The Indonesian Journal of International Clinical Legal Education
Vol. 1 Issue 1 (2019) 93–118
DOI: https://doi.org/10.15294/iccle.v1i01.20720
Available online since: March 30, 2019

The Indonesian Journal of International Clinical Legal Education
https://journal.unnes.ac.id/sju/index.php/iccle/index

Civil Responsibility Model of Coastal State to Oil Pollution in the Sea as the Impact from the Stipulation of Dumping Area by Tanker Ship

Elly Kristiani Purwendah, Agoes Djatmiko, Elisabeth Pudyastiwi

Faculty of Law, University of Wijayakusuma Purwokerto, Indonesia

Abstract

The research findings reveal a pluralistic understanding of dumping within the Indonesian Legal System, evident in various laws, including Law No. 17 of 1985 on the Ratification of UNCLOS, Law No. 32 of 2009 on Environmental Protection and Management, Government Regulation No. 29 of 2014 on the Prevention of Environmental Pollution, Ministerial Regulation No. 136 of 2015 on the Second Amendment to Ministerial Regulation No. 52 of 2011 on Dredging and Reclamation, and Ministerial Decree No. 4 of 2005 on the Prevention of Pollution from Ships. Dumping countermeasures are primarily perceived as acts related to dredging and reclamation, identified as contributors to the silting of shipping channels. Notably, Indonesia has not ratified the London Dumping Convention, and there is a lack of a definitive list specifying wastes requiring special arrangements and absolute prohibition within the coastal states' territories.

© 2019 Authors. This work licensed under a Creative Commons Attribution-ShareAlike 4.0 International (CC BY-SA 4.0). All writings published in this journal are personal views of the authors and do not represent the views of this journal and the author's affiliated institutions.

Consequently, compensation has not been prioritized as a state-led measure for marine environmental protection. The state's responsibility, enforced through the State Attorney, necessitates procedural formalities, including a special power of attorney. Collaborative efforts with relevant institutions, particularly the Ministry of Environment and Forestry, are deemed essential. The current landscape in Indonesia reveals overlapping authorities among agencies, leading to conflicting interpretations of civil lawsuit issues related to environmental damages. The proposed model advocates for centralizing environmental priorities within the Ministry of Environment and Forestry, coordinated through the State Attorney, as a strategic step towards addressing these complex issues.

Keywords

Oil Pollution in the Sea, Tanker, Dumping, Compensation, Coastal State

I. Introduction

The authority of coastal states includes granting permission to the tankers to perform oil cleanup (dumping) after delivering the oil contents to consumers; which is Pertamina in this case. The mechanism for determining the coordinates of dumping area, must meet very strict standards including a prediction that the dumping performed by the tanker does not damage or pollute marine environment of the coastal state. Hence, coastal states are required to conduct strict supervision and perform certain actions in terms of dumping that causes losses through civil lawsuits in the form of compensation and specific actions in the form of the

recovery of marine environment (*restitutio in integrum*). The role of coastal states in conducting civil suit against tanker owner or the representative is, in this case, marine insurance that must be owned by tankers as the fulfillment of the requirements under CLC 1969 (compulsory insurance).

Marine dumping is only understood as a deliberate waste disposal into marine environment in particular coordinates specified by coastal state authorities, harbormaster, as administratively the jurisdiction of the directorate general of marine transportation by coordinating with relevant agencies.

The setting of dumping in Indonesian legal system is regulated into several laws such as Law No. 32 of 2009 on the Protection and Environmental Management (UUPPLH), the Government Regulation No. 29 of 2014 on the Prevention of Maritime Environmental Pollution, the Regulation of Minister Number 136 of 2015 on the Second Amendment of the Ministerial Regulation No. 52 on 2011 on Dredging and Reclamation, and the Ministerial Decree No. 4 of 2005 on Prevention of Pollution from Ships. Dumping Countermeasures in general is still understood as an act of dredging and reclamation as a result of shipping channel silting.

