

MARINE POLLUTION IN LAMPUNG PROVINCE: THE STATE IS POWERLESS AGAINST ENVIRONMENTAL DESTROYERS

PENCEMARAN LAUT PROVINSI LAMPUNG: NEGARA TAK BERDAYA MELAWAN PERUSAK LINGKUNGAN

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ABSTRACT

Law enforcement efforts in order to provide a deterrent effect against perpetrators of environmental crimes and force the perpetrators to be responsible for the impacts caused by pollution or damage that occurs based on the polluter pays principle as contained in Law 32/2009. pollution and / or oil spills in Lampung sea waters continue to occur throughout 2020 - 2022. This study aims to determine how the legal liability of PT Pertamina due to PHE OSES pipe leakage on the east coast of Lampung with an empirical juridical approach using primary and secondary data sources. the conclusion of this study is: The State is still hesitant in applying criminal law against perpetrators of marine pollution due to oil spills; in cases of marine pollution due to oil spills, the state prefers to apply administrative sanctions and / or civil law enforcement. In the case of the implementation of civil sanctions, there is a weakness of the government in supervising the implementation of sanctions so that the perpetrators of pollution have a low level of compliance in the implementation of sanctions.

Keywords : Impact, Pollution, Law Enforcement, Environment Law.

ABSTRAK

Upaya penegakan hukum dalam rangka memberikan efek jera terhadap pelaku kejahatan lingkungan dan memaksa pelaku untuk bertanggung jawab atas dampak yang ditimbulkan dari pencemaran atau kerusakan yang terjadi berdasarkan Asas pencemar membayar sebagaimana termuat dalam UU 32/2009. pencemaran dan/atau tumpahan minyak di wilayah perairan laut Lampung terus terjadi sepanjang tahun 2020 - 2022. Penelitian ini bertujuan untuk mengetahui Bagaimana pertanggungjawaban hukum PT. Pertamina akibat kebocoran pipa PHE OSES di pantai timur Lampung dengan pendekatan yuridis empiris menggunakan sumber data primer dan sekunder. kesimpulan penelitian ini yaitu : Negara Masih Ragu Dalam Menerapkan Hukum Pidana Terhadap Pelaku Pencemaran Laut Akibat Tumpahan Minyak; Dalam Kasus Pencemaran Laut Akibat Tumpahan Minyak Negara Lebih Senang Menerapkan Sanksi Administratif Dan/Atau Penegakan Hukum Perdata. Dalam Hal Pelaksanaan Sanksi Perdata Terdapat Kelemahan Pemerintah Dalam Melakukan Pengawasan Penerapan Sanksi Sehingga Pelaku Pencemaran Memiliki Tingkat Kepatuhan Rendah Dalam Pelaksanaan Sanksi

Kata Kunci : Dampak, Pencemaran, Penegakan Hukum, UU PPLH.

I. INTRODUCTION

The right to the environment (HALH) as part of human rights (HAM) to ensure the right to live and be in a good, healthy, protected, and maintained and sustainable environment for humans and other living things to continue to grow and develop and live. .that humans have the right to live in a healthy and sustainable environment for the realization of a dignified and prosperous life and livelihood.¹ Because it is part of human rights, the state has 3 main obligations in fulfilling the right to the environment, namely: Respect for Human Rights (To Respect), Protection of Human Rights (To Protect) and Fulfillment of Human Rights (To Fullfil). The relationship between the right to the environment and human rights has been recognized since the 1972 Stockholm Declaration on the human environment. Then in the 1992 Rio meeting (Earth Summit) also succeeded in compiling normative rules for the right to the environment contained in the Rio Declaration.²

The Indonesian Constitution and laws and regulations are also very clear that the right to a healthy and sustainable environment is part of human

¹ Yulianor Abdi, "Tindak Pidana Pencemaran Laut Akibat Tumpahan Di Balikpapan Dalam Perspektif Hukum Pidana Lingkungan," *Jurnal Penegakan Hukum Indonesia* 3, no. 2 (2022): 163-77.

