

# Dispute Settlements of Oil Spills in the Sea Towards Sea Environment Pollution

Elly Kristiani Purwendah  
Faculty of Law  
Universitas Wijayakusuma  
Purwokerto, Indonesia  
elly\_kristiani@yahoo.co.id  
*Correspondence author*

Dewa Gede Sudika Mangku  
Faculty of Law and social sciences  
Universitas Pendidikan Ganesha  
Singaraja, Indonesia  
dewamangku.undiksha@gmail.com

Aniek Periani  
Faculty of Law  
Universitas Wijayakusuma  
Purwokerto, Indonesia  
aniekperian68@yahoo.co.id

**Abstract-- Environmental pollution often occurs not only in parts of the environment that are on land, but environmental pollution often also occurs in the sea. The sea is a part of the environment that has enormous benefits and roles for human life. In history, the sea has proven to have various functions, including as a food source, trade highway, means of transportation, recreation / tourism, and a means of separating or unifying the nation. Pollution of the marine environment can cause damage to the preservation of the environment and the natural resources in the sea to be disrupted. In this paper, we will discuss how to resolve disputes due to oil spills in the sea to pollution caused by the sea and what are the impacts of such pollution. This research is descriptive, namely research that intends to provide as much data as possible as regards the resolution of disputes due to oil spills in the sea to pollution of the marine environment, and the purpose of this legal research is normative legal research and literature. The results of this study are that each country has rights and obligations to what is under their jurisdiction. In the event of sea pollution, the applicable law is the national law of each country by taking into account the applicable international provisions. However, some provisions regarding accountability due to marine pollution cannot be uniformed. Thus, the granting of state responsibility should be given through diplomatic settlement of disputes by negotiating cases. Diplomatic dispute resolution is carried out so that cooperative relations between countries can run well, and prevent future friction. In order for a polluted country to live its life and sustainably develop economic development.**

**Keywords-- environment, dispute resolution, sea.**

## I. INTRODUCTION

The environment is a gift from God Almighty that must be preserved and developed so that it can remain a source of life support for humans and other living things for the continuity and improvement of the quality of life itself. Environmental damage is caused by two factors, including environmental damage by nature and by humans. Environmental damage caused by nature such as volcanic eruptions, earthquakes, hurricanes, and so on.

Environmental damage caused by humans, for example illegal logging, careless plastic waste disposal, illegal hunting, and so on.

Environmental damage is a threat to human survival, so immediate and serious attention and handling must be done immediately. Environmental pollution often occurs not only in parts of the environment that are on land, but environmental pollution often also occurs in the sea. The sea is a part of the environment that has enormous benefits and roles for human life. In history, the sea has proven to have various functions, including as a food source, trade highway, means of transportation, recreation / tourism, and a means of separating or unifying the nation (Masdin, 2016: 1-2).

Pollution of the marine environment can cause damage to the preservation of the environment and the natural resources in the sea to be disrupted. Pollution is a change in unfavorable (harmful, destructive) sea conditions, which is caused by the presence of foreign objects due to human actions or natural processes. Foreign objects such as industrial remains, municipal waste, petroleum, biocide remnants, used refrigeration hot water, and so on (Syofyan, 2010: 143). Article 1 Number 2 of the Government Regulation Number 19 of 1999 concerning Marine Pollution and / or Damage Control states that the meaning of marine pollution is the entry or inclusion of living things, substances, energy and / or other components into the marine environment by human activities so that the quality drops to a certain extent that causes the marine environment no longer in accordance with the quality standards and / or functions.

Pollution of the marine environment can be interpreted that the presence of dirt or waste products from living things that enter the sea area directly or indirectly. Sources of pollution of the marine environment include oil spills, sea transportation emissions, the rest of the war ammunition, the oil drilling process in the sea, the disposal of industrial waste into the sea, waste disposal from land transportation through the river and disposal of objects containing chemicals from the waters. Pollution of the marine environment caused by this oil spill has become a concern of the wider community which is very quickly felt by the people around the coast, damaging living creatures around the coast significantly and can even spread far into the sea area of other countries (Rehulina and Novia, 2015:

70-71).

