


Responsibility of States, Individuals and Legal Entities Towards Marine Pollution

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Abstract

Introduction: Marine environmental pollution is a global concern today because it has an impact on environmental sustainability and the use of marine resources. This problem not only affects the national interests of coastal countries, but also has implications for the welfare of all mankind.

Purposes of the Research: Examine and analyze regulations on the protection of the marine environment from pollution, as well as the responsibility of the state, legal entities, and even individuals for marine pollution.

Methods of the Research: This research is a normative research using a legislative approach with the sources of legal materials used are primary, secondary and tertiary legal materials with qualitative analysis.

Results of the Research: Pollution of the marine environment is a global challenge that requires international cooperation. UNCLOS 1982 has established rules regarding the responsibilities of states, legal entities, and individuals in efforts to prevent, reduce, and handle marine pollution. Along with the increasing exploitation of marine resources, both in the energy and transportation sectors, the risk of pollution, especially due to oil spills, is getting higher. Therefore, national regulations that are aligned with international standards are needed to ensure the sustainable protection of the marine environment as well as effective accountability and compensation mechanisms for affected parties.

Keywords: Marine Pollution; State Responsibility; UNCLOS 1982.

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INTRODUCTION

The sea is a vital element for human life, both as a natural resource and as a global transportation route. The Earth has a geographical shape that shows that the ocean area is larger than the land area, which automatically natural resources to support human welfare come from the ocean.¹ The sea by legal definition is the entire ocean water that is freely connected throughout the earth's surface.² Through the sea, people from various nations hold all kinds of activities ranging from the exchange of trade commodities to science. The sea is also a food source for humanity because of its protein-rich fish and the seabed is also rich in mineral resources as about 60% of the petroleum comes from the continental shelf. The seabed is also rich in nodules and at the bottom of the Pacific Ocean alone it is estimated

¹ Riry, W. A., Waas, R. M., Hattu, V. V., Tahamata, L., Leatemia, W., Daties, D. R. A., ... & Palijama, T. (2023). *Buku Ajar Hukum Laut Internasional*, p. 1

² Boer Mauna, *Hukum Internasional: Pengertian, Peranan dan Fungsi Dalam Era Dinamika Global*, (Bandung: Alumni, 2005), p. 305.

that there are about 1,500 billion tons of nodules containing nickel, manganese, copper, and cobalt.³ This gives an idea that the sea has a very important meaning so that many countries and other parties want to explore and exploit the sea as much as possible so that various problems of marine pollution arise that have bad consequences for the marine environment as well as for humanity itself, in the 1982 Convention on the Law of the Sea regulates provisions on the protection of the marine environment against pollution that occurs in the sea.

Increasing the use of the sea by a nation in accordance with its various functions can have a direct impact on the marine environment and the biota ecosystem in it. At first, the use of marine resources did not pose a problem for human life because the sea still had the ability to clean itself without experiencing fruiting or interference with its original nature and function. Increased marine utilization activities cause the entry of coastal substances into the waters, while the presence of existing substances further worsens marine conditions. It makes the ocean lose its ability to clean itself, so it is polluted, and in some cases the ocean undergoes a change in function. These problems can be a threat to human life, which ultimately causes a new problem, namely marine pollution.

Pollution of the marine environment is a challenge faced by the global community, with an impact that extends to all human activities in the sea. Given the characteristics of the ocean that are different from land, marine pollution can affect all coastal countries, both developing and developed. Therefore, it is important to realize that every coastal country has an interest in dealing with the issue of marine pollution.⁴

The problem of marine environmental pollution is currently a global concern because of its impact on environmental sustainability and the utilization of marine resources. This problem not only affects the national interests of coastal states, but also impacts the welfare of all human life. *The United Nations Convention on the Law of the Sea 1982* (UNCLOS 1982) as the source of international maritime law stipulates regulations on the protection of the marine environment from pollution, as well as the responsibility of states, legal entities, and even individuals for marine pollution.