² Komnas HAM, *Jadikan Bumi Hijau : Hak Atas Lingkungan Hidup Adalah Hak Asasi Manusia*, (2011), Hal 2.

rights. There are at least three laws and regulations that explicitly state that the right to a healthy and sustainable environment is part of human rights, namely the 1945 Constitution of the Republic of Indonesia (UUD 1945), which states:

“Everyone has the right to physical and mental well-being, a place to live, a good and healthy environment and health services. Then Human Rights Law No. 39 of 1999 (Law 39/1999), which reads:

Everyone has the right to a good and healthy living environment.³ And Law No. 32 of 2009 on Environmental Protection and Management (Law 32/2009 or PPLH Law), according to which the state must ensure that the right to the environment is fulfilled and protected as part of human rights.⁴”

The environment is a unity of space with all objects, forces, conditions, and living things, including nature, which is influenced by humans and their behavior, survival, and the welfare of humans and other living things. The environment in Indonesia must be protected and managed in accordance with the principles of responsibility, sustainability and justice. Ecological disturbances must be restored to their role as providers of the benefits of life and human welfare, including intergenerational justice, through improved management and law enforcement. The environment whose balance is disturbed either due to pollution, damage and other factors needs to be restored to its function in one way through law enforcement to prevent environmental criminals and force them not to commit crimes. Then related to environmental responsibility for environmental recovery efforts due to the impacts caused, according to the polluter pays principle must be applied in accordance with Law 32/2009, which contains the importance of pollution and / or environmental events. damage caused by business and / or activities, costs incurred due to damage, environmental recovery must be borne by the person in charge of the business and / or activity.⁵

Environmental law enforcement refers to the ability of tools and citizens' compliance with applicable regulations, which includes three aspects of law: administrative, criminal and civil. Environmental law enforcement can be defined as an effort to achieve compliance with regulations and requirements in universally and individually applicable general regulations, through supervision and the application (or threat) of administrative, criminal, and

³ Indonesia, *Undang-Undang Hak Asasi Manusia*, UU No.39 Tahun 1999, Pasal 9 Ayat (3)

⁴ Karina Fitri Darmawan, “Hak Asasi Lingkungan Versus Hak Atas Pembangunan Sebagai HAM: Antara Konflik Dan Keseimbangan,” *Jurnal Poros Hukum Padjadjaran* 3, no. 2 (2022): 169–84.

⁵ Suhendar I Sachoemar and Heru Dwi Wahjono, “Kondisi Pencemaran Lingkungan Perairan Di Teluk Jakarta,” *Jurnal Air Indonesia* 3, no. 1 (2007).

civil measures. The aim is to improve order and legal certainty in society. It is done by controlling activities, roles and law enforcement officers in accordance with the proportion of their fields, including those that support a good system of cooperation and achievable goals.⁶

In 2020-2022 Lampung Province successively experienced the phenomenon of pollution in the marine waters of Lampung Province. Pollution with a thick black color, smells like diesel fuel and is in the form of liquids and lumps which are thought to be crude oil and most likely comes from oil mining activities on the east coast of Lampung Province. The oil spill that occurred in Lampung Province is certainly an environmental pollution event due to the exceedance of sea water quality standards. The oil spill occurred or was first known in August 2020, where crude oil splashes were found on the coast in Labuhan Maringgai District, East Lampung and also in the sea waters of East Lampung Regency. Then the incident in 2021 occurred twice, of which the first incident occurred in August 2021 with a fairly wide distribution occurring in the waters of the east coast of East Lampung Regency, the coast of Rajabasa District, South Lampung Regency, Lampung Bay, the coast of Tanggamus Regency and also to the west coast of Lampung Province in the West Coast Regency. Then the second finding in 2021 is in the coastal area in rajabasa sub-district, south Lampung district. Then in 2022 there were also 2 similar waste findings, to be precise in February in the coastal area of the long sub-district of the city of Bandar Lampung and in July in the coastal area of East Lampung Regency. It is suspected that all of these incidents occurred due to a leak in an oil pipeline owned by PHE OSES on the east coast of Lampung, but what has just been verified is the incident in August 2021 and July 2022.