Efforts to protect and preserve the marine environment are certainly not a few problems faced. The lack of effort in overcoming problems will be a trigger factor for pollution of the marine environment. One of the cases related to the pollution of the marine environment which is currently on the rise is an oil spill. The purpose of this study is to know the resolution of disputes and state responsibility for pollution of the marine environment due to oil spills in the sea according to International Law, to find out arrangements regarding protection and preservation of the marine environment according to international law and to know the form of state responsibility for pollution of the marine environment due to oil spills under international law.

## II. EASE OF USE

### A. *Settlement of Disputes on Sea Oil Spills Against Marine Environmental Pollution*

The discussion of the history of international marine law will certainly be related to the functions of the sea that have been felt by humans. The functions of the sea give impetus to the rule and use of the sea by every country or kingdom based on a legal conception. The birth of the concept of international marine law cannot be separated from the history of the growth of international sea law which recognizes the struggle between two conceptions, namely:

- 1) *Res Communis*, which states that the sea belongs to the world community, and therefore cannot be taken or owned by each country;
- 2) *Res Nulius*, which states that no sea has and therefore can be taken and owned by each country.

The growth and development of these two doctrines began with a long history of the domination of the sea by the Roman Empire. The Roman Empire ruled the edge of the Middle Sea and therefore took control of the entire Central Sea. Thus, the Middle Sea is free from the interference of pirates, so that everyone can use the Middle Sea safely and prosperously. The thinking of Roman law towards the sea was based on the doctrine of *res communis*, which saw the use of the sea as free or open to everyone (Kusumaatmadja, 1986: 3).

Around the 14th to 17th century there was a race of western nations to sail the seas in order to find new continents and with the main goal of finding a country or nation which was the origin of the spice producers. Therefore, territorial claims arose from the explorers' nations towards the ocean. One example such as the Romans who have shown many signs in carrying out their power that the sea can be owned through the right of coastal residents to catch fish in the sea area that they admit.

In the same period of time as the beginning of the exploration of the hemisphere certainly added to the hectic voyages across continents and oceans, the legal status of the oceans began to be questioned. Spain, Portugal, Italy and the United Kingdom argue that the ocean can be owned. In the midst of countries that are competing to claim sovereignty over the sea, the Netherlands as a small country that also travels the ocean feels no longer free to sail in the North Sea and the Atlantic Sea. Therefore, the Dutch oppose claims

from these countries by saying that the oceans must not be owned by anyone and must be open to all nations. This Dutch attitude was also expressed by his legal expert, Hugo de Groot, aka Grotius. In his book *De jure Praedae* (Law on Confiscation of War), published in 1604 in chapter 12 which was specifically published under the title *Mare Liberum* (Free Sea) in 1609, Grotius specifically expressed his defense by stating that the sea cannot be owned by anyone and because it must be open to all nations. The reason he thinks so, is because the sea is so vast and no one can live on the sea permanently for a long time (Parthiana, 2014: 3-7). On the other hand, John Shelden argues that the sea can be owned. He pointed to the actions of countries that implement their territorial sovereignty such as Sweden, Russia, Germany. According to John Shelden, the liquid nature of the sea does not cause it cannot be owned because rivers and waters along the liquid coast can be recognized and can be owned (Astuti, 2018: 22-23)

The development of the problem of sea pollution in the world is increasing rapidly along with the many activities in the sea, such as exploration and exploitation of natural resources, offshore drilling, sea transportation and so on. Activities or activities on the sea have an impact on sea pollution such as oil spills and spills of substances or dangerous objects into the sea. Attention to marine pollution has implications for ecosystems and ecology including marine resources in the fisheries sector as well as influences on coastal life. Ordinary pollution caused by ships, offshore drilling, and disposal of hazardous substances into the sea. Of course this has a negative impact on the marine environment and coastal communities so that it requires comprehensive dispute resolution (Syofyan, 2010: 140-141).

