamiliar to these days and runs only in small businesses and often only a part of ship building and repair yards (Fariya, 2016). This is mostly due to the lack of the proper government attention especially in establishing the policies relating to environmentally friendly ship breaking and recycling practice while in the same time supporting the growth of the ship recycling industry itself by creating a competitive business climate for the stakeholders involved in it.

2.3. International Regulations on Ship Recycling

2.3.1. International Regulations on Waste Management

With the determination and concerns towards the environmental protection especially in the disposal and movement of hazardous wastes in the ocean, the international community has been striving to set some restrictions to prohibit and limit the transfer of waste as well as to regulate the waste management to be adopted globally (Alam, 2017). The United Nations Conference of the Law of the Sea, 1982 (UNCLOS III) which covers most aspects of the oceans, has also set out the obligations of the State Parties to ensure the protection and

preservation of the marine environment and to do their utmost efforts to prevent or to minimize the disposal of harmful substances from land sources activities which includes ship building and scrapping industries that may release toxic products and waste to the marine ecosystem (Samiotis et.al., 2013).

Aside from the UNCLOS which is the main legal framework of the oceans, there are several other international legal instruments that are fundamentally setting out the international standards for waste management. The International Maritime Organization (IMO) has established several conventions regarding waste management disposal which includes the International Convention for the Prevention of Pollution from Ships, 1973 and its Protocol of 1978 (MARPOL 73/78), the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (London Convention) and its 1996 Protocol, the International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001, the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 and the Nairobi International Convention on the Removal of Wrecks, 2007 (Puthucerril, 2010).

With regards to the breaking and dismantling of ships, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1991 serves as the primary international legal regime for waste management as complimented with the Basel Ban and the Technical Guidelines for the Environmentally Sound Management of the Full and Partial Dismantling of Ships which specifically regulates the transboundary movement of ships to be recycled (Puthucerril, 2010). To differentiate which legal instrument to govern the specific waste management, Mukherjee (2013) argues that as the provision of MARPOL applies to the ship's generated wastes resulted from the operations, the London Convention governs the wastes originating from land which is loaded to a ship for disposal at sea while the Basel Convention, in particular, sets out the regulation for the similar hazardous wastes to be discharged in other countries whereas the end-of-life ships are treated as transboundary hazardous waste.

While the Basel Convention only regulates about the disposal of ships to be recycled and most of ships are ended up being scrapped which in the process may produce hazardous materials that caused risks for the health of the workers involved in it, the International Labour Organization (ILO) has also established the standards for the occupational safety and health of the workers (Puthucerril, 2010). The most recent development of the legal regime of ship recycling activities is the formulation of the 2009 Convention for the Safe and Environmentally Sound Recycling of Ships (Hong Kong Convention) which sets out the provisions of the aspects involved in the ship recycling process (Rothwell, 2016). Although this Convention has not yet been enforced but the IMO has put a major concern towards its enforcement, especially for the reason that the Convention also compliments the IMO Guidelines on Ship Recycling, 2003 (IMOGRS) (Puthucerril, 2010).

2.3.2. The Basel Convention on the Control of Transboundary Movements of Wastes and their Disposal, 1989

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, 1991 is the major international convention that introduces and recognizes the measures to the impacts and threat of the transboundary movements of hazardous wastes which are usually being transported from developed countries to developing countries on the environment and human health (Bhattacharjee, 2009). This Convention is established with the support of the United Nations Environmental Programme (UNEP) which was entered into force on 1992 with more than 172 parties (Puthucerril, 2010). The Basel Convention is also defines the term of “*illegal traffic*” of hazardous wastes and states such traffic as a criminal act (Alam, 2017).

According to the document submitted by Greenpeace International as cited by Puthucerril (2010), this Convention is the only legally binding document with a clear intention to reduce the transfer of ships which contains hazardous

materials from developed countries to developing countries as well as to serve as an instrument for the prevention of harmful impacts resulting from hazardous wastes including carcinogens and flammable materials for the workers. The Basel Convention applies to the transboundary movement of ships to be recycled or disposed that may contain hazardous wastes and its main purpose is to ensure the Parties to provide the facilities for recycling and disposal of hazardous waste in their own territory, to bear the responsibility of the hazardous wastes produced by their own ships, to prevent the export of the wastes and the damage it may cause to the environment and human health, and to overall minimize the transboundary movement and generation of such hazardous wastes (Alam, 2017).

Bhattacharjee (2009) argues that the Basel Convention is structured upon 3 (three) main objectives, that are: to minimize generated wastes hazard level; to promote the wastes disposal the nearest as possible to the source of the wastes generation, and; to establish an environmentally sound management and disposal of hazardous wastes.

There are 5 (five) legal persons mentioned in the Convention which are individually play the role in the transport of hazardous wastes, namely:

1. The “Generator” that is the Party who generates or produces the wastes or the person who is entitled to the control or the possession of the wastes.
2. The “Exporter” that is the entity or individual who undertake the export of hazardous wastes and is situated under the exporting state’s jurisdiction.
3. The “Carrier” that is the entity or individual who carry out the transport or the export of the wastes.
4. The “Importer” that is the individual or entity who undertake the import of the wastes under the jurisdiction of the importing state.
5. The “Disposer” that is the entity or individual who receives the hazardous wastes to be disposed.

All those legal persons work in a particular framework with the states of export, import and transit that play the role as the main drivers of the operation.

Furthermore, Alam (2017) describes that the obligations of the Parties in the Convention are:

1. To give no permission or to prohibit the hazardous wastes to be exported to the other parties that have established the prohibition of the wastes;
2. To establish an environmentally sound management of hazardous wastes and to take all the measures in order to ensure the environmental and human health protection;
3. To ensure the maximum reduction of transboundary movement of hazardous waste and other wastes through the efficient and environmentally sound management which is conducted in the ways that will protect the environment and human health from the adverse impacts of the movement;
4. To prohibit the export of hazardous wastes if it is believed that the particular waste has the probability of not being managed and handled in an environmentally sound manner;
5. Unless it has received a written confirmation of the existence of a valid contract which specifies the environmentally sound management of the wastes between the exporter and the disposer, the exporter state is prohibited to allow any export of such wastes.

The Convention provides 2 (two) documents which in turn has made the regulation to be very challenging in practice. The first document is a notification from the exporting state to inform the receiving state on the intention to export the hazardous wastes and to obtain a written agreement from the receiving state, and the second document is a movement document with the information on the carrier and the description of the wastes that are being transported (Samiotis, et.al., 2013). Furthermore, Samiotis (2013) stated that the wastes have to be labeled, packaged and transported pursuant to the existing international regulations and standards. The Basel Convention also establishes the regulations and procedures regarding the damage compensation during the transportation and disposal as well as the requirement to entitle only the person

who is given the authority by the national law to perform the disposal or transportation of such wastes (Puthucerril, 2016).

