

Legal Responsibility Of Sea Transport Companies For Losses Due To Ship Waste Pollution

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Abstract

The ocean is a natural resource that plays a vital role in human life, particularly in the transportation, fisheries, and trade sectors. However, shipping and maritime transportation activities also have the potential to cause negative impacts in the form of marine environmental pollution due to the discharge of ship waste such as oil, ballast water, and chemicals. This pollution not only damages marine ecosystems but also threatens the sustainability of biological resources and the lives of coastal communities that depend on the ocean. This study aims to analyze the legal regulations governing the accountability of shipping companies for ship waste pollution in Indonesia. This research uses the normative legal research type with the approach statute approach. Data collection techniques are carried out using document study or library research methods (library research). The data analysis technique used is qualitative analysis. The research results show that normatively, Indonesia has a fairly strong legal framework to regulate the accountability of shipping companies for ship waste pollution, both through national regulations and ratification of international conventions such as UNCLOS 1982, MARPOL 73/78, and SOLAS. However, the implementation of legal accountability in the field remains weak. This is due to a lack of legal awareness among ship owners, weak enforcement of sanctions, and the ineffective implementation of the principles of Strict Liability and Polluter Pays. As a result, the pollution handling process is often slow and does not provide a deterrent effect for perpetrators. Ship waste pollution causes significant harm to marine ecosystems, causing the death of marine life, declining water quality, and economic losses for coastal communities. Therefore, strict law enforcement, increased supervision, and the application of the principle of strict liability are needed to ensure sustainable protection of the marine environment.

Keywords: Legal Liability, Shipping Companies, Losses, Ship Waste Pollution

1. INTRODUCTION

Environmental pollution due to oil industry business activities can occur starting from upstream business activities (upstream) to downstream business activities (downstream). Environmental damage occurs not only on land but also at sea. Marine pollution is defined as the presence of waste or waste products from living organisms entering the sea. The sea is a land rich in natural resources, including diverse biological resources, all of which can be utilized for the prosperity and well-being of society. As is known, 70% of the earth's surface is covered by water/oceans, and more than 90% of the biomass of life on planet Earth lives in the sea. (UNEP, 2004). Therefore, the ocean is an important part of human survival, one can imagine if the ocean is polluted/damaged so that some of the biomass is polluted. Meanwhile, 60% of the world's human population lives within 60 km of a coast that is highly dependent on marine products (UNEP, 2004). State components are responsible and obliged to preserve the condition and existence of the ocean according to its form, including preventing pollution.

Marine pollution can be caused by many things, including ship operations (Batti, 2000). Marine pollution is caused by oil spills (oil Games), remaining war ammunition, waste from processes on ships, industrial waste into the sea, oil drilling processes at sea, waste discharge from land transportation through rivers, marine transportation emissions and pesticide discharge from agriculture. However, the main source of marine pollution comes from oil spills both from processes on ships, offshore drilling and due to ship accidents. Marine pollution incidents that often occur, especially in Indonesia are caused by oil spills, discharge of hazardous materials from cleaning cargo tanks of ships transporting liquid chemicals, ship collisions with ships, ship grounding on coral reefs, and discharge of waste water from ship engine operations (Hartanto, 2008).

Oil spills at sea are a source of marine pollution that consistently attracts public attention, as the effects are quickly felt by coastal communities and significantly damage living creatures. Group of Expert on Scientific Aspects of Marine Pollution (GESAMP) recorded that around 6.44 million tons per year of hydrocarbon content enter the world's marine waters. (Clark, 2003). These sources include marine

transportation amounting to 4.63 million tons/year, offshore drilling installations amounting to 0.18 million tons/year and from other sources including industry and settlements amounting to 1.38 million tons/year (Sulistiyono, 2013).

Oil spills carried by ships owned by oil transportation companies are the absolute responsibility of the ship owner. Absolute Responsibility in Environmental Pollution Cases with the concept strict liability. This absolute liability differs from the general criminal liability system, which requires intent or negligence. In the absolute liability system, only the defendant's knowledge and actions are required. This means that if the defendant knew or was aware of the potential harm to another party in committing the act, this is sufficient to demand accountability. Therefore, no intent or negligence is required, but merely the act that resulted in the pollution (Russell & Locke, 1992).