METHODS OF THE RESEARCH

This research is included in the category of normative legal research,⁵ which is carried out through literature studies or known as *legal research*.⁶ The approaches used are the legislative approach, the case approach and the analytical approach.⁷ The types and sources of legal materials used include primary legal materials, namely the 1982 Convention on the Law of the Sea (UNCLOS 1982). Secondary legal materials are books, journals, articles, and scientific manuscripts in the field of law. Tertiary legal materials such as general dictionaries and legal dictionaries are used to complement primary and secondary legal materials. The analysis in this study uses qualitative analysis, considering that this research is literature that uses legal materials, namely primary, secondary and tertiary legal materials as the main source of research.⁸

³ *Ibid.*

⁴ Juarir Sumardi, *Hukum Pencemaran Laut Transnasional* (Bandung: Citra Aditya Bakti, 1996), p.1

⁵ Nawi, S. *Penelitian Hukum Normatif Versus Penelitian Hukum Empiris*. (Makassar: Umitoha Ukhuwah Grafika, 2018), p. 7.

⁶ Soekanto, S dan Mamudji, S. (2015). *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Jakarta: Rajawali Pers, p. 23.

⁷ Irwansyah. *Penelitian Hukum Pilihan Metode & Praktik Penulisan Artikel*. (Yogyakarta: Mirra Buana Media. 2020), p. 133.

⁸ Qamar, N. *et al.*, (2017). *Metode Penelitian Hukum (Legal Research Methods)*. Makassar: CV. Social Political Genius (SIGn), p. 53.

RESULTS AND DISCUSSION

The issue of protecting the marine environment, especially pollution due to oil spills, has been regulated since the "1958 Geneva Convention" regarding the free sea regime, namely in Article 24, which reads: "Every state shall draw up regulations to prevent pollution of the seas by the discharge of oil from ships or pipelines or resulting from the exploitation and exploration of the seabed and its subsoil taking account of the existing treaty provisions on the subject". ("Every country shall have regulations to prevent marine pollution caused by oil derived from ships or marine pipelines or caused by the exploration and exploitation of the seabed and land beneath it, taking into account the provisions of existing international treaties on this subject").

In general, the issue of marine environmental protection is also regulated in the "Stockholm Declaration of 1972" in principle number 7 states that every country is obliged to take measures to prevent marine pollution that endangers human health and welfare, the source of marine biodiversity for the use of the marine environment. The international community's attention to the exploration and exploitation of the seabed to find the sediment to extract oil began to emerge after the United States government issued the Truman Proclamation in 1948 regarding the Continental Shelf. This proclamation aims to secure the natural resources found on the seabed and the land below which borders the coast of the United States for the benefit of the people and their nation, especially in terms of mineral wealth, especially petroleum. This policy is based on the findings of petroleum geologists who state that certain parts of the continental plain beyond the 3-nautical-mile boundary contain valuable petroleum reserves. The move allows for the planned exploitation of a 750,000-square-mile submarine area, which is covered by waters no deeper than 100 fathoms (200 miles).⁹

Technological advances in the exploitation of petroleum on the seabed are inseparable from various risks. The use of offshore drilling technology as well as the operation of oil tankers has the potential to pollute the sea, ultimately impacting the decline in the quality and quantity of biological and plant resources that are essential for the needs of humanity. Measures to prevent, reduce and control marine pollution, states are required to take necessary measures in accordance with the 1982 Convention on the Law of the Sea both individually and collectively to prevent, reduce and control pollution of the marine environment caused by any source.¹⁰ The classification of marine pollution according to the 1982 Convention on the Law of the Sea is: a. Marine pollution from water sources; b. Marine pollution derived from seabed activities subject to national jurisdiction; c. Marine pollution derived from activities in the area; d. Pollution due to dumping; e. Marine pollution from water vehicles; f. Marine pollution originating from or through the air.

