

## SEA PROTECTION FROM OIL POLLUTION BY SHIP TANKER

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### **Abstrak**

Wilayah pesisir dan pulau-pulau kecil dikuasai oleh negara dan dipergunakan sebesar-besarnya kemakmuran rakyat sebagaimana diamanatkan dalam Undang-undang Dasar Negara Republik Indonesia Tahun 1945. Pengelolaan wilayah pesisir dan pulau-pulau kecil belum memberikan kewenangan dan tanggung jawab negara secara memadai atas pengelolaan perairan pesisir dan pulau-pulau kecil sehingga beberapa pasal perlu disempurnakan sesuai dengan perkembangan dan kebutuhan hukum di masyarakat. Perlindungan dan pengelolaan lingkungan hidup di Indonesia sebagaimana disebutkan dalam Pasal 2 Undang-undang Nomor 32 Tahun 2009 Tentang Perlindungan Pengelolaan Lingkungan Hidup (UUPPLH) dilaksanakan berdasarkan asas; tanggung jawab negara, kelestarian dan keberlanjutan, keserasian dan keseimbangan, keterpaduan, manfaat, kehati-hatian, keadilan, ekoregion, keanekaragaman hayati, pencemar membayar, partisipatif, kearifan lokal, tata kelola pemerintah yang baik dan otonomi daerah. Perlindungan dan pengelolaan lingkungan hidup meliputi; perencanaan, pemanfaatan, pengendalian, pemeliharaan, pengawasan dan penegakan hukum. Pengendalian lingkungan hidup dalam hal ini dimaksudkan meliputi pencegahan, penanggulangan dan pemulihan yang dilaksanakan oleh pemerintah, pemerintah daerah dan penanggung jawab usaha dan/atau kegiatan sesuai dengan kewenangan, peran dan tanggung jawab masing-masing. Salah satu instrumen pencegahan pencemaran dan/atau kerusakan lingkungan hidup terdiri atas; instrumen ekonomi lingkungan, peraturan perundang-undangan berbasis lingkungan hidup, anggaran berbasis lingkungan hidup dan instrumen lain sesuai dengan kebutuhan dan/atau perkembangan ilmu pengetahuan.

**Kata kunci** : Perlindungan laut, lingkungan, wilayah

### **Abstract**

Coastal areas and small islands are controlled by the state and used as much as possible the prosperity of the people as mandated in the 1945 Constitution

of the Republic of Indonesia. Management of coastal areas and small islands has not provided adequate authority and responsibility for state management of water the coast and small islands so that several articles need to be refined in accordance with developments and legal needs in the community. Environmental protection and management in Indonesia as stated in Article 2 of Law Number 32 Year 2009 concerning Protection of Environmental Management (UUPPLH) is implemented based on the principle; state responsibility, sustainability and sustainability, harmony and balance, integration, benefits, prudence, justice, ecoregion, biodiversity, paying polluter, participatory, local wisdom, good governance and regional autonomy. Environmental protection and management includes; planning, utilization, control, maintenance, supervision and law enforcement. Environmental control in this case is intended to include prevention, mitigation and recovery carried out by the government, regional government and those responsible for businesses and / or activities in accordance with their respective authorities, roles and responsibilities. One of the instruments for preventing pollution and / or environmental damage consists of; environmental economic instruments, environmental based legislation, environmental based budgets and other instruments according to the needs and / or development of science.

**Keywords :** Marine protection, environment, region

### **Introduction**

Indonesia's sea area which reaches an area of 3.11 million km<sup>2</sup> causes (Siahaan, 2018) the potential of the marine sector to be invaluable, especially from its natural marine wealth sector (Lilley, 1999). The potential of marine wealth becomes so important as prioritized by Indonesia in the concept of green economy and blue economy that leads to sustainable development as stated by the President of the Republic of Indonesia when giving his remarks at the Rio + 20 Conference (United Nations Conference on Sustainable Development) in Rio de Janeiro, Brazil in June 20-22, 2012.

The marine environment is part of a country's economy (Gore, 1995). With a coastline of around 95,181 km, Indonesian waters have high potential. The measure is second only to Canada as the country with the second longest coastline in the world. The economic value of the sea is estimated at US \$ 3 trillion - US \$ 5 trillion or equivalent to Rp. 36,000 trillion - Rp. 60,000 trillion per year (Financial Media). This figure does not include other potential derived from the wealth of biotechnology, marine tourism and the development of sea transportation. Indonesia's great maritime potential is captured as one of the leading mission and vision in the current Jokowi's presidential administration.

