

Legal Study Related to the Application of Compensation in a Fishery Business Affected by Oil Spill Pollution in the Sea Water Area

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ABSTRACT

The oil spill event can be considered a disaster, one of which occurred in the Balikpapan and Karawang regions.

This event has provided much learning in better policy making. What are the results of the legal study related to the implementation of compensation in the affected fishery business that has been regulated in the legislation in Indonesia? These issues will be addressed through searching of regulatory and statutory documents.

The results show that if the study of environmental losses is guided by Law Number 32 of 2009, while related to the application of fisheries compensation affected by oil spill pollution in sea waters can be guided by Law Number 7 of 2016. Even though the application of the contents of Law Number 7 Year 2016 still requires the making of implementing regulations to create standard operational procedures so that they can be more easily applied in the community.

Keywords: *law, compensation, fishing business, pollution, oil spills*

1. INTRODUCTION

Indonesia is known to have a region that is very rich in diversity of natural resources, both natural resources (fish, crustacea, molluscs, mangroves, coral reefs, seagrasses, and other biological natural resources, and non-biological natural resources such as mineral, gas and petroleum, as well as cargo from the sinking ship (Mukhtasor, 2007). This condition results in a lot of biological and non-biological resource extraction activities in Indonesian waters. Various types and amounts of activities in sea waters lead to the potential for overlapping interests that lead to higher ecological pressure in sea and coastal waters.

Oil spill (oil spill), is one of the events / events that have the risk of polluting the waters and the coast. These events have an impact on damage to ecological functions, disruption of sea transportation activities, tourism, and social and economic impacts thereof. The impact if an oil spill event occurs at sea, can be seen clearly, such as the beach becomes not beautiful to be seen (aesthetically), the death of seabirds, fish and shellfish, or even though some of these organisms survived but can be dangerous to eat.

According to Stoker and Seager (1976), oil spill events in the marine environment can reduce the quality of sea water, both direct effects (short term effect) and effects in the long term (long term effect). Physically, oil pollution will be very clear because the sea surface will be covered with a layer of oil or lumps of oil (tar balls). Chemically, petroleum is classified as an aromatic hydrocarbon compound so that it is toxic which can kill marine organisms and cause damage to ecosystems in coastal areas.

Biologically the presence of waste or oil spills can affect the life of marine organisms and humans, both directly and indirectly.

Furthermore, Ofiara and Seneca (2006) stated that "the biological effects of marine pollution that occur will produce economic impacts and damage, but often negative impacts on the environment and economic damage are not included in studies of the effects of pollution of the marine environment". Yet according to Riani (2012) petroleum pollution causes economic damage both tangible or intangible or unreal. Considering the heavy metals and organic compounds produced by petroleum such as poliaromatic hydrocarbons, carcinogenic, mutagenic, and teratogenic are very difficult to decompose. Therefore marine pollution caused by

petroleum can produce major economic impacts and damage if not handled and managed properly.

The specific effect of an oil spill on the marine and coastal water environment depends on the amount of oil spilled, the location of the incident and the time of the event (Neff 1996). In line with this, (Sulistyo 2012) states that the level of damage caused by oil spills depends on the number of oil spills, the type, and chemical nature of the spilled oil and the sensitivity of the ecosystem to the impact of the oil spill. Clark (2003) states that oil pollution has a big effect on the marine ecosystem. Penetration of sunlight will decrease due to the closed layer of oil. The process of photosynthesis will be blocked in the euphotic zone, so the food chain will be broken. The oil layer also prevents the exchange of gases from the atmosphere and reduces oxygen solubility which ultimately the waters are no longer able to support aerobic marine life.