The study was aimed to determine the conception of dumping and its law enforcement in each of relevant authorities to be able to establish the blueprint model of civil responsibility against oil pollution as a result of dumping area by tankers through the role of each agency of the Ministry of Environment, Ministry of Maritime Affairs and Fisheries, the Coordinator Ministry of Maritime, the Supreme Court and Attorney General regarding the protection and prevention of marine pollution as a result of oil tanker dumping in Indonesia, inter-agency

coordination mechanisms, supervision performed by each agency, and the civil responsibility model of coastal state.

Oil Pollution Regulation

Marine pollution according to the Government Regulation No.19 / 1999 on Pollution Control and/ or Marine Destruction is defined as, "The inclusion or addition of living creatures, substances, energy, and/ or other components into marine environment by human activities so that the quality decreases to a certain level causing the marine environment is no longer appropriate with the quality standards and/ or its function."

Marine pollution is defined by the experts joined in the agencies under the United Nations as:

> *Introduction by man, directly or indirectly, of substance or energy into the marine environment (including) resulting in such deleterious effects as harm to living resources, hazardous human health, hindrance to marine activities including fishing, impairment quality for use of sea water and reduction of amenities* (Ariadno, 2007 :55)

The legal basis of the International Environmental Law concerning Marine Pollution are:

a. *Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter* (London Dumping) 1972:

Convention on the prevention of Marine Pollution by Dumping Wastes and Other Matter, or better known as the London Dumping is an international convention which was signed on 29 December 1972 and entered into force on August 30, 1975. It is an international convention which is an extension

of the contents of the Stockholm Convention. This Convention is essentially an outline of the prohibition of waste disposal in marine environment intentionally. The purpose of this convention is to protect and preserve marine environment from all kinds of pollution that creates the obligations for the protocol participants to take all effective measures, either individually or jointly, in accordance with their abilities in science, engineering and economics to prevent, suppress and, if possible, to stop the pollution caused by the disposal or incineration of wastes or other hazardous materials in the sea. The protocol participants are also obliged to align their policies with one another.

The definition of disposal (dumping) in the 1996 protocol is any waste storage on the seabed and the ocean floor on ships, aircraft, bridges, and every act of neglecting or destroying right on the bridges only for the purpose of wiping out deliberately. The exceptions from this definition is that the disposal of this protocol is added by additional actions of material renunciation (such as cables, pipelines and marine research devices) in the sea, which was placed for the purpose other than disposal.

The obligation of the participating countries in this convention is the obligation of the protocol participating countries to apply the precautionary approach principle or an preparedness approach to protect marine environment from the disposal of waste or other materials. The other obligation is to implement the principle of polluters pay principle; the perpetrators of pollution should, in principle, bear the cost of pollution. The next obligation is not to to move, either directly or indirectly, the damage of other environmental areas or to convert one form of pollution into another. The protocol participating countries are also obliged to prohibit the discharge

of any waste or other toxic materials with the exception of those listed in annex 1 wherein the discharge must obtain the permission beforehand. The participating countries are also obliged to implement administrative or legal requirements to ensure that the issuance and requirements of the permits are in accordance with those stipulated in Annex 2 of the 1996 protocol. Besides, the practice of burning waste or other materials to other countries for dumping or burning is prohibited in this protocol and the participating countries must ban it. The exceptions to the prohibitions set forth in this protocol is a must to get a permit and burning in the sea in a state of emergency due to the pressure or the weather, or in the case when it arises the danger to human life and the disposal is the only way to avoid such threats. The participating countries are obliged to appoint a body or bodies to handle the licensing, to make notes about the nature and amount of waste or other materials and the quality of waste or other materials that actually have been discarded, location, time and method of disposal.

b. *International Convention for the Prevention of Pollution from Ships 1973/1978* (MARPOL 1973/1978)

Marpol is an international regulation that aims to prevent pollution in the sea. Every systems and equipment on board supporting this legislation must receive certification of the class. The content in Marpol does not prohibit the discharge of contaminants into the sea, but it sets different disposal methods in order that the disposal does not pollute sea (damage), and the marine ecosystem is preserved.

