LEGAL BRIEF
ISSN 2722-4643 (Online) | 1979-522X (Print)
Volume 13, No.1, 2024, pp. 50-56
Published by: IHSA Institute (Institut Hukum Sumberdaya Alam)

International Dispute Settlement Of Montara Oil Spill On Timor Sea Pollution

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Abstract: The environment is a very important aspect of human life. In its development, the environment is often used by humans as a basis for human life in fulfilling their daily needs. Humans see the environment as one of the resources that can be utilized. Petroleum is a natural resource produced from fossils that were buried millions of years ago. In the process of exploiting petroleum, of course, it cannot be separated from some of the risks that will be faced. The case of the explosion of the oil rig in Montana Australia, owned by the oil company Petroleum Exploration and Production Authority Australia or (PTTEP). The explosion of the oil rig has an impact on pollution of the marine environment in this case related to state borders, for this reason, international legal classification is needed in dealing with the dispute. In framing the journal entitled International Dispute Resolution of the Motara Oil Spill Against Timor Sea Pollution using qualitative research with a constructivist paradigm approach. From this research, it can be concluded that the dispute resolution process between the two parties, namely Indonesia and PTTEP, uses a class action lawsuit and is based on International Law contained in the 1982 United Nations Convention on the Law of the Sea in the form of absolute responsibility for the Austrian government because it is the owner of the sovereign territory on the rig and is also reinforced by the granting of permits to PTTEP.

Keywords: Environment, International Law, Oil, Dispute.

1. Introduction

The environment is the place where an organism lives with other non-living organisms. The environment is a crucial aspect of human life. In addition to acting as a place for humans to live, the environment is also a resource to complement and fulfill human needs. The ocean is a part of the environment that is utilized by humans for essential survival. The ocean is currently the determining factor of human prosperity.(Starke, J.G. & Bambang Iriana Djajaatmadja (Penerjemah), 2008) In the sea area, there are many sources of wealth, especially in the form of oil, gas, tin and biological and biological resources such as fish etc. The ocean has a very important and influential role in providing natural resources that are not top for humans and can be managed in such a way as to bring great benefits to humans. However, in every marine management activity there are always consequences that arise in marine conservation itself.(Muhammad Nuha Maulana Pasya & Fina Akmalia, 2022)

On August 21, 2009 there was an oil spill that polluted the waters of NTT due to the explosion of the Montara oil rig at the North West Timor Atlas site owned by the oil company Petroleum Exploration and Production Authority Australia. (PTTEP). The oil spill in Australia's arctic waters and continues to affect Indonesian waters in the Timor Sea due to haphazard oil exploration activities and lack of oversight by the Australian government resulted in an explosion at the well rig. Montara is located about 250 km offshore. Australia. Crude oil spewed into the pristine Timor Sea for over 70 days and ended up in a giant flame on top of the Montara platform. The crude oil has an area of about 300,000 km2 stretched across the sea borders of Australia and Indonesia where the oil flows and is accompanied by hazardous substances to the marine ecosystem which contributes to the destruction of the marine ecosystem so that it causes damage to the

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Received: Mar 17, 2024;
Revised: Mar 20, 2024;
Accepted: Mar 23, 2024;
Published: Apr 02, 2024

seaweed industry which is rapidly developing in West Timor. (Antaranews.com, 2019) The Indonesian government filed a lawsuit for compensation against PTTEP to the Central Jakarta District Court with case No. 2 1Pdt.G2017PN.Jkt.Pst in July 2017 a case filed by the Ministry of Environment and Forestry (KLHK) against three Australian state-owned companies namely Thailand Australasia Petroleum Exploration and Exploration Authority (PTTEP AA) as Defendant I PTTEP as Defendant II and Petroleum Authority of Thailand Pulic Company Limited (PTT PCL) as Respondent III (Adrian, 2020).

There is often pollution of the sea. Pollution of the sea gets its own attention both regionally, nationally and internationally. This attention arises because the effects of marine pollution are so great for the preservation and benefits of marine resources for national needs and the interests of mankind. In terms of environmental pollution caused by oil spills has been regulated since the *Geneve Convention on the High Seas (Geneva Convention 1958)* regarding the *high seas* regime, article 24 which reads.