One case of oil spills in Indonesia occurred in Balikpapan and Karawang. The impact of the perceived damage is related to events in Balikpapan, one of which is related to the community who cannot move on the beach and the loss of the livelihoods of hundreds of fishermen (Puspoyu, Hakim, and Selsiana B., 2018). Likewise, if you look at the impact of the oil spill incident in Karawang, where the surrounding stakeholders were affected based on a press release from PT Pertamina Hulu Energi (2019), mainly fishermen, fish farmers, and coastal residents. These two events have provided a lot of learning in better policy making. This lesson will be elaborated in this paper by raising the issue of how the results of the legal study related to the implementation of compensation in the affected fisheries business that have been regulated in the legislation in Indonesia? These issues will be addressed through searching of regulatory and statutory documents. Priority of Discussion of Material The discussion of issues related to the implementation of compensation in the affected fisheries business that has been regulated in the laws and regulations in Indonesia is important, because the main players in the fisheries business based on Law Number 7 of 2016 are the main objects that get protection on the side of the fisheries business carried out. This discussion looks at how far the implementation of protection is normative, bearing in mind when an oil spill event occurs, there are several legal rules governing the conditions of handling due to the impact that occurs. This discussion is important in order to provide better policy recommendations for anticipatory efforts if there are similar events in the future.

2. RESEARCH METHOD

Discussion of the problem is carried out with normative legal research, where legal research is carried out by examining library materials and related secondary data. The legal material that is reviewed and analyzed consists of primary legal material, which is legal material that has binding power; and secondary legal materials, which are legal materials that can provide an explanation of primary legal materials; by using qualitative analysis.

3. RESULTS AND DISCUSSION

Pollution of sea water areas is always a concern of many parties, and one of the causes of pollution is caused by the occurrence of oil spills. In the case of the Balikpapan Bay after the cause was explored due to a leak of a Pertamina oil pipeline that was allegedly caused by a broken crude pipeline from the Lawe-lawe Terminal in Penajam Paser Utara to the Balikpapan refinery; while in the case of Karawang, the oil spill event was caused by the leak of the Pertamina Upstream Energy YYA-1 Block Offshore North West Java (ONWJ) project on the north coast of Karawang.

The impact of the two oil spill events, which is focused in this paper, is related to the impact experienced by the main actors in the fisheries in the waters affected by oil spill pollution. Handling the impact of sea pollution on the main actors of this fishery business according to their duties and functions is the responsibility of the Ministry of Maritime Affairs and Fisheries (KKP). Although related to handling oil spill pollution there are at least 4 (four) related ministries, namely the Ministry of Environment and Forestry (KLHK), the Ministry of Maritime Affairs and Fisheries (KKP), the Ministry of Home Affairs (Ministry of Home Affairs), and the Ministry of Energy and Human Resources (Ministry of ESDM).

The diversity of related institutions that need to be studied together so that later can be a form of mutual support for the handling of pollution and not the omission if there are cases of marine pollution. When there is a condition of environmental damage, it will be a threat to living things, including humans, even though environmental damage is directly due to human behavior to utilize environmental goods and services in order to meet the needs of human life. Constitutionally there are legal norms that protect the public to get a good and healthy environment and this must be done by the state. This is stated in the 1945 Constitution Article 28 (h).

Until now, related to the study of environmental losses, guided by Law Number 32 of 2009, while related to the application of fisheries compensation affected by oil spill pollution in sea waters, one of which can be guided by Law Number 7 of 2016.

The role of the CTF became dominant when implementing Law Number 7 of 2016. If you look at the considerations of Law Number 7 of 2016, one of the responsibilities of the state is to protect and advance public welfare; and one of the efforts made to make it happen by organizing Protection, Empowerment of Fishermen, Fish Hatchers, and Salt Farmers in a planned, directed, and sustainable manner for fisheries businesses. Fisheries business actors are very dependent on fish resources, environmental conditions, facilities and infrastructure, business certainty, access to capital, science, technology, and information.

