



RESPONSIBILITY AND LEGAL AWARENESS OF SEA TRANSPORT SERVICE PROVIDERS TO PREVENT POLLUTION OF THE MARINE ENVIRONMENT IN THE MALAKA STRAIT AREA

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ABSTRACT

Based on the problems above, the prevention principle was first introduced at the United Conference on Environment and Development (UNCED) in Rio de Janeiro in 1992, better known as the Rio Declaration 1992. This principle states that to protect the environment, every country should be able to apply an approach to prevention by their respective abilities. UNCLOS 1982, as a law of the sea convention that has been widely accepted by countries around the world, also regulates explicitly the protection of the marine environment. In Chapter XII on protecting and preserving the Marine Environment, article 192 states that States are obliged to protect and preserve the marine environment. This also applies to the Strait area, one of a country's sea areas. Pollution of the marine environment is a change in the marine environment that occurs as a result of the direct or indirect introduction by humans of materials or energy into the marine environment (including river mouths), which results in such harmful consequences that it constitutes a loss to biological wealth, a hazard to human health, disturbance to activities at sea, including fishing and others, reasonable use of the sea, deterioration of seawater quality, and reduction of places of residence and recreation. One of the problems in this research is how the principles contained in the laws and regulations are a basis for preventing pollution of the marine environment in the Malacca Strait. The research method used in this study is a normative juridical method considering that the starting point of this research is an analysis of laws and regulations governing marine environmental pollution.

Keywords: Legal Awareness Responsibilities, Sea Transportation Service Providers, Preventing Marine Environmental Pollution

A. INTRODUCTION

As it is understood, today's humanity is beginning to realize the limited carrying capacity of the land in sustaining human life. Some resources are running out and disappearing, and some raw materials are already experiencing scarcity. Such a situation has led people to turn their eyes to the marine environment as an element yet to be fully exploited. If in ancient times the sea was only used as a medium of transportation/shipping and a place for taking fish & salt, today the sea has increased with extraordinary leaps in its uses and benefits, thanks to advances in science and modern technology. In addition to the benefits humans get in the ocean, the side effects they generate are also felt, namely in the form of damage and pollution to the environment, especially the marine environment, both to human life and the lives of other creatures. Indeed, marine pollution is an aspect of environmental problems that have now

reached forms that demand serious attention. The increased attention to these problems is due to several reasons, including:

1. Considering the geographical position of the Malacca Strait as a very congested shipping lane, this automatically results in the easy danger of sea pollution by ships passing through it. Coupled with the narrow, shallow, and tortuous Malacca Strait condition, it results in frequent ship accidents.
2. As a result of this pollution, it soon spreads without regard to artificial national boundaries so that it is said to be national, regional, or international. As stated by Prof. Em. Du Pontavice that the nature and character of marine pollution are transnational, which has transfrontier or off-limits consequences.
3. The influence of pollutant substances from petroleum and substances made from it harms the marine environment because this petroleum enters the marine food web through plankton and is then eaten by marine animals, thus endangering the area. River estuaries as breeding grounds for fish and other marine biodiversity.

Mochtar Kusuma atmadja stated that in the struggle for insight and other stages that rely more on one's ability to carry out actions and management efforts that have unfolded before us, therefore the law has a role in developing a rational conception of marine environmental management, which consists of:¹

1. Securing the marine environment of the archipelago as a container or physical means of conception by instilling sovereignty over the archipelago's waters.
2. With arrangements to maintain harmony between the various uses of the archipelago's marine environment, carried out sectorally (structural function).

As to regulate and maintain harmony between the various uses of the archipelago's marine environment, of course, in addition to harmonization of the use of the marine environment itself, various efforts are also taken, both in the form of prevention and repression against various violations and perpetrators of marine pollution, especially in the legal field. Understandably, many efforts in various fields can be taken to prevent or repress this marine pollution. Even in law, such efforts also have various styles and varieties. The problem for us is in examining the practice of various major countries which have long carried out these steps, which are known as unilateral actions of the coastal state on the one hand and the remedies available in international law on the other hand; determine which pattern is most compatible with the pattern of regulation of our archipelago's marine environment.