Marpol contains six (6) Annexes containing the regulations on the prevention of pollution from ships to Annex I - Oil; Annex

II - Nixious Liquid Substance Carried in Bulk; Annex III - Harmful Substance in Packages Form; Annex IV - Sewage; Annex V - Garbage; Annex VI - Air Pollution.

c. *International Conventions on Civil Liability for Oil Pollution Damage (Civil Liability Convention) of 1969.*

The scope of the application of the CLC Convention is in crude oil pollution damage (persistent oil) spilled and cargo tanker. The Convention covers location pollution damage including the waters of the convention member states, while for the country of ship flag and nationality of tanker owners are not included in the scope of the application of the CLC Convention. The notation "pollution damage" includes the effort to perform prevention or to reduce damage from pollution in the territories of the convention member state (preventive measures).

The CLC Convention applies only to the damage caused by spills of oil cargo from tanker and does not include oil spill which is not the cargo or pure preventive efforts undertaken when there is no oil spill from tankers at all. This convention also applies only to the ships carrying oil as cargo, which is the tanker carrying oil. Spills of tanker in a voyage of "Ballast Condition" and spills of bunker oil or a ship other than tanker is not included in this convention. The damage caused by "non-presistent oil" such as gasoline, kerosene, light diesel oil, etc., are not included in the CLC Convention either.

1) *Strict Liability*

Tanker owner has a duty of compensation for pollution damage caused by oil spills and his ships due to accidents. The owner can be free from that obligation only by a reason that the damage is as a result of war or natural disaster, the damage as a

result and sabotage of other party, or the damage caused by the authorities who do not maintain navigation equipment properly.

2) *Limitation of Liability*

Under certain conditions, a vessel owner compensates to the limit of compensation of 133 SDR (Special Drawing Rights) per ton of ship tonnage or 14 million SDR, or about US$ 19.3 million taken from the smaller one. If a party who claims (Claimant) can prove that the accident occurs due to personal error (actual fault of privity) of the owner, the limit of liability to the ship owner is not given.

3) *Channeling of Liability*

Claims against pollution damage under the CLC Convention can only be aimed at registered ship owners. It does not preclude the victims to claim compensation out of the Convention from the persons other than the owner of the ship. However, the convention prohibits the claim to the representatives or agents of shipowners. Shipowners must address the issue of third-party claims based on the applicable national law.

4) *Compulsory Insurance*

The owner of the tanker carrying more than 2,000 tones of persistent oil is required to insure the ship to cover the claims arising under the CLC Convention. Each tanker must bring along the certificate of insurance in question, the ships entering the port of the member states of the CLC Convention. Although the ship flag state is not a member of the convention, the state is still required to bring along the certificate of insurance in question.

5) *Competence of Courts*

The follow-up of the compensation in accordance with the CLC compensation can only be executed by the court decision of the convention member state in the territorial environment where the accident occurred. When the accident and pollution occur in Indonesian waters, the trial is conducted by the Indonesian courts under the applicable rules and laws. Therefore, Indonesia must have the rules or laws governing the court system and compensation for oil pollution.

The obligation to protect and preserve marine environment by Indonesia is further described in detail in the national legislation of each country. Some national laws regarding pollution in the sea are:

a. Law No. 32 of 2009 on the Protection and Environmental Management
b. The Government Regulation No. 19 of 1999 on The Control of Marine Pollution and/ or Destruction.
c. the Presidential Decree No. 109 of 2006 on Oil Spill Emergency Response in the sea

d. *Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter* (London Dumping) 1972

The Convention on the prevention of Marine Pollution by Dumping Wastes and Other Matter, or commonly known as London Dumping is an international convention which was signed on 29 December 1972 and entered into force on August 30, 1975. It is an international convention which is an extension of the contents of the Stockholm Convention. The Convention is essentially an outline of the prohibition on the waste disposal in marine environment intentionally.

The purpose of this convention is to protect and preserve marine environment from all kinds of pollution that creates the obligations for the participants of the protocol to take all effective measures, either individually or jointly, in accordance with their abilities of science, engineering and economics to prevent, to suppress and, if possible, to stop the pollution caused by the disposal or incineration of wastes or other hazardous materials in the sea.