In addition, the great economic and ecological potential that is stored as a maritime country, the potential for natural damage that can be caused by excessive exploration that can threaten the sustainability of development should also receive attention. For this reason, the government is currently pushing for a maritime economic policy with a blue economic model (<http://prasetya.ub.ac.id>). Basically the blue economy combines economic development and environmental preservation.

In the period 2011-2015 there were 4 (four) oil pollution in the Cilacap sea. In 2011 there were two cases of pollution in July and September by the TT Super Tanker. Arenza XXVII and MT Ships. Medelin Atlas Belawan IMO 8717245, and in April 2012 MV. Indo Baruna V pollutes the marine environment of Cilacap. The last was in 2015 in May 2015 MT. Martha Petrol. The demand for compensation for oil pollution by oil tankers in the Cilacap sea was carried out by fishermen to PT. Pertamina through direct claims. Compensation calculation is calculated in the amount of direct loss of fishermen who cannot go to sea during pollution, multiplied by the number of fishermen registered as members of the All Indonesian Fishermen Association (HNSI). The All Indonesian Fishermen Association (HNSI) of Cilacap Regency requested compensation of Rp 40.7 billion from PT Pertamina RU IV Cilacap due to oil leakage (<http://berita.suaramerdeka.com/>).

## **Discussion**

### **The importance of protecting the marine environment from oil pollution by tankers**

National economic development as mandated by the 1945 Constitution of the Republic of Indonesia (UUD '45) is based on the principle of sustainable development and environmental insight. In addition, the deteriorating quality of the environment has threatened the survival of human life and other living creatures, so that serious and consistent environmental protection and management needs to be carried out by all stakeholders. Specifically the mandate of the 1945 Constitution is spelled out in part considering Law Number 32 of 2009 concerning Protection of Environmental Management (UUPPLH) which states that a good and healthy environment is a human right of every Indonesian citizen as mandated in Article 28H of the Law the 1945 Constitution of the Republic of Indonesia. In this law it is stated that the protection and management of the environment is a systematic and integrated effort undertaken to preserve environmental functions and prevent environmental pollution and / or damage which includes planning, utilization, control, maintenance, supervision and law enforcement.

Natural resources in the UUPPLH are mentioned as environmental

elements consisting of biological and non-biological resources which as a whole form the unity of the ecosystem. Environmental pollution itself is referred to as the entry or inclusion of living things, substances, energy and / or other components into the environment by human activities so that they exceed the established environmental quality standards. Environmental damage is a direct and / or indirect action on the physical, chemical and / or biological nature of the environment that exceeds the standard criteria for environmental damage. Environmental protection and management in Indonesia as referred to in Article 2 of the UUPPLH is based on principles; state responsibility, sustainability and sustainability, harmony and balance, integration, benefits, prudence, justice, ecoregion, biodiversity, paying polluter, participatory, local wisdom, good governance and regional autonomy.

Environmental protection and management includes; planning, utilization, control, maintenance, supervision and law enforcement. Environmental control in this case is intended to include prevention, mitigation and recovery carried out by the government, regional government and those responsible for businesses and / or activities in accordance with their respective authorities, roles and responsibilities. One of the instruments for preventing pollution and / or environmental damage consists of; environmental economic instruments, environmental based legislation, environmental based budgets and other instruments according to the needs and / or development of science.

An interesting thing in the UUPPLH is the existence of Article 66 which states that, anyone who fights for the right to a good and healthy environment cannot be prosecuted criminal or civilly sued. This article regulates the participation of the public in obtaining legal protection so that they cannot be prosecuted for criminal or civil suit when the community participates in fighting for the right to a good and healthy environment. The concept of Article 66 is known as the Anti Strategic Lawsuit Against Public Participation (Anti SLAPP). When the SLAPP concept was first published, George W. Pring and Penelope Canan as the inventors of this concept divided SLAPP into several fields including real estate development, taxation, the environment, and others. Specifically for SLAPP that occurs in the environmental field, Pring and Canan popularized the term Eco-SLAPP.

