

A Legal Review of Sailing Approval Letter: Systems and Procedures

Abbas¹
Syahrudin Nawi²
Hamzah Baharuddin³
Ilham Abbas⁴

¹²³⁴Faculty of Law, Universitas Muslim Indonesia, Indonesia. Email: andiabbas2021@gmail.com

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Abstract

Every ship that is going to sail is required to have a sailing approval letter issued by the harbormaster as an effort to control the security and safety of shipping. This research is a normative-legal research using a statute, comparative and conceptual approaches. The results show that the harbormaster as a government official at the port carries out and supervises efforts to fulfill shipping safety and security as a government administrative action by issuing a state document in the form of a sailing approval letter through a system of procedures for issuing a sailing approval letter. This letter is given to every ship that will sail or leave the port by ensuring that the ship, crew and cargo have technically-administratively fulfilled all sailworthiness requirements. The compliance of all parties in implementing the procedure for the issuance of the sailing approval will lead to the achievement of safety and security in shipping.

1. Introduction

In archipelagic countries, especially in Indonesia, sea transportation is one way of channeling needs from primary needs to additional or supporting needs. It cannot be denied that in an archipelagic country such as Indonesia, marine transportation facilities and infrastructure are the main support in the transportation of large quantities of goods by ship. From an economic and business perspective, the use of shipping is more effective and has great benefits, so that with sea transportation infrastructure such as ships, it is useful for moving goods and people from one place to another, it is hoped that community economic activities will have a positive and positive impact on improving the economy in the region Indonesia.²

Indonesia has implemented Law No. 17 of 2008, Government Regulation No. 20 of 2010, Minister of Transportation Regulation No. 20 of 2015 and many other laws and regulations that regulate all matters relating to sea traffic, transportation of goods and/or people by sea, navigation and shipping activities as a means of sea transportation, including aspects of security and law enforcement.³ In carrying out the functions and duties of ship safety and security, the government in this case is the harbormaster given the functions and duties as regulated in article 208 of Law No. 17 of 2008 reads The harbormaster has the duty to carry out safety and security functions as referred to in Article 207 paragraph (1), namely Pay attention to shipworthiness, safety, security and order at the port; Attention to orderly ship travel in port waters and shipping traffic; Paying attention to transboundary activities in port waters; Pay attention to salvage activities and underwater work; Pay attention to ship alert activities; Pay attention to scouting; Pay attention to the ups and downs of dangerous goods and hazardous and toxic waste; Pay attention to ship refueling; Pay attention to the orderliness of the embarkation and debarkation of passengers; Pay attention to island dredging and reclamation; Pay attention to the activities of building port facilities for ships; Carry out assistance to search and rescue ship accidents; Leading the pollution control and fire fighting team at the port; and Pay attention to the implementation of marine environmental protection; The inherent aspects of shipping safety include the

² Alexandro, V. H., & Rahmawati, M. (2019). Pertanggungjawaban Pidana Terhadap Kecelakaan Kapal Akibat Tidak Laik Laut. *Jurnal Hukum Adigama*, 1(2), 774-799.

³ Badu, L. W., & Apripari, A. (2019). Menggagas Tindak Pidana Militer Sebagai Kompetensi Absolut Peradilan Militer Dalam Perkara Pidana. *Jurnal Legalitas*, 12(1), 57-77.

characteristics of attitudes, values and activities related to the importance of meeting safety and security requirements related to transportation in waters and at ports.⁴ Neglecting shipping safety generally results in higher economic and environmental costs, such as reduced production, incurring medical costs, pollution and inefficient energy consumption.⁵ Shipping is a high regulated sector where there are clear regulations regarding the role of each related party in shipping.⁶ The existence of marine safety regulations that prioritize third party regulations is a result of the many shipping accidents caused by human errors. At the operational level, the harbormaster, ship owner and skipper are the trident of shipping safety.⁷ The three of them have roles and responsibilities as defined in the maritime affairs of the ship, which is explicitly regulated in article 1 paragraph (33) of Law No. 17 of 2008 which explains that shipworthiness is a condition of a ship that meets the requirements of ship security, crew members, cargo, health and welfare of crew and passengers as well as legal status of ships, security management and prevention of ship pollution, management of ship security to navigate certain waters.⁸

According to Law No. 17 of 2008, every sea transportation (ship) to carry out shipping activities requires a Sailing Approval Letter (SPB) issued by the harbormaster in order to be able to sail or anchor in order to sail or anchor to obtain SPB, a ship that will sail must meet several requirements such as marine eligibility ship.⁹ Each sailing approval letter can be given by a harbormaster to the user or owner of the ship if the ship has met several important requirements as referred to in article 117 of law no. 17 of 2008.