2.3.3. The Hong Kong Convention for the Safe and Environmentally Sound Recycling of Ships, 2009

The latest development of the legal regime of ship recycling is the formulation of the Hong Kong Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 which was finalized during the 58th Session of the Marine Environmental Protection Committee (MEPC) meeting and was adopted in May 2009 (Bhattacharjee, 2009; Mikhelis, 2009). As stated in the Preamble, the objective of this Convention is to “*effectively address the environmental, occupational health and safety risks related to ship recycling*” (HKC, 2009) and it is also defined as the first international regulations that sets out a uniform standards and procedures for ship recycling activities (Rossi, 2011).

Generally, the structure of the Hong Kong Convention consists of:

- 21 Articles which sets out the legal provisions.
- 25 Regulations which describes the technical requirements and is divided into 4 (four) sections, namely:
 - General provisions (Regulation 1-3)
 - Requirement for ships (Regulation 4-14)
 - Requirements for ship recycling facilities (Regulation 15-23)
 - Reporting requirements (Regulation 24-25)
- 7 Appendices which contains the list of hazardous materials and the formats of documents required pursuant to the Convention.

This Convention applies unique approaches in its provision which covers the life of a ship from its construction to the end of its life as well as the facilities in which the ship will be recycled and the enforcement of the provisions by different states involved in ship recycling practice.

2.3.3.1. “Two-folds” Approach

The Hong Kong Convention adopts the “two-folds” approach which means that it applies to ships and ship recycling facilities and excludes warships, Government owned non-commercial ships, exclusively domestically operated ships and ships of less than 500 GT (Mikhelis, 2009). Therefore, it is considered as a comprehensive approach to address the problems related to the environmental protection as well as human safety and health related to the ship recycling process (Jain, 2013). As for the term of ship recycling, the Convention defines it by “*the activity of complete or partial dismantling of a ship at a Ship Recycling Facility in order to recover components and materials for reprocessing and re-use, whilst taking care of hazardous and other materials*” (HKC, 2009). The Hong Kong Convention limits the scope of application of the activity to “*associated operations such as storage and treatment of components and materials on site*” and excludes the “*further processing or disposal in separate facilities*” (HKC, 2012).

The definition of “ships” provided in the Convention is “*any vessel whatsoever operating or having operated in the marine environment*” (HKC, 2009) which means that the Convention applies to all ships except those excluded by the Convention. This definition is subjected for the purpose to secure the withdrawal of the ships that has ended its operational life or end-of-life ships (Fang and Mejia, 2012). While for ship recycling facility, the Convention defines it as “*a defined area that is a site, yard or facility used for the recycling of ships*” (HKC, 2009) which the Convention sets out the requirements of the qualification, operational and control management to ensure that it undertakes a safe and environmentally friendly operations under the jurisdiction of the state parties (Fang and Mejia, 2012).

2.3.3.2. “Cradle to Grave” Approach

The second characteristic of the Hong Kong Convention is that it applies “cradle to grave” provision which covers the regulation for every aspects of the life of a ship from the beginning to the end of its life (Bhattacharjee, 2009). The Convention provides the provisions of the ship design, construction, operation and maintenance in order to minimize the level of material hazards generated from ships such as asbestos, heavy metals, ozone-depleting substances and hydrocarbons which would pose the risks to the environment as well as work safety and health on the ship recycling process (Fang and Mejia, 2012). For that purpose, it is required by the Convention for the ship to have an “Inventory of Hazardous Materials” carried on board throughout its operational life (Jain, 2017).

2.3.3.3. Enforcement

The last approach that is adopted by the Convention is concerning the particular enforcement and control mechanism by different states involved in the process of ship recycling. The Convention assigns different roles to the flag state, port state and recycling state regarding their obligations towards the ship subjected to be recycled (Fang and Mejia, 2012). Flag state is obligated to conduct a survey and verification as well as to issue the International Certificate on the Inventory of Hazardous Materials and the International Ready for Recycling Certificate (Bhattacharjee, 2009). The Convention requires the recycling state to ensure that all the ship recycling facilities under its jurisdiction to submit the Ship Recycling Plan as an evidence of compliance of the facility to the Convention (Bhattacharjee, 2009). In addition, Bhattacharjee (2009) also describes that port states are authorized to undertake an inspection for the International Certificate on the Inventory of Hazardous Materials on the ships coming to their port and the ships subjected for recycling in the respective states.

2.3.4. IMO Guidelines for Ship Recycling

In line with the provisions of the Hong Kong Convention, the International Maritime Organization (IMO) has developed several guidelines to assist the state parties to adopt and fully implement the Convention. The guidelines are:

1. Guidelines for the Development of the Inventory of Hazardous Materials
2. Guidelines for the Survey and Certification under the Hong Kong Convention
3. Guidelines for the Inspection of Ships under the Hong Kong Convention
4. Guidelines for the Authorization of Ship Recycling Facilities
5. Guidelines for the Safe and Environmentally Sound Ship Recycling
6. Guidelines for the Development of the Ship Recycling Plan

Those guidelines are the parts that attached to the Convention as the Annexes and they are formulated and designed in particular to support the provisions under the Convention. It is expected that with the guidelines, the state parties will be able to set up the plan for the environmentally sound ship recycling in their respective states and to fully implement all the provisions under the Convention.

2.4. National Law and Regulations on Ship Recycling in Indonesia

Since maritime sector plays a significant role in Indonesia, the Government of Indonesia is also putting a major concern towards marine environmental protection particularly by establishing and implementing the regulations and measures to prevent or to minimize the pollution coming from maritime transportation and other maritime activities. Although have not yet been fully effectively implemented, the Government has established several regulations concerning the environmental protection related to ship recycling.

This section will discuss the regulations related to ship recycling that has been enacted in Indonesia, namely the Law No. 17 Year 2008 on Shipping (State Gazette Year 2008 Number 64), the Government Regulation No. 21 Year 2010 on Marine Environmental Protection (State Gazette Year 2010 Number 27) and

the Ministerial Decree No. 29 Year 2014 on Marine Environmental Pollution Prevention (State Document No. 1115, 2014).

2.4.1. Law No. 17 Year 2009 on Shipping (State Gazette Year 2008 Number 64)

The Law No. 17 Year 2008 serves as the primary maritime law in Indonesia which covers all the major aspects of maritime law including maritime security, safety of navigation, seaworthiness, port affairs and marine environmental protection. The provisions of the law are contained in 355 Articles which are divided into 22 Chapters covering both public and private maritime law.

It is stated on Article 1 that marine environmental protection under the law is *“every effort to prevent and handle marine environmental pollution resulting from shipping related activities”* and it is further described on Article 123 that the activities include port operation, ship operation, the transport of hazardous and toxic materials through the waters, waste disposal and ship recycling.

