

## ROLES OF THE MINISTRY OF ENVIRONMENT AND FORESTRY IN MARINE ENVIRONMENT PROTECTION FROM OIL POLLUTION BY TANKERS IN INDONESIAN LEGAL SYSTEM

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### ABSTRACT

*The Ministry of Environment and Forestry (KLHK), as stipulated in the Presidential Regulation Number 16 of 2015, is in charge of organizing government affairs in the field of environment and forestry to assist the President in organizing the state government; one of them is in the field of oil pollution by tankers. KLHK as the most relevant institution surely requires a normative support executing the roles of marine environment protection from oil pollution by tankers in order that the principles of marine environment protection can be well-maintained. In playing its roles, KLHK requires preventive regulations related to the permits of utilizing marine resources, the sanctions to violations, and recovery to marine environment. The results show that KLHK has not played its roles in marine environment protection from oil pollution by tankers due to the sanctions to violations and recovery of marine environment.*

**Keywords:** Ministry of Environment and Forestry, marine environment protection, oil pollution, tanker, Indonesian Legal System.

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### Introduction

Oil pollution in the sea by tankers is a serious concern because pollution causes harm to marine ecology and sociology of coastal states. An argument is given by John Maddox (Silalahi, 2001;14) that pollution will be solved by calculating costs, so pollution is an economic problem: “*we can reduce pollution if we are prepared to pay it*”. Therefore, it must be understood that the problem of pollution is the economic problem; it means that how much we pay for it either by creating anti-pollution prevention tools or indirectly by paying for losses caused by pollution. H.C. Combs argues that economic changes can solve many environmental problems. In his opinion, pollution can be controlled economically through legal arrangements such as the application of fines and taxes on the materials processed or their waste.

The losses due to oil pollution from the source of tankers as happened on May 25, 2015, there were a lot of oil distributions on *Teluk Penyuh Beach* in Cilacap allegedly sourced from the tanker of MT