⁴ Puluhalawa, F. U., Puluhalawa, J., & Katili, M. G. (2020). Legal Weak Protection of Personal Data in the 4.0 Industrial Revolution Era. *Jambura Law Review*, 2(2), 182-200.

⁵ Puluhalawa, J., Towadi, M., & Swarianata, V. (2020). Perlindungan Hukum Situs Bawah Air Leato/Japanese Cargo Wreck. *Reformasi Hukum*, 24(2), 189-208.

⁶ Baranyanan, A. S., Kuswara, K., & Nasrun, N. (2020). Kajian Pemodelan Dan Implementasi Alat Keamanan Kebakaranpada Km. Satria Express 99, Askar Saputra 07 Dan Km. Queen Marydalam Menunjang Keselamatan Transportasi Laut Ternate–Halmahera Selatan. *Clapeyron: Jurnal Ilmiah Teknik Sipil*, 1(1). See too, Rayyan, A. (2017). *Tanggungjawab Hukum Atas Terjadinya Kecelakaan Kapal Km Zahro Express Di Pulau Tidung Dihubungkan Dengan Kuid Dan Undang-Undang Nomor 17 Tahun 2008 Tentang Pelayaran*. (Fakultas Hukum Universitas Pasundan). Diakses pada <http://repository.unpas.ac.id/id/eprint/31391>

⁷ Wantu, F. M., & Sarson, M. T. Z. (2020). Legal Protection of Women as Victim of Domestic Violence. *Indonesian Journal of Advocacy and Legal Services*, 1(2), 243-258.

⁸ *Ibid.*

⁹ Bayuputra, T. B. (2015). Tinjauan Yuridis Mengenai Peran Syahbandar Dalam Kegiatan Pelayaran Angkutan Laut Di Indonesia. *Lex et Societatis*, 3(3). See too, Br Barus, V. I., Prananingtyas, P., & Malikhatun, S. (2017). Tugas dan Tanggung Jawab Syahbandar dalam Kegiatan Pengangkutan Laut di Indonesia. *Diponegoro Law Journal*, 6(1), 1-13.

2. Problem Statement

In accordance with Article 219 of Law No. 17 of 2008, sea transportation (ships) to carry out shipping activities requires a Sailing / Anchoring Approval (SPB) issued by the harbormaster to sail or dock. To get an SPB, a ship that will sail must meet several requirements such as vessel eligibility. Each sailing approval letter can be given to the user or owner of the ship by the harbormaster if the ship has met the important requirements in accordance with the procedure for issuing a sailing approval letter. This study aims to analyze the system of sailing approval issuance procedures that affect shipping safety and security.

3. Method

This research is a normative-legal research using a statute, comparative and conceptual approaches.¹⁰ Its data will be provided from primary and secondary legal materials. The primary legal materials resulted from some relevant laws and legislation. Those legal material collected are analysed descriptively related to the problems and prescriptively.

4. Discussion

Based on Article 219 paragraph (1) of Law No.17 of 2008, it is stipulated that every sailing ship is required to have a Sailing Approval Letter (SPB) issued by the Harbormaster. Where the regulation regarding the issuance of SPB is further regulated in the Minister of Transportation Regulation No. 82 of 2014. Then on the regulation in the Regulation of the Minister of Transportation, it can be seen that: Issuance of Sailing Approval Letter is a supervisory activity carried out by the Harbormaster of a ship that will sail based on the Master Sailing Declaration.

- 1) Sailing Approval Letter is a state document issued by the Harbormaster to every ship that will sail.
- 2) Master Sailing Declaration is a statement letter made by the master explaining that the ship, cargo, and crew have met the safety and security requirements of shipping and protection of the maritime environment to sail to the port of destination.