Because this law is the fundamental law for maritime regulations of Indonesia, it governs all the general provisions of all aspects of maritime law and mandates its subsequent provisions to the other specific regulations. For ship recycling, it is stated in Article 241 paragraph (1) that ship recycling activities shall comply with the marine environmental protection requirements. Furthermore, in the Article 242, it is mentioned that the specific requirements are regulated by Ministerial Decree.

The last provision of ship recycling mentioned in the law is concerning the legal consequences and liability for the violations to the Article 241 paragraph (1). It is stated in Article 329 that *“every person conducting ship recycling without compliance to the marine environmental protection protection will be subjected to 2 (two) years of prison and a maximum compensation of Rp. 300.000.000,00 (three hundred million rupiahs)”*.

2.4.2. Government Regulation No. 21 Year 2010 on Marine Environmental Protection (State Gazette Year 2010 Number 27)

The Government Regulation No. 21 Year 2010 on Marine Environmental Protection is the main national regulation which specifically governs the marine environmental protection measures and requirements including waste management and disposal. It is considered as the implementing regulations in relation to the provisions of the Law No. 17 Year 2008 on Shipping, particularly the provisions on waste management and disposal.

Regarding waste disposal, paragraph 7 of Article 1 defines waste disposal as “*every disposal of waste or other materials to the waters, both coming from ships or ship hulls, except those resulting from the normal operation of ships*”. The measures of marine environmental protection are mentioned in Article 2 paragraph (1) and (2) which stated that the environmental protection is conducted through the prevention of those pollution resulting from ships operation, port activities, waste disposal and ship recycling.

It is also stated in Article 34 paragraph (2) that the designated Minister shall provide a specific information system on marine environmental protection. The information system shall contain the details regarding underwater construction, waste disposal location and ship recycling location. This provision is further detailed on Article 35 paragraph (3) which stated that the information on ship recycling location shall covers the location of ship recycling in ports and in the waters.

The regulation also serves as a bridge between the Law No. 17 Year 2008 on Shipping with the respective specific Ministerial Decrees on marine environmental protection enacted in Indonesia. It sets out the basic requirements of the marine environmental measures including the liability and compensation which are further mandated to the Ministerial Decrees of specific matters pursuant to the law.

2.4.3. Ministerial Decree No. 29 Year 2014 on Marine Environmental Pollution Prevention (State Document No. 1115, 2014)

In order to effectively implement the measures in relation to the marine environmental protection, the Ministry of Transportation of the Republic of Indonesia has issued the Ministerial Decree No. 29 Year 2014 on Marine Environmental Pollution Prevention. This Ministerial Decree sets out all the regulations and requirements as well as the international standards on pollution prevention including those laid out by the International Convention for the Prevention of Pollution from Ships 1973 as modified by the Protocol of 1978 Relating Thereto (MARPOL 73/78), the International Convention on the Control of Harmful Anti-Fouling Systems on Ships (AFS Convention), the International Convention for the Control and Management of Ships' Ballast Water and Sediments (BWM Convention) and the Hong Kong Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 (Hong Kong Convention).

Unlike the other conventions enlisted in the Ministerial Decree which had been ratified by the Government of Indonesia, the Hong Kong Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 has not yet been ratified. Nevertheless, its requirements and standards are included in the Ministerial Decree and as addition, this Ministerial Decree is not only set out the regulation that applies to the ships of 500 GT and above but also to the ships of 100 GT or above which sail in domestic waters.

The specific provisions for ship recycling are mentioned in Section 4, Article 51-56 of the Ministerial Decree which cover the general requirements of ships subjected for recycling and ship recycling facilities. The other requirements including the obligation and mandatory surveys and certifications are listed in different sections that set out the provisions of surveys and certifications not only those dedicated for ship recycling but also those required for other waste management activities.

It is also stated in the Ministerial Decree, the requirement for ships to provide the Inventory of Hazardous Materials (IHM) and for ship recycling facilities to provide Ship Recycling Plan as required by the Hong Kong Convention. This Ministerial Decree also includes the formats of the National and International Certificates on the Inventory of Hazardous Materials, the Document of Authorization to Conduct Ship Recycling, as well as the National and International Ready for Recycling Certificates pursuant to the provisions of the Hong Kong Convention as its appendices.

With regard to the procedure of the certification of IHM, Article 52 of this Ministerial Decree stated that ship owners and ship recycling facilities shall prepare the IHM to be verified by the safety of ships inspector before the ship is entitled for recycling. Furthermore, it is also stated in Article 54 that for the authorization to conduct the monitoring and inspection of ship recycling and ship recycling facilities is undertaken by the safety of ships inspector. Subsequently, under Article 63 Paragraph (15) - (19), ship owners and ship recycling facilities shall submit the documents required for the issuance of the National and International Certificates on the Inventory of Hazardous Materials, the Document for the Authorization to Conduct Ship Recycling, as well as the National and International Ready for Ship Recycling Certificate to the Director General of Sea Transportation as the authorized official.

Furthermore, Article 56 mentions that the implementation of this Ministerial Decree is further regulated by Director General of Sea Transportation Decision which pursuant to this, the Directorate General of Sea Transportation has issued the Circular Letter No: 19/PK/D/2019 dated 11 March 2019 on the Recycling of Indonesian Flagged Ships. This Circular emphasizes that the ships of 500 GT or above which sail in international waters and the ship recycling facilities under the national jurisdiction shall comply to the international standards for ship recycling.

Chapter 3

ROLES AND OBLIGATIONS OF RELEVANT MINISTRIES AND AGENCIES IN INDONESIA RELATED TO SHIP RECYCLING

3.1. Roles and Obligations of Relevant Ministries

In relation to the implementation of ship recycling governance, there are several ministries that are obligated in terms of its regulatory framework. The main ministries that are directly involved in the provisions of ship recycling activities are the Ministry of Transportation and the Ministry of Industry particularly on the authorization of inspection, survey, and certification of ships and ship recycling facilities as well as the development of ship recycling industry itself.

This chapter will discuss about the roles and obligations of the respective ministries according to the national regulatory framework as well as the agencies that are involved in the regulations on ship recycling and its implementation.

3.1.1. Roles and Obligations of the Ministry of Transportation

The major Ministry which is appointed to handle maritime affairs in Indonesia as a part of its main obligation is the Ministry of Transportation. The Ministry undertakes the mandate and responsibility to handle all the aspects of transportation in Indonesia which covers land transportation, sea transportation, civil aviation and railways.