As we know that pollution and / or oil spills in marine waters have the potential to cause many impacts, ranging from social, economic and environmental impacts. Therefore, one of the efforts in encouraging low rates of marine pollution both due to intentional and unintentional needs to be carried out serious law enforcement efforts to provide a deterrent effect, both starting with the criminal law aspect to the responsibility of polluters to carry out environmental recovery efforts.⁷

II. METHOD

This paper analyzes the legal responsibility of PT Pertamina (Persero) due to the leakage of the PHE OSES pipeline on the east coast of Lampung with an empirical juridical approach which is an effort to handle the problem

⁶ Dewa Gede Sudika Mangku et al., "Compensation for Oil Pollution Due to Tanker Accidents in the Indonesian Legal System in a Justice Value Perspective," *International Journal* 9 (2020): 663.

⁷ Jihong Chen et al., "Oil Spills from Global Tankers: Status Review and Future Governance," *Journal of Cleaner Production* 227 (2019): 20–32.

through the nature of real law or based on the reality that lives in society. through primary and secondary sources of information from library research, namely researching environmental legal liability and reading and quoting articles, laws and regulations, academic journals and studies related to Indonesian marine oil spill cases.⁸¹

III. ANALYSIS AND DISCUSSION

a. Impact Marine Pollution of Wnvironmental, Economic and Sosial

1. Impact of Oil Poluttion on Marine Ecosystems

In several studies and facts, it is stated that the occurrence of oil spills in the sea has a great potential to cause negative impacts on ecosystems in marine and coastal areas.⁹ There are harmful chemicals in the oil that can disrupt the lives and habitats of marine life. Fish and other marine life (coral reefs, seagrass beds, etc.) will contain toxic chemicals contained in the oil in the body of the fish later.¹⁰ causing death, which in turn reduces the population and sustainability of marine life. Meanwhile, the fish that are still alive cannot be eaten by humans because they already contain toxins or harmful chemical compounds that come from the oil. In addition, oil has characteristics that are difficult to clean from seawater. This will certainly cause a decrease in the quality of sea water. then the Ministry of Maritime Affairs and Fisheries (KKP) RI states that there are 7 environmental impacts caused by oil pollution in the sea, including: Ecosystem damage, Death of organisms, Impact on plankton, Impact on migratory fish, Tainting, Changes in reproduction and behavior of organisms, and Impact on aquaculture activities.¹¹

2. Impact Oil Spills of Socio-Economic

The oil spill event that occurred in Lampung Province for 3 consecutive years had an impact on social and economic aspects, which was most felt by local communities who lived in coastal areas and made a living in the waters affected by the oil spill. A number of fishermen experienced a decrease in income due to reduced catches. Damaged

⁸ Hadikusuma, Hilman. *Metode Pembuatan Kertas Kerja Atau Skripsi Ilmu Hukum* (Edisi Revisi). Bandung: Mandar Maju, 2013.

⁹ Ni Putu Suci Meinarni, "Dampak Pencemaran Lingkungan Laut Terhadap Indonesia Akibat Tumpahan Minyak Montara Di Laut Timor," *Jurnal Komunikasi Hukum (JKH)* 2, no. 2 (2016).

¹⁰ Ekaterina Anyanova, "Oil Pollution and International Marine Environmental Law," *Sustainable Development—Authoritative and Leading Edge Content for Environmental Management*, 2012, 2–26.

¹¹ Direktorat Pendayagunaan Pesisir Dan Pulau-Pulau Kecil Direktorat Jenderal Pengelolaan Ruang Laut. *Tumpahan Minyak (Oil Spill)*. KKP RI. <https://kkp.go.id/djprl/p4k/page/2626-tumpahan-minyak-oil-spill>, Diakses Pada 6 November 2022, Pukul : 00.15 Wib.

boats and fishing gear also add to the losses for fishermen. Research conducted by Huda, et al in the time period of April - June 2022 using economic valuation method based on market price approach and survey showed the total Socio-Economic loss due to oil spill in Balikpapan Bay in 2018 amounted to Rp.1,608,861,000, - obtained from the affected components: Public health (Patients with respiratory problems, Death victims), Damage to fishery facilities (Fish boats, ponds, Bubu, Rengge, Sodok and Mullet), Decrease in income (Capture fishermen, pond fishermen, Kelotok managers).