Marine pollution has an exceptionally influential impact on the surrounding environment, especially if the surroundings are residential areas where the population generally has a livelihood as sailors or fishermen. Marine pollution is caused by human actions and the dangers resulting from pollution of the ecological stability of the sea. Pollution will be bad for life or the marine environment depending on where the pollution occurs. This negatively affects the fertility of biological productivity in an unequally divided sea.

Starting from the description above, the author is interested in conducting research and deeper discussion regarding the Responsibility and Legal Awareness of Sea Transport Service Providers to Prevent Marine Environmental Pollution in The Malaka Strait Area.

B. PROBLEM FORMULATION

Based on this background, the problem can be formulated as follows: How is the application of law and responsibility and legal awareness of sea transport service providers to prevent marine environment pollution in the Malacca Straits area?

C. RESEARCH METHOD

Related to the writing of this research, the author uses empirical or sociological legal research methods. This research is based on primary data/basic data, namely data obtained directly from the community as the first source through field research. Primary data is obtained through field research, for example, through observation and interviews by distributing questionnaires. Sociological, legal research can be realized into research on the effectiveness of the law that is currently in effect or research on legal identification. Primary legal research cannot be carried out separately from normative legal research. Normative legal research is library research or document study because it is mainly done on secondary data in the library. In normative research, secondary data as sources/information materials can be primary legal materials, materials

D. BENEFITS OF RESEARCH

Research is a concrete reflection of scientific activities in processing knowledge. Operationally research can serve as the development of science and technology, supporting development, developing systems, and developing human quality. Legal research is conducted to find solutions to legal issues that arise. Therefore legal research is research within the framework of know-how in law by doing a prescription regarding what should be the issue raised. Starting from the research objectives mentioned above, it is hoped that this research will provide theoretical and practical benefits or uses in law. Theoretically, this research is expected to open insights and paradigms of thinking in understanding and exploring legal issues related to the principles of preventing marine environmental pollution in the Malacca Strait.

This research is expected to be a comparison and reference material for further researchers and can enrich the body of knowledge, especially in developing legal knowledge. Practically, this research is addressed to the Government of Indonesia, especially the Batam City Government, through the principle of preventing pollution of the marine environment, and can use the results of this research as a reference in carrying out its functions as a Regional Government Apparatus in implementing and implementing this law.

E. RESEARCH RESULTS

The sea naturally can neutralize pollutant substances that enter it. However, suppose the incoming substance exceeds the limit of the ability of the sea to neutralize and has exceeded the threshold. In that case, this condition results in pollution of the marine environment. Law

Number 32 of 2009 concerning Environmental Protection and Management in Article 1 defines the environment as:²

"An environment is a spatial unit with all objects, power, conditions, and living things, including humans and their behavior, which affect nature, the continuity of life, and the welfare of humans and other living things." As well as Article 1, paragraph 14 provides a broad understanding of environmental pollution: "Environmental pollution is the entry or inclusion of living things, substances, energy, and other components into the environment by human activities so that they exceed the established environmental quality standards."

According to Munadjat Danusaputro, what is meant by pollution is a condition in which a substance and energy are introduced into an environment by natural processes in such concentrations as to cause changes in conditions, including those that result in the environment not functioning. In terms of health, well-being (comfort), and biosafety. In principle, the definition of environmental pollution is the same as the definition of marine pollution. The sea is also an integral part of the environment. Therefore, when it is called marine pollution, it means environmental pollution, in this case, marine environmental pollution. Pollution can be interpreted as a form of environmental impairment, namely the presence of disturbance, change, or destruction. Marine pollution is a problem shared by the international community. Its influence not only extends to all activities at sea but also concerns activities in coastal areas, including river mouths that are connected to the sea. The sea has a natural ability to neutralize pollutant substances that enter it. However, if these contaminants exceed the ability of seawater to neutralize them, the condition is categorized as pollution.