The protection of maintenance for the marine environment has increasingly attracted the attention of various parties, both in the form of cooperation between countries in certain regions and research conducted by the country itself. M. Daud Silalahi stated that pollution can be interpreted as a form of environmental impairment, interference, change, or destruction, even the presence of foreign objects in it which causes the reasonable function while in the 1982 United Nations Maritime Law Convention It is stated that pollution of the marine environment means the direct or indirect inclusion of human material or energy into the marine environment, including quality which results in or may bring adverse consequences such as damage to ecosystems and life in the sea, danger to human health, disruption to activities activities at sea include fishing and other legitimate marine activities, a decrease in the quality of seawater use and a reduction in comfort.

Symptoms of damage to the marine environment that occur at this time cannot be separated from human activities themselves. Therefore, there must be control over this destructive human action. One of the controlling devices is in the form of law. The law referred to here is a law specifically regulating the environment, namely Environmental Law, both nationally and internationally (Masdin, 2016: 1). Regarding the protection of the marine environment, it is closely related to environmental problems in general and the environment in the sea in particular with regard to the region (Parthiana, 2014: 226). The marine environment is very concerned, because in the period of 2 years from 1975-1976 there were only 6 cases of tankers

that spilled large amounts of oil in the sea due to irresponsible negligence. Therefore further regulation of marine preservation and protection needs to be applied because the interests in the sea in the form of maritime needs are not only for us to enjoy, but for the next generation of our grandchildren (Aida and Rianto, 2015: 32).

Annual tanker ships carry large amounts of crude oil. At present, pollutants that are dangerous and often pollute the marine environment are oil. The oil industry in the world is developing very fast, but accidents that result in the scattering of oil in the ocean are almost inevitable, so that, if there is an oil spill in the ocean it will cause pollution of the marine environment. Environmental pollution by oil spills in the ocean will cause oil to float above the sea surface which eventually gets carried away and carried to the coast. According to the Marine and Fisheries Research Center (BRKP), 3 to 4 million tons of oil pollutes the marine environment every year. In 2009 for example, there was an Indonesian East Sea pollution by the Montana Australian company. The BRKP survey results on November 4, 2009, the area affected by pollution reached 16,420 square kilometers and another recent case was an oil spill that occurred in the waters of Balikpapan Bay on March 31, 2018 which resulted in an environmental pollution of 200 kilometers or 20,000 hectares. Pollutants in this case the oil that enters the marine ecosystem can not only directly damage the marine environment, but it can also be dangerous for the food supply and habitat of the marine environment which is a source of natural wealth for a country especially for the Southeast Asian region where the population depends on fishery products.

As a result of the oil spill, as stipulated in the 1982 United Nations Convention on the Law of the Sea Article 192, which states that states have an obligation to protect and preserve the environment, in the sense that every country has an obligation to participate in safeguarding the marine environment which is further in article This emphasizes that marine ecosystems are part of the safeguarded and preserved part of each country, Indonesia has the right to file legal remedies to hold these vessels accountable because Indonesia was affected by the consequences of the ship collision. Moreover, according to international law, anyone has the right to sue as long as the plaintiff is directly affected by environmental pollution. In accordance with what is stated in international law (Rivani, 2017).