The participants of the protocol are also obliged to align their policies with one another. The definition of disposal (dumping) on the 1996 protocol is any waste storage on the seabed and the ocean floor on ships, aircraft, bridges, and every action of neglecting or destroying right on the bridges only for the purpose of wiping out deliberately.

The exceptions from this definition is that the disposal of this protocol is added by additional actions of material renunciation (such as cables, pipelines and marine research devices) in the sea, which was placed for the purpose other than disposal. The next obligation is not to move, either directly or indirectly, the damage of other environmental areas or to convert one form of pollution into another. The protocol participating countries are also obliged to prohibit the discharge of any waste or other toxic materials with the exception of those listed in annex 1 wherein the discharge must obtain the permission beforehand. The participating countries are also obliged to implement administrative or legal requirements to ensure that the issuance and requirements of the permits are in accordance with those stipulated in Annex 2 of the 1996 protocol.

Besides, the practice of burning waste or other materials to other countries for dumping or burning is prohibited in this

protocol and the participating countries must ban it. The exceptions to the prohibitions set forth in this protocol is a must to get a permit and burning in the sea in a state of emergency due to the pressure or the weather, or in the case when it arises the danger to human life and the disposal is the only way to avoid such threats.

The participating countries are obliged to appoint a body or bodies to handle the licensing, to make notes about the nature and amount of waste or other materials and the quality of waste or other materials that actually have been discarded, location, time and method of disposal.

Marine dumping, such as ship pollution sources, was initially the international agenda in the 1970s. In practice, recently dumping is considered to be a cheaper, easier and relatively safe alternative for disposal ashore. Sea disposal and incineration is now heavily regulated in which only the hazardous substances that may legally be dumped into the sea. The legal framework governing ship as a source of pollution is based on the LOSC (1982 United Nations Conventions on the Law of the Sea) which establishes jurisdiction in chapter 17 of Agenda 21, which contains general principles and sponsored by the 1972 IMO London Convention and the 1976 Protocol. They have been applied since March 1976 by regulating the minimum rules for the prevention of marine pollution as a result of sea dumping sea and other sources.

Unlike the field of ship source pollution, both LOSC and LC (London Convention) strongly encourage the regional development measures to control sea dumping. Regional rules do

seem better suited than global rules to ensure adequate protection especially in enclosed and semi-enclosed sea.

Currently, sea dumping and incineration are strictly controlled that only covers 10% of sea pollution (see GESAMP Report No. 39, 2001, The State of the Marine Environment (1990): 88; GESAMP, Sea of Troubles, Report no. 70: 26). The disposals of sea water from industries and radioactive waste have been completely banned and only a few hazardous materials that may still be disposed in European waters (the dredge material, inert geological materials (mine tailings) and fish waste).

II. Method

The study was conducted using empirical juridical approach with interpretative qualitative analysis based on the cases happened in Balikpapan in the form of oil pollution due to dumping by the tanker of Panos G. which failed to be sued in civil law by the City Government of Balikpapan. The data were analyzed using a deductive approach by mapping the primary data (the Directorate General of Sea Transportation, Ministry of Environment and Forestry, the Attorney General and the Pollutio Object Regions of Balikpapan and the Comparing Region of Sea and Ports in Cilacap, Central Java). The authority among institutions in Indonesia was analyzed using a way of thinking of consistent, constructive, and logical to produce the results through four components such as data collection, data reduction, data display and conclusions.

III. Result and Discussion

Indonesia is a country with vast marine natural resources covering an area of approximately 3,273,810 million km². The natural resource is very potential to be utilized for the welfare of the community and a source of state revenue. It is important to have the priorities for the state to protect its marine interests as a legal subject which supports the rights and obligations as mandated by the 1945 Constitution, Article 33, paragraph 2, "Production branches which are important for the State and dominate the life of the people are controlled by the State".

Then, Paragraph 3 states that; "Earth, water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people". Paragraph 4 states that, "the national economy shall be organized based on economic democracy with the principles of togetherness, efficiency with justice, sustainability, environmental friendliness, independence, and balancing economic progress and national economic unity".

