

Merger Of Cases In Compensation Of Sea Oil Spills Compensation As An Effort To Optimize Blue Economy Application

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ABSTRACT: This study was conducted first, to examine the process of settlement of oil spill contamination at sea and the constraints faced in obtaining compensation. Both of these studies also examine the compilation of cases of compensation for oil spill contamination at sea in optimizing the implementation of blue economy. This research uses normative juridical method which is done by deeply examining the rules of international and national law related to this research object. This research also comes with data collection from both the literature and field research conducted through interviewing and distributing questionnaires. In addition to searching data via the internet. The results show that for the compensation, the plaintiffs are based primarily on the 1992 International Convention on Civil Liability (CLC) which has been ratified by Indonesia through Presidential Decree No. 53/1999 and Fund Convention 1992. Nevertheless there are constraints in the acquisition of compensation that can optimize the implementation of blue economy. These constraints are also sourced from CLC which limits losses that can be paid for compensation.

Key words: *Compensation, Oil Contamination, Merger Case, Blue Economy.*

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I. INRODUCTION

Blue Economy is a concept that offers economic activity that promotes environmental sustainability, drives a low carbon economy by abandoning short-term economic practices that exploit natural resources and environmental services regardless of the impact it has on environment.¹

Blue Economy focuses on the development of environmentally friendly marine and fishery sectors. In order to apply the Blue Economy one of the things that need attention is the problem of pollution caused by the oil spill. The impact of the oil spill can cause enormous damage to the marine environment. Damage as a result of the oil spill other than a direct loss to the economic and social community is also a long-term loss, especially to the marine environment, which can only be known after so long the occurrence of oil spills.² It is therefore imperative that immediate action be taken to ensure that oil can be quickly cleaned, localized and destroyed so that greater damage can be prevented. Communities in the vicinity of polluted beaches need to receive compensation as soon as possible, as well as damage to the marine ecosystem should be recovered immediately and restore the environment to a state before the spill. To be able to do the countermeasures, it takes a lot of money for that immediate settlement of compensation from the polluters with the appropriate amount or quantity is very important.

The Civil Liability Convention (CLC) 1969/1992 has established an accountability system based on the strict liability principle, in which the perpetrators of pollution in this case the shipowner are responsible for the absolute occurrence of the oil spill without having to be proved by the element of error first. Strict liability

¹The Blue Economy: Design Theory, <http://en.wikipedia.org/w/index.php?title=The_Blue_Economy:_Design_Theory&oldid=50108> [07/02/2017]. Eddy Cahyono Sugiarto, Ekonomi Biru dan Pembangunan Berkelanjutan, <<http://www.setkab.go.id/artikel-6784-.html>>, [15/12/2016].

² Kiran R., Banu Krishna, 2010, *Liability and Compensation for Oil Pollution Damage: an Examination of IMO Convention*, <<http://www.nujslawreview.org/articles/>> [diakses pada 17/06/ 2017]

principle is equipped with the obligation of the ship owner to insure his responsibility so that if an oil spill caused by his ship, there is available funds for the pollution control from the Insurance.³

Indonesia as an archipelagic country and geographically very strategic as the ship's crossing line and therefore very vulnerable to the danger of oil spills, especially from ships. Of the several oil spill events that have occurred have caused very severe damage.⁴ While there are obstacles to obtaining compensation for the mitigation that is done both to restore the rights of people who suffer losses as well as restore damaged environments.⁵

If the handling of such oil spills continues, Blue Economy, which is a development concept for coastal countries, especially archipelagic countries like Indonesia will not be realized and will ultimately threaten the sustainability of the marine environment and all human interests against it. For that there should be efforts made primarily by the government to overcome this.

Research Methods

In answering the problem identification, the juridical normative and empirical juridical methods are used by examining in-depth the rules of international and national law related to the object of this study. Research is also conducted on a number of cases of oil spills occurring in Indonesia and several other countries as a result of ship accidents. This research is also equipped with data collection from both literature and field research conducted through interviews.

II. DISCUSSION

Completion of Compensation Process for Oil Spill Contamination based on Civil Liability Convention (CLC) 1969/1992. CLC is a special convention governing the liability for losses from pollution caused by oil spills due to ship accidents. Oil, is any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil. Indonesia was a CLC participant in 1969/1992 by ratifying by Presidential Decree No. 18 of 1978. Indonesia just declared itself to be bound by the 1992 Protocol on amendment of CLC 1969 on February 16, 1999 through ratification with Presidential Decree No. 19/2002. 52 of 1999.