"Every state shall draw up regulations to prevent pollution of the seas by the discharge of oil from ships of pipelines or resulting from the exploitation and exploration of the seabed and its subsoil, taking account of the existing treaty provisions on the subject."

("Each state shall make regulations to prevent pollution of the sea caused by oil from ships or pipelines or caused by exploration and exploitation of the seabed and the land beneath it, taking into account the provisions of existing international treaties on the subject."). (Kusumaatmadja, 1992)

The state is the main and most important entity in international law. The state as the main and most important subject of international law must fulfill the conditions as stipulated in Article 1 of the 1993 Montevideo Convention. (Yordan Gunawan, 2021) Article 1 of the 1993 Montevideo Convention on the Rights and Obligations of the State, states that the characteristics of a state are the existence of a definite and clear territory, then the existence of support for the movement of the wheels of a sovereign government and has the ability to enter into relationships with subjects of International Law and recognition from other countries. (Sefriani, 2018) The 1933 Montevideo Convention not only provides the legal requirements of a state, namely consisting of territory, government and population but also must fulfill other conditions, namely the recognition of other countries. In addition to the state there are other entities within the scope of international law including International Organizations and Individuals.

International Law is a law that is coordinative in nature. Coordinative means parallel where the characteristic of this international law is the equality of position between nations and is not subordinate, meaning that there is a hierarchical relationship between the governing and the governed. International relations governed by international law are based on equality of position between members of society. (Sefriani, 2018)

International law itself regulates almost all aspects and it is often difficult to see a legal vacuum within the scope of international law. This proves that international law focuses heavily on issues of nationalism, extradition, the use of armed force, human rights, environmental protection and national security, this arises because of the many problems that occur in international relations. (Gunawan, 2021) Speaking of international relations, it cannot be separated from the influence of the state in it. The state requires interaction or relations between countries, and is realized in international agreements made by countries in the world. (Wayan Parthiana, 2002) From the description above, several questions arise that need to be realized, namely, Knowing the Concept of Marine Pollution in International Law, and the process of resolving disputes over marine pollution by PTT Exploration and Production (PTTEP) Australasia related to the Indonesian Timor Sea. From the description above, several questions arise that need to be realized, namely as follows, Know the Concept of Marine Pollution in International Law and Dispute settlement process of PTT Exploration and Production (PTTEP) Australasia's marine pollution in Indonesia's Timor Sea

The benefit of this research is of course that it will be used as a reference, and the addition of literature to learning, to a science that has a determination of the study of inter-

national aspects, especially being a general reference to the study of law and especially those who study problems in international law involving a country

2. Materials and Methods

The research in this journal writing is shown using qualitative research with a constructivist paradigm approach. This research will see how the construction carried out through the analysis of several journals and books in framing the role of the United Nations in dealing with international disputes. The Unit of Analysis in this study is the information made by several people in each journal and book related to the discussion points which focuses on environmental principles and legal certainty in a country on international issues. (Pasya & Widowaty, 2021) One of the data collection techniques chosen and used is literature study because by conducting an understanding study of books, journals, notes, and reports that have to do with the problems to be discussed and solved in accordance with the title and existing problems according to the facts. The data analysis technique used by the author in this research is logical, systematic and juridical analysis. (Gunawan, 2012)

3. Result and Discussion

3.1. Marine Pollution In International Law

Looking at the general purpose of the sea, known as the territorial sea area, the territorial area can be measured from the area closest to the coast and the area is subject to the country closest to the coast and is considered to follow the applicable law in that country. (Lestari, Maria Maya, 2009)The territorial sea itself is regulated in the 1985 Geneva Convention on the Territory of the Sea, which states that the state may set its boundaries up to 12 miles from the coast, and the determination of its width must not cut into the territories of other countries, as well as the limits set out in international law conventions.