SLAPP in the Indonesian legal system does not yet have a standardized understanding, in order to know the SLAPP understanding we refer to the understanding of the Philippines through the Rules of Procedures for Environmental Cases which provide understanding as, among others, a legal action that is proposed to harass, harass, put undue pressure or inhibit law enforcement that has been done or may be carried out by every person,

institution or government in environmental law enforcement, protection of the environment or claims to the right to the environment must be treated as SLAPP and regulated by this regulation. Anti Slapp Advisory Panel Report to The Attorney General in Ontario (Canada) adopted in the Protection of Public Participation Act 2013, as stated as an action / lawsuit against a person or several groups or groups who express their opinions or attitudes towards issues related in the public interest. SLAPPs use the court system to limit the effectiveness of opposing opinions or actions.

SLAPPs can intimidate opponents, drain their resources, reduce the opportunity to participate in public affairs and prevent them from participating in matters of public interest. In the elucidation of Article 66 it is stated that this provision is intended to protect victims and / or reporters who use legal methods due to environmental pollution and / or damage. This protection is intended to prevent retaliation from being reported through criminal prosecution and / or civil lawsuits while taking into account the independence of the judiciary.

The term marine as understood through Law Number 32 Year 2014 concerning Maritime Affairs, Additional State Gazette of the Republic of Indonesia Number 5605 (Maritime Law), is stated as, "... matters relating to the sea and / or activities in the sea area which includes the seabed and the land beneath, the water column and sea level, including coastal areas and small islands. " The Maritime Law further states that the protection of the marine environment is a systematic and integrated effort undertaken to conserve marine resources and prevent pollution and / or damage to the environment at sea that includes marine conservation, control of marine pollution, control of marine disasters, prevention and prevention of pollution, and damage and disaster.

Marine operations are carried out based on principles, sustainability, consistency, integration, legal certainty, partnership, equity, community participation, openness, decentralization, accountability and justice. The implementation of marine aims to, utilize marine resources in a sustainable manner for the greatest possible welfare for the current generation without compromising the interests of future generations, advancing marine culture and knowledge for the community, developing human resources in the field of marine that are professional, ethical, dedicated and able to prioritize the interests national level in supporting marine development in an optimal and integrated manner, and providing legal certainty and benefits for all people as an island nation.

Some articles of the Maritime Law provide an understanding of how the country's commitment to the sea, that the state is fully responsible for the protection of the marine environment with the concept of sustainable and

fulfill justice for the present generation and for future generations. In this Maritime Law the protection of the marine environment is the responsibility of the government through the control of marine pollution and the prevention and control of pollution and disaster pollution. Marine disasters in this case are understood as one of the environmental pollution in addition to natural phenomena and global warming. Marine disasters caused by environmental pollution can be in the form of oil pollution. More interestingly, the Maritime Law discusses marine pollution in a separate article which, among other things, states that, in anticipating sea pollution, the government establishes policies to mitigate the effects of sea pollution.

The policy for overcoming the impact of marine pollution can be done through the development of national plans for emergency response to oil spills at sea, and the development of marine pollution control systems and damage to marine ecosystems. In Article 55 Paragraph (1) it is said that the government and regional government are obliged to implement a system of preventing and controlling pollution and damage to the marine environment. Furthermore, in Article 55 Paragraphs (1), (2) and (3) which state that, the government is responsible for protecting and preserving the marine environment, protecting and preserving the marine environment through prevention, reduction and control of the marine environment from any marine pollution and handling damage to the marine environment, and the government cooperating, both bilaterally, regionally and multilaterally in implementing prevention, mitigation and control.

The protection and preservation of the marine environment is carried out based on statutory provisions and international marine law. For marine governance and institutions, in Article 69 it is explained that, the government established a marine governance and institutional policy. Marine governance and institutional policies include plans for developing legal and governance systems as well as effective and efficient planning, coordination, monitoring and evaluation of marine development. In preparing marine governance and institutional policies, the government conducts sea law structuring in a national legal system through both the public and civil aspects by taking into account international law.

An interesting thing in the Maritime Law is the existence of a Chapter that regulates community participation, namely Chapter XI, Article 70 which states that the implementation of marine development is carried out by the government and regional government by involving community participation, community participation can be carried out by individuals, groups, professional organizations ,

business entities or other social organizations according to the principles of openness and partnership. Community participation in marine

development is carried out through participation in; formulation of marine development policies, marine management, marine development and provide input in evaluation and supervision activities. Community participation can be done through participation in preserving cultural values and maritime insights and revitalizing customary law and local wisdom in the marine field, or protecting and promoting underwater cultural heritage through preservation, restoration and conservation efforts.