In undertaking its task and function in the national governance, the Ministry of Transportation runs according to the Presidential Decree No. 40 Year 2015 (State Gazette Year 2015 Number 75) on the Ministry of Transportation as the main regulation which sets out all the responsibilities that have to be carried out by the sub-sectors in the Ministry. As stated in the Presidential Decree, the main task of the Ministry is to undertake the administrative governance in transportation sector to assist the President in the

implementation of State's governance. Furthermore, the details of the responsibilities are set out in Article 3 of the Decree which stated that the functions of the Ministry of Transportation, are in:

- a. The formulation and establishment of policies in transportation services, safety and security, as well as the enhancement of transportation accessibility, connectivity and also transportation infrastructure and facilities;
- b. The implementation of policies in transportation services, safety and security, as well as the development the operations, accessibility, and connectivity of transportation infrastructure and facilities;
- c. Technical assistance and supervision on the implementation of transportation services, safety and security as well as the enhancement of transportation accessibility, connectivity and also transportation infrastructure and facilities in the regions of Indonesia;
- d. Transportation research and development;
- e. The implementation of transportation human resources development;
- f. The supervision on the implementation of the tasks of the Ministry of Transportation.

3.1.1.1. The Responsibilities of the Ministry of Transportation in Ship Recycling

To undertake its task in maritime sector, the Ministry of Transportation mandates the responsibility to the Directorate General of Sea Transportation which also serves as the Maritime Administration in Indonesia. The task of the Directorate General of Sea Transportation is also indicated in the Presidential Decree No. 40 Year 2015 on the Ministry of Transportation (State Gazette Year 2015 Number 75) under Article 12 which describes the task to formulate and implement the policies in shipping sector. Furthermore, Article 13 of the Decree entails the functions to be carried out by the Directorate General of Sea Transportation, that are:

- a. To formulate the policies in sea transportation, port, maritime infrastructure and facilities, marine environmental protection as well as the enhancement of maritime safety and security;
- b. To implement the policies in sea transportation, port, maritime infrastructure and facilities, marine environmental protection as well as the enhancement of maritime safety and security;
- c. To formulate the norms, standards, procedures and criteria in sea transportation, port, maritime infrastructure and facilities, marine environmental protection as well as the enhancement of maritime safety and security;
- d. To offer technical assistance and supervision in sea transportation, port, maritime infrastructure and facilities, marine environmental protection as well as the enhancement of maritime safety and security;
- e. To undertake the evaluation and reporting in sea transportation, port, maritime infrastructure and facilities, marine environmental protection as well as the enhancement of maritime safety and security.

As seen from the functional responsibilities listed above, one of the major tasks of the Directorate General of Sea Transportation is to handle the policies on marine environmental protection. To conduct this task, the specific Directorate designated to undertake the matters of marine environmental protection, particularly waste management and ship recycling is the Directorate of Ships and Seafarers.

According to Article 355 of the Ministerial Decree No. 122 Year 2018 on the Organization and Working Procedures of the Ministry of Transportation (State Document No. 1756 Year 2018), the specific section in the organizational structure of the Directorate General of Sea Transportation is the Subdirectorates of Pollution Prevention, Ship Safety Management and Marine Environmental Protection which undertakes the task to formulate and implement the policies, norms, standards, procedures and criteria as well as to provide technical assistance and supervision, evaluation, and reporting system in the pollution

prevention and compensation as well as the safety management of ships that are not subjected for crossing transportation.

In details, the task is undertaken in a set of functions stated in Article 356 of the Ministerial Decree which covers the formulation and implementation of policies, norms, standards, procedures and criteria, and technical assistance in safety management and marine environmental protection as well as evaluation and reporting system on oil pollution, noxious liquid substances, packaged dangerous goods, liquid waste, garbage, air pollutant, waste transport and disposal, third party liability and compensation of the damage resulting from marine pollution, tank cleaning, ballast water management, anti-fouling system and ship recycling which includes the task for the verification of the required documents submitted by ship owners and ship recycling facilities to be approved by the Director General of Sea Transportation and subsequently will also issues the certificates for ship recycling.

According to the functions mentioned above, it is this particular Subdirectorate which is authorized to undertake the implementation of the provisions laid out in the Ministerial Decree No. 29 Year 2014 on Marine Environmental Pollution Prevention including the provisions of ship recycling activities. However, the functions of the Directorate General of Sea Transportation do not include the authorization over ship yard and ship recycling industry as a whole.

3.1.2. Roles and Obligations of the Ministry of Industry

The other ministry that is directly involved with the provisions related to ship recycling is the Ministry of Industry particularly on the regulation and authorization of ship yard industry. The Ministry of Industry of the Republic of Indonesia undergoes its duties and obligations based on the Presidential Decree No. 29 Year 2015 on the Ministry of Industry (State Gazette Year 2015 Number 54). It is stated on Article 2 of the Presidential Decree that the task of the Ministry of Industry is to undertake the administrative governance in national

industrial sector to assist the President in the implementation of State's governance.

Furthermore, the details of the responsibilities are set out in Article 3 of the Presidential Decree which stated that the functions of the Ministry of Industry, are in:

- a. The formulation and establishment of policies in the exploration and reinforcement of industrial sector, the improvement of competitiveness, the development of business climate, the promotion of national industry and industrial services, industrial standardization, industrial technology as well as the development of strategic industry and green industry, the development and empowerment of small and medium scale industries, the dispersion and equal distribution of the industrial development, industrial and cooperation tenacity, and the enhancement of national products consumption;
- b. The implementation of policies in the exploration and reinforcement of industrial sector, the improvement of competitiveness, the development of business climate, the promotion of national industry and industrial services, industrial standardization, industrial technology as well as the development of strategic industry and green industry, the development and empowerment of small and medium scale industries, the dispersion and equal distribution of the industrial development, industrial and cooperation tenacity, and the enhancement of national products consumption;
- c. Technical assistance and supervision on the implementation of the exploration and reinforcement of industrial sector, the improvement of competitiveness, the development of business climate, the promotion of national industry and industrial services, industrial standardization, industrial technology as well as the development of strategic industry and green industry, the development and empowerment of small and medium scale industries, the dispersion and equal distribution of the industrial

development, industrial and cooperation tenacity, and the enhancement of national products consumption;

- d. Research and development in industrial sector;
- e. The supervision on the implementation of the tasks of the Ministry of Industry.

3.1.2.1. The Responsibilities of the Ministry of Industry in Ship Recycling

The specific institution under the Ministry of Industry which carries out the responsibility to handle the regulations related to ship recycling industry is the Directorate General of Metal, Machinery, Means of Transportation and Electronic Industries, particularly in the Subdirectorate of Maritime Industry of the Directorate of Maritime, Means of Transportation and Defense Equipment Industries.

According to the Ministerial Decree No. 35 Year 2018 on the Organization and Working Procedures of the Ministry of Industry Article 376 (State Document No. 1509, 2018), the functions of the Subdirectorate of Maritime Industry in relation to its duty and task are:

- a. To prepare the materials for the formulation and implementation of industrial dispersion to all the regions of industrial development, the preparation of human resources development, natural resources utilization, industrial technology research and development, creativity, innovation and budget resources, the preparation of the implementation of standards as well as the processing and application of information system, the preparation of the formulation of norms, standards, procedures, and criteria as well as technical assistance and planning supervision, authorization, and industrial information and also the preparation of the implementation of the supervision on the Indonesian National Standards and the Indonesian National Standards of Work Competence in the sector of maritime industry.
- b. To prepare the materials for the formulation and implementation of green industry, strategic industry, the enhancement of national products

utilization, the preparation for international cooperation, the preparation of the industrial safety and security, the implementation of promotion, the preparation of the supervision of green industry supervision as well as the technical policy of the development of industry in maritime sector.