Such articles prove that the state is responsible for preserving marine resources; especially Indonesia is a maritime state. The state viewpoint thin the sea is the subject of law has become a demand, especially by accommodating the right to sue of the government and regional government for the right to sue the environment in civil law (environmental compensation and recovery actions). In the government's right to sue, Article 90 of the Protection and Environmental Management Law (UUPPLH) states that, "the government agencies and local governments which are responsible for the field of environment have the authority to file a claim for compensation and certain action

against a business and/ or activities that cause pollution and/ or environmental damage resulting in loss of environment".

The circumstances above lead to serious consequences when the interests of the environment are not based on one institution related to environmental interests. In Indonesia, the maritime sector is governed by several relevant ministries, such as the Ministry of Environment and Forestry (KLHK), the Ministry of Maritime Affairs and Fisheries (MMAF), the Ministry of Energy and Mineral Resources (ESDM), Ministry of Transportation (the Directorate General of Sea Transportation), and the Coordinating Ministry of Maritime Affairs.

Such overlapping authority would lead to the conflict of interest when one of the ministries prioritizes investment (in the case of the pollution performed by oil businesses oils which financially support the economy of the country, as an example presented by the speakers from the Attorney General representing the interests of KLH (once) and it had a conflict of interests with the Ministry of Mineral Resources (once), in the case of Buyat Bay with PT. Newmont Minahasa Raya.

Similarly, in the case of the contamination in Balikpapan with the pollution source from the sewage of the tanker chartered by PT. Pertamina (Persero) from Panos G, the lawsuit of Balikpapan City Government was lost in the current interim decision when having the exception by the party of Pertamina on the formal procedure of Pertamina's domicile in Jakarta, not in Balikpapan.

Balikpapan city government sued Pertamina in tort based on Article 1365 of BW with material and immaterial lawsuit. When the lawsuit is examined through the case examination (not

terminated by the injunction based on relative competence exception), it will make it difficult for the plaintiff concerning the evidence to prove the loss as required for all elements of an unlawful act must be proven.

The concept of strict liability was firstly introduced in Indonesia through Law No. 23 of 1997 on Environmental Management, which was further amended by Law No. 32 of 2009 on the Protection and Management of the Environment ("UUPPLH"). In Article 88 of PPLH Law, the concept of strict liability is mentioned explicitly; "Any person whose actions, business, and/ or activities using Hazardous and Toxic Substances, producing and/ or managing the waste of Hazardous and Toxic Substances, and/ or causing a serious threat to the environment is absolutely responsible for the losses incurred without the proof of fault elements".

The concept of strict liability has not been applied in the practice of environmental law enforcement, particularly for the oil pollution in the sea in Indonesia. The Judiciary in Indonesia has not implemented the polluter pays principle and the principle of strict liability. Judges are still using a concept in 1365 for pollution, but there are restrictions on oil unlawful act using the precautionary principle and the polluter pays principle. In addition, specifically for the tankers which transport oil, they have a liability to have the insurance for the responsibility of sea transport concerning oil pollution risks that occur in transporting obligations.

On November 29, 1969 and December 18, 1971, the delegation of the Republic of Indonesia in Brussels signed the International Convention on Civil Liability for Oil Pollution Damage and the International Convention on the Establishment

of International Fund for Compensation for Oil Pollution Damage. In principle, the provisions on the parties' responsibilities in the event of accidents causing marine pollution due to oil spills has been approved. For further implementation, the act of ratification was conducted through the Presidential Decree No. 18 of 1969 on the Ratification of the 1969 CLC and the Presidential Decree No. 19 on the Ratification of Fund Convention (the enforcement in Indonesia was later revoked through the Presidential Decree No. 41 of 1978).

The International Conventions are in fact actually a transitional obligation from polluter, in this case a tanker (tanker company/ owner) to a third party to perform its obligations in accordance with the polluter pays principle (the principle that the polluter is liable to pay compensation to the pollution as a risk of his activities). The transitional obligation to pay compensation is carried out by a third party, in this case the insurance, that has previously been agreed and the condition for tanker transporting agreement.