This law aims to facilitate the national transportation system in supporting economic growth, regional development and strengthening the country's sovereignty. In this Law it is mentioned about the ship's seaworthiness as the condition of the ship that meets the ship's safety requirements, prevention of water pollution from the ship, manning, loading lines, loading, welfare of the crew and passenger health, legal status of the ship, safety management and prevention of pollution from the ship and ship security management to sail in certain waters. This law also provides an understanding of the protection of the maritime environment as any effort to prevent and overcome pollution of the marine environment originating from shipping-related activities.

The principles and objectives of this law are stated based on; the principle of benefit, joint and family business, fair competition, fair and equitable without discrimination, balance, harmony and harmony, public interest, integration, legal standing, independence, environmental insight, national sovereignty and nationality. Shipping safety and security in this law are said to cover the safety and security of transportation in waters, ports and maritime environmental protection and are implemented by the government. The safety and security of water transportation are mentioned as fulfilling the requirements; seaworthiness, and navigation.

Ships are required to be fulfilled by every ship in accordance with the shipping area including; ship safety, prevention of pollution from vessels, vessel manning, ship loading and loading, crew welfare and passenger health, vessel legal status, safety management and prevention of ship pollution and ship security management. This fulfillment is evidenced through certificates and ship certificates.

Pollution prevention is carried out on the condition that the ship has a certificate which is further regulated by ministerial regulation. The shipping law explains the functions, duties and authority of the Syahbandar. Syahbandar is said to have the task of carrying out the function of shipping safety and security which includes, implementation, supervision and law enforcement in the field of transportation in waters, ports and maritime environmental protection.

Syahbandar is in charge of leading the prevention of pollution and fire

fighting in ports and oversees the implementation of maritime environmental protection. In carrying out these activities the Shahbandar has the authority to inspect ship accidents and detain ships on court orders. Syahbandar has the highest authority in carrying out coordination of customs, immigration, quarantine and other government institution activities. In carrying out security and order at the port in accordance with the provisions of international conventions, Syahbandar acts as a port security committee. In carrying out this function, Syahbandar can request assistance from the Indonesian National Police and / or the Indonesian National Army. Security and order assistance at the port is under the coordination of Syahbandar's authority. The implementation of maritime environmental protection in this law is declared to be carried out by the government. Implementation of maritime environmental protection is done through; prevention and prevention of pollution from vessel operations; and prevention of pollution prevention from port activities.

The prevention and control of pollution from the operation of ships is regulated in this law, as stated in Article 227, each ship is required to prevent and cope with environmental pollution originating from ships. Ships of certain types and sizes that are operated must be equipped with oil pollution prevention equipment and materials from ships that are approved by the government. Ships of certain types and sizes that are operated must be equipped with oil pollution prevention patterns from ships that have government approval. The size of the ship is further regulated by the requirement for completing pollution control which is further stipulated in the Regulation of the Minister of Transportation of the Republic of Indonesia Number PM. 45 of 2012 concerning Ship Safety Management, namely for oil tankers, chemical transport tankers and gas carriers with gross tonnage size greater than or equal to GT 150 (one hundred and fifty Gross Tonnage).

The Shipping Law provides a very large portion of sea transportation in the event of oil pollution, as evidenced by Syahbandar's role in leading pollution prevention and mitigation activities with the help of other state instruments in its coordination. This law was drafted before the Ministry of Maritime Affairs was formed. The era it formed had the authority to coordinate maritime environmental protection, including oil pollution. The very large position of Syahbandar as stated in the Shipping Law which was then followed up with Government Regulation as the executor on the role of Syahbandar in protecting maritime environment through Government Regulation of the Republic of Indonesia Number 21 of 2010 concerning Maritime Environmental Protection. In this Government Regulation, Syahbandar coordinates pollution control based on tier levels, tier one for regency areas, tier two for provincial areas and tier three for national.