In addition, the Ministry of Industry has also established a list of the types of industries under its authority which set out in the Ministerial Decree No: 30/M-IND/PER/7/2017 on the Types of Industries under the Auspices of the Directorate Generals and Bodies in the Ministry of Industry. The Ministerial Decree contains the list of industries under every Directorate General unit which are compiled in the Official Classification of Business Fields of Indonesia. On Annex I of the Ministerial Decree, Recycled Steel Industry (for ship breaking) is classified under the auspices of the Directorate of Maritime, Means of Transportation and Defense Equipment Industries.

From the above-mentioned details, it is clearly stated that ship recycling industry is under the authority of the Ministry of Industry despite of the non-existence of the specific regulation concerning the standards and certification of ship yard in particular in the regulatory framework of the Ministry of Industry. Nevertheless, it can be concluded that the authorization of ship recycling yard or ship recycling facilities is under the obligations of the Ministry of Industry according to the existing national regulations of Indonesia.

3.2. Roles and Obligations of Relevant Agencies and Biro Klasifikasi Indonesia (BKI)

According to Article 12 paragraph 3 of the Hong Kong Convention, State Parties shall report and disseminate *“a list of the recognized organizations and nominated surveyors which are authorized to act on behalf of that Party in the administration of matters relating to the control of Ship Recycling in accordance of the Convention, and the specific responsibilities and conditions of the authority delegated to the recognized organizations or nominated surveyors”*. In line with that provision, it is worth to mention that the Government of Indonesia has appointed PT. Biro Klasifikasi Indonesia (BKI)

as the Recognized Organization which acts on behalf of the Government of Indonesia to undertake the survey, certification and statutory of Indonesian flagged ships under the provisions of IMO Conventions.

Nevertheless, BKI has not been given the mandate to undertake the certification in relation to ship recycling and with regard to the certification of ship recycling facilities, there is no specific institution which is assigned as the authorized organization to undertake the surveys, certification and statutory on behalf of the government in the sector of industry. The following subsection will discuss the roles and obligations of BKI as the Recognized Organization of the Government of Indonesia.

PT. Biro Klasifikasi Indonesia was established in 1964 by the Government of Indonesia through the Government Regulation No. 28 Year 1964 on the Establishment of the State Owned Company Biro Klasifikasi Indonesia. The recent legal framework of the appointment of PT. BKI as the Recognized Organization (RO) for the Government of Indonesia was marked by the issuance of the Decision of the Director General of Sea Transportation No. PK.204/1/3/DJPL-16 dated 21 April 2016 on the Appointment of PT. Biro Klasifikasi Indonesia (Persero) as the Recognized Organization to Conduct Survey and Providing Statutory Certification on behalf of the Government for Indonesian Flagged Ships.

It is stated in the document that the government of Indonesia has delegated its authority to BKI to conduct survey and providing statutory certification to Indonesian flagged ships that sail outside the shipping area of Indonesia as well as appointed BKI as the classification society or Recognized Organization (RO) to undertake the task in the field of classification of Indonesian flagged merchant ships and foreign flagged ships. The official document is strengthened with the establishment of the Decision of the Minister of Transportation of the Republic of Indonesia No. KP 249 Year 2018 on the Appointment of PT. Biro Klasifikasi Indonesia (Persero) to Conduct the Survey and Statutory Certification for Indonesian Flagged Ships.

It is worth to mention that although BKI is not a member of the International Association of Class Societies (IACS), BKI was one of the Class Societies which participated in the establishment of the Asian Classification Society (ACS) and is an active member of the organization ever since. In undertaking its statutory task, BKI has also established cooperation in Dual Class and Mutual Representative with several major Class Societies such as RINA Services S.p.A, Lloyd's Register, DNV-GL, Nippon Kaiji Kyokai, Korea Classification Society, Bureau Veritas and other Class Societies (BKl, 2019). This cooperation is established in order to enhance the competitiveness of BKI as a business entity and as the Recognized Organization of the Government of Indonesia which handles the large number of Indonesian flagged ships specially to support and to assist BKI in undertaking the survey and certification regarding the specific matters which BKI has not been fully equipped with the supporting capacity.

As the line of services, BKI has been performing ships classification based on hull construction, electricity installation, machinery for ships as well as floating facilities and offshore platforms. BKI as a Recognized Organization has also been entrusted to conduct the surveys and certification on behalf of several Maritime Administrations for the certification as required by the IMO Conventions such as the ISPS Code, ISM Code, Load Line, MARPOL and others.

The details of the surveys and certification that are authorized by BKI are enlisted in the Cooperation Agreement between the Directorate General of Sea Transportation and PT. Biro Klasifikasi Indonesia concerning Statutory Survey and Certification for Indonesian Flagged Ships No. HK.201/3/8/DJPL/2019 dated 9 April 2019. The delegation of authorities from the Ministry of Transportation to BKI as enlisted in Annex I of the Agreement are as shown in Table 1 as follows:

No	CERTIFICATE
1	1974 SOLAS CONVENTION PROTOCOL 88 AND OTHER MANDATORY SOLAS INSTRUMENTS
1.1	Document of Compliance (ISM Code)
1.2	Safety Management Certificate (ISM Code)
1.3	Passenger Ship Safety Construction Certificate
1.4	Cargo Ship Safety Construction Certificate
1.5	Cargo Ship Safety Equipment Certificate
1.6	Cargo Ships Radio Certificate
1.7	High Speed Craft Safety Certificate
1.8	Fitness Certificate for the Carriage of Dangerous Chemical Bulk
1.9	Fitness Certificate for the Carriage of Liquefied Gasses in Bulk
1.10	Fitness Certificate Dangerous Goods
1.11	International Maritime Solid Bulk Cargo (IMSBC)
1.12	Nuclear Cargo Ship Safety Certificate
1.13	Document of Authorization for the Safe Carriage of Grain in Bulk
1.14	Certificate Special Purpose Ship
2	MARPOL 73/78 CONVENTION
2.1	International Oil Pollution Prevention (IOPP)
2.2	International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances (NLS)
2.3	International Sewage Pollution Prevention (ISPP) Certificate
2.4	International Air Pollution Prevention (IAPP)
2.5	Engine International Air Pollution Prevention (EIAPP)
2.6	International Energy Efficiency Certificate (IEEC)
3	Anti Fouling Convention, 2001
	International Anti Fouling System (AFS) Certificate
4	International Convention for the Control and Management of Ship Ballast Water and Sediment, 2004
	International Ballast Water Management (IBWM) Certificate
5	ILLC 1966 and Protocol 88
	International Load Lines Certificate

Table 1. : List of statutory authorities for ships sailing in international waters with the size of 500 GT and above (BKI, 2019)

As shown on Table 1, BKI has been assigned to act on behalf of the Government to issue the certificates according to those attached as the requirements of all the conventions that have been ratified by the Government of Indonesia. In undertaking these tasks, the Ministry of Transportation is obligated to supervise all the activities of this Recognized Organization in order

to ensure the effective compliance of the Indonesian flagged ships to the international standards.