Another impact that is feared to arise due to pollution that continues to recur every year is related to the tourism sector. As a result of the oil spill, it is feared that the tourism sector will be one of the sectors directly affected in Lampung Province, in this case coastal marine tourism which has been the mainstay of tourism in Lampung. The Chairman of the Indonesian Travel Agent Association (Astindo) of Lampung Province, Adi Susanto, said that the tourism sector will experience a bad impact from the marine pollution incident in Lampung Province that occurs repeatedly so that this can discourage tourists from visiting and traveling to Lampung.¹²

b. Legal Impact on the Perpetrators of Oil Spills in Lampung Province

In relation to Law Number 32 of 2009 concerning Environmental Protection and Management (UU PPLH), pollution is defined as the entry of living things, energy, material and/or other biological components into the environment through human activities or intrusion into the environment so that quality standards exceed established environmental quality standards.¹³ The PPLH Law is also very clear that everyone is prohibited from carrying out activities that can cause pollution and/or damage to the environment.¹⁴

For this incident, PHE OSES should be subject to sanctions as stipulated in Article 99 Paragraph (1) of the Environmental Law which reads:

“Any person whose negligence results in the exceeding of ambient air quality standards, water quality standards, sea water quality standards, or environmental damage standard criteria, shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 3 (three) years and a fine of at least Rp1,000,000,000.00 (one billion

¹² Dikutip dari : Didik Tri Purnajaya. Pencemaran Limbah Minyak Mentah Pertamina di Lamtim Ancam Sektor Pariwisata. Kupastuntas.co. 21 Juli 2022. <https://www.kupastuntas.co/2022/07/21/pencemaran-limbah-minyak-mentah-pertamina-di-lamtim-ancam-sektor-pariwisata>. diakses pada 5 November 2022, Pukul 22.51 WIB.

¹³ Undang-Undang Republik Indonesia Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup. Pasal 1 Ayat 14.

¹⁴ Ibid., Pasal 69.

rupiah) and a maximum of Rp3,000,000,000.00 (three billion rupiah).”

In addition, if the incident for 3 consecutive years is proven to have been carried out by PHE OSES, the article that can be imposed is Article 98 paragraph (1) of the UUPPLH with a heavier penalty, while Article 98 paragraph (1) of the UUPPLH reads as follows:

“Any person who intentionally commits an act that results in the exceeding of ambient air quality standards, water quality standards, sea water quality standards, or environmental damage standard criteria, shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years and a fine of at least Rp3,000,000,000.00 (three billion rupiah) and a maximum of Rp10,000,000,000.00 (ten billion rupiah).”

Then in addition to the imposition of article 98 paragraph (1) UUPPLH in this case the authorized officials related to this problem can also be sentenced under Article 112 of the PPLH Law which reads as follows:

“Any authorized official who intentionally fails to supervise the obedience of the person in charge of the business and/or activity to the laws and regulations and environmental permits as referred to in Article 71 and Article 72, which results in pollution and/or environmental damage resulting in loss of human life, shall be punished with imprisonment of not more than 1 (one) year or a maximum fine of Rp500,000,000.00 (five hundred million rupiah).”¹⁵

Another obligation that must be carried out by the perpetrator of environmental pollution is to have the obligation to carry out activities in the context of environmental recovery. such recovery can be carried out by: a. stopping the source of pollution and cleaning up polluting elements; b. restoration; c. rehabilitation; d. remediation; and/or e. In other ways that are relevant to the development of science and technology.¹⁶ Then the Minister obliges certain businesses and/or activities with a high risk to the environment that do not comply with the law in the event of pollution to conduct an Environmental Audit.¹⁷ and if the obligation is not fulfilled, the Minister may authorize an independent third party to conduct an environmental assessment at the expense of the person responsible for the

¹⁵ Lihat : Penjelasan UU 32/2009 Tentang PPLH Pasal 71

¹⁶ Lihat : Undang-Undang Republik Indonesia Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup. Pasal 54.