Law enforcement in maritime transportation is regulated by Law Number 17 of 2008 concerning Shipping (hereinafter referred to as the UUP). In maintaining the sustainability of the marine environment, the Indonesian Government not only relies on the provisions contained in the UUP, but also has regulated technical provisions in the provisions of Government Regulation (PP) Number 21 of 2010 concerning Maritime Environmental Protection. In addition, it has also participated in ratifying international regulations, regarding the prevention of marine pollution (Marine Pollution (MARPOL) 1973/1978) through Presidential Decree Number 46 of 1986 (Bisri et al., 2018).

The absolute responsibility of ship-owning companies for environmental pollution due to oil spills at sea needs to receive serious attention regarding the right to sue (right to stand), evidence related to scientific verification to explain causal relationships, the application of the principle of compensation, the scope and extent of environmental issues to determine the amount of compensation, and environmental restoration criteria related to the formal truth system adopted in the civil compensation claim system.

According to Rosa Agustina, the requirements for compensation resulting from oil pollution by ships at sea can be sued, because an unlawful act is an act that violates the (subjective) rights of another person or (an act of not doing something) that is contrary to what according to unwritten law should be carried out by a person in his/her interactions with all members of society, bearing in mind the existence of justifiable reasons.(Agustina, 2003). If a plaintiff wishes to sue for an unlawful act, the plaintiff must fulfill the requirements for a claim for compensation, as stipulated in Article 1465 of the Civil Code. As stated in Article 1365 of the Civil Code, several elements can be drawn which are also requirements for a claim for compensation for an unlawful act (Agustina, 2003).

According to Kanatatmadja (1981), large amounts of liability due to oil pollution from ships at sea in large quantities can cause large losses for coastal states, both direct losses (direct damage) the consequences of which can be felt after the spill occurs, as well as long-term losses whose consequences will only be apparent after a certain period of time has passed. This loss is essentially an ecological loss. The development of jurisprudence in cases concerning compensation resulting from pollution shows a direction towards ecological ecology as a reasonable compensation. If damage occurs to a coastal state, the next step is to determine the extent of the loss suffered by the coastal state. This loss must be interpreted as the extent of the decline in the economic value of assets or parts thereof, both now and in the future.

Marine spills in Indonesian waters have resulted in significant losses to communities and the environment. However, they have not yielded the expected results, either in terms of economic compensation or environmental recovery. Some cases of marine spills in Indonesian waters include the following:

1. Balikpapan Bay (March 2018)

The oil spill in Balikpapan Bay occurred when the MV Ever Judger dropped anchor, dragging and breaking a Pertamina pipeline on March 31, 2018. As a result, five thousand liters of oil spilled and polluted the waters of Balikpapan Bay and sparked a fire that killed five fishermen. Residents who are members of the Oil Spill Concern Community Coalition (Kompak) have filed a citizen lawsuit with the Balikpapan District Court with the defendants being the Governor of East Kalimantan, the Regent of Penajam Paser Utara (PPU), the Mayor of Balikpapan, the Minister of Environment and Forestry, the Minister of Transportation, and the Minister of Maritime Affairs and Fisheries. The lawsuit was then granted as a plaintiff's petition on August 18, 2020. However, in September 2020, the judge rejected the petition for the creation of regional regulations related to environmental information systems because the Regent of PPU had made initial efforts in the form of submitting a draft Regent Regulation (Perbup) on Disaster Management and a Perbup on Early Warning for Oil Spill Management in Balikpapan Bay.

2. Karawang (July 2019)

In July 2019, the YYA-1 well belonging to PHE ONWJ experienced a leak and the oil spill polluted the waters and along the coast in Karawang. The spill caused local residents, the majority of whom worked as fishermen, to lose their livelihoods because the number of catches decreased drastically after the incident occurred. However, many of the affected fishermen were not registered and therefore did not receive compensation from Pertamina. In addition to compensation, residents of Karawang waters also asked Pertamina to collaborate with the Ministry of Environment and Forestry (KLHK) to immediately carry out environmental restoration because a year later, the remains of the oil spill are still there and the impact is still being felt.