¹⁰ Marzuki, P. M. (2009). *Penelitian Hukum*, 5th ed. Jakarta: Kencana.p. 59

- 3) Harbormaster is a government official at the port who is appointed by the Minister and has the highest authority to carry out and supervise the fulfillment of the provisions of laws and regulations to ensure the safety and security of shipping.
- 4) Harbormaster at fishery port is a harbormaster who is specially placed at fishery port for administrative management and performs the function of maintaining shipping safety.
- 5) Shipworthiness is the condition of the ship that meets the requirements of ship safety, prevention of water pollution from the ship, manning, loading lines, loading, crew welfare and passenger health, legal status of ships, safety management and prevention of pollution from ships, and ship security management for sailing in certain waters.

The process of issuing Sailing Approval Letter, namely:

1) Issuance of Sailing Approval Letter.

- a) Every ship sailing must have a Sailing Approval Letter issued by: Harbormaster, or Harbormaster at the fishing port.
- b) In order to obtain a Sailing Approval Letter, each ship must meet the ship's seaworthiness requirements and other obligations.
- c) For fishing boats, Sailing Approval Letter is issued by the Harbormaster at the fishing port.
- d) The obligation to have Sailing Approval Letter is exempted for: Warships, and / or, state / government ships as long as they are not used for commercial activities.
- e) Harbormaster includes: Head of the Main Harbormaster Office, Head of Batam Port Office, Head of Port Authority and Port Authority Office, and / or, Head of Port Operational Unit Office.
- f) Harbormaster at fishing port is an official / officer authorized to handle portability at fishing ports who is appointed by the Minister.
- g) Sailing Approval Letter is valid for 24 (twenty four) hours from the time of issuance and can only be used for 1 (one) time of voyage.
- h) In issuing Sailing Approval Letter, the harbormaster may appoint an official and / or officer who has competence in the field of portability.

2) Application for the Issuance of Sailing Approval Letter

To obtain a Sailing Approval Letter, the ship owner or operator submits a written application to the Harbormaster. Based on Article 8 paragraph (2) Minister of Transportation Regulation No. 82 of 2014 that the SPB Application, is equipped with:

- a) Master Sailing Declaration.
- b) Evidence of fulfillment of other ship's obligations in accordance with its designation.
- c) For fishing boats, they must be equipped with an operational acceptance letter from the fisheries supervisor.

3) Completeness of Issuance of Sailing Approval Letter

Based on the application received, the harbormaster checks the completeness and validity of the ship's letters and documents. In the event that the Harbormaster receives a report and / or finds out that the ship going to sail does not meet the maritime and ship safety requirements, the Harbormaster has the authority to conduct an inspection of the ship. Examination is the main task for a Shahbandar. The use of ships that are not seaworthy will have legal consequences because they risk losing the cargo and human lives (passengers and crew). The task of this harbormaster will actually be greatly helped if the owner and master of the ship also carry out their duties as mentioned above. For this reason, an inspection system is needed that can ensure, in particular the ship owner / operator, the captain (together with the crew), compliance with the prevailing laws and regulations in the field of shipping safety. The system above identifies all violations that can result in ship accidents, based on input from the ship owner / operator, the captain and crew. If found, the Harbormaster will then take various actions based on the Minister of Transportation Regulation no. 20 of 2015. In addition, the inspection system must be complete and cover administrative, technical and implementation management aspects. The goal, in addition to preventing or avoiding ship accidents, is also to face the legal consequences of ship accidents. Marine safety is a condition that guarantees the safety of various activities at sea, including shipping, exploration and exploitation of natural and living resources, and environmental protection. Based on the results of the examination, the Harbormaster issued a Sailing Approval Letter.

4) Delays, Revocation and Exemption from Sailing Agreement

The harbormaster can delay the departure of the ship to sail because it does not meet the maritime and ship safety requirements or weather considerations. Revocation of Sailing Approval Letter can be carried out by the Harbormaster in the case: The ship does not sail from the port, more than 24 (twenty four) hours from the deadline for issuance, and / or a written order from the court.

Sailing Agreement exemption applies to ships in the following circumstances: Ships temporarily sailing out of the port with the aim of providing rescue assistance to ships in danger, and / or ships that stop at the port due to an emergency.