The Oil Spill Accountability system is based CLC 1969/1992 establishes a strict liability principle system, in which the shipowner is assumed absolute responsibility without having to be proved to be an element of error in advance for losses incurred by the oil spill from his vessel, as provided for in Article III paragraph (1) of CLC. Article III does not explicitly mention the use of strict liability terms. However, from the exception of liability (defenses) as set forth in paragraph (2), then this Convention may be inferred under the principle of strict liability.

The application of strict liability principle aims not only to summarize or shorten the process of compensation without a protracted settlement, avoiding the perpetrators of pollution can not be held accountable due to the unprovable mistake of the perpetrator in court. In addition, by applying the strict liability principle, it is expected that the condition of the affected communities can be immediately rehabilitated and the immediate condition of the environment can be improved so that it can be re-functioned as before.⁶

Implementation of Responsibility through P & I Insurance is to support the immediate payment of claims for strict liability principle compensation with insurance obligations for vessels containing more than 2000 tonnes of oil so that funds are available in the event of a ship accident spilling oil. This insurance obligation is evidenced by the existence of a certificate which must be carried by the ship in each of its voyages issued under an insurance policy by the flag state of the vessel which is a participating country of the Convention.⁷

The intended insurance will usually be provided by the P & I Club (Protection and Indemnity Insurance) and is usually a third party that covers the risk of oil spill contamination with the amount and limit as determined by the convention. Thus based on the principle of strict liability which is then followed by the obligation of insurance and the obligation to carry a certificate for this ship the plaintiff can immediately get compensation for any losses suffered in case of damage caused by pollution from the oil spill.

³ See Pasal VII CLC.

⁴ Look at oil spill cases, among others, by Tanker King Fisher in Cilacap in 2000, MT Natuna Sea Tanker in Batam Islands Memorial Rock in 2000, MT case. Lucky Lady in Cilacap 2006.

⁵ *Ibid.*

⁶ Komar Kantaatmadja, *Bunga Rampai Hukum Lingkungan Laut Internasional*, Alumni, Bandung, 1982, hlm. 52.

⁷ Lihat Pasal VII ayat 2 CLC.

The Compensation Proceedings Under the Fund Convention 1992 aims to compensate those suffering damage from oil spill pollution in a State Party to the Convention that is not fully compensated under the CLC, given that the total number of shipowner liability is limited to a certain amount according to the cargo of the vessel.

The Fund Convention provides compensation up to a maximum of 135 million SDR (equivalent to US \$ 192 million), which after November 1, 2003 increases to a maximum of 203 million SDR (equivalent to US \$ 289,000,000), this amount includes compensation paid by the shipowner / insurance based on CLC.⁸

IOPC Fund 1992 Financing is financed by the contribution imposed on every person who has received in a calendar year over 150,000 tons of crude oil and heavy fuel oil in one of the Contracting States. Contributions are paid directly by each contributor to the IOPC Funds Secretariat.⁹

CLC and Fund Convention arrangements in the form of a two tier system, through the amount provided for the payment of this compensation, can ensure the restoration of the rights of affected people, as well as the restoration of the environment to prevent further damage. Indonesia is no longer a participant of the Fund Convention since withdrawing as a party through Presidential Decree no. 41 of 1998. Therefore, Indonesia is only entitled to the amount of compensation prepared by CLC in which the amount provided is very small compared to the CLC plus the Fund Convention. If in the future there is a ship accident that spills oil in large numbers then Indonesia can not provide adequate protection for people who suffer losses or to the environment. On the other hand, Indonesia is very vulnerable to oil spill contamination due to Indonesia's geographical position in cross position

The Compensation Claim Settlement Process may be filed by victims who have suffered / suffered damages from pollution occurring in a country that is party to the CLC and the Fund Convention. The victims are any person or legal entity that has been damaged due to pollution, including the state authorities conducting cleanup operations or preventive and environmental restoration measures, private companies and individuals suffering personal injury, property damage, or loss of income or profits resulting from the damage caused by pollution can make a claim for damages suffered.¹⁰