3. Thousand Islands (August 2020)

The Food Security, Agriculture, and Maritime Affairs Agency (KPKP) of the Seribu Islands Regency confirmed an oil spill in the Pari Island area to the waters of Tidung Island, Seribu Islands, in August 2020. In addition to polluting the 2 km coastline of Pari Island, the oil spill also resulted in the death of a number of marine biota and damage to residents' seaweed cultivation. According to Pertamina Hulu Energi (PHE), there are two possible causes of the oil spill, namely leaks from PHE Offshore Southeast Sumatra (OSSES) or Offshore North West Java (ONWJ) drilling wells and negligence by oil carriers/rogue ships that carry out tank washing in the middle of the sea.

With the enactment of Law Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH), this absolute responsibility is formulated more concisely and "clearly" in Article 88 of the UUPPLH than in Article 35 of the UUPPLH. The meaning of the above Article indicates that "Any person whose actions, business, and/or activities use B3, produce and/or manage B3 waste, and/or which pose a serious threat to the environment is absolutely responsible for the losses that occur without the need to prove the element of fault." The explanation of the article states that what is meant by absolute responsibility or strict liability is that the element of fault does not need to be proven by the plaintiff as a basis for payment of compensation. It is also stated that the provisions of this paragraph are *lex specialis* in lawsuits regarding unlawful acts in general. Although the provisions and explanation of absolute responsibility in Article 35 of the UUPPLH are clearer, it is still difficult to apply. First, theoretically, the term "absolute" in responsibility does not have a special meaning, because basically, everyone is absolutely responsible if proven guilty. Second, its application in resolving environmental disputes through the courts has encountered obstacles, because there are no clear "rules of the game" regarding this matter.

Absolute responsibility for community environmental disputes, there is a maximum limit of responsibility (ceiling), but to date, such a limit has not been established. The formulation of absolute liability can be interpreted differently by experts and law enforcement, and in environmental disputes, it does not necessarily help victims. The failure to realize this absolute liability results in the weak position of victims in environmental disputes. Similarly, this absolute liability has not been able to achieve preventive efforts for major environmental cases. Based on this background, the author is interested in conducting research entitled "Legal Liability of Maritime Transportation Companies for Losses Due to Ship Waste Pollution".

2. METHOD

This research uses a normative legal research type, namely legal research that places law as a normative system. The type of research used is normative juridical, namely a technique or procedure of review guided by several legal principles, legal rules, and legal principles related to the substance of general and specific laws and regulations carried out in a series of determining the absolute responsibility of shipowners for environmental pollution due to oil spills at sea. The legislative approach (statute approach) is carried out by reviewing all laws and regulations related to the legal issue being addressed (Marzuki, 2017). This research uses primary and secondary legal materials. The data collection technique is carried out using the document study method or library research (library research), namely collecting materials by conducting library research on a number of literature, documents, expert opinions, and articles that can clarify legal concepts. The data analysis used is primary legal materials first using analytical tools available in the literature review. This is then continued with the use of secondary legal materials, namely legal materials originating from printed literature such as books, research journals, and internet sites related to the issues discussed.

3. RESULT AND DISCUSSION

3.1 Liability of Shipping Companies

Legal regulations regarding the liability of shipping companies for losses resulting from ship waste pollution are an integral part of the intersecting environmental and maritime legal systems. In the context of Indonesia, an archipelagic nation with a maritime territory of approximately 5.8 million km² and busy international shipping lanes, these regulations are highly urgent in ensuring the protection of marine ecosystems while providing legal certainty for shipping companies. The prevailing legal system positions shipping companies as legal entities directly responsible for all impacts arising from ship operations, including the potential for pollution from oil spills and other hazardous waste.