In the conception of administrative law, the Sailing Approval Letter issued by the harbormaster is an act or act of the government. In administrative law literature, it is very clear that the main purpose of forming a government is to maintain an order system in which people can live their lives in a healthy and fair manner.¹¹ In essence, modern government is how to make an act or act of government more encourage the realization of the best service to the community so that people can feel the existence of the government as a public servant or as a welfare provider.¹²

Van Vollenhoven argued that government action (*Bestuurshandeling*) was an action in the context of maintaining the interests of the state and the people spontaneously and independently by high and low powers.¹³ The Van Poelje Commission, based on its report in 1972, defines *publiek rechtelijke handeling* (actions in public law) as legal actions taken by the authorities in carrying out government functions.¹⁴ In addition,

¹¹ Ismail, D. E., & Nggilu, N. M. (2019, October). The Urgency of Indonesia-Singapore's Extradition Agreement in the Corruption Law Enforcement. In *3rd International Conference on Globalization of Law and Local Wisdom (ICGLOW 2019)*. pp. 157-160

¹² Ilmar, A. (2014). *Hukum tata pemerintahan*. Jakarta: Prenada Media. p. 99

¹³ Asyiah, N. (2016). Eksistensi Perlindungan Hukum Warga Negara Terhadap Tindakan Pemerintah Dalam Membuat Keputusan Administrasi Negara. *Jurnal Hukum Samudra Keadilan*, 11(1), 44-54. See too, Suharsono, A., & Widyaiswara, W. (2018). Implementasi Hukum Pajak Indonesia Yang Transendental. Prosiding Seminar Nasional & Call for Papers Hukum Transendental.

¹⁴ Herman, H. (2015). Perlindungan Hukum Warga Negara Terhadap Tindakan Pemerintah Dalam Membuat Keputusan Administrasi Negara. *Jurnal Komunikasi Hukum (JKH)*, 1(1). See too, Putrijanti, A. (2015). Kewenangan Serta Obyek Sengketa Di Peradilan Tata Usaha Negara Setelah Ada UU No. 30/2014 Tentang Administrasi Pemerintahan. *Masalah-Masalah Hukum*, 44(4), 425-430. See too, Hakim, L. A. R., Asikin, Z., & Wibowo, G. D. H. (2019). Kewenangan Pemerintah Daerah Dalam Pelepasan Hak Atas Tanah Dan Bangunan Melalui Tukar Bangun (Studi Tukar Bangun Antara Pemerintah Provinsi Ntb Dengan Pt. Hasta Karya Darma). *Jurnal Education And Development*, 7(3),

Romeijin argues that government action is any action or act of a state administrative tool (*bestuurs organ*) which includes actions or things that are outside the field of governance law, such as security, justice and others with the intention of give rise to legal consequences in the field of administrative law.

In the administrative law literature, it is explained that as a legal subject, governmental actions or actions are the same as other legal subjects, namely that they can carry out various actions or actions in the form of real government actions or actions (*feitelike handelingen*) or in the form of government legal actions or actions (*rechtshandelingen*).¹⁵

C.J.N. Versteden defines that the real action or action of government is an act or act of government that has no relevance to law and therefore does not cause legal consequences.¹⁶ The actual government actions or actions referred to, such as the government being invited to inaugurate an event, attend and give speeches at activities carried out by the community, and sign an inscription on the inauguration of a building.¹⁷

R.J.H.M. Huisman expressed the definition of what is meant by government legal action or action, namely an act or legal action intended to create rights and obligations (*een rechtshadelingen is gericht op het scheppen van rechten en plichten*). In other words, an action or action based on its nature and character can give rise to certain legal consequences. Seeing the origin of the term legal action or action comes from the concept of civil law as put forward by A.D. Belinfante, that in the field of civil law, legal action or action is the initial stage of the birth of a legal relationship (*rechtsbetrekking*), namely a relationship that has relevance to law.

Furthermore, he stated that the birth of a legal relationship is none other than because this relationship can give rise to certain rights and obligations. Legal relations are born from the existence of a will and a statement made (*wil en wilsverklaring*) both firmly

340-340. See too, Muin, F. Diskresi Dalam Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan. *Tanjungpura Law Journal*, 2(2), 151-165.

¹⁵ Ilmar, A. *Op.Cit.* p.144

¹⁶ Ahmad, A., & Nggilu, N. M. (2020). Denyut Nadi Amandemen Kelima UUD 1945 melalui Pelibatan Mahkamah Konstitusi sebagai Prinsip the Guardian of the Constitution. *Jurnal Konstitusi*, 16(4), 785-808.

