

System of Responsibilities in International Marine Pollution

Noer Indriati

Universitas Jenderal Soedirman , Purwokerto - Indonesia
sunoboputri40@gmail.com

Abstract-Pollution of the sea is one of the environmental issues facing the current and is often caused by human activities or activities, where most of the pollution of the seas is exercised either directly or indirectly. The issue of damages is not always completed properly by the existing system. This research is specified in the juridical normative. The method of the approach is the doctrinal approach with secondary data sources which are analyzed qualitatively and legally. Survey results show that marine pollution cannot use the three systems. Marine pollution has an impact on marine functions not only currently but also in 5 or 10 years afterwards. Each of which is seen based on the cases; strict liability is used for cases that are classified as severe so that the compensation is certain and unlimited, absolute liability is available to use since the perpetrators must be responsible, and based on fault liability is difficult to prove.

Keywords-Compensation, Marine Pollution, Responsibility.

I. INTRODUCTION

Environmental issues have become one of the important issues in the international world where an environmental problem that occurs in a country has become the responsibility of the international world. Problems related to the environment include environmental pollution, resource degradation and global warming.

Environmental pollution is a form of environmental damages that occurs due to human or natural activities. In addition to land and air pollution, sea water pollution is one of the many problems faced by several countries in the world. Today with the development of science and technology, exploration and exploitation of the sea by humans often cause damages to the marine environment. Human activities in this case are less friendly to the marine environment, causing pollution that results in the destruction of sea water, which has a negative impact on marine life. Therefore, the destructive human actions have to be controlled. One of the control media is law, the environmental law [1].

The marine environment needs to be protected and conserved along with its use by humans so that marine pollution can be reduced. Sea pollution may come from tanker operations, tanker accidents, ship scrapping (cutting the body of the ship to become scrap metal), as well as oil and gas leaks offshore. For example, oil pollution at sea began to receive serious attention from the

international community in 1967. At the time 821,000 barrels of oil were spilled in the waters of Seven Stones Reef, England, which was the result of the rupture of a Torrey Canyon tanker.

II. RESEARCH METHOD

This study is specified as normative juridical. The method of approach is the doctrinal approach, with secondary data sources and are analyzed by juridical qualitative. Secondary data sources consist of primary, secondary, and tertiary legal materials, which support each other.

III. FINDINGS AND DISCUSSION

The environment as a gift and grace from God Almighty to the people in every country is a space for life in all aspects. In order to utilize natural resources to advance public welfare and achieve the happiness of life and sustainable development that is environmentally friendly, it is based on an integrated and comprehensive national policy that takes into account the needs of present and future generations. For this reason, it is necessary to carry out a harmonious and balanced environmental management in order to support the implementation of sustainable development with an environmental perspective [2]. Globally, sea areas cover two-thirds of the total surface area of the earth and provide about 97% of the total space of life on earth [3].

In connection with this, it is necessary to preserve the environment from pollution, which is a result of human activities [4]. The United Nations Convention on Law of the Sea 1982 was ratified by the United Nations on December 10, 1982. The 1982 United Nations Convention on Law of the Sea Article 1 paragraph (4), defines sea pollution as pollution of the marine environment means the introduction by man directly, or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities.

There are two criteria used to classify sources of pollution, namely: based on the activity causing the

occurrence of pollution (seabed activity, dumping, navigation) and based on the way pollutants enter the environment (pollution from land and atmospheric pollution). Sea Pollution, according to Government Regulation No. 19/1999 concerning Control of Pollution and/or Destruction of the Sea, 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 the certain level which causes the marine environment to be no longer in accordance with the quality standards and/or functions.

Related to the marine environment there are natural resources, both biological and non-biological, as a means of connecting, recreational media, etc. Therefore, it is very important to protect the marine environment from the threat of pollution originating from tanker operations, tanker accidents, ship scrapping (cutting the body of the ship to become scrap metal), as well as offshore oil and gas leaks. This is important so that the marine environment of the countries that are the most productive regions can be utilized in a sustainable manner, both for current and future generations.

Each State must have laws and regulations concerning immediate and adequate compensation for damage caused by pollution of the marine environment by natural persons or legal entities (juridical persons) within its jurisdiction. Therefore, each State must cooperate in implementing international law governing the responsibilities and obligations of compensation for losses due to pollution of the marine environment, and also the payment procedures such as through compulsory insurance or compensation funds.

The UNCLOS 1982 participating countries are obliged to collaborate bilaterally, regionally and globally, either directly or through international organizations in formulating rules, standards and recommendations of practices and procedures to protect and take into account regional conditions. UNCLOS 1982 also regulates matters relating to liability for damage to the marine environment, the right of immunity for warships Article 193, Article 197, Article 198 UNCLOS 1982.

Responsibility and obligation of compensation from the State or State sovereignty is a fundamental principle in international law so that if there is a violation of international obligations, State responsibility will arise. Violations of international obligations, for example, do not implement the provisions of the 1982 Law of the Sea which binds the state. This is because there is no agreement specifically regulating the State's responsibility in international law. Up to now, the issue of State responsibility refers to the Draft Articles on Responsibility of States for International Wrongful Acts made by the International Law Commission (ILC) which states: every act of the wrong country internationally burdens the obligations of the country concerned.