At the national level, the regulation of legal responsibility is regulated through several main instruments, namely Law Number 32 of 2009 concerning Environmental Protection and Management (UU PPLH), Law Number 17 of 2008 concerning Shipping, and Government Regulation Number 19 of 1999 concerning Control of Marine Pollution and/or Destruction. Article 88 of the PPLH Law states that any person whose business activities pose a serious threat to the environment is absolutely responsible for the losses incurred without the need to prove the element of fault (strict liability). This provision is a fundamental basis that imposes direct legal responsibility on business actors, including shipping companies that cause marine pollution due to negligence in operating ships or leaking oil cargo at sea.

Meanwhile, the Shipping Law emphasizes the principle of maritime transport companies' responsibility for pollution originating from their vessels. Article 68 states that ship owners or operators are responsible for marine pollution caused by the vessels they operate and are required to insure such liability. This demonstrates the integration of legal liability and preventative financial obligations. The obligation to have liability insurance is reinforced by Government Regulation Number 51 of 2002 concerning Shipping, which stipulates that every vessel carrying a certain volume of oil must have a Marine Pollution Compensation Guarantee Fund Certificate issued by the ship's flag state. This certificate serves as a guarantee that in the event of a pollution incident, compensation funds can be immediately disbursed to address damage to the marine environment.

In the context of international law, Indonesia has ratified various important conventions that strengthen national regulations regarding the legal responsibilities of shipping companies. The 1982 United Nations Convention on the Law of the Sea (UNCLOS) and MARPOL 73/78 (International Convention for the Prevention of Pollution from Ships) are the main pillars governing the prevention and control of marine pollution caused by shipping activities. MARPOL 73/78 explicitly regulates the types of waste that may not be discharged into the sea, such as oil, hazardous chemicals, solid waste, and wastewater sewage. Ratification of the convention signifies Indonesia's commitment to aligning national regulations with international standards regarding marine environmental protection (Varabih & Fitri, 2024).

In addition, the International Convention on Civil Liability for Oil Pollution Damage (CLC) 1969 which was ratified through Presidential Decree Number 18 of 1978 became an important milestone in the implementation of the principle strict liability in the maritime sector. This convention emphasizes that ship owners are absolutely responsible for any damage caused by oil spills without regard to fault (Kusumaatmadja, 2006). However, the convention also provides limits on liability by considering the tonnage capacity of the ship and introduces a mandatory insurance mechanism (compulsory insurance). This encourages the formation of a system of responsibility that not only requires legal aspects but also economic aspects through financial protection mechanisms from international insurance institutions such as P&I Club (Protection and Indemnity Insurance).

The liability system stipulated in the international convention was subsequently adopted into Indonesian national law, with the aim of providing balanced legal protection for the interests of coastal states, shipping companies, and communities affected by pollution polluter pays. The polluter pays principle, as stipulated in Article 2, letter j, of the Environmental Management and Management Law, strengthens corporate responsibility for restoring damaged environments. Thus, shipping companies are not only obligated to pay compensation for material losses but also to undertake comprehensive environmental restoration measures (Rachma & Triwibowo, 2023).

In addition to substantive legal provisions, technical regulations related to pollution prevention are also regulated in various derivative policies, such as Minister of Transportation Regulation No. 43 of 2008 concerning Ship Operation Safety Management. This regulation requires shipping companies to implement a Safety Management System in accordance with the International Safety Management (ISM)

Code. This system emphasizes the importance of crew competence, safety facility readiness, and adherence to standard operating procedures to prevent pollution incidents.

Thus, it is understandable that the legal regulation of maritime liability in Indonesia is built on three layers of legal systems: national, international, and technical-operational. The national layer provides the basis for absolute liability and compensation obligations, the international layer reinforces commitment to global standards, and the technical layer ensures pollution prevention at the operational level. However, the main challenge remains the effectiveness of law enforcement and inter-agency coordination in implementing these regulations. An integrated oversight mechanism is needed between the Ministry of Transportation, the Ministry of Environment, and port authorities to ensure the consistent application of this principle of legal liability and provide a deterrent effect for business actors who neglect maritime environmental aspects.