The obligation to pay compensation of pollution by tanker owners is stipulated in the international conventions viewed from the interests of the originator. There are the conventions resulted by the states (IMCO/ IMO) which are made to avoid the complexities of laws that could arise in the case of oil spills and in order to meet the needs of international regulations. IMO quickly worked to develop a uniform international instrument to regulate the procedure for liability in the event of oil spills (Harrison, 2009: 379-391).

The relevant issue in this convention is the private obligation for the polluter parties to the victims of pollution related to the civil liability of private perpetrators (Smith, 1988:

85). Allan Khee-Jin Tan said, " Liability thus refers to the conventional regime of civil liability facilitating the compensation of pollution damage victims by private, non-state interest, particularly the shipowner and his insurer. The issue of criminal liability under the national laws of states where pollution is suffered falls outside the present inquiry" (Jin Tan, 2005 :286).

The 1969 CLC is intended for tanker owners for, in oil pollution damage, strict liability is applied to limit the responsibility of tanker owners to oil pollution damage by the size of their vessels. Besides, all tankers carrying more than 2,000 (two thousand) tons of oil in the CLC participating countries must be assured by appropriate insurance or other security in accordance with the CLC.

KLHK as an environmental stakeholder found it difficult to prioritize environmental interests when dealing with the interests of other ministries. The State Attorney who represents the state in civil law must act for the interests of the state, in this case the environment, through a special power granted by KLHK. It is still difficult to proceed in a trial when political interest is the priority (the comparable result with the case of PT Newmont; the interviews with the Prosecutors in the case of the environmental crime prosecution conducted in 2012).

In order to avoid the overlapping of authorities, Ministrial efficiency should be performed related to the interest and authority for the environment. From the results of mapping, Ministry of the Environment has the most fundamental interest to prioritize the interests of the environment in compliance with coastal state civil responsibility to pollution losses. Conflict of interest can be avoided if the relevant leading sector exists only in the environment ministry assisted by the state attorney who

oversee the state's interest against environmental damages through either prosecution of peaceful or compensation.

The number of ministries with different interests resulted in overlapping of roles in which each role has an interest in securing sectoral interests. KLHK is expected to guide the entire partial interests when dealing with environment as a whole and part of the legal system as a legal subject (started to leave human perspective as the subject (anthroposentrisme), and began to shift the perspective that the environment is also a non-human subject).

With the comparison case of PT. Kalista Alam handled by the Attorney General of Indonesia, the granting of the tort against the law as the basis of the compensation both material and immaterial is a model of handling pollution by revitalizing the state attorney as a forefront node point in representing the state's responsibility on the environment. The role of the Prosecutor shall be maximized, not only for the claims for compensation in litigation, but also in non-litigation.

Working Coordination in terms of pollution due to dumping by tankers is only limited on the reporting from the local scene to KLHK. It was usually through the local Environment Agency or the community submitted to the Directorate General of Environmental Control and Degradation that will continue to monitor the damage to the site.

At the moment, one of the ministries that has a General Directorate of Law Enforcement is the Ministry of Environment and Forestry. The Directorate General of Environmental and Forestry Law Enforcement is in charge of organizing the formulation and implementation of policies in the field of the reduction of interference, threats and violations of environmental

and forestry laws. (Article 1108 of the Regulation of the Minister of Environment and Forestry No. P. 18 / MENLHK-II / 2015 on the Organization and Administration of the Ministry of Environment and Forestry).

Currently, the settlement for waste oil pollution due to dumping (intentional waste disposal) as the case in Balikpapan should be resolved through a tiered and integrated mechanism as the existing task of law enforcement at KLHK in synergy with the Attorney General either criminal or civil.

Due to the data obtained from KLHK, the surveillance conducted in phases by KLHK delegate the supervision through districts or regions respectively. KLHK through local Environment Agencies and the existing complaint in cooperation with other institutions such as the Attorney General, also monitors gradually to the region concerned. As in the case of PT. Newmont because of oil pollution, mainly dumping, it had not been resolved with the involvement of the Attorney General. The oil spill in Minahasa was the delegation from the North Sulawesi Court along with the reporting from Police Headquarters, Criminal Investigation to the Attorney General and tiered down.

