

# LEGAL PROTECTION FOR NORTH SUMATRA EAST COAST FISHERMEN IN THE INDEMNIFICATION OF MALACCA STRAIT OIL SPILL

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## ABSTRACT

*The marine and fishery areas of North Sumatera Province, especial Medan and Serdang Bedagai Regency have a very huge potential for both regional and national economies. However, no real legal protection is provided to safeguard the lives of the fishermen and women who make this happen. This study aims at finding out the reasons that lie behind this lack of legal protection for fishermen and women and how the North Sumatran Government can make good use of the national legal framework to implement laws and regulations that best protect its fishing communities.*

**Keywords:** Legal Protection, North Sumatera, East Coast Fishermen, Malacca Strait, Oil Spill.

## INTRODUCTION

Oil spills can have disastrous consequences for society; economically, environmentally, and socially. As a result, oil spill accidents have initiated intense media attention and political uproar, bringing many together in a political struggle concerning government response to oil spills and what actions can best prevent them from happening (Wout, 2015). With the enactment of the 1982 Convention on Sea, the marine space of Indonesia grew to 8,193,163 km<sup>2</sup>, consisting of 2,027,087 km<sup>2</sup> of land and 6,166,163 km<sup>2</sup> of ocean (Laws and Regulations, 1982). The marine environment is a source of natural wealth; it is also a means of a connecting and recreational site. As such, it crucial to protect it from pollutions of all kinds to preserve the sustainability of natural resources (Mochtar, 1992). Efforts to prevent the pollution of the marine environment have been carried out by the government and the international community through national laws, regulations, and international treaties. Several major marine pollutions occurred in Indonesia that was caused by the collision or the sinking of tanker ships. However, of these tragedies, only the tanker Showa Maru sinking in the Malacca Strait received wide attention from the Indonesian government given the large scale of the pollution and its consequences on the lives of both the marine and fishermen. From 1967 until 2017, there have been 28 collisions of tankers with 2 in the year 2017 alone<sup>1</sup>.

The coastal area of North Sumatera (the Malacca Strait) stretches over 1300 Km consisting of 545 km of the East Coast and 375 km of West Coast. This coastal part of North Sumatera has a marine and fishing potential estimated to 276,030 tons/year. Indonesia has ratified several international conventions e.g., the 1982 Sea Convention with Law No. 17/1985, the International Convention on Civil Liability for Oil Pollution Damage in 1969 (Laws and

Regulations, 1969) through Presidential Decree (Keppres RI) No. 18/1978 and the International Convention on the Establishment of International Fund for Compensation of Oil Pollution Damage in 1971 (Fund Convention, 1971) with Presidential Decree No. RI. 19/1978, which was repealed and replaced by Presidential Decree No. 41/1998 (Laws and Regulations, 1998). To protect the local fishing communities, the Regional government of North Sumatra passed several regulations which include Local Regulation No. 1/2014 on the Retribution of Fishery Business Licenses and the local Regulation No. 3/2013 on the Protection of the Environment. But these regulations provide no real protection to the fishing communities in North Sumatra (Laws and Regulations, 2014).

Nevertheless, the Indonesian government's participation in the International 1969 Convention on Civil Liability for Oil Pollution Damage through Presidential Decree No.18/1978 is considered as the legal basis for the compensation of the pollution of the marine environment originating from oil spills from ships including tankers. Based on this situation, this research was conducted to find out how this presidential decree provides real legal protection and benefits to the people of Indonesia, especially the coastal fishermen of North Sumatra.

What are the challenges and obstacles of North Sumatera Provincial Government, Medan City and Serdang Bedagai Regency in providing Legal protection for East Coast fishermen related to compensation for the pollution of marine environment originating from the oil spill of Tanker ship in Malacca Strait? This study sets out to identify weaknesses in government regulation and policies on a compensation fund for marine environment pollution caused an oil spill from Tanker ship in Malacca Strait in Medan City and Serdang Bedagai Regency. It also aims at finding solutions to the challenges and obstacles of North Sumatra Provincial Government in providing legal protection for East Coast fishermen related to compensation for the pollution of marine environment caused by the oil spill from Tanker ship in Malacca Strait.

## METHODS

This is a qualitative descriptive research whose data were collected through direct field observations, unstructured or flexible interviews (to allow for more freedom), questionnaires and focus group discussions at several Medan municipalities. The data also include regional regulations and policies on marine environment and marine pollution compensation in North Sumatra Province, Medan City, and Serdang Bedagai Regency.

## RESULTS AND DISCUSSION

### Global and National Legal Frameworks on Marine Environment Pollution

Initially, the theories of the protection of the marine environment in the framework of international law are the combination of the principles of national sovereignty and freedom of the high sea. Generally, the argument presented here is:

*"A right on the part of a state threatened with environmental injury from sources beyond its territorial jurisdiction, at least where those sources are located on the high seas, to take reasonable action to prevent or abate that injury."* (Daud, 1992)

The existence of state responsibility for the protection of the marine environment is the embodiment of the concept of sovereignty. A sovereign state is a state does not recognize a

higher power than its own. However, it should be understood that the prevailing sphere of supreme power is limited by the borders of the state.