Each state shall take the necessary measures to ensure that the activities under its jurisdiction do not result in pollution, and such pollution does not spread beyond the areas under the exercise of its sovereign rights.¹¹ Based on UNCLOS 1982, each country has a responsibility to prevent pollution of the marine environment, there are various steps that include monitoring and analysis to assess the impact of marine pollution. These measures include: observing, regulating, assessing, and analyzing marine pollution with

⁹ Mochtar Kusumaatmaja, *Hukum Laut Internasional* (Bandung, Bina Cipta, 1986), p. 84

¹⁰ Konvensi Hukum Laut 1982 Pasal 194 ayat 1.

¹¹ Konvensi Hukum Laut 1982 Pasal 194 ayat 2.

standardized scientific methods to assess risks and impacts; supervise activities in the sea that have the potential to pollute the marine environment; submit reports on the results of monitoring, regulation, assessment and analysis of marine pollution based on scientific methods that are later determined; as well as evaluate the potential impact of activities at risk of causing significant pollution or adverse changes to the marine environment.¹²

A. Sources of Marine Pollution and Their Classification

According to UNCLOS 1982, marine pollution is classified into several categories, namely: 1) Land-based pollution; This pollution is caused by industrial, agricultural, and household waste entering the ocean through rivers and other waterways. Examples: the disposal of chemical waste in the Yangtze River that pollutes the East China Sea;¹³ 2) Pollution from exploration and exploitation activities on the seabed; this pollution is caused by offshore oil and gas drilling activities such as the damage to marine ecosystems that occurred in the Gulf of Mexico due to the Deepwater Horizon oil spill;¹⁴ 3) Pollution from shipping activities; This pollution occurs due to the disposal of ship waste, oil leaks, and exhaust gas emissions from ships. For example, in 2002 there was an oil spill from the tanker Prestige off the coast of Spain;¹⁵ 4) Pollution due to waste dumping (dumping); the cause of pollution is the dumping of industrial or radioactive waste into the sea as in the 20th century, there was the dumping of nuclear waste by several countries into the Pacific Ocean;¹⁶ 5) Pollution due to maritime accidents (shipping accidents); This pollution occurs due to the accident of tankers or cargo ships carrying hazardous materials. This has happened in the Exxon Valdez ship incident which caused major pollution in Alaskan waters in 1989;¹⁷ 6) Pollution due to atmospheric changes (airborne pollution); The cause of this pollution is the emission of greenhouse gases and air pollutants that settle in the ocean. For example, acid rain due to sulfur dioxide emissions from burning fossil fuels.¹⁸ All of these pollutions the state is obliged to control and prevent the impact of each of these categories of pollution.

B. National Responsibility in Oil-Induced Marine Pollution

Oil pollution in the sea can come from various sources, including oil spills due to routine ship operations and ship accidents, oil release from land (down the drain), spread through smoke (up in smoke), offshore exploration and exploitation, leaks in oil transportation pipelines, tank cleaning processes, and natural seeps. The majority of oil pollution in the ocean is caused by human activities, primarily through oil spills that occur as a result of leaks, accidents, sabotage, or even intentional actions, such as the disposal of oil-contaminated ballast water.¹⁹ Some of the steps that can be taken by the state are related to the state's responsibility for marine pollution, namely: 1) Implementing science-based marine pollution prevention standards; 2) Developing a marine environmental monitoring

¹² Konvensi Hukum Laut 1982 Pasal 204-206.

¹³ Xue, X., Hong, H., & Charles, A. T. (2000). "Coastal and Marine Pollution in China: Policy, Implementation and Challenges." *Marine Policy*, 24(3), 235-248.

¹⁴ National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling. (2011). *Deep Water: The Gulf Oil Disaster and the Future of Offshore Drilling*.

¹⁵ Yliskylä-Peuralahti, J. (2003). "Maritime Transport and the Environment: Environmental Policy in European Shipping." *European Environment*, 13(4), 228-242.

¹⁶ Krueger, R. (1999). "The Politics of Radioactive Waste Disposal in the Ocean: International Regulation and the Challenges of Enforcement." *Marine Policy*, 23(2), 159-175.

¹⁷ Exxon Valdez Oil Spill Trustee Council. (1991). *Final Report: The Exxon Valdez Oil Spill Recovery Plan*.