Such supervision would require the support of culture and a strong legal structure. In fact, in such condition, the direction of government policy in maritime sector begins to receive attention as the MoU between the Attorney General and the Indonesian Fishery Company to encourage the development of Indonesian maritime sector, the Attorney General made a memorandum of understanding with the Indonesian Fishery Company (Perindo).

The Memorandum of Understanding was signed by the Attorney General for Civil and State Administration (Jamdatun),

Bambang Setyo Wahyudi, and the Director of Perindo, Syahril Japarin, in Jakarta, on Tuesday (20/9). "Law enforcement is an important element to realize the development of maritime sector," said Jamdatun. Through this MOU, Perindo may enhance the knowledge and skills of its personnel through legal education and training from the Prosecutor.

In addition, the Attorney General will also provide the assistance in terms of mediation and legal considerations in resolving civil cases and the State Administration of Perindo. The settlement can be carried out in or out of the court. Furthermore, Jamdatun explained that the economic development of maritime must be aligned with the development of coastal community potentials and the environment preservation. Perindo must also anticipate the potential friction with other countries. "Do not let any policies to only benefit foreign fishermen and detrimental to small fishermen. Here, the state is present to protect its citizens," he continued.

Syahril said that the legal assistance from the Prosecutor is expected to control the companies which are 'naughty'. These companies typically reap the benefits with the default of the contract that has been agreed. "For example, in Muara Baru, Jakarta, there are a few tenants who control the lands in large numbers. Their contracts have actually been expired, but they still do not want to move so that we cannot empower the land," said the Director of Perindo, Syahril Japarin.

The agreement with the Prosecutor is also expected to help Perindo improve earnings. With the legal assistance of the Prosecutor, the problems of civil law and the State Administration can be resolved so that Perindo can concentrate on business development. "We want to create a fishery storefront in Indonesia

with the concept of one stop shopping in Muara Baru, Jakarta. The plan was started on 10 November," continued the Director of Perindo. The cooperation between the Prosecutor and Perindo is not only established at the central level, but also in regions. As a first step, the Prosecutor will make the mapping of problems and disseminate the applicable laws.

From the analysis, the model expected to overcome the problems of oil dumping by tanker is by revitalizing the function of Prosecutor as the State Prosecutor who sued for material and immaterial compensation, both in litigation and non-litigation. The need for inter-ministerial integration as the environmental stakeholders is to avoid overlapping authority in the regulation and supervision as well as the representatives of environmental interests. Until recently, the number of existing ministries creates conflicts of interest with the environmental stakeholders (sea), i.e. KLHK.

The establishment of the new ministries, the Ministry of Maritime Affairs and Fisheries and the Coordinator Ministry of Maritime Affairs is expected to make more synergy with marine environment priorities and strengthened authority, no more overlapping authorities. This study was limited to the KLHK and Attorney General, so the model we made is as follows:

Civil Liability of Port State for Oil Pollution in the Sea as the Impact of the Determination of "*Dumping Area*" by Tanker

IV. Conclusion

Deliberate oil spill is known as dumping. Dumping is understood as, intentional marine disposal into the sea in the form of generally produced waste (but not exclusively) on the ground. Waste is loaded onto a special ship and dumped into the sea in their original form or after the burning onboard. The international setting is regulated by the 1996 London Convention Dumping and the development of the convention is to prevent waste disposal intentionally to the sea. Indonesia needs to apply it to accommodate the problems of waste pollution, in this case the oil waste, and more specifically the waste of tanker oil. To realize the law enforcement in the settlement of compensation claims as a result of dumping, it is important to promote the role of state attorney who exercises any power of the Ministry of Environment and Forestry, both litigation and non-litigation, so the problem of dumping will not have a procedural failure as happened in

Balikpapan where the government of Balikpapan was lost in a lawsuit for a compensation due to tanker dumping.

V. References

Ariadno, Melda Kamil, *Hukum Internasional Hukum yang Hidup (International Law, a Living Law)*, 2007, Diadit Media, Jakarta.