Pollution of the marine environment means the introduction by humans, directly or indirectly, of materials or energy into the marine environment, including estuaries, which results or is likely to result in such adverse effects as damage to marine living resources and marine life, danger to human health, disturbance to activities at sea including fishing and other lawful uses of the sea, reduction of the usable quality of seawater and reduction of amenities. The essence of marine pollution is the decline in the quality of seawater due to human activities, whether intentional or unintentional, to introduce specific amounts of pollutant substances into the marine environment (including river estuaries), resulting in negative consequences for biological and vegetable resources in the sea, human health, activities at sea, and for the survival of living resources in the sea. It is based on Article 1 PP. No. 19 of 1999 concerning Control of Marine Pollution and Destruction, that marine pollution is the entry or inclusion of living things, substances, energy, and other components into the marine environment by human activities so that their quality drops to a certain level which causes the marine environment to be unsuitable. Again with quality standards and functions.

As for what is meant by pollution of the marine environment, several exciting limitations are put forward. It is called interesting because there are differences in the meaning of marine pollution itself. According to the meeting of the Ministers of the OECD (Organization for Economic Cooperation and Development), 13-14 November 1974, sea pollution, namely :
"Pollution is an introduction by man directly or indirectly of substances or energy into the environment, resulting in deleterious effects of such a nature as to dangerous human health, harm living resources and ecosystem and impair or interfere with amenities and other legitimate of the environment".³

Based on this understanding, marine pollution occurs when humans enter, either directly or indirectly, an object, substance, or energy into the marine environment, causing such an effect on nature and endangering human health and life and ecosystems and harming a good environment. and the function of the sea as it should. Based on the Principle Concerning Transfrontier Pollution, pollution across national borders is :⁴

1. Implementation of the Provisions for Preventing Pollution of the Marine Environment in the Malacca Strait

International recognition through the 1982 Sea Law Convention on the Indonesian archipelagic state has consequences with the obligation to provide accommodation for international shipping in its waters in the form of :⁵

- a. Right of archipelagic sea lanes passage;
- b. Right of innocent passage.

The right of the archipelagic sea lanes passage (Indonesia calls its archipelagic sea lanes passage "Indonesian Archipelagic Sea Lanes"-ALKI) is new in maritime provisions.

After Indonesia ratified the 1982 Law of the Sea Convention through Law no. 17 of 1985, dated December 13, 1985, Indonesia began to think about and try to establish Indonesian archipelagic sea lanes (ALKI) through Indonesian archipelago waters.

The application of ALKI must be by the concept contained in the 1982 Sea Lanes Law Convention, where "all ships and aircraft" obtain the "right of archipelagic sea lanes passage." Indonesia, in granting the right of archipelagic passage over its archipelagic waters, must cover all regular passage routes used as routes for international navigation or overflights, with the note that if in one place there are several passages, if the convenience is approximately the same, then it is sufficient to specify only one route (duplication of routes of similar convenience between the duplicate entry and exit points shall not be necessary).

Thus, as an archipelagic country with the existence of international shipping rights, the position of Indonesia's marine environment has the potential to be polluted. In order to support the position of the Unitary State of the Republic of Indonesia (NKRI) from all threats, including threats from pollution originating from foreign ships, maximum efforts are needed to determine sea lanes in Indonesian archipelagic waters. In implementing ALKI, it is necessary to consider not harming Indonesia's national interests in utilizing its marine resources and from all threats of pollution from ships that can be detrimental to the state. To prevent this from happening, in-depth research and identification efforts are needed in the area to be used as ALKI.

In-depth research and identification in the areas passed by ALKI, including, among others:

- a. Local or intersecting traffic intensity of ALKI;
- b. Location of dense and intensive fishing areas;
- c. Location of ongoing oil and gas exploration and exploitation areas;
- d. Location of underwater pipelines and cables;
- e. Location of tourist areas, especially beaches and tourist islands adjacent to ALKI;
- f. Locations of sensitive areas in the field of the marine environment;

- g. Identification of the capabilities of existing facilities along ALKI to deal with all possibilities, both pollution of the marine environment and security and law enforcement.

The high level of potential for environmental problems, such as pollution of the marine environment, can also be seen from how the conditions of the marine environment; for example, there are various types and fields of human activity around the marine environment, differences in climate change, surface circulation, geological conditions of the marine environment and soon. The reasons for justifying the objections raised by the coastal states include the interpretation that a vessel carrying such hazardous cargo could engage in the no-innocent passage under the terms of Article 19. While the environmental risk of such a voyage may be high, the LOS only recognizes that a voyage is not innocent if an "act of willful or serious pollution contrary to this convention" occurs. Meanwhile, another reason that can be justified is the requirement that foreign nuclear-powered ships and ships carrying nuclear or other materials which, due to their dangerous and toxic nature, exercise the right of innocent passage through the territorial sea, to carry documents and comply with special precautions stipulated by the treaty. International.