3.2 Implementation of Maritime Transportation Companies' Responsibility for Losses Due to Ship Waste Pollution

The implementation of liability for losses caused by ship pollution is an implementation of legal principles stipulated in various national regulations and international conventions (Margareta & Boediningsih, 2023). In practice, this legal responsibility encompasses not only the obligation to pay compensation to injured parties but also concrete steps to prevent, mitigate, and restore marine environmental damage caused by oil spills or ship waste. Therefore, the implementation of legal responsibility is multidimensional, involving integrated legal, administrative, technical, and financial aspects.

Legally, the implementation of the responsibility of shipping companies for marine pollution in Indonesia is based on Article 68 of Law Number 17 of 2008 concerning Shipping, which states that Ship owners or operators are responsible for pollution originating from their ships and are required to insure their liability. This provision provides a strong legal basis for the state to hold companies whose vessels cause marine pollution civilly liable. In the event of an oil spill, the government, through port authorities and the Ministry of Transportation, can immediately take remedial measures and subsequently file a claim for compensation against the ship owner based on the results of the investigation and the calculation of environmental losses.

The implementation of this responsibility is also regulated in Presidential Regulation No. 109 of 2006 concerning Emergency Response to Oil Spills at Sea, which establishes a coordination mechanism between various relevant agencies in handling pollution. The regulation explains the division of responsibilities based on the severity of the pollution, as follows:

- Tier 1 is handled by the facility operator or shipping company directly,
- Tier 2 is handled by local governments, and
- Tier 3 is handled by the central government through the National Command and Control Center (PUSKODALNAS).

Through this mechanism, shipping companies are required to have internal emergency response procedures, provide pollution control equipment such as a soil boom, skimmer, and dispersant, and coordinate with port authorities to minimize environmental impacts. Failure by a company to fulfill these obligations could provide law enforcement with the right to impose administrative or criminal sanctions on the perpetrators.

Civil liability is enforced through compensation and environmental restoration mechanisms. Under Articles 87 and 88 of the Environmental Management and Management Law, polluters are obligated to take two forms of action:

- 1) Paying compensation to the injured parties, including the community, government, and legal entities affected; and
- 2) Taking certain actions to restore environmental functions.

The compensation referred to is not limited to direct economic losses, such as losses to fishermen or damage to port infrastructure, but also includes ecological losses that require high costs for restoring marine ecosystems. This mechanism is generally based on calculations by independent surveyor agreed upon by the victim and the company, and if no agreement is reached, it can be submitted through a litigation process in the district court or the Maritime Court.

In international practice, the implementation of liability for compensation often involves insurance institutions such as P&I Clubs (Protection and Indemnity Insurance). These institutions provide financial guarantees for member shipping companies to cover the costs of compensation for oil spills. Based on the provisions of the 1969 Civil Liability Convention (CLC), which has been ratified by Indonesia, every ship

carrying oil in excess of 2,000 tons is required to have a marine pollution liability insurance policy. In the event of an accident, the insurance company is responsible for paying compensation to the coastal state or the injured victims, as long as the claim can be legally proven. In this context, shipping companies are required to present a Certificate of Financial Responsibility issued by the ship's flag state as proof of compliance with international obligations.

The implementation of maritime transport companies' responsibilities also involves a limitation of liability mechanism regulated in the CLC 1969. This principle provides a maximum limit on the amount of compensation that can be claimed based on the tonnage of the vessel, with the aim of preventing business actors from going bankrupt due to the large compensation burden. However, if there is evidence of serious error or gross negligence (gross negligence), then the limit can be set aside and the company is required to bear all losses without limit (unlimited liability). This mechanism aims to maintain a balance between legal certainty for business actors and protection for the state and communities affected by pollution.