According to Article IX paragraph (1) of CLC, the victim of pollution can only file his / her claim to a national court where the damage caused by the pollution occurs. From this article shows that CLC encourages the settlement of claims through the courts. In practice, however, the new prosecutor will file or bring his or her claim to court if the claimant objected to the Insurance (P & I) assessment of the amount / amount of the compensation. If the claimant chooses to settle his claim through an out-of-court line, the plaintiff filed his claim directly to the shipowner or P & I insurance which would normally be the protector and guarantor of third party liability including liability for damage from pollution.¹¹

Usually in every ship accident, vessel owner insurance, P & I will work with IOPC Fund to handle claims. In the case of a major spill which inflicts damage from highly polluting pollution, to facilitate the claimant's claim and the claims handling itself, P & I insurance together with the IOPC Fund,¹² and with the assistance of the Shipowners' Association, in this case incorporated in the International Tanker Owners Pollution Federation (ITOPF), established a claim-handling office in a country where the oil spill due to a ship accident occurred in collaboration with the P & I Correspondent Firms in the country.

Settlement Process Compensation Oil Pollution on the Sea Based on Cases, in accordance with the principle of strict liability which is then followed by insurance liability for ship owners, is very instrumental in countering oil spills in the sea compensation. The liability of shipowners exercised by P & I in this case is not limited to countermeasures (after the oil spill) but also prevents the occurrence of oil spills. The mitigation itself consists of two forms: first, preventive measures, ie efforts to prevent and reduce the extent of pollution damage and second, countermeasures, ie actions taken to compensate for community losses, cleanup operations, and environmental restoration efforts .

⁸ Lihat Mans Jacobsson, "The International Compensation Regime and The Activities of The International Oil Pollution Compensation Funds, International Seminar on Tanker Safety, Pollution Prevention and Spill Preparedness, Shanghai, People's Republic of China", ITOPF/INTERTANKO/ OCIMF, 8 December 2005, hlm.5, <www.itopf.com/information/services/intertanco/OCIMF/pdfSim> [diakses pada 23/06/2017].

⁹ R. Banu Krishna Kiran, *loc. cit.*

¹⁰ Lihat Pasal I ayat (2) CLC.

¹¹ PT Sillo Bahari tidak lagi menjadi *Correspondent Firms* dari P&I *The Britannia Steam Ship Insurance Assosiation Limited* di Indonesia sejak tahun 2012.

¹² Keterlibatan *Fund* di sini hanya jika negara dimana tumpahan minyak karena kecelakaan kapal itu terjadi adalah peserta dari *Fund Convention*.

Prevention of P and I insurance is twofold: First The ship owner as a polluter who has paid compensation to the pollution victim will then be more careful in operating his vessel, otherwise it will improve and complement the ship's construction in order to improve the safety of the voyage and prevent the occurrence of pollution.

Second, the owner of the vessel to be able to assume its responsibility to the insurance must first prepare the completeness of the required certificates for the maritime aboard ship. Without any documents concerning the voyage of the vessel, the insurer will not accept to insure the shipowner's responsibility for marine pollution.

The role of P & I insurance in oil spill response as described above for the next has an important role in the implementation of blue economy. As it is known that the blue economy offers economic activity that promotes environmental sustainability, drives a low carbon economy by abandoning the economic practice of prioritizing short-term gains that exploit natural resources and environmental services irrespective of the impact it has on the environment. However, in its application based on several cases of oil spill that happened, there are some obstacles in obtaining compensation that cause also not optimal implementation of blue economy.¹³

CLC establishes liability for shipowners for pollution damage caused by oil discharged from ships as a result of incidents within the territory of participating countries (including territorial sea). CLC provides compensation only for losses that fall within (define) the definition of 'pollution damage'.¹⁴ Thus the requirement for the receipt of a claim filed by the claimant (plaintiff) that must meet the definition of pollution damage, as contained in Article I paragraph (6) CLC 1992, namely:

“Pollution damage means:

- (a) loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken;
- (b) The costs of preventive measures and further loss or damage caused by preventive measures.”

The definition is actually more advanced when compared to that specified by CLC 1969 because different from CLC 1992, CLC 1969 has not explicitly set about environmental damage as part of pollution damage. However this definition is less clear as there is no further explanation of the definition resulting in a different interpretation by either the plaintiff, the court or the shipowner / Insurance P & I and IOPC Fund.