Another reason for justifying the coastal state's objection to the shipping of ships categorized as carrying "ultrahazardous radioactive cargo" is the existence of a principle called the "Precautionary Principle." The Precautionary Principle is also applied to the 1992 Rio Declaration. The application of the Precautionary Principle is in the framework of protecting the rights of coastal states over their marine environment in international shipping lanes, where such shipping is "hazardous transport." However, please note that all risk regulations cannot apply the Precautionary Principle.

Where coastal States have reasonable grounds for suspecting that planned activities within their jurisdiction or under their control may cause significant pollution or marked and adverse changes to the marine environment, they shall assess these activities' potential effects as soon as possible. On the environment, and must submit a report on the assessment results, including to IMO.

The existence of a threat that threatens hazardous transport requires the state to announce any danger to shipping in its waters, including in archipelagic sea lanes. Ships sailing in archipelagic sea lanes are required:

- a. Comply with generally accepted international regulations, procedures, and practices regarding safety at sea and collision prevention at sea;
- b. Comply with generally accepted international regulations, procedures, and practices on preventing, reducing, and controlling pollution from ships.

Indonesia can refuse foreign ships carrying other dangerous and toxic materials, such as nuclear if the ship does not notify and consult about the route it will take, emergency procedures, and liability arrangements contained in the ship. Indonesia has adopted this provision through Government Regulation 37 of 2002 concerning the Rights and Obligations of Foreign Ships and Aircraft in exercising the stipulated Right of Archipelagic Sea Lanes Passage through Archipelagic Sea Lanes. This government regulation is an implementing provision in Law Number 6 of 1996 concerning Indonesian Waters.

Indonesia can carry out efforts to prevent pollution of the marine environment with considerations based on the 1982 Sea Law Convention and the Precautionary Principle, also based on Indonesian national provisions such as the Law.

No. 6 of 1996 and Government Regulation no. 37 of 2002. Apart from the ratio for the benefit of the coastal state, this ratio also applies to the safety of ships in their voyages and, ultimately, to the benefit of the international community.⁶

The factors that affect marine pollution are as follows:

a. Natural Marine Environment

The analysis of the natural marine environment in this section is focused on the objective condition of sea waters that exist specifically in Southeast Asia, in this case, the natural conditions of the sea waters which influence the occurrence of global marine pollution.

With the nature of the biota and climate that are different from other regions, as well as its unique physical characteristics with its shallow and narrow seabed, it is found in western Indonesian waters where international shipping is the busiest, coupled with increasing the scale and number of other marine environmental, economic activities, such as fishing. In this position lies the Malacca Strait and the Singapore Strait, the traffic of ships of all sizes and all activities carried out. In the strait, which is quite busy with international shipping, lies the port of Singapore, the busiest in Southeast Asia. In the waters around this port, activities are centered on oil transportation (tankers), the oil industry (refinery), and offshore oil drilling (offshore drilling). With its shallow marine environment, the Malacca Strait is categorized as the most vulnerable in the world. The waters of the Malacca Strait contain a mixed tidal regime affected by two high tides and two low tides each day. The four low and high points are different in height and low.

The dominant wave nature of the waters of the Malacca Strait occurs around 8 to 9 hours every day, which is influenced by Western currents. The duration of each of the currents above is also influenced by monsoons which can occur at any given time. The highest current speed occurs when the current flows from the east. About 75% of these Eastern currents are more robust than Western ones. However, it is generally not easy to predict the nature of the tides and wave conditions in the waters around the port of Batam / Malacca Strait. The urgency of a description of the natural marine environment in the waters of the Malacca Strait due to environmental conditions, especially current patterns and tidal conditions, climate processes, and natural conditions, rainfall on seawater salinity and sedimentation by floods from rivers, and combinations thereof, are all factors that affect It is essential to note because it affects the spread or permeation of marine pollution.