¹⁸ IPCC. (2019). *Special Report on the Ocean and Cryosphere in a Changing Climate*. Intergovernmental Panel on Climate Change.

¹⁹ Eny Budi Sri Haryani, *Pencemaran Minyak di Laut dan Tuntutan Ganti Kerugian*, Makalah Pribadi Pengantar Falsafah Sains, Sekolah Pascasarjana / S3 / TKL Khusus, Institut Pertanian Bogor, Bogor, 2005, p. 2.

system; 3) Requiring the application of environmentally friendly technology in the maritime industry; 4) Sanctioning violations of marine pollution.

The source of international law of the sea related to the responsibility and obligation of compensation is found in the 1982 Convention on the Law of the Sea Chapter XII Article 235, which stipulates that states must be responsible for marine pollution arising from activities within their jurisdiction. The state is obliged to take legal, administrative, and policy measures to ensure that pollution does not occur or can be minimized. States are responsible and must bear the obligation of compensation in accordance with international law, with a view to ensuring adequate compensation, States must cooperate in the implementation of applicable international law and for the further development of international law relating to the responsibility and obligation of compensation for the assessment of compensation for damages and the settlement of disputes arising so that it is necessary to develop procedures adequate compensation payment.

C. Individual and Legal Entity Responsibilities

The principle of responsibility in resolving disputes due to marine pollution is based on the principle of absolute responsibility, namely strict liability and absolute liability.²⁰ Strict liability is a form of responsibility that is direct and automatic, where the responsible party is obliged to pay compensation in accordance with the limit of the amount that has been previously determined in the case of marine pollution. Meanwhile, absolute liability is an absolute and unconditional liability, which requires the payment of full compensation without limitation on the amount. As a result of an oil spill causing marine pollution in the case, the principle applied is strict liability, which is the obligation to pay compensation to the coastal country arising directly after the oil spill occurs and causes losses, regardless of whether the tanker in question is negligent or not. This is stated in Article 3 paragraph 1 of the International Convention on Civil Liability for Oil Pollution Damage 1969 (CLC 1969)²¹ : “... the owner of a ship at the time of incident or where the incident consists of a serious occurrences at the time of the first such occurrence, shall be liable for any pollution damage caused by oil which has escaped or been discharged from the ship as a result of the incident”.

The 1982 Convention on the Law of the Sea provides protection for those accused of pollution of the marine environment. Article 230 of the 1982 Convention on the Law of the Sea regulates financial fines and respect for the rights recognized of the accused, namely: a) Financial fines can only be imposed in the event of a violation of national laws and regulations or applicable international provisions and standards in an effort to prevent, reduce, and control marine environmental pollution by foreign vessels outside the territorial sea area; b) Financial fines may be imposed in the event of violations of national laws and regulations or applicable international provisions and standards in efforts to prevent, reduce, and control marine environmental pollution by foreign vessels in territorial waters. However, exceptions apply in cases of intentional pollution or that causes serious impacts in territorial marine areas; c) The prosecution process for violations committed by a ship that results in the imposition of a sentence, the rights owned by the defendant must still be respected. Therefore, this provision needs to be included in the national laws and

²⁰ Ahmad Syofyan, *Pencemaran Laut Oleh Minyak Menurut Hukum Internasional*, INSPIRASI, No. X Edisi Juli 2010, p. 152.

²¹ Komar Kantaatmadja, *Bunga Rampai Hukum Lingkungan Laut Internasional*, (Bandung: Alumni, 1982), p. 78.

regulations of a country in order to guarantee the right to obtain compensation for marine pollution if it occurs in the country's territorial waters.

CONCLUSION

The overall study confirms that marine environmental pollution is a global challenge that must be overcome through strong international cooperation. UNCLOS 1982 has established regulations on the responsibility of states, legal entities, and individuals in preventing, reducing, and dealing with marine pollution. Along with the increasing exploitation of marine resources, both for energy and transportation, the risk of pollution is increasing, especially due to oil spills. Therefore, national laws and regulations that are in line with international standards are needed to ensure sustainable protection of the marine environment as well as effective accountability and compensation mechanisms for affected parties.

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