Under the CLC and the Fund Convention, the IOPC Fund establishes a Claims Manual which should be the basis and guidance for P & I Insurance and IOPC Fund in the process of settling indemnity claims which of course serve as the guidance for the claimant to make his claim acceptable. Claims Manual determines that pure environmental losses and pure economic losses in second-tier business are excluded from the notion of pollution damage so that it can not be claimed for damages. It also limits the loss of reasonable clearance measures so that even if such measures are taken, they are not paid any compensation. Similarly to the economic loss of society, Claims Manual also determines a very heavy burden on proofs imposed on pollution victims to show a causal relationship between oil pollution and the alleged (claimed) losses.¹⁵

Another obstacle is not inseparable from the weaknesses of the claimant himself when filing a claim. In this case the claimer filed a claim without being equipped with accurate supporting data. There is even a speculative claimant in filing a claim.

From the settlement of several cases occurring in Indonesia and in some countries indicates that this problem is mainly a constraint in obtaining compensation from the insurer both the losses suffered by the community and for the interests of cleaning and restoring the environment.

Compilation of Case for Indemnification on Oil Spill Pollution in Optimizing Blue Economy Implementation In this right of existence of CLC which is then followed up by IOPC Fund into Claims Manual, raises concerns expressed by some countries that CLC provisions are among others related to environmental

¹³Based on the completion of several cases in Indonesia namely King Fisher Tanker in Cilacap in 2000, MT Natuna Sea Tanker in Batu Berhanti Batam Island in 2000, MT case. Lucky Lady in Cilacap 2006.

¹⁴ Philippe Sands and Jacqueline Peel, *Principles of International Environmental Law*, 2012, <books.google.com> [diakses pada 09/07/2017].

¹⁵ International Oil Pollution Compensation (IOPC) Fund 1992, “Claims Manual December 2008 <<http://www.iopcfund.org/npdf/claimans.en.pdf>>, [diakses pada 17/05/2017].

restoration, has been interpreted too narrowly by the IOPC Fund.¹⁶ Thus efforts made to at least reduce the rate of environmental damage, especially the marine environment through the application of blue economy becomes obstructed. As it is known that the concept of blue economy is the concept of development that leads to pro-poor development policies, pro jobs, pro-growth and pro-environment. Therefore, efforts should be made to make compensation claims made for the benefit of the community and the protection of the marine environment to be paid promptly and in sufficient quantities.

As a participating country of CLC, Indonesia can not rule out the international law it has ratified. The responsibility for compensation for an oil spill based on the CLC is a civil matter based on the principle of absolute responsibility, but based on the constraints faced by the claimant, it is necessary to have a legal breakthrough with the extension to the system of accountability held. In this case the expansion is done by applying the system of responsibility based on mistake that is by bringing the problem of compensation in criminal process. Thus, in addition to absolute liability, a fault liability system is also applied.

For that purpose, there is also a legal extension to the party / person who can be held responsible. As has been stated previously that the party responsible for pollution due to ship accident is the owner of the ship. In order for the extension of the system of accountability can be implemented then also made legal breakthrough against the person or party who claimed responsibility. Thus the party prosecuted through criminal proceedings is not the owner of the vessel (as required by the CLC), but the party associated with the operation of the ship is guilty of the occurrence of a ship accident, even including a coastal state official responsible for shipping signs. Claims filed through this criminal process are limited to losses based on the CLC / Claims Manual can not be indemnified whereas for other claims are still settled on the basis of civil proceedings. The process of settlement of compensation by conducting legal breakthroughs on the system of accountability and against persons or parties that can be held responsible is conducted by basing the demands on national law. When reviewing Law Number 32 Year 2009 on Environmental Protection and Management, this law has determined the environmental crime, among others, in Articles 98 and 99. Nevertheless, UUPPLH does not regulate civil liability (to compensate) persons or parties found guilty of causing harm to other parties.