¹⁷ Ibid., Pasal 49 Ayat (1). Pengertian Audit lingkungan hidup dapat dilihat Pada Pasal 1 Angka 28 UUPPLH) dan pengertian “usaha dan/atau kegiatan tertentu yang berisiko tinggi” dapat dilihat pada Penjelasan Pasal 49 Ayat 1 Huruf (a) UU PPLH).

business and/or activity concerned and announce the results to the Minister.¹⁸

c. Lack of Information on Oil Spill Law Wnforcement in Lampung Province

The oil spills that occurred in Lampung Province for 3 consecutive years certainly captured the attention of the Lampung Province public, especially the community and/or business sector affected or experiencing the pollution. until now there has been no information regarding how the progress of law enforcement efforts, environmental audits and environmental restoration carried out against the oil spills that occurred. The environmental agency as one of the law enforcement officials in this case in delivering progress information to the public seems to be hands off and pretends not to know. Even the Head of the Lampung Provincial Environment Office, Emilia Kusumawati, gave quite misleading information and statements to the media, namely stating that the Lampung Provincial LH Office had conducted laboratory tests on PT PHE OSES oil waste found on East Lampung Beach, which was in the category below the threshold and did not damage the environment.¹⁹

Other information related to the 2021 Marine Pollution by PHE OSES in Lampung Province which occurred in the waters of Lampung Bay, Semaka Bay and the West Coast of Lampung, the government collected 18.5 barrels of material. And the government never publicized this case, and seemed to cover up, including when discussing the implementation of the Directorate General of Contaminated Land Recovery as a follow-up to the handling of oil spills. and Emergency Response to Hazardous and Toxic and Non-Hazardous and Toxic Waste, the Directorate General of PSLB3, KLHK seems to exclusively only hold activities that take place on February 8, 2022 at the Wyndham Casablanca Hotel Jakarta and also online through Zoom. Those invited to the activity consisted only of government agencies and the non-government part only invited TWNC Managers and Hydrogeology Experts and Environmental Experts from ITB.0

d. Comparision of Research with Previous Studies

This research also compares previous research related to the same case in different areas. This comparison is carried out to find out the renewal of

¹⁸ Ibid., Pasal 50

¹⁹ dikutip dari : Nur Aini. DLH: Limbah Minyak di Pantai Lampung Timur di Bawah Ambang Batas. [Republika.co.id](https://www.republika.co.id/berita/ri8qw7382/dlh-limbah-minyak-di-pantai-lampung-timur-di-bawah-ambang-batas). 15 Sep 2022 .
<https://www.republika.co.id/berita/ri8qw7382/dlh-limbah-minyak-di-pantai-lampung-timur-di-bawah-ambang-batas>, diakses pada : 6 November 2022, Pukul 00.39 WIB. dapat dilihat juga pada : <https://lampung.antarane.ws.com/berita/654385/tanggapan-dinas-lingkungan-hidup-lampung-atas-limbah-minyak-di-pantai-lampung-timur>, diakses pada 6 November 2021, Pukul 12.45 WIB.

the development of environmental law and also to find out the extent of the application of environmental law to cases of marine pollution by oil spills.

The previous research conducted compares as follows:

Table 1 List and Summary of Similar Previous Research

Title	Researcher	Conclusion
The Polluter Pays Principle: Questioning the Liability of PT Pertamina Hulu Energi Offshore North West Java (ONWJ) for Oil Pollution in Karawang Waters	Winda Rachmainda Firdaus0	The conclusion of Winda's investigation is that PHE ONWJ as the owner of the company / oil natural resource exploitation activities in Karawang waters caused Karawang waters to be polluted twice, namely in 2019 and 2021 by the PHW-ONWJ oil spill. ONWJ as a related legal entity applies the polluter pays principle in accordance with Law 32/2009.
		The results showed that PHE ONWJ did not fulfill the three elements of the polluter pays principle, namely prevention, mitigation and recovery. PHE ONWJ failed to contain the oil spill that became its business risk and polluted the Karawang Waters twice, namely in 2019 and 2021. PHE ONWJ's efforts to prevent the spread of oil spills in Karawang Waters were never completed, and both times there was no clarity at all. Both in 2019 and 2021.
		To ensure that PHE ONWJ complies with the polluter pays principle, PHE ONWJ must disclose information as best as possible. Especially regarding the mitigation and restoration of Karawang waters polluted by the PHE-ONWJ oil spill, PHE ONWJ is obliged to provide information about the pollution