Coastal areas and small islands are controlled by the state and used as much as possible the prosperity of the people as mandated in the 1945 Constitution of the Republic of Indonesia. Management of coastal areas and small islands has not provided adequate authority and responsibility for state management of water the coast and small islands so that several articles need to be refined in accordance with developments and legal needs in the community. Coastal pollution according to this Law in Article 1, Number 28 is referred to as the inclusion or inclusion of living things, substances, energy and / or other components in the coastal environment due to everyone's activities so that the quality of the coast falls to a certain level that causes the coastal environment cannot function according to its designation.

The main stakeholders in this law are mentioned as users of coastal resources and small islands who have a direct interest in optimizing the utilization of coastal resources and small islands such as traditional fishermen, modern fishermen, fish growers, tourism entrepreneurs, entrepreneurs fisheries and society. In the explanation of Article 17 Paragraph (2), it is explained that the definition of traditional fishermen is a fisherman who uses a boat without a machine, carried from generation to generation, has a fixed fishing area and to meet the needs of daily life.

The waters in the Cilacap region are one of the important areas for the district. These waters are used for three main activities, namely as a fishing area for fishermen, as an international shipping lane, as a place for oil processing and as a place for tourism. Different interests in a resource can trigger conflicts over natural resources. Especially with the Segara Anakan lagoon area which will be designated as a natural laboratory. As a continuation of the aforementioned Law, Central Java Province Regional Regulation Number 4 of 2014 concerning Zoning Plans for Coastal Areas and Small Islands of Central Java Province in 2014-2034, in its consideration states that, it is necessary to establish Regional Regulations on Coastal and Island Zoning Plans small island of Central Java Province 2014-2034. This regulation maps the understanding of the region as part of coastal areas and small islands that have certain functions that are determined based on criteria of physical, biological, social and economic characteristics to be maintained.

The Central Java Province in the aforementioned Perda directs the development of a service center system and the growth of coastal areas; Semarang-Kendal-Demak Urban and Cilacap Urban as National Activities (PKN); Kebumen, Pekalongan City, Tegal City as a Regional Activity Center (PKW); Purworejo, Wonogiri, Rembang, Pati, Juwana, Tayu, Demak, Kendal, Comal, Pemalang, Brebes as Local Activity Centers (PKL). These development directives are determined in accordance with statutory provisions. Technically, the management of the Cilacap Regency coastal area is outlined in the form of

the Cilacap Regent Regulation No. 42 of 2014 concerning the Strategic Plan for the Management of the Cilacap Regency Coastal Region in 2011-2030. What is interesting in this local regulation is that in the consideration section it is stated that, in the context of realizing community welfare in a just and prosperous manner by integrating various sectoral plans, overcoming overlapping management, conflicts of use and authority and optimizing the development of coastal areas, which begins with a strategic management plan Cilacap Regency coastal area. One of the goals of planning is the compilation of effective and measurable indicators in the development of coastal areas, namely tourism activities, especially ecotourism, increased fishery catches, increased fishery yields, sustainable mangrove forests and coastal length which can be rehabilitated

### **Conclusion**

Environmental protection and management in Indonesia as stated in Article 2 of Law Number 32 Year 2009 concerning Protection of Environmental Management (UUPPLH) is implemented based on the principle; state responsibility, sustainability and sustainability, harmony and balance, integration, benefits, prudence, justice, ecoregion, biodiversity, paying polluter, participatory, local wisdom, good governance and regional autonomy. Environmental protection and management includes; planning, utilization, control, maintenance, supervision and law enforcement. Environmental control in this case is intended to include prevention, mitigation and recovery carried out by the government, regional government and those responsible for businesses and / or activities in accordance with their respective authorities, roles and responsibilities. One of the instruments for preventing pollution and / or environmental damage consists of; environmental economic instruments, environmental based legislation, environmental based budgets and other instruments according to the needs and / or development of science. The waters in the Cilacap region are one of the important areas for the district. These waters are used for three main activities, namely as a fishing area for fishermen, as an international shipping lane, as a place for oil processing and as a place for tourism. Different interests in a resource can trigger conflicts over natural resources. Especially with the Segara Anakan lagoon area which will be designated as a natural laboratory. As a continuation of the aforementioned Law, Central Java Province Regional Regulation Number 4 of 2014 concerning Zoning Plans for Coastal Areas and Small Islands of Central Java Province in 2014-2034, in its consideration states that, it is necessary to establish Regional Regulations on Coastal and Island Zoning Plans small island of Central Java Province 2014-2034. This regulation maps the understanding of the region as part of coastal areas and small islands

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