Similarly, Law No. 17 on Shipping, has already regulated the criminal provisions, but has not provided for the civil liability of the person or parties found guilty

The process is to combine civil cases with criminal proceedings. The guilty party who for his mistake caused the ship accident, not only to be criminally liable, for example, to pay a fine but also to be civil liable to provide compensation. The merging process is performed by combining compensation claims to criminal cases simultaneously. Merger of compensation claim to criminal case is not regulated in UUPPLH or Law Number 17 Year 2008 regarding Sailing. However, this incorporation is possible under Article 98 of the Criminal Procedure Code.¹⁷

This merger is done to ensnare or hold the perpetrators responsible for pollution. The offender is a person other than the owner of the vessel that has caused an accident. Thus, if any party is found guilty in a criminal manner and the consequences of his actions cause harm, especially for the public interest, including the environment, reasonable if the offender bears the consequences of his actions. The imposition of such punishment, also a deterrent effect for the perpetrators to be more careful in acting for the future.

For this purpose, in this case it is very important that the examination results of the Ship Court concerning the cause of the accident. This examination is primarily related to the provisions of the sea shipping requirements stipulated by the provisions of international law that have been accommodated by Law No. 17 of 2008 on Shipping. The merger of a compensation claim in a criminal case shall be made if the requirement of an act committed by a defendant in which the act is clearly a criminal act is committed.

Then it must also be fulfilled that the act resulted in losses that have a causal relationship with the actions of the defendant. As the last requirement of the merger is a request from the victim. Therefore, the criminal charges against the defendant must be immediately followed by a claim of compensation from the losing party. According to Article 98 of the Criminal Procedure Code, the claim of compensation shall be filed no later than before the public prosecutor shall file a criminal suit.

As has been pointed out in the preceding section that the actual claims of compensation under Article 98 of the Criminal Procedure Code are civil but provided through criminal proceedings. The merger of

¹⁶ Michael Mason, *Transnational Compensation for Oil Pollution Damage: Examining Changing Spatialities of Environmental Liability*, Department of Geography and Environment, London, *loc. cit.*

¹⁷ Article 98 of the Criminal Procedure Code states that if an act on which an indictment is charged in a criminal case in a court of law that causes harm to another person, the presiding judge at the request of the person may decide to combine the case of indemnification to the criminal case.

compensation claims to this criminal case aims to provide protection for victims of criminal acts, to the victim to be given easy ways to get compensation that is with the merger of the case. With this merger can be done the efficiency of funds (operational) and time efficiency so that the process can run quickly.

Thus the criminal prosecution of the guilty party caused a ship accident and caused harm to the community and the environment, ensuring adequate compensation, which also ensured the optimization of the implementation of blue economy.

The legal breakthrough by extending the system of accountability in the process of oil spills and persons whose liabilities are liable is based on the polluter pays principle, so that every person or party should be held liable for any harm resulting from the social and economic losses of society and environmental damage. Patricia W. Birnie and Alan E. Boyle, argue that the polluter pays principles are based on the principle of economic policy to allocate costs for contamination due to pollution. This principle is not a legal principle but has certain implications for the development of international environmental law.

By criminal procedure the person who is excluded from the liability becomes responsible for paying the indemnity. Such liability is granted for non-compensable losses under CLC such as pure second-level economic losses and pure environmental losses. It should be emphasized, however, that criminal liability for oil spill perpetrators is not intended to impose prison sentences, but with the imposition of a fine. Sea transportation, especially the transportation of oil, is not prohibited activities, on the contrary, it is very supportive of the way the wheels of the economy. It is important to hasten the process of settling the compensation, so that the role can be run again.

III. CONCLUSION

The function of preventing the occurrence of oil spills as regulated by CLC, The process of settlement of oil spill contamination at sea based on the principle of absolute responsibility in addition to functioning for the prevention as well as for the prevention of oil spill contamination. However, in its application, there are obstacles in obtaining compensation both for the benefit of society and the environment. This is an obstacle to optimizing the implementation of blue economy.

The merger of compensation for oil spill contamination in the sea has a decisive role in optimizing the implementation of blue economy. This merger is done by legal breakthrough by developing a system of liability for compensation and the person / party that can be held responsible.

Suggestion

States Parties incorporated in the IMO and CLC participants 1992 and/ or the 1992 Convention, in order to make amendments to CLC 1992 in particular the provisions limiting the types of damages which may be claimed for damages. Countries which are members of the IOPC Fund in order to schedule changes to the Claims Manual's claim that interpret CLC 1992 very narrowly, leading to the rejection of the claim submitted. The claimant shall seek to obtain compensation through the compilation process of the indemnification case, especially for losses that can not be compensated under the CLC / Claims Manual.

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