



Law enforcement against marine environmental pollution as a result of oil and gas exploitation in the Southeast Maluku Sea

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Abstract

Indonesia's marine environment has a very strategic role, both in exploitation and exploration activities. However, the existence of Indonesia's marine environment, especially in the Southeast Maluku region, has experienced marine pollution due to pollution in the marine area due to hydrocarbon exploration activities in the masala block of Southeast Maluku. This paper analyses the Indonesian national legal arrangements governing the Law Enforcement of Marine Environmental Pollution and Marine Environmental Pollution in the Maluku region. The research method in this paper uses Normative research type so that in this research several local and national regulatory legal arrangements that regulate marine environmental protection issues are found. Arrangements for the conservation of biological resources in the sea are explicitly regulated in UNCLOS 1982 regarding the protection and preservation of the marine environment which places obligations on participating countries to protect and maintain the marine environment.

Keywords: Law enforcement, marine debris, exploitation, Maluku Sea

Introduction

The environment is a continuous unity between the space and all objects, forces, conditions of living things, and all their behavior that can affect nature. Today, Indonesia is experiencing serious problems regarding environmental pollution and damage. The negative impact of the decline in the function and quality of the environment is the emergence of threats and negative impacts on health, decreased aesthetic value, economic loss (economic cost), and disruption of natural systems. This problem is still an emergency problem because it concerns the continuity of the Indonesian population and the survival of the nation's next generation. One of the crucial issues of environmental pollution is the problem of marine environmental pollution. Crucial issues regarding the problem of marine pollution or environmental destruction in Indonesia are several types of marine pollution, including those related to oil spill pollution, hazardous waste disposal, dumping, marine debris, and non-oil mining vessel accidents at sea. This happens in almost all ocean coasts in Indonesia^[1].

Indonesia is also highly vulnerable to the impacts of climate change. These impacts include decreased food production, disruption of water availability, spread of pests and plant diseases and human diseases, rising sea levels, sinking of small islands, and extinction of biodiversity. The availability of natural resources in quantity or quality is uneven, while development activities require increasing natural resources. Development activities also carry the risk of environmental pollution and damage. This condition can result in decreased carrying capacity, capacity, and productivity of the environment, which in turn becomes a social burden.

Southeast Maluku, is one of the districts in Maluku province which is in the planning area of the development of the VIII island cluster with the city of Tual. The waters of the Southeast Maluku district are of great importance, as they are located right at the center of the world's marine biodiversity triangle (coral triangle), the diversity of biota and coastal species is very highly supported by the completeness of coral reef types, mangrove species, and

seagrass beds, besides that these waters are also a crossing place and playground for several types of protected biota such as dolphins, sharks, and dugongs, leatherback turtles (*Dermodochelys coriacea*) or known as 'Tabob'^[2].

With the high diversity in the area around Southeast Maluku district, part of this area has been designated as a conservation area based on KEPMEN KP Number 6 of 2016 concerning regional conservation areas in the island waters of Southeast Maluku district of Maluku province. This area is an important supporting area for capture fisheries because it produces fish to supply the surrounding waters. Talking about marine sustainability means discussing the problem of disturbances to the sustainability of the marine environment, specifically marine pollution. Indeed, the sea is a dumping ground for marine waste or pollution from the exploitation of mining or oil and gas spread across our earth. The increase in population and the advancement of technology make marine pollution a problem that we need to pay attention to^[3].

Inpex, a Japanese company, obtained the right to conduct exploration activities in the Masela block through the signing of the Masela PSC contract on 16 November 1998. Since then, Inpex through Inpex Masela Ltd has been conducting hydrocarbon exploration activities in the Masela block. In 2000, the oil and gas reserves of the Masela block were discovered in Southeast Maluku. At that time Inpex Masela Ltd drilled the first exploration well, the Abadi well, which is located in the middle of the Abadi structure with a sea depth of 457 meters and a total depth of 4230 meters. Recognition of the environmental impacts on the people of Southeast Maluku is important to ensure that the giant Masela Block project runs smoothly. The environmental justice aspect of the community must be considered. Regarding the impact, from the results of the calculation, the total processed water discharged by the Masela Block will reach 2 million liters per day. The water from the separation of this gas contains dangerous pollutants, such as benzene, toluene, and xylene (BTX)^[4]. This makes the islands in Southeast Maluku potentially affected by waste from the