¹⁷ Ilmar, A. *Op.Cit.* p. 101

and secretly (*uitdrukkelijke en stilzwijgende verklaring*) between the parties in an equal position.¹⁸

The concept of legal action or action in the civil law field is then taken over and used also in the administrative law field, so that in administrative law the term administrative or government legal action or action is also known. This concept, although taken from the concept of civil law, has differences. In the concept of civil law, legal action or action requires the consent of the parties or legal action requires the consent of the parties or the conformity of the will, whereas in the concept of administrative law, the action or act of government does not require the consent or will of the community because it is unilateral binding.¹⁹

Government legal action is a statement of the unilateral will of a government organ and brings legal consequences or existing legal conditions, then the will of the organ must not contain defects such as *dwaling*, fraud (*bedrog*), coercion (*dwang*), and others that cause illegal legal consequences.²⁰

From government legal actions or actions, consequences that are relevant to law will emerge. By Romefjn the consequences of the law in question, such as: the creation of a new legal relationship (*het scheppen van een nieuwe*), a change or termination of a new legal relationship (*het wijzigen op het opheffen van een bestaande recht Syerhouding*).²¹ In other words, the legal consequences (*rechtsgevolgen*) can take the following forms:

- a) If there are changes to existing rights, obligations or authorities (indien er een verandering optreedt in de bestaande rechten, verplichtingen op bevoegdheid van sommigen).

¹⁸ *Ibid.* p. 101-102

¹⁹ *Ibid.*

²⁰ Hadi, S., & Michael, T. (2017). Principles of Defense (Rechtmatigheid) In Decision Standing of State Administration. *Jurnal Cita Hukum. Faculty of Sharia and Law UIN Jakarta*, 5(2), 383-400. See too, Afif, M. I. (2020). Subsidi Angkutan Udara Kargo Dalam Kerangka Program Jembatan Udara Sebagai Kewajiban Pelayanan Publik Di Indonesia. *Jurnal Hukum & Pembangunan*, 50(2), 447-461.

²¹ Ilmar, A. *Op.Cit.* See too, Hadi, S., & Michael, T. (2017). Principles of Defense (Rechtmatigheid) In Decision Standing of State Administration. *Jurnal Cita Hukum. Faculty of Sharia and Law UIN Jakarta*, 5(2), 383-400.

- b) When there is a change in the legal position of a person or existing object (wanner er verandering optreedt in juridische status van een persoon op (van) object).
- c) When there are certain stipulated rights, obligations, authority or status (wanner het bestaan van zekere rechten, verplichtingen, bevoegdheden op status bindend wordt vastgestol).

With regard to public legal actions or actions from the government by A.F.A Korsten and F.P.I.L. Tonnaer in Ridwan HR. argued, that public legal actions or actions taken by the government in carrying out its government functions and duties, can be differentiated into unilateral public legal actions or actions and actions of many parties (*publiekrechtelijke rechtshandelingen, waarvan de overheid voor de uitoefening van hoar bestuursfunctie gebruik maakt, ztjn te onderscheiden in eenzijdige en meezijdige publiekrechtelijke rechtshandelingen*).²²

In addition, because every government action must be based on the prevailing laws and regulations, then automatically such action may not deviate from or conflict with the relevant regulations, which can cause the legal consequences that arise to be nullified (*nietig*), or can be canceled (*nietigbaar*).

Muchsan said the elements of government legal action were as follows:²³

- 1) Such acts are carried out by government officials in their positions as rulers and as tools of government equipment (*bestuursorganen*) on their own initiative and responsibility.
- 2) The act is carried out in the framework of carrying out government functions.
- 3) The said act is intended as a means of generating legal consequences in the field of administrative law.
- 4) The action concerned is carried out in the framework of maintaining the interests of the state and the people.

²² Ridwan H.R. *Op. Cit.* Ilmar, A. *Op.Cit.*

²³ Matitaputty, M. I. (2015). Kebebasan Beragama Ditinjau Dari Perspektif Hak Asasi Manusia. *SASI*, 21(1), 74-82. See too, Suriata, I. N. (2020). Pengaduan Sengketa dalam Pelayanan Publik dan Penyelesaiaannya di Ombudsman Republik Indonesia Perwakilan Provinsi Bali. *Public Inspiration: Jurnal Administrasi Publik*, 5(1), 43-56.