According to the internal data, BKI has registered and certified a total number of 11,317 of vessels or 19,219,373 GT of Indonesian flagged ships which consists of 10,878 of vessels or 15,193,130 GT of the ships sized 100 GT and above which sail the domestic waters and 439 of vessels or 4,026,243 GT of ships 500 GT and above sailing internationally (BKI, 2019).

From the total number of registered fleet, the number of ships with the age of 25 years or more are 1,553 or 1,997,762 GT of vessels of 100 GT and above; and 189 of vessels or 1,919,699 GT of 500 GT and above. Considering of this data, the opportunity for BKI to undertake the certification regarding ship recycling is considered to be very high. With regard to the matter, BKI has prepared a guideline entitled “Surveys for Ship Recycling Convention” adopting the IMO Guidelines on Ship Recycling which was formatted in preparation in the case that they will be assigned with the statutory task and certification of ship recycling particularly for the IHM survey and certification even though they have not been mandated to undertake the actions (BKI, 2017).

Chapter 4

THE PROCESS OF RATIFICATION OF INTERNATIONAL CONVENTIONS IN INDONESIA

4.1. Ratification Process of International Conventions in Indonesia

According to international law, every States that becomes a party of an international convention is subjected to ratify the convention to its respective national law and regulations for the purpose of its implementation. The process of ratification of international conventions in Indonesia is particularly regulated by the Law No. 24 Year 2000 on International Agreements (State Gazette Year 2000 Number 185). This legislation sets out the basic and fundamental provisions on the process of ratification that shall be taken by the specific government institution which responsables to undertake the ratification process.

It is regulated in Article 10 of the Law that an agreement shall be ratified in the form of legislation or law if it has a fundamental impact to the life of the people or to the national budget and/or requires an amendment to the existing law or a formulation of a new legal framework that has never been regulated in the national regulations before. The issues that include to this criterion are those agreements regarding politics or national defense and security, the change to national areas or border establishment, sovereignty or the right of sovereignty, human rights and environment, the formulation of new legal provisions, and foreign loan and/or grant.

Article 10 also mentions that there are agreements that can be ratified in the form of Presidential Decree if the issues are related to technical provisions which include science and technology, economy, trade, culture, merchant shipping, double tax exemption, investment protection, and other technical matters that fall into the tasks of specific government institutions.

The Government of Indonesia has also established the Presidential Decree No. 68 Year 2005 on the Preparation Procedures of the Draft of Law, Government Regulation as the Substitution of Law, Government Regulation

and Presidential Decree as an implementing regulation that sets out the steps that have to be undertaken in the ratification process of international conventions and other agreements. It is in this regulation that the responsible government institution to undergo the ratification process is pointed out as the Initiating Institution as stated in Article 1. This article defines the Initiating Institutions as the Ministry or other governmental institution other than Ministry which proposes the process of ratification to be carried out.

The Ministry of Foreign Affairs has published a book entitled the Practical Guidance for the Process of Ratification and the Depository of International Agreements including the Preparation of Full Powers and Credentials (Lubis, 2011). Based on the book, in general the process of ratification is described in Figure 3 below:

THE RATIFICATION PROCEDURES OF INTERNATIONAL CONVENTION

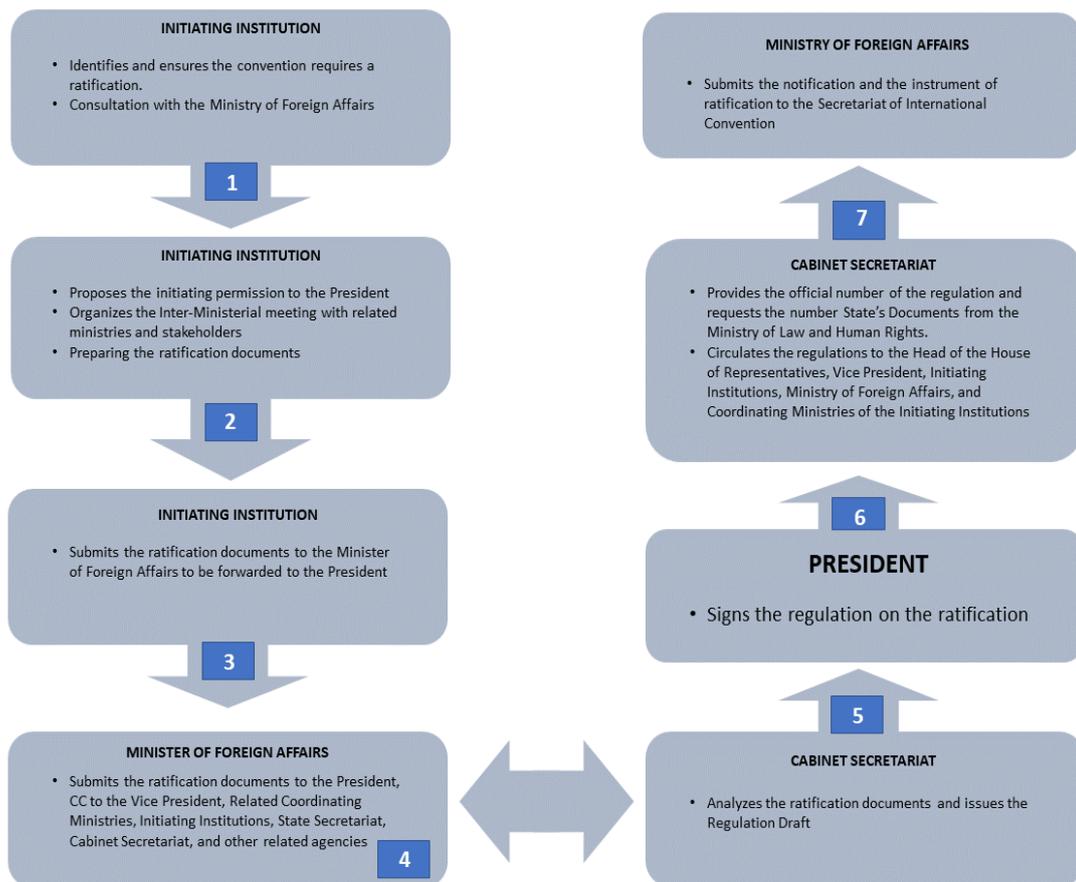


Figure 3. The Process of Ratification in Indonesia (Lubis, 2011)