Masela block. The drilling site is at the junction of the Tanimbar (KKT) and Southwest Maluku (MBD) island districts. According to documents, the discharge of treated water is only 12 meters deep, while the thermocline layer that continues to rotate in Southeast Maluku is 0-50 meters from the water's surface^[5].

The regulation of conservation of biological resources at sea is explicitly regulated in UNCLOS 1982 regarding the protection and preservation of the marine environment, which places an obligation on participating states to protect and maintain the marine environment. The provisions of Article 192 of UNCLOS 1982 stipulate that every State should protect and preserve the marine environment. Therefore, States have the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or areas beyond the limits of national jurisdiction. This means that the marine environment is an important part and must be maintained and preserved by every state.

Results and Discussion

Indonesian National Legal Arrangements Related to Law Enforcement for Marine Environmental Pollution

Oil and gas business activities include upstream and downstream businesses. Upstream activities are business activities that are centered or based on exploration and exploitation business activities (Article 1 point 8 of Law no. 22/2001 and Article 1 point 4 of GR 53/2017). Upstream business activities include exploration, oil and gas field development, production/exploitation, and oil and gas upgrading. Meanwhile, downstream oil and gas activities are closely related to processing, transportation, and marketing activities. Exploitation activities cause a lot of pollution that can be caused by marine pollution. Marine pollution as part of environmental issues has long been an international concern^[6]. Marine pollution is one of the environmental problems faced today and is often caused by human activities. Most human-caused marine pollution occurs directly or indirectly. Marine pollution has a deleterious effect on various marine biological resources, endangers human health, hinders human activities in the waters, and degrades water quality. This is stated in Article 1 paragraph 1 point (4) of the United Nations Convention on the Law of the Sea, 1982, which defines pollution of the marine environment as follows:

Pollution of the marine environment” means the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of seawater and reduction of amenities

Law enforcement as a process is essentially the application of discretion which involves making decisions that are not strictly regulated by legal rules, but have elements of personal judgment. Law enforcement is essentially interpreted as an activity to harmonize the relationship of values described in various rules and attitudes of action to create and maintain peace of life in society. According to Satjipto Rahardjo, law enforcement is defined as a process of turning legal desires into reality. What is called legal desires here are none other than the thoughts of the lawmaking body formulated in legal regulations. The rule of

law^[7]. The formulation of law-making thoughts as outlined in the rule of law will help determine how law enforcement is carried out. According to Moeljatno, based on the understanding of the term criminal law, which says that law enforcement is part of the overall law in force in a country that holds elements and rules, namely:

- Determining acts that may not be committed with the threat or sanction in the form of certain punishment for those who violate the prohibition.
- Determining and in what cases those who violate the prohibitions can be subject to or sentenced to the punishment as threatened.
- Determines in what manner the imposition of punishment can be carried out if the person is suspected of having violated the prohibition.

Environmental law enforcement is defined as an effort to utilize or function the instruments or tools of administrative law, civil law, and criminal law against perpetrators of environmental pollution or perpetrators of environmental damage. As stipulated in Article 1 numbers 14 and 16 of the Environmental Protection and Management Law Number 32 of 2009. Environmental law enforcement in the context of environmental pollution control can be divided into three aspects: administrative environmental law enforcement by government officials, criminal environmental law enforcement carried out through judicial juridical procedures, and civil environmental law enforcement and "environmental disputes resolution" pursued by litigation and non-litigation. The trial of environmental law enforcement in three families of legal disciplines is a logical consequence of the position of environmental law as a functional law subject ("functional rechtsvakken"). Environmental law enforcement in the context of environmental pollution control means utilizing the legal means ("legal means") available in the fields of administrative, criminal, and civil environmental law enforcement (environmental dispute resolution) to carry out legal protection to ensure the quality of a clean and healthy sustainable environment^[8].