Ariany, Zulfaidah, 2011, *Kajian Aspek Hukum Internasional pada Kasus Tumpahan Minyak Kapal Tanker Exxon Valdez (A Study of International Legal Aspect in the Case of the Oil Spill of Exxon Valdez Tanker)*, Media Komunikasi Ilmu dan Profesi Bidang Kerekayasaan, volume 32. No,1., Available online at http://ejournal.undip.ac.id/index.php/tehnik, ISSN 0852-1697.

Bungin, Burhan, 2005, *Metodologi Penelitian Kualitatif (Qualitative Research Methodology)*, PT Raja Grafindo Persada, Jakarta.

Churchill R.R., and Lowe, A.V., 1995, *The Law of the Sea*, University Press, Great Britain, Manchester.

Cross, Michael, Hamer, Mick, March, 1992, *How to Seal a Supertanker, Improving Ship Design to Prevent Oil Spills*, *New Scientist*, Vol. 133, No. 1812.

Diah Okta Permata, Irma Gusmayanti, Ria Maya Sari, Januari, 2014, *Penerapan Peraturan Pembuangan Minyak ke Laut oleh Kapal Tanker dilihat dari Perspektif Hukum Lingkungan Indonesia (The Application of the Regulation of Oil Dumping to the Sea by Tankers Viewed from the Perspective of Indonesian Environmental Law)*, Jurnal Hukum Lingkungan Vol.1, Issue. 1, Indonesian Center for Environmental Law, Jakarta.

Gold, Edgar, 1997, *Gard Handbook on Marine Pollution*, second edition, Assuranceforeningen Gard.

Harrison, James, (Edinburgh School of Law), 2009, *Regime pluralism and the global regulation of oil pollution liability and compensation, International Journal of Law in Context*, Cambridge University.

http://www.tandapagar.com/luas-wilayah-indonesia/, downloaded on 22 October 2016, at 19.20 Indonesian Western Time.

https://www.kejaksaan.go.id/berita.php?idu=0&id=11229&hal=6, 20-09-2016, downloaded on 21 October 2016, at 18.00 Indonesian Western Time

Ibrahim, Johny, 2006, *Teori dan Metode Penelitian Hukum Normatif (Normative Legal Research Method and Theory)*, Bayumedia, Malang.

Imo and Maritime Security; International Maritime Orgnization, 1986, Superintendent of Documents Department of State Bulletin.

Jin Tan, Alan Khee, 2005, *Vessel-Source Marine Pollution*, The Law and Politics of International Regulation, Cambride University Press.

Konvensi Jenewa 1958 " *Convention on The Territorial Sea and Contiguous Zone"*

Law No. 17 of 1985 on the Ratification of the 1982 *UNCLOS*. *Protocol* 1992 (CLC 1969)

Law No. 32 of 2009 on the Protection and Management of the Environment.

Nikson S., Willem, 2009, Kebijakan Keselamatan Transportasi Laut, Badan Koordinasi Keamanan Laut (Policy on Sea Transportation Safety, the Body of Sea Security Coordination), Jakarta.

Smith, B, 1988, *State Responsibility and the Marine Environment*, The Rules of Decision, dan G. Handl, 1983, *International Liability of States for Marine Pollution*, 21 CAN. Y.B. INT'L. L.

The Presidential Decree No. 52 of 1999 on the Ratification of *CLC*

The Regulation of the Minister of Environment No. 13 of 2011 on Compensation Due to Pollution and/ or Environmental Damage.

The Regulation of the Minister of Transportation No. 58 of 2013 on the Handling of the Pollution in Waters and Harbors

Acknowledgment

The earlier version of this paper was presented at the International Conference on Clinical Legal Education (ICCLE) held by the Faculty of Law, Universitas Negeri Semarang (UNNES), Indonesia. The conference held in cooperation between the Faculty of Law Universitas Negeri Semarang, Law Clinics, Bridges Across Borders South East Asia Community Legal Education (BABSEACLE), and Indonesian Clinical Legal Education Associations, May 20-21, 2017.

Funding Information

None

Conflicting Interest Statement

There is no conflict of interest in the publication of this article.

Publishing Ethical and Originality Statement

All authors declared that this work is original and has never been published in any form and in any media, nor is it under consideration for publication in

any journal, and all sources cited in this work refer to the basic standards of scientific citation.