It is shown on Figure 3 that the procedures of ratification according to the Presidential Decree No. 68 Year 2005 in line with the Law No. 24 Year 2000, are as follows:

1. The Initiating Institution shall identify and ensure that the conventions require ratification to national regulations as well as define the form of national legal instrument that will be applied as the ratification result. In case of doubt, the institution can undertake consultation with the Directorate General of International Law and Agreements of the Ministry of Foreign Affairs.
2. The Initiating Institution shall propose a permission to undertake the ratification process to the President along with the official copies to the Minister of Foreign Affairs and other related Ministers supplemented by the Explanatory Document which covers the urgency and purpose of ratification, objectives, points of interest, scope of regulation, limitation and direction of regulation as well as the Certified True Copy of the conventions as attachment.
3. The Cabinet Secretariat will analyze the proposal with the consideration to the substance, procedures and the interest of the related sectors before its submission to the President and subsequently will formulate a recommendation to the President for decision. Should the President agree with the proposal, the Cabinet Secretariat will issue the Letter of Approval for Initiating Institution to the designated Minister with the official copies to the Vice President and the Minister of Foreign Affairs.
4. The Initiating Institution shall organize an Inter-Ministerial Meeting and form an Inter-Ministerial Committee which includes the Cabinet Secretariat, The Ministry of State Secretariat, the Ministry of Foreign Affairs, the Ministry of Law and Human Rights, and other related Ministries and stakeholders to discuss the draft of regulation, the Explanatory Document and the translated document of the conventions. The purpose of this coordinative meeting is to ensure that there is no overlap in the interest or

obligations and no conflicting regulations between the Ministries and stakeholders as well as to ensure that the substance of the conventions is found to be acceptable to all the stakeholders in term of their readiness for the implementation of the regulation.

5. Should the Inter-Ministerial Committee agree with the substance and the draft of regulation, the Initiating Institution will submit the document to the Minister of Foreign Affairs to be forwarded to the President for signature through the Cabinet Secretariat.
6. The President officially signs the regulation on the ratification.
7. The Cabinet Secretariat will provide the official number of the regulation and request the number of State Gazette from the Ministry of Law and Human Rights. Subsequently, the regulation will be circulated to the Head of the House of Representatives, the Vice President, the Initiating Institution, the Ministry of Foreign Affairs and the Coordinating Ministries of the Initiating Institution.
8. After the regulation is issued, the Ministry of Foreign Affairs will prepare the draft of notification to be submitted to the Secretariat of the international conventions for the submission of the Instrument of Ratification.

4.2. Challenges in the Ratification Process of the Hong Kong Convention in Indonesia

Regarding the plan of the Government of Indonesia to ratify the Hong Kong Convention, there are several challenges that have to be addressed before the process of ratification is entered into actions. From the existing condition of ship recycling in Indonesia described in Chapter 2, it is found that the ship scrapping and ship breaking yard in Indonesia are not in the state of readiness to comply with the regulations set out in the Hong Kong Convention. They are still considered to be a sub-standard industry which applies low technology and being conducted without any consideration towards the impacts of its practice to the environment. The beaching method that is implemented in the ship scrapping process makes the hazardous materials flows directly into the waters

which pollutes and causes eminent threats to the marine environment and the humans involved in the process as well as the community surrounding the ship scrapping sites. Therefore, the Government has to address this issue by ensuring that the stakeholders in ship scrapping and ship breaking industry are ready to implement the concept of sustainable ship recycling as regulated by the Hong Kong Convention

Another challenge that has to be addressed is that currently there are no specific regulation which entails the standards for ship recycling facilities in particular in the national legal framework enacted in Indonesia. Although the Ministry of Transportation has established the Ministerial Decree No. 29 Year 2014 on Marine Environmental Pollution Prevention which contains the adoption of the provisions of the Hong Kong Convention, the Ministry has no authorization to implement the regulation upon ship recycling facilities which lies in the obligation of the Ministry of Industry. The “two-folds” approach of the Convention which covers the regulation for the standards of both ships and ship recycling facilities which fall into the obligations of different ministries in Indonesia makes the ratification process to face an obvious challenge. The obligation to set the regulations for ships lies in the task of the Ministry of Transportation while the regulations for ship recycling facilities is the task of the Ministry of Industry.

It is also revealed from the discussion in Chapter 2 that although the Ministerial Decree No. 29 Year 2014 on Marine Environmental Pollution Prevention is adopting the provisions of the Hong Kong Convention, yet in the formulation process it was not done through the mechanism set out by the existing law on the ratification process of international conventions. It can be incurred from the description of the ratification process in Indonesia that one of the most significant step is to appoint the Initiating Institution and to ensure that there is no overlap or no conflicting existing regulation as well as roles and obligations between ministries and other stakeholders in the subject of ratification through the Inter-Ministerial Meeting. Based on the overlapping in

the task and obligations of the Ministry of Transportation and the Ministry of Industry regarding the regulations for ships to be recycled and the ship recycling facilities, it is clearly seen that this is one of the challenges that has to be addressed especially in deciding which Ministry that has the right to undertake the ratification process.

Another challenge that has to be addressed by the Government of Indonesia is on the process of survey and certification procedures of the IHM. According to the Ministerial Decree No. 29 Year 2014, ship owners and ship recycling facilities have to submit the proposal for the issuance of the Certificates of the Inventory of Hazardous Materials to the Director General of Sea Transportation which points out that the Directorate General of Sea Transportation is the institution authorized for the survey and certification of IHM. While pursuant to the provisions of the Hong Kong Convention, Competent Authorities shall assign a Recognized Organization to undertake the procedures of IHM survey and certification. From the facts, it is found that the appointment of the Directorate General of Sea Transportation as the authorized institutions for the survey and certification of IHM is not in compliance with the provisions of the Hong Kong Convention because the Directorate General of Sea Transportation is not the Recognized Organization of the Government of Indonesia. Therefore, the Directorate General of Sea Transportation as the Competent Authority of the Government of Indonesia to the IMO should assign the Recognized Organization to undertake the survey and certification of IHM.

The other challenge regarding the IHM survey and certification procedures is that there is no specific requirement mentioned in the Ministerial Decree No. 29 Year 2014 on the preparation of the list of IHM pursuant to the Hong Kong Convention and the IMO Guidelines for Ship Recycling. According to Gramann (2018), as specified by the Hong Kong Convention, IHM should be prepared by a qualified company or institution which is capable to constitute the inventory supplemented by a thorough inspection conducted in accredited laboratories since it is a task which requires vast cross-education and experience. Therefore,

it is significant for the Government of Indonesia to ensure that the IHM submitted by ship owners and ship recycling facilities are reliable and produced by competent experts or companies. In relation to this matter, there is no clear information of whether or not the Directorate General of Sea Transportation, which is currently undergoing the task of IHM certification, or BKI as the Recognized Organization, have the competency or expertise to undertake a proper inspection of the IHM.