Outside its territory, a country no longer has such power (Mochtar, 1981). As a result of the ideology of sovereignty in this limited sense, there is a term of independence and equality. The ideology of sovereignty does not necessarily contradict the existence of international society, each of which is sovereign, independent, and equal to one another. Del Vecchio states that the need for states to recognize each other equally (Friedmann, 1994; Hohmann, 1994). Indonesia's decision to ratify several international provisions concerning the protection of the marine environment, such as the 1982 Sea Law Convention with Law no. 17/1985, International Convention on Civil Liability for Oil Pollution Damage, 1969 (Laws and Regulations, 1969), through Presidential Decree. 18/1978 and International Convention on the Establishment of International Fund for Compensation of Oil Pollution Damage, 1971 (Fund Convention, 1971) with Presidential Decree No. 19 of 1978, which was repealed and replaced by Presidential Decree No. 41/1998, is appropriate as the main reason to ratify all three Conventions above is to protect Indonesia's vast waters from the threat of pollution (Oil Spill Compensation, 2000).

Two issues arose after the ratification i.e., how Indonesia can accommodate and implement these international provisions within national laws and how to identify and determine the authority between related agencies to carry out the provisions stipulated in these conventions in order to protect the people of Indonesia, especially fishing communities from potential pollution. The pollution of the marine environment caused by tankers is the result of national, regional, and global maritime activities involving the spread of pollutants. The treaties, conventions agreed upon by the Central Government must be implemented with the collaboration of the countries within the region. The existence of provisions on protection against pollution of the marine environment can advantageous to the people depending on how a country implement these international provisions within its national law along with the coordination between government agencies, including regional governments.

Similarly, with law enforcement issues in marine law regimes, if sea pollution is also important to be observed. A country is only sovereignty in its territorial sea, while on ZEE and Continental Shelf, a country only has a sovereign right. A country does not have any sovereignty on the high seas. The juridical fusion of Indonesian waters is reinforced by the issuance of Law No. 6/1996 on Indonesian Water. Currently, Indonesia has issued Law No. 32/2009 on the Protection and Management of the Environment, followed by Law No. 32/2014 on Marine (Laws and Regulations, 2009).

Another interesting development in marine environment protection in Indonesia is the issuance of Law No. 32/2014 on Regional Government which gives power to provinces to manage their natural resources within their territory i.e., at most 12 nautical miles measured from the coastline toward the open sea and/or the archipelagic waters (Laws and Regulations, 2009). Indonesia as a unitary state, facing the development of various challenges and competitions, both at home and abroad. Consequently, it necessary to carry out regional autonomy by granting proportionally broad, real, and responsible local authority to provinces to maximize their natural resources, including the marine.

## **Lack of Provincial Legislation Protecting Fishermen**

North Sumatra Province lies in the geographic coastline between 104° 4' LU and 98° 10' east, bordering the province of Nanggroe Aceh Darussalam to the North, West Sumatra Province and Riau Province to the South. The West Coast of North Sumatra faces directly the Indian Ocean, while the East Coast faces directly the Malacca Strait. The east coastal area of North Sumatra consists of seven regencies/cities, namely Regency Langkat, Medan City, Tanjung Balai City, Asahan Regency, Labuhan Batu Regency, Deli Serdang, and Serdang Bedagai Regencies. The total coastal area in the eastern part of North Sumatra is 43,133.44 km<sup>2</sup>, consisting of 35 districts with 436 villages. On the east coast of North Sumatra, there are only six small islands. Given the fact that the eastern coast of North Sumatra faces the Malacca Strait, it is prone pollution of the marine environment compared with the west coast.

The regulations and policies of the Provincial Government of North Sumatra in respect of pollution of the marine environment caused by tanker vessels in the Malacca Strait are in line with the national law. As argued earlier, to protect the local fishing communities, the Regional government of North Sumatra passed several regulations which include Local Regulation No. 1/2014 on the Retribution of Fishery Business Licenses and the local Regulation No. 3/2013 on the Protection of the Environment. But these regulations provide no real protection to the fishing communities in North Sumatra.

Indonesia has ratified the 1982 Sea Law Convention with Law No. 17/1985, 1969 International Convention on Civil Liability for Oil Pollution Damage through Presidential Decree No. 18/1978 and 1971 International Convention on the Establishment of the International Fund for Compensation of Oil Pollution Damage with Presidential Decree No. 19/1978 (Laws and Regulations, 2016). The ratification of the International Convention on Civil Liability for Oil Pollution Damage through Presidential Decree No. 18/1978 is deemed a sufficient to provide a guarantee for the compensation of marine pollution caused by oil spills from ships including the tankers<sup>2</sup>.

Another interesting development in marine environment protection in Indonesia is the issuance of Law No. 32/2014 on Regional Government. Article 27 of Law No. 32/2014 authorizes provinces to manage their natural resources, including the sea located at 12 nautical miles measured from the coastline towards the high seas and/or towards the archipelagic water. In order to secure the welfare of the people, including fishermen, the government passed Law No. 7/2016 on the Protection and Empowerment of Fishermen and salt farmers. This law is expected to provide protection for fishermen who highly depend on fish resources and environmental conditions (Laws and Regulations, 2016).