To provide an overview of the nature of the spread of petroleum contaminants from the spill that occurred until it reached the seabed, especially in the Malacca Strait, the research results are as follows:⁷

- 1) Oil spills spread quickly by a law of gravity and chemical-physical forces on the sea surface;

- 2) The speed and extent of spread are determined by several factors, such as the wind, the nature of the sea, which includes waves, currents, and temperature, as well as the type, specific gravity, and viscosity of the spilled oil;
- 3) Evaporation and emulsion processes are also influenced by the nature of the spread (contaminated surface area).

Taking into account the influence of natural conditions as described above on the process of spreading pollution, which ultimately involves two or more countries in terms of the consequences it receives, it can be concluded that even though humans with their technological capabilities are also intended to avoid and prevent the expansion of pollution, but there are still factors that cannot be determined by humans, namely natural factors that play a role in the occurrence of marine pollution both on a national and transnational scale.

Besides the factors of natural conditions of the marine environment such as sea surface currents, seasonal climate, differences in the depth of the sea, and soon also determine the occurrence of transnational marine pollution as previously stated, the natural wealth factor of the marine environment is also a factor that has influenced the occurrence of marine pollution.

With the natural wealth found in the sea, as described above, there is an increase in sea activities to take advantage of its wealth. This condition has more or less become the cause of pollution at sea, both caused by leaks in ships transporting oil drilling products, accidents on offshore platforms, or due to routine discharges carried out by each ship or the oil drilling process. Thus, the natural wealth in the sea has attracted human interest to change it and use it by producing an impact that can occur in the form of sea pollution.

b. Offshore Petroleum Activities

Although the oil industry has existed and developed since towards the end of the 19th century, including in Indonesia, this industry was only considered mature (reached maturity) in the early 20th century. After that, society depended on him, as B.D. Berger and K.E. Anderson argued: sources of marine wealth, both living and non-living natural resources. The impact arising from the increase in marine environmental technology, which seriously endangers the survival of marine biota and human health and damages other human instruments in the sea, is the occurrence of sea pollution by polluting substances produced by this technology, such as petroleum and other materials. dangerous and toxic (B3) that falls in sea waters. Technological developments for offshore oil drilling and tanker ships transporting oil cannot be denied; it is undeniably troubling the people of nations, especially those who depend on the marine sector for their livelihoods. Reduce the quality and quantity of living and vegetable natural resources, which are the object of fulfilling their daily needs.

The Southeast Asian region, which is an area that is exceptionally rich in biological, vegetable, and mineral natural resources, is an area that uses such technology to explore and exploit its marine natural wealth. In addition, with the Malak Strait and the Singapore Strait as shipping lanes that are very busy for ships of various sizes, the possibility of sea pollution is quite large. The increase in ship size, weight, speed, and number operating in the Malacca Straits and Singapore Straits, coupled with offshore oil exploration and exploitation activities, not only increases the amount and sources of pollution in the marine environment and pressures on marine ecosystems but also creates problems. Shipping safety, in turn, increases the

possibility of collisions, aground, and other accidents, all of which ultimately threaten the sustainability of the marine environment.

F. CONCLUSION

Legal Arrangements the precautionary principle was first introduced at the United Conference on Environment and Development (UNCED) in Rio de Janeiro in 1992, better known as the Rio Declaration 1992. This principle states that to protect the environment, every country should be able to apply a preventive approach according to their respective abilities. UNCLOS 1982, as a convention on the law of the sea that has been widely accepted by countries in the world, also explicitly regulates the protection of the marine environment. In Chapter XII on protecting and preserving the Marine Environment, article 192 states that States are obliged to protect and preserve the marine environment. This also applies to the Strait area, one of a country's sea areas. The application of provisions to prevent marine environment pollution is contained in the Application of Indonesian Archipelagic Crossings (ALKI) in Indonesian Waters and Implementation of the MARPOL International Convention 73/78 Regarding the Prevention of Marine Pollution. Factors and constraints in legal efforts to overcome and provide protection for pollution of the marine environment are from the field of prevention of marine pollution and the field of prevention of marine pollution; moreover, in Article 87 paragraph (1) of Law no. 32 of 2009 concerning the Protection and Management of the Environment where every person in charge of a business and activity who commits an unlawful act in the form of environmental pollution and damage that causes harm to other people or the environment is obliged to pay compensation and take specific actions.

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