The International Convention Concerning Civil Liability for Oil Pollution at Sea is a convention governing compensation for oil pollution due to oil tanker accidents. This convention applies to pollution of the marine environment in the territorial seas of participating States. In terms of the responsibility for compensation for pollution of the marine environment, the principle used is the principle of absolute responsibility [5].

The 2001 Draft of International Law Commission on state responsibility has brought many new developments to state responsibility law in international law. One of the things that is a new development, which has received a lot of attention, is regarding who can submit the demands of state responsibility that are regulated in the third part of the implementation of the International Responsibility of a State, especially in Chapter 1 of Invocation of the responsibility of a state.

Classical international law only gives the right to an injured country to demand state responsibility, so that the Draft of International Law Commission 2001 (ILC 2001) on state responsibility distinguishes between an injured state regulated in Article 42 and an unaffected state (non-injured states). In the case of An Injured State requesting responsibility from other countries the state notifies its demands to the country so that the country stops the violation if it is still ongoing. The Injured State can also include in its claims what form of reparation is demanded from the offending state.

The owner of the tanker has the obligation to compensate for damage caused by pollution from oil spills and ship accidents. The owner can be free and the obligation is only with the reasons:

- a. Damage as a result of war or natural disasters.
- b. Damage as a result and sabotage of other parties, or
- c. Damage as a result of which the authorities do not maintain navigation aids properly.

The reason for the exclusion is very limited, and the owner may be said to be obliged to provide compensation due to pollution. Under certain conditions, the ship owner provides compensation with a limit of 133 SDR (Special Drawing Rights) per ton of the ship tonnage or 14 million SDR, or about US \$ 19.3 million of which the smaller one is taken. If the claimant can prove that the accident occurs because of the owner's actual fault of privy, the limit of his liability for the ship owner is not given. Judgment of damage to pollution under the CLC can only be directed at registered ship owners. This will not prevent victims from claiming compensation outside the convention from anyone other than the owner of the ship. The Convention prohibits the actions of States to make claims to representatives or agents of ship owners. Ship owners must resolve claims from third parties based on applicable national law.

According to Komar Kantaatmadya, the absolute responsibilities in the perspective of international law and its implications for national law are: First, the development of technology to develop human well-being also carries potential hazards and high risks to the environment, both because of the nature of the equipment (transportation, industry and so on) and materials used, such as: explosives, corrosive, poisonous and other dangerous materials, besides in this activity the element of negligence is difficult to prove; Second, the increase in industry and trade on a large scale which tends to be cross-national in nature has an influence on the system of responsibility in national law regarding environmental pollution and destruction;

Third, the application of this absolute responsibility must pay attention to the level of knowledge and economic capacity of the community and social-culture as one of the basic considerations in order to measure the level of the community's ability to understand the nature of the risks that might occur; Fourth, it is necessary to develop means and procedures for settlement of compensation that can support the implementation of the principle of responsibility, including the maximum limit that can be imposed on pollutants or environmental damage as a dis-intensive factor; Fifth, it is necessary to develop the ability of high officials to make decisions that can help provide clear legal criteria and formulations, so that it is easily understood by law enforcers regarding the application of the principle of absolute responsibility for activities that are considered dangerous and at high risk [6].

There is a confusion in understanding the term absolute responsibility which is often equated between strict liability and absolute liability, both of which have different meanings. The term strict liability describes the characteristics of responsibility which is instantaneous (strict), while absolute responsibility is absolute/final. The strict nature actually refers to the condition of the action that is clearly wrong, but the causality between the action and its consequences must still be seen proportionality so that resistance is still possible. Therefore, compensation for losses is not limited. Absolute nature leads to actions that are clearly in error so that there is no resistance that there is a maximum limit.

System of responsibility based on errors and the burden of proof which is called based on fault liability or it can also be said the presumption of liability assumes that in the actions carried out there are presumptions of innocence that must be proven. This principle, if applied to pollution cases, will be very detrimental, especially in marine pollution. This is to be avoided because sea water changes very quickly. For example, the Montara Oil Case involving the Australian Government, the Indonesian Government, the Thai Government and the company, PTTEP Australasia, was settled through the Negotiation process. The settlement of the Montara Oil Case has not yet received a satisfactory settlement for all parties.

Some things that cause the duration of the settlement process in addition to a prolonged bureaucracy and its proof include failure to monitor 2 Montara platforms, failure in platform verification, lack of management control and lack of personnel competence which causes less responsiveness in decision making Based on a prolonged bureaucracy and its proof, so we must choose strict liability it is the best.

IV. CONCLUSION

Three systems are used in resolving cases of pollution of the marine environment, namely: strict liability, absolute liability and based on fault liability/presumption of liability. The use of strict liability and absolute liability in solving cases is difficult because four areas are keys of coordination such as: government, related organizations and their capabilities, technical systems, safety, security, health, and environmental culture and its management that require maximum works. System based on fault liability/presumption of liability is difficult to prove.

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