In the context of implementation in Indonesia, the process of enforcing shipping company liability is carried out through administrative stages and environmental procedural law. The initial stage begins when an oil or ship waste spill occurs, where the harbormaster (Port Administrator) is required to report and order safety measures and the collection of seawater samples for laboratory testing. Based on these test results, the type of oil and its level of pollution can be determined. These results are then used by the government as the basis for filing a compensation claim. If the claim is not approved, the dispute can be submitted to the local court. Before entering the litigation stage, the Maritime Court can conduct an internal audit of the ship's captain, officers, and operator to determine whether there was negligence in shipping procedures and pollution prevention.

Marine pollution cases in Indonesia demonstrate that accountability still faces significant challenges, particularly related to inter-agency coordination and limited implementation legal instruments. For example, in the case of tanker accidents in Balikpapan waters and the Malacca Strait, compensation claims were often hampered by differing legal interpretations between national authorities and foreign ship operators. Furthermore, the lack of detailed implementing regulations regarding claims procedures and the calculation of ecological losses has resulted in slow and suboptimal compensation processes.

To strengthen the effectiveness of the implementation of this responsibility, several steps have been recommended, including:

1. Enhancement of the ship monitoring and inspection system by port authorities to ensure that all ships meet pollution prevention standards as stipulated in MARPOL 73/78 and national regulations.
2. Increasing the capacity of PUSKODALNAS and law enforcement officers in handling marine pollution cases through technical training and collaboration with international institutions.
3. Implementation of the principles of transparency and accountability in the compensation claim mechanism, by involving coastal communities and non-governmental organizations as independent supervisors.
4. Strengthening the national environmental insurance system to ensure the availability of rapid compensation funds without complete dependence on foreign insurance institutions.

In addition to law enforcement and compensation, the accountability of shipping companies is also closely related to marine environmental restoration. The Environmental Management and Management Law mandates that, in addition to paying compensation, polluters must implement environmental restoration measures. These measures can include cleaning polluted marine areas, rehabilitating mangrove ecosystems, and long-term monitoring of seawater quality. In practice, environmental restoration is often carried out through collaboration between the government, private institutions, and universities to ensure that restoration is based on scientific studies and sustainability principles (Rinto et al., 2023).

Conceptually, the application of the principle strict liability and the polluter pays principle (polluter pays principle) is an important instrument for upholding ecological and social justice. This principle asserts that any business actor who creates environmental risks must bear all consequences without the need for proof of fault. Therefore, shipping companies have a moral and legal responsibility to ensure that all their activities do not harm the marine environment. In the context of national law, this principle serves not only as a sanction instrument but also as a preventative measure to encourage business actors to be more cautious in their operations.

Considering the overall implementation framework, it can be concluded that the Indonesian maritime transport company accountability system has a strong legal foundation, both in terms of national regulations and harmonization with international standards. However, its effectiveness still depends heavily on consistent law enforcement, the capacity of supervisory institutions, and the government's political will to take firm action against any violations. Strengthening inter-agency synergy, improving claims mechanisms, and imposing strict sanctions on polluters are key to ensuring that the principle of legal responsibility for shipping companies is not merely a written norm but also a concrete implementation in maintaining the sustainability of Indonesia's marine environment.

4. CONCLUSION

Legal arrangements regarding the liability of shipping companies for losses due to ship pollution from waste in Indonesia have been regulated through various national and international laws and regulations. These regulations include Law No. 32 of 2009 concerning Environmental Protection and Management, the Shipping Law, Government Regulation No. 19 of 1999, Government Regulation No. 21 of 2010, and several international conventions such as UNCLOS 1982, MARPOL 73/78, and SOLAS, which demonstrate Indonesia's commitment to protecting the marine environment from pollution. However, in practice, the responsibility of shipping companies for ship pollution from waste has not been optimally implemented. This is due to the lack of compliance of ship owners with technical and administrative provisions, weak law enforcement, and the lack of strict implementation of the principles of strict liability and polluter pays. The impact of ship pollution from waste is very detrimental to the marine ecosystem, both in the short and long term, because it causes damage to marine biota and decreases environmental quality. Therefore, it is necessary to increase awareness, implement strict laws, and take swift and integrated countermeasures so that marine pollution caused by ship waste can be prevented and handled effectively for the sustainability of Indonesia's maritime environment.

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