Environmental pollution that has a negative impact on the ecosystem is marine pollution. Then environmental pollution is pollution by doing the action of adding substances, components, and even living things that can interfere with marine life and exceed quality standards in the environment itself. (Sofyan, 2010) In this modern era, environmental problems are global and crucial problems, because this has led to the issuance of an international regulation or regulation to regulate pollution, including marine pollution through legal principles. Basically, marine pollution is environmental pollution, therefore the principles of international law on marine pollution are the same as environmental pollution in general which is regulated in international law. The principles of international law related to environmental pollution in general are as follows. (Tangel, 2019)

1. Principles relating to Transboundary Pollution and Environmental Damage The definition of transboundary pollution is contained in Article 1 paragraph (2) of the Agreement on Air Quality, USA-Canada dated March 13, 1991 as follows*: Transboundary pollution, defined as "pollution whose physical origin is situated wholly or in part within the area under the jurisdiction of one state and which has adverse effects, other than effects of a global nature, in the area under the jurisdiction of another state."* (Suparto Wijoyo dkk., 2017) Translated as follows: Transboundary pollution, defined as "pollution whose physical origin lies wholly or partly within the area under the jurisdiction of one state and which has adverse effects, other than effects of a global nature, in the area under the jurisdiction of another state"
2. Principle of Absolute Liability (Strict Liability) is regulated in Article 235 of the 1982 Convention on the Law of the Sea, the provisions of Article 235 paragraph 1 establish responsibility for states to fulfill obligations relating to the protection and preservation of the marine environment and they must bear the obligation of compensation in accordance with international law. (Sudini dkk., 2020) This system of compensation refers, among other things, to the principle of strict liability set out in Article 3 paragraph 1 of the 1969 Brussels Convention. The provisions of paragraph 2 require states

to provide for prompt and adequate compensation in their national legal systems for losses caused by pollution of the marine environment committed by a person or legal entity under their jurisdiction. (Prof. Dikdik Mohamad Sodik, SH., MH., Ph.D, 2016)

From several regulations issued on an international scale, there are several laws that specifically regulate oil pollution in the sea in a country. In the case of the explosion of the Montara oil rig owned by PT *Exploration and Production* Australia which took place in the Timor Sea, international law regulates in several aspects in addition to being regulated in UNCLOS including the following. (Fauzi, 2018)

1. Convention on the High Seas of 1958. Article 24 of the High *Seas Convention* of 1958 states *"Every State shall establish regulations to prevent pollution of the seas by the discharge exploration of the seabed and its subsoil, taking account of existing treaty provisions on the subject"*. This provision speaks to the obligation of states to make preventive measures against pollution of the seas caused by oil from pipelines, ships, or caused by the exploitation of the seabed and its subsoil, taking into account the relevant provisions of international treaties.
2. Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration) in 1972. The conference agreed on several basic principles regarding the prevention of environmental pollution for the sake of environmental sustainability as stated in the 7th principle which states. *"The State shall take all possible steps to prevent pollution of the sea by substances that are liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses to the sea"*. The principle states that in order to achieve a good environment, rational management must be realized. States should compile and apply a thorough and coordinated approach with development planning commensurate with national needs to protect and improve the environment. In the 22nd principle of the Stockholm conference regulates the responsibility and harm caused by pollution, the principle reads. *"States shall cooperate to develop further the international law regrading liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such state to areas beyond their jurisdiction." The* meaning of this principle is that the function of each country in the world is to work together to revive and apply the ideals of international law in the field of marine or sea, to develop international law to realize environmental protection, especially in this case the sea effectively.

3.2. Dispute Resolution Process for Marine Pollution by PT Exploration and Production (PTTEP) Australia in Indonesia's Timor Sea

Responsibility in the state is closely related to the fundamental aspects of international law itself, in principle if the state is burdened and suffers losses from the cause of another state, then the state is entitled to compensation for the losses suffered. (Gunawan, 2016) This will be examined in international law by looking at the basis and situation experienced and measured in international law until it is proven that another country takes actions that result in harm to another country. When an environmental area has received contamination from foreign substances and not substances that should be in that place, or the environment, it can be said that the environment has been polluted. Thomas M. Pankartz defines environmental pollution as *Pollution is the presence of population in the environment.* (Pankratz, 2000)

In the enforcement of international law in this domain is the sea, several regulations and agreements are made to regulate this matter which is intended so that a country has legal power over its sea or sea regime. (Oceans & Law Of The Sea United Nations, t.t.) Some of these regulations are as follows. (a) The Hague Codification Conference 1930 (The Hague Codification Conference in 1930) (b) The First UN Conference on the Law of the Sea in 1958 (The First UN Conference on the Law of the Sea in 1958) (c) The Second UN Conference on the Law of the Sea in 1960 (d) The Third UN Conference on the Law of the Sea 1982 resulted in an international legal product known as the United Nations Convention on the Law of the Sea, abbreviated as UNCLOS 1982.