There are two forms of government legal action, namely government legal action based on public law (*publiekrechtelijke handeling*) and government legal action based on private law (*privatrechtelijke handeling*).²⁴ These two forms of government legal action are related to the position of the government as an institution holding government positions (*ambtsdrager*) and as a legal entity.

Public legal action (*publiekrechtshandeling*) means that legal action taken by the government is based on public law in its position as a holder of government office which is carried out based on government authority which is public law which can only be born from authority that is also public law, while private legal action is legal action based on civil provisions.²⁵ In the system of government administration, wherever it is carried out or implemented, especially in Indonesia, the existence of government instruments or means (tools) plays a very important and decisive role, even if it may be said that it is vital to smooth the implementation of government functions and tasks. In addition, government instruments or facilities are tools or means that exist in the government to be able to carry out an act or legal act of government by using various types of government instruments. In other words, what is meant by government instruments is nothing but a tool or means that exist in the government and which can be used directly by the government in carrying out or carrying out its various functions and tasks.

Related to this, Article 5 paragraph (2) of the Shipping Law stipulates that the government is responsible for the operation of shipping, which is then realized by the existence of regulatory, controlling and supervisory functions. In paragraph (3) of the Shipping Law stipulates that the regulation includes the establishment of general and technical policies, including the determination of norms, standards, guidelines, criteria, planning and procedures including requirements for shipping safety and security as well as licensing. In paragraph (4) it stipulates that the control as referred to in

²⁴ Herman, H. (2015). Perlindungan Hukum Warga Negara Terhadap Tindakan Pemerintah Dalam Membuat Keputusan Administrasi Negara. *Jurnal Komunikasi Hukum (JKH)*, 1(1). See too, Haris, O. K. (2015). Good Governance (Tata Kelola Pemerintahan yang Baik) dalam Pemberian Izin oleh Pemerintah Daerah di Bidang Pertambangan. *Yuridika*, 30(1), 58-83. See too, Chodijah, S. (2020). *Tijauan yuridis akta yang dibuat notaris pengganti yang cacat materiil*, Universitas Pelita Harapan.

²⁵ Herman, H. (2015). Perlindungan Hukum Warga Negara Terhadap Tindakan Pemerintah Dalam Membuat Keputusan Administrasi Negara. *Jurnal Komunikasi Hukum (JKH)*, 1(1).

paragraph (2) letter b includes providing direction, guidance, training, licensing, certification, as well as technical assistance in the field of construction and operation. And furthermore in paragraph (5) it stipulates that the supervision as referred to in paragraph (2) letter c includes activities to supervise development and operations so that it is in accordance with statutory regulations including taking corrective actions and law enforcement.

According to Article 9 paragraph (1) Minister of Transportation Regulation No. 82 of 2014 that based on the request of the ship owner or ship operator, the harbormaster checks the completeness and validity of the ship's letters and documents. Meanwhile, in paragraph (2) it is stipulated that in the event that the Harbormaster receives a report and / or finds out that a ship going to sail does not meet the maritime and ship safety requirements, the Harbormaster has the authority to conduct an inspection of the ship.

Furthermore, in Article 11 (1) Minister of Transportation Regulation No. 82 of 2014 that the Sailing Approval Letter can be revoked by the Harbormaster, in the following cases:

- a) The ship does not sail leaving the port, more than 24 (twenty four) hours from the deadline for issuance; and / or
- b) Written order from the court.

Based on the various descriptions, it can be seen that the ship reporting mechanism at the port until the issuance of the SPB is related to the supervisory mechanism. Sailing Approval Letter is one of the instruments of government action in an effort to supervise a ship that is about to sail or leave the port to ensure that the ship, crew, and cargo have technically-administratively fulfilled all the requirements of sailworthiness to ensure safety and security of shipping.

5. Conclusion

The harbormaster as a government official at the port carries out and supervises efforts to fulfill the safety and security of shipping as a government administration act by issuing a state document in the form of a sailing approval letter through a system of procedures for issuing a sailing approval letter. This letter is given to every ship that is

about to sail or leave the port by ensuring that the ship, crew and cargo have technically fulfilled all the requirements for sailability. The compliance of all parties in implementing the procedure for the issuance of the sailing approval will lead to the achievement of safety and security in shipping.

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