Article 3 of Law Number 7 Year 2016 states that the Protection and Empowerment of Fishermen, Fish Cultivators, and Salt Farmers has the following objectives:

- a. provide the infrastructure and facilities needed to develop the business;
- b. provide business certainty that is sustainable;

- c. increase the ability and capacity of Fishermen, Fish Hatchers, and Salt Farmers; strengthen institutions in managing Fish and marine resources and in running businesses that are independent, productive, advanced, modern and sustainable; and develop the principle of environmental sustainability;
- d. developing financing systems and institutions that serve business interests;
- e. protect against the risks of natural disasters, climate change, and pollution; and
- f. provide security and safety guarantees as well as legal assistance.

In Law Number 7 of 2016, although in the title of the regulation it is written only Fishermen, Fish Cultivators, and Salt Farmers, but based on Article 5 paragraph (2), the material contained in this Law applies to families of Fishers and Fish Cultivators, which carries out processing and marketing. In this Law, related to Guaranteed Risk of Catching Fish, Fish Cultivation, and Salting Business is regulated in Article 30, where one of the causes of risk faced by fishery business actors is due to pollution. The effort to protect the said business is in the form of insurance.

In the application of the contents of Law Number 7 of 2016, it is still necessary to make implementing regulations to create standard operational procedures so that they can be more easily applied in the community.

This form of insurance protection is one of the alternative aids for fishery business actors in the event of a business disruption due to pollution. Because if waiting for compensation due to pollution based on the principle of polluting paying according to Law Number 32 of 2009 takes longer.

The regulation of the principle of paying polluter has basically been regulated in Law Number 32 Year 2009, where the realization is contained in the explanation of article 87 of Law Number 32 Year 2009, stated in Paragraph (1) The provisions in this paragraph are the realization of the principles contained in the environmental law called the polluter principle of paying. In addition to being required to pay compensation, environmental pollutants and / or destroyers can also be burdened by judges to take certain legal actions, such as orders to:

- a. installing or repairing waste treatment units so that the waste is in accordance with the specified environmental quality standards;
- b. restore environmental functions; and / or
- c. eliminate or destroy the cause of environmental pollution and / or damage.

Furthermore, in 2014 Law No. 32 of 2014 concerning Maritime was enacted, in which this law became one of the efforts to synergize several regulations related to sea pollution and is one form of efforts to synergize the institutions and institutions involved therein. Article 52 of Law Number 32 Year 2014 states that the process of dispute resolution and the application of sea pollution sanctions are based on the principle of polluter pays and the principle of prudence. The principle of polluter pays as pollutants must bear the costs of measures to reduce pollution is a provision that is feared to open a loophole

for sea pollution as long as the polluter is able to provide compensation.

Therefore this needs to be done further study.

Law Number 27 of 2007 also regulates Paying Pollutants in the marine and fisheries sector, related to (1) Incentives: Provision of program assistance that can be directed to optimize the accreditation program; and technical assistance for the area management program manager. Coastal and Small Islands that have been accredited (Article 40 paragraph 4); Civil Code: regulation on PMH (article 66) and Strict Liability (Article 67); Administrative Sanctions (articles 71 and 72), and Criminal sanctions (articles 73-74).

Affected communities, in this case including the main actors of fishery business, can still receive compensation related to the impact of pollution that is detrimental to their business, if all processes have been carried out. Because this compensation process is different from compensation from fisheries business insurance that they have received under Law Number 7 of 2016.

4. CONCLUSION

The results of the legal study related to the implementation of compensation in the affected fishery business that has been regulated in Indonesian laws and regulations, if based on Law number 7 of 2016, the compensation can be applied, because the implementation of protection for fisheries businesses is carried out in the form of insurance on fishing businesses, and pollution is one of the reasons that can be covered by the insurance.

Apart from fisheries business insurance compensation, affected communities, in this case including the main fisheries business actors, can still receive compensation related to the impact of pollution that is detrimental to their business, if all processes have been carried out. Because this compensation process is different from compensation from fisheries business insurance that they have received under Law Number 7 of 2016.

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