In Indonesia itself, the comprehensive nature of environmental law was present after the shipwreck of the Showa Maru oil tanker in the Strait of Malacca and Singapore in 1975, with this, it encouraged the formation of draft laws related to the Environment in Indonesia. From this event, a legal product was formed by the government through the Minister of Environmental Development Supervision, currently named the Minister of the Environment, and the enactment of Law No.4 of 1982 concerning Basic Environmental Provisions, then replaced by Law No.23 of 1997, replaced by Law No.32 of 2009 concerning Environmental Protection and Processing. UNCLOS 1982 provides implementation for existing legal products in Indonesia, based on this, Article 3 letter a of UUPLH regulates the protection of waters nationally from the threat of pollution of marine biota caused by activities carried out outside the jurisdiction of Indonesia. (Tangel, 2019)

Australia issued a diplomatic note through the Australian Embassy on September 3, 2009, then on August 30, 2009 the former Montara pipeline oil spill entered the Indonesian EEZ. Based on Presidential Regulation No.109 of 2006 concerning Oil Management at Sea, the Minister of Transportation as the Chairperson of the National Team for Emergency Management of the Montara Oil Spill in the Timor Sea, made several efforts to deal with the spill. Some of the efforts made are (a) Establishment of regional command posts for marine oil spill response, and activation of the national command and control center for marine oil spill response operations (PUSKODALNAS). (b) Observe and collect marine biota samples of oil slick sediments and seawater in the Timor Sea and conduct lab tests of the collected samples. (c) Conduct a review of the economic, social and environmental impacts of the oil spill.

In resolving the dispute, Indonesia and Australia took steps to resolve it through negotiations. This is in conjunction with several Indonesian Ministers who coordinate the handling of the Montara issue. In the process of resolving this dispute, the Peduli Timor Foundation filed a compensation claim worth 140 trillion based on the results of field observations. (Sumanto, 2013) In the process, the negotiation method as the first step for the dispute resolution process was not accepted by the Australian government because the Australian side claimed that the findings of the observations from the Indonesian side were not appropriate, the next step that was sworn was to submit a draft MOU on June 28, 2011 and agreed to be signed on August 2, 2011, but the signing was delayed because the PTTEP CEO cabinet was changed. Efforts at peaceful settlement could not be heeded by each of the parties to the dispute, because there were dilemmas in UNCLOS 1982, including not regulating compensation in terms of marine pollution, but rather the obligation of state responsibility to overcome the damage that had been caused in this case by the explosion of the oil rig in the Montara district. Based on this, Australia carried out countermeasures carried out by the Australian Maritime Safety Agency or AMSA. (Astiti dkk., 2019)

4. Conclusions

The dispute experienced by the two countries between Indonesia and Australia is based on environmental issues caused by the explosion of a well or oil refinery on the Montana rig which coincides with Australai's territorial area, because of this Indonesia demands compensation for damage to the marine environment that has been done by Australia by causing oil spills from the Montana rig. In this dispute itself is regulated in UNCLOS 1982 in the form of absolute liability against the Austrian government because as the owner of the sovereign territory on the rig and also reinforced by the granting of permits to PTTEP, this is in line with UNCLOS 1982 Article 139 which states that countries that cause harm to other countries as a result of their activities must be subject to compensation for the impacts caused. In the process of resolving the dispute, there are many dilemmas related to the medium to be pursued, so far the Indonesian side has sued the Australian side with a joint lawsuit or *clas action* which was later dismissed by the Australian side, and transferred to individuals in the oil company. So on that basis, the Australian government in this case withdrew from the responsibility of environmental pol-

lution and transferred the responsibility to the oil company. where it is very incompatible with the application of UNCLOS 1982, which should Australia be responsible for marine pollution that has been done by PTTEP. Surly in this study there are still many shortcomings, due to the limitations of the personal author in terms of conducting deeper research, especially in the eyes of international law. for this reason, it is appropriate to conduct a follow-up study that discusses the role of the international court on an environmental pollution problem carried out across borders between countries, especially in this case which has a similar topic in the journal that the author wrote this time, intended to extend the flow of knowledge, especially in the science of international law.

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