The Ministry of Marine Affairs and Fisheries has targeted 2018 as the year in which all provinces should have local regulations governing the Plan for the Zoning of Coastal Zones and Small Islands (RZWP3K) for more sustainable management of marine. This is meant to prevent marine pollution. According to the law, this is a 20-year management plan that can be renewed for 5 additional years. RZWP3K includes various aspects, such as the allocation of space in the area of general utilization, conservation area, certain national strategy area, and sea channel. These areas are fixed for the purpose of cultural conservation, economy, marine transportation, strategic industry, and defense and security. It is, therefore, necessary for the Provincial Government of North Sumatra to issue its own North Sumatra Provincial local regulations that would not only protect fishermen but also indemnify them in the event of marine pollution. This

is in accordance with an interview with the North Sumatra Provincial Government, the old village government of Kuala (Hamdani, 2018), and several other communities such as the community of Bagan Deli Belawan, Medan, (Amin, 2018) the community of Nelayan Bagan Deli Belawan (Asmuni & Siti, 2018), the community of Nelayan Kuala Tanjung Serdang Bedagai and the Indonesia Fishermen Association in North Sumatra Province (Jhoni & Nazli, 2018).

The challenges of North Sumatera Provincial Government, especially Medan City, and Serdang Bedagai Regency in providing legal protection for east coast fishermen related to the compensation for pollution of marine environment caused by oil spill from tankers in Malacca Strait, among others, are as follows: the absence of accurate, most recent and measured data on oil spill from the tanker in Malacca Strait; lack of competent human resources in the field of environmental pollution compensation from oil spill from Tanker ship in Malacca Strait within government agencies, North Sumatra Provincial Government, Medan City and Serdang Bedagai Regency; The lack of coordination between government agencies within both the central and local governments, between provincial government, district and municipalities and communities.<sup>3</sup>

### **Remediating Actions**

Many countries have been dealing with oil spill for several decades. Some have succeeded while many are still struggling to keep their citizen and marine safe. Indonesia, especially Regional Government of North Sumatra can follow the examples/models of countries that have succeeded in dealing with such a disaster. The Australian Maritime Safety Authority coordinates the response to oil spills under the National Plan to Combat Pollution of the Sea by Oil and Other Noxious and Hazardous Substances. The Australian Government, in response to the Montara oil spill<sup>4</sup>, whose effects went far beyond Australian coastal borders to reach Indonesia and Est Timor, have agreed to a two to ten year monitoring plan that includes scientific studies to provide information on marine life, wildlife and habitats, water quality and shoreline ecology<sup>5</sup>. After the incidence, The Australian Marine Oil Spill Centre began mobilizing aircraft and equipment to spray chemical dispersant onto parts of the slick. But it is important to acknowledge that remediating an oil spill is difficult and depends upon many factors, including the type of oil spilled, the temperature of the water, and the types of shorelines and beaches involved. Physical cleanups of oil spills are also very expensive. However, microorganisms such as Fusobacteria species demonstrate an innovative potential for future oil spill cleanup because of their ability to colonize and degrade oil slicks on the sea surface (Hindsight & Foresight, 2010). In addition to these actions, the Local Government of North Sumatra must pass regulations in line with the Regional Autonomy Law No. 23/2014 to require the national government to take certain measures including:

1. Require tankers keep a safe distance with the fishing communities.
2. Engage local communities in the negotiation and remediating process.
3. Guarantee transparency and accountability.
4. Establish a regional environmental protection agency such as the Australian Maritime Safety Authority coordinates the response to oil spills under the national plan to combat pollution of the Sea.
5. Provide training on oil spill and its impact on both humans and marine to the fishing communities.

These measures may not be the best way to deal with the issue of massive oil spill in Indonesia, especially in North Sumatra, but we believe that they would help minimize the impacts. Regulations only cannot deal with the problem, but the lack of regulations can worsen the situation.

## CONCLUSION

The Province of North Sumatra, especially Medan City and Serdang Bedagai Regency does not have laws and regulations providing direct legal protection to its vast communities of fishermen. In order to deal with issues related to the livelihood and security of fishermen in this part of Indonesia, only national laws and regulations are called upon. These national laws and regulations include Presidential Decree No. 18/1978, Law No. 17/1985, Law No. 32/2014, Law No. 7/2016 and other relevant national legislation. Challenges and obstacles experienced by the Provincial Government of North Sumatra in providing legal protection to fishermen are related to the unavailability of data and human resources that support the legal protection of fishermen; the absence of local regulations from North Sumatra Provincial Government on the protection and compensation of fishermen in case of marine pollution caused by tankers and the lack of coordination between government institutions and the associations of fishermen. Indonesia can learn from the success of oil spill recovery models adopted by country such as Australia to best cope with oil spill in its waters in order to protect the environment and human and marine lives.

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## ENDNOTE

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