			and the form of compensation. Another thing, information disclosure is needed to avoid the greenwashing practices of polluters who hide the fact that environmental restoration is carried out not to win cases, but for the company's goodwill.
Criminal Enforcement Against Marine Pollution by Oil Spill in Belakang Padang Sub-District, Batam City, Riau Islands Province	Law	Melisa Rahel Nainggolan, Hendra Arjuna, Heni Widiyani	<ol style="list-style-type: none"> 1. Criminal law enforcement of marine pollution due to oil spills has not been effective when referring to the provisions of environmental protection Article 63 paragraph 2 subsection UUPPLH. However, in its implementation, law enforcement officials take preventive actions such as monitoring, prevention, mitigation, recovery of oil spills behind Padang and fulfill their duties according to the mandate of each agency, and there is no action (repressive). 2. The inhibiting factor in the application of the criminal law of marine pollution due to oil spills is that each party cannot provide very strong evidence, as in the examination and proof is difficult, then also regarding the certification of oil sampling must be accredited and registered, while the north wind season is a weather factor, and also the peculiarity of the lack of coastal radar to detect oil spills.
Legal Liability of PT Pertamina for Pipeline Leak in Balikpapan Bay*	PT	Seliyana, Bruce Anzward, Rosdiana	The conclusion of the research conducted is that PT has three legal responsibilities. Pertamina due to a pipeline leak that resulted in

environmental pollution of Balikpapan Bay based on PPLH Law No.32 of 2009, namely in this case administrative responsibility, issued forced government action Decree of the Minister of Environment and Forestry No. Sk.2631/MenlhkPhlhk/Ppsa/Gkm .O/4/2018, civil responsibility in the form of compensation paid to the community, while the criminal in the form of fines paid to the state and imprisonment for negligent responsible persons.

If we look at the 3 previous studies, we can indeed say that there is no willingness and courage of the government in applying criminal sanctions against perpetrators of marine pollution. most cases of marine pollution only receive administrative sanctions or civil law enforcement in marine pollution cases. as happened in the case of marine pollution in Karawang by PHE ONWJ which was approved by KLHK based on the Decree on the Karawang Waters recovery plan No. 1597/MENLHK-PSLB3/PKTDLB3/PLB.4/9/2020.82. However, prior to the review, there was no information that PHE ONWJ had fulfilled its recovery plan commitments and/or successfully recovered the Karawang Waters. Especially after the oil spill case in 2021.

Then Pertamina's Pipeline Leak in Balikpapan Bay which received civil legal liability sanctions based on the Decree of the Minister of Environment and Forestry SK.2631/Menlhk-PHLHK/PPSA/GKM.o/4/2018 civil liability in the form of compensation paid to the community while criminal liability in the form of compensation to the State, fines and imprisonment does not apply to negligent liability. and finally referring to the case of marine pollution due to oil spills behind Padang Regency, Batam City, Riau Islands Province which has the same fate as the case that occurred in Lampung Province without clear resolution and sanctions.

IV. CONCLUSION

This paper shows that the state is still afraid and hesitant in applying criminal law against perpetrators of marine pollution due to oil spills so that there is no deterrent effect given by the state to the perpetrators of pollution not to repeat their mistakes. In cases of marine pollution due to oil spills, the state prefers to apply administrative sanctions and/or civil law enforcement in the form of environmental restoration, compensation to affected communities and written warnings. Whereas this case is an extraordinary

crime that should apply civil and criminal sanctions together, in terms of the implementation of civil sanctions in the form of environmental recovery there is a weakness of the government in supervising the implementation of sanctions so that the perpetrators of pollution also have a low level of compliance in the implementation of sanctions. There is a kind of information closure in the law enforcement process of marine pollution cases due to oil spills in Lampung Province.

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