4.3. Analysis

Referring to the research questions enlisted in Chapter 1 which aim to achieve the objectives of this dissertation, an analysis can be undertaken by finding the answers to the specific questions. To answer the question about the urgency of the ratification of the Hong Kong Convention for Indonesia, the Author finds that in line with the determination of the Government of Indonesia to put its utmost efforts to minimize marine pollution resulting from maritime sector in order to protect the marine environment and also considering the number of old age Indonesian flagged ships as well as the opportunity for ship recycling industry to be developed in Indonesia, it is significant for the Government of Indonesia to ratify the Hong Kong Convention in order to set the national regulation for the sound recycling of ships activities. With the ratification, it is expected that the pollution resulted from ship scrapping practice existing in Indonesia will be reduced and in the long run will contribute to the marine environmental sustainability in Indonesia.

In relation with the question about the compliance of national regulations on ship recycling in Indonesia to the Hong Kong Convention, the Author finds from the research that the only regulations that touches ship recycling provisions is the Ministerial Decree No. 29 Year 2014 on Marine Environmental Pollution Prevention issued by the Ministry of Transportation and there is no regulation concerning ship recycling facilities in particular. Even though it is mentioned in the Ministerial Decree No: 30/M-IND/PER/7/2017 on the Types

of Industries under the Auspices of the Directorate Generals and Bodies in the Ministry of Industry that the recycled steel industry (for ship recycling) is under the auspices of the Ministry of Industry, but the regulation for the standards and requirement for ship recycling facilities from the industrial point of view has not been in place. These issues have become the reason underlying the Government of Indonesia has not taken any action to start the official process of ratification.

Pursuant to the Law No. 24 Year 2000 on International Agreements, the conventions regarding technical matters which fall into the task and obligations of a specific government institution can be ratified in the form of Presidential Decree. Bearing in mind of this provision, the Author finds that if the Government of Indonesia decides to ratify the Hong Kong Convention, the legal instrument that is possible to be applied is Presidential Decree because the provisions of the Convention are specifically regulate the technical matters on ship recycling including the technical requirements of ships to be recycled as well as ship recycling facilities. This argument can be applied to answer the question relating to the suitable legal instrument to be enacted as the legal framework of the ratification of Hong Kong Convention.

Concerning the steps and process of ratification, as described previously in this Chapter that the ratification process can be undertaken after the Initiating Institution is appointed to initiate the proposal to the President and will continue to complete the process until the submission of the Instrument of Ratification to the Organization. Nevertheless, in order for the ratification process to start, the first step on the procedures of ratification process is to decide on the appointment of the Initiating Institution. To be able to answer the last question of the research questions, the Author finds that for the reason that the Hong Kong Convention is an IMO convention and the Competent Authority appointed to represent the Government of Indonesia in the IMO is the Ministry of Transportation, therefore, it is most suitable for the Ministry of Transportation to be appointed as the Initiating Institution despite the

conflicting obligations concerning the authorization upon ship recycling facilities with the Ministry of Industry.

This final argument is based on the provisions of the Hong Kong Convention that requires the State Parties to provide the information on the ship recycling activities in the respective states through the Competent Authority. Therefore, to simplify this task, the Ministry of Transportation as the Competent Authority of the Government of Indonesia to the IMO can undertake the information sharing as well as the reporting in relation to the requirements of the Convention. In the case of the regulations on ship recycling facilities would be established by the Ministry of Industry, the Ministry of Transportation could arrange a coordinative measure on the supervisions and reporting mechanism of the ship recycling facilities to be constituted as one solid report to the IMO.

In addition, as stated in the Hong Kong Convention that State Parties shall provide the list of Recognized Organization for the purpose of certification of ship recycling, the Ministry of Transportation has appointed BKI to act on behalf of the Government to conduct the survey and certification of the implementation of IMO Conventions. Therefore the Ministry of Transportation should assign BKI to undertake the task of survey and certification of IHM and other requirements provided by the Convention. Nevertheless, based on the fact of the probability that BKI does not have the competency to conduct a proper survey and inspection in relation to IHM, BKI should establish a specific agreement with other Class Societies with the competency and have provided IHM survey and certification in their line of services such as Nippon Kyokai Kaiji or DNV-GL.

Chapter 5

CONCLUSION AND RECOMMENDATION

5.1. Conclusion

Recalling the primary objective of this dissertation which aims to give a comprehensive overview of the legal framework for ship recycling in Indonesia and to align the international legal regime on ship recycling for its compliance, it can be concluded that based on the research, the current overall position from the existing conditions and the regulatory point of views, Indonesia is not entirely ready to fully comply with the provisions of the Hong Kong Convention. However, the Government of Indonesia has undertaken several measures towards the compliance and the ratification of the Convention such as the establishment of the Ministerial Decree No. 29 Year 2014 on Marine Environmental Pollution Prevention.

The major challenges that has to be addressed by the Government of Indonesia are to ensure the preparedness of the ships and the ship recycling facilities to be able to comply with the standards set out in the Hong Kong Convention for sustainable ship recycling and to solve the issue of conflicting regulations on the roles and obligation between the Ministry of Transportation and the Ministry of Industry.

From the review on the national regulatory framework, the Ministry of Transportation has more key regulations in place relating to marine environmental protection and waste management to support the establishment of a regulation on ship recycling than the Ministry of Industry. In addition, the Ministry of Transportation has other supporting aspects to be appointed as the Initiating Institution of the ratification process such as the appointment of BKI as the Recognized Organization to act on behalf of the Government of Indonesia to conduct the statutory for the Indonesian flagged ship which also would be possible to conduct the surveys and certification on ship recycling operations in the implementation of the ratification.

5.2. Recommendation

Based on the findings of this dissertation, some recommendations that can be proposed are:

- The Ministry of Industry should formulate a specific regulation to support the development of sustainable ship recycling facilities in order to establish the sustainable ship recycling industry which would benefit the steel industry and national economy as well as to promote the marine environmental protection.
- The Ministry of Transportation should manage a coordinative measure with the Ministry of Industry in the formulation of the regulations on ship building and ship recycling requirements and standards.
- In case of doubt in the decision to appoint the Initiating Institution for the ratification process, the Ministry of Transportation and the Ministry of Industry should conduct a consultation with the Coordinating Ministry of Maritime Affairs under which both ministries are coordinated, the Ministry of Foreign Affairs and the Ministry of Law and Human Rights to get an overall view related to the national policy and interests. The consultation should consider the national law and regulations regarding the roles and obligations of both ministries as well as the codes of conduct of international regulatory framework of the Convention.
- BKI as the Recognized Organization of the Government of Indonesia in the filed of maritime affairs should make efforts to prepare itself to conduct the survey and certification for IHM and ship recycling activities by establishing cooperation with other Class Societies which provide the particular services.

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