The main instrument in law enforcement regarding the protection of the Marine Environment is UNCLOS 1982. The Convention states the definition of pollution in Article 1 paragraph 1 point 4, namely:

“A pollutant of the marine environment is one that is introduced into the water, whether directly or indirectly, by humans and that has or is likely to have adverse effects on the environment, marine life, humans, or other legitimate uses of the sea, such as fishing and other legitimate uses of the sea, on the quality of the water, including estuaries.”

Under UNCLOS 1982, pollution from all sources, including land-based and offshore operations, as well as dumping (waste disposal) and ships, is now included in the definition of marine pollution. Mood (atmosphere). Chapter XII, Articles 192 to 237, of the United Nations Convention on the Law of the Sea 1982 (UNCLOS) governs the oceans and deep seas. All measures taken to prevent and manage marine pollution must comply with the requirements of the UN Convention on the Law of the Sea 1982, under Indonesia's ratification law (Law 17 of 1985). Under Article 194 of the 1982 United Nations Convention on the Law of the Sea, marine pollution must be prevented, reduced, and regulated. Article 194 number 2 states that governments shall take the necessary measures to ensure that activities

within their jurisdiction or control do not damage the environment in any way. This includes the actions of other countries that damage the environment ^[9].

The classification of marine pollution according to UNCLOS 1982, as contained in Section 5 on International Rules and National Legislation to Prevent, Reduce and Control Pollution of the Marine Environment, namely:

- Marine pollution from land-based sources (UNCLOS 1982, Article 207)
- Marine pollution originating from seabed activities is subject to national jurisdiction (UNCLOS 1982, Article 208)
- Marine pollution originating from activities in the Region (UNCLOS 1982, Article 209)
- Pollution of the sea due to dumping (UNCLOS 1982, Article 210)
- Pollution of the sea from water vehicles (UNCLOS 1982, art. 211)
- Pollution of the sea from or by air (UNCLOS 1982, Article 212)

The Role of Local Government on Law Enforcement of Marine Environmental Pollution in the Maluku Region

The sea is a common property, to be framed by rules that are obeyed together, to be utilized together, and at the same time to be protected and preserved together. Various marine environmental resources and services are presented to be utilized by various parties, in various sectors of life, in various types of activities, and various forms of products and services. Therefore, the ocean can be seen as a place for collaboration between various dimensions of life and livelihood in a dynamic fluid medium with sub-sub-life and sub-sub-life that is only limited by imaginary barriers.

Meanwhile, in terms of marine management authority, with the issuance of Law No. 23/2014 on Regional Government, the rules have changed, where only the Government and provincial regions have marine management authority ^[10]. The authority of provincial regions in the sea under its scope is carried out under the provisions regarding the boundaries of the sea area, namely: (1) a maximum of 12 nautical miles measured from the coastline towards the high seas and or towards archipelagic waters; and (2) If the distance between two provinces is less than 24 nautical miles, then the distance or measured under the principle of the center line of the area between the two provinces. The new Local Government Law also places marine affairs as a separate field of development more firmly, wherein the provisions related to concurrent government affairs, Marine Affairs, and Fisheries are designated as one of the lists in the optional government affairs.

In conformity with the meaning of concurrent government affairs, the authority of marine and fisheries affairs is distributed (shared) between the Government and the Provincial and Regency / City regions. The completion of the framework and legal certainty in the Indonesian sea area is becoming more complete with the issuance of Law Number 32 of 2014 concerning Maritime Affairs. The objectives of marine administration as stated in Article 3 of the Marine Law are: Affirming Indonesia as an archipelago with archipelagic and maritime characteristics; Utilising marine resources and/or activities in the sea area in accordance with the provisions of laws and regulations and international law of the sea in order to achieve the prosperity of the nation and state; Realising a sustainable

and safe sea as a living space and fighting space for the Indonesian people; Utilising marine resources in a sustainable manner for the greatest welfare of the present generation without compromising the interests of future generations; Promote marine culture and knowledge for the community; Develop human resources in the marine sector that are professional, ethical, dedicated, and able to prioritise national interests in supporting optimal and integrated marine development; Provide legal certainty and benefits for the entire community as an archipelagic state; and Develop the role of the Unitary State of the Republic of Indonesia in the global marine arena in accordance with international law of the sea for the benefit of the nation and state ^[11].