In the aquatic environment there are three media that can be used as indicators of pollution of heavy metals, namely water, sediments and living organisms. The use of marine organisms as an indicator of pollution is based on the fact that non-polluted nature or environment will be characterized by biology conditions that are balanced and contain diverse lives. One organism that is often used as an indicator of pollution is fish. There are several effects of metal toxicity on fish, for example the influence of metal toxicity on gills. Gills other than as respiratory devices are also used as a means of regulating the pressure between water and in the body of the fish (osmoregulation). Therefore, gills are an important organ in fish and are very sensitive to the effects of metal toxicity. Heavy metals can enter the body tissues of living things through several

pathways, namely: the respiratory tract, digestion and penetration through the skin. In an animal's body, metal is absorbed by blood, binds to blood proteins which are then distributed to all body tissues. The highest metal accumulation is usually in detoxification (liver) and excretion (kidney). Accumulation of heavy metals in the body of an organism depends on the concentration of heavy metals in water / environment, temperature, state of the species and physiological activities (Rizky, Lex Administratum, Vol.I / No.2 / Apr-Jun / 2013).

Pollutants that enter the aquatic environment will experience three kinds of accumulation processes, namely physical, chemical and biological. Disposal of industrial waste that contains hazardous materials with high toxicity to the aquatic environment causes pollutants to accumulate directly physically and chemically and settles on the seabed. Through the food chain there is a metabolism of biologically hazardous materials and will ultimately affect human health. This accumulation through biological processes is linked to bioaccumulation. Pollutants enter the body of an organism or fish through an absorption process. Absorption is the process of transferring poisons from the absorption site into the blood circulation. Absorption, distribution and excretion of pollutants cannot occur without transport across the membrane. The transportation process can take place in two ways, namely passive transport (through the diffusion process) and active transport (with a special transport system, in this case the substance is usually bound to the carrier molecule). Pollutants can enter the body of the fish in three ways, namely through the food chain, gills and diffusion of the skin surface ((Rizky, Lex Administratum, Vol.I / No.2 / Apr-Jun / 2013).

One of the pollutants classified as dangerous heavy metals is mercury (mercury, symbol: Hg). According to several studies, if the mercury content in the body reaches a certain level, it can cause death for these humans. Some other effects caused by mercury in the body include (Rizky, Lex Administratum, Vol.I / No.2 / Apr-Jun / 2013):

- 1) All mercury compounds are toxic to the body, if they are in sufficient quantities.
- 2) Different mercury compounds, showing different characteristics in the toxicity they have, their spread, accumulation and retention time in the body.
- 3) Certain biotransformation that occurs in an environmental setting and / or in the body of living organisms that have been contaminated with mercury caused by changes in the shape of the mercury compounds, from one type to another.
- 4) The main influence caused by mercury in the body is blocking the work of the enzyme and damaging the cell membrane (membrane) of the cell. This situation is caused by the ability of mercury to form strong bonds with groups containing sulfur (sulfur) contained in enzymes or cell walls.
- 5) Damage caused by metal mercury in the body is generally permanent.

International law recognizes that in principle every country has sovereign rights over its territory and citizens, but this provision does not mean making the country free of responsibility because no country can enjoy its rights without respecting the rights of other countries (Adolf, 2002 : 255). Responsibility arises due to mistakes or losses that

have been made by a country. This in turn might lead to various types of state responsibilities. For example, as a country is responsible for violating the treaty, related to the failure to carry out contractual obligations, because of losses to citizens of other countries and so on. Violation of obligations can be in the form of an act or negligence. The responsibility of the state is governed by international standards that depend on what and to what extent actions or omissions of a country are considered legitimate or invalid according to national and international legal standards (Starke, Op. Cit., 1989: p. 392).

### B. Conclusion

Environmental damage is a threat to human survival, so immediate and serious attention and handling must be done immediately. Environmental pollution often occurs not only in parts of the environment that are on land, but environmental pollution often also occurs in the sea. The development of the problem of sea pollution in the world is increasing rapidly along with the many activities in the sea, such as exploration and exploitation of natural resources, offshore drilling, sea transportation and so on. Symptoms of damage to the marine environment that occur at this time cannot be separated from human activities themselves. Pollutants that enter the aquatic environment will experience three kinds of accumulation processes, namely physical, chemical and biological.

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