Law enforcement is the process of making efforts to uphold or function of legal norms in reality as a guide to behavior in traffic or legal relations in the life of society and the state. Law enforcement can also be interpreted as an activity to harmonise the relationship of values that are spelled out in stable rules and embodiment and attitudes of action as a series of final stage value elaboration, to maintain and maintain the peace of life. Law enforcement will be fulfilled if the pillars of law run well, namely good legal instruments, tough law enforcement officers, adequate equipment, a law-aware society, and a supportive bureaucracy. Law enforcement apparatus as one of the pillars of law enforcement includes law enforcement agencies and law enforcement officers. Three important elements influence the working process of law enforcement officers, namely: a. Law enforcement institutions along with various supporting facilities and infrastructure and institutional work mechanisms; b. Work culture related to the apparatus, including the welfare of the apparatus; and c. Laws and regulations that support both institutional performance and regulate legal materials that are used as work standards, both material law and formal law ^[12].

Law enforcement is one element of the overall problems faced by Indonesia as a state of law so the problems faced by this nation are not only in law enforcement but also law reform or making new laws. Law enforcement cannot be separated from the position of law as a unified system containing three elements, namely institutions, legal materials, and legal culture. Supervision in environmental management is needed to anticipate environmental damage caused by pollution containing chemicals that are very dangerous for the health and environment of the surrounding community, including in Manganese and Nickel mining activities in North Maluku Province. Such supervision can be carried out by the Environmental Supervisory Officer and the Regional Environmental Supervisory Officer. Supervision can be carried out directly or indirectly. The supervisor's job is to protect the surrounding community related to environmental permits in the form of AMDAL, UKL, and UPL to create a good environment as a control of environmental management actions ^[13].

This law can be a reference material in natural resource management, one of which is in the mining sector. Therefore, law enforcement officials can resolve environmental crimes that occur, especially communal industrial waste pollution, which often occurs between cities and remote villages. The success of legal regulation is shown by its implementation and enforcement. If law enforcement does not go well, laws and regulations, no

matter how perfect, will not provide any benefit. Law enforcement is the dynamics of legislation^[14].

Law enforcement of coastal areas is intended to be repressive and preventive enforcement of environmental violations in coastal areas, so in this case it involves all law enforcement officials, including increasing public awareness which includes extension activities, dissemination of information, education both formal and non-formal about law and the environment as well as facilities that are expected to support the implementation of environmental law rules^[15].

Preventive efforts to control the environmental impact of coastal areas need to be implemented by maximally utilizing the instruments of supervision and licensing. In terms of marine pollution and environmental damage to coastal areas that have occurred, repressive efforts need to be made in the form of effective, consequent, and consistent law enforcement against marine pollution and environmental damage to coastal areas that have occurred. Therefore, it is necessary to develop a legal system for the protection and management of the coastal environment that is clear, firm, and comprehensive to ensure legal certainty as a basis for the protection and management of coastal areas and other development activities.

Conclusion

The impact of Manganese and Nickel mining in the Maluku sea area from the results of the author's research is a positive impact as an economic support and a negative impact on the environment according to the author is more likely to have a lot of negative impacts, including water pollution, air and soil pollution due to Manganese and Nickel mining activities. Law enforcement of Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands in the jurisdiction of Maluku waters against perpetrators of marine ecosystem destruction in the jurisdiction of Maluku waters law enforcers has not been running effectively, this is due to the lack of a thorough understanding of the law for law enforcement officials, as well as the absence of coordination between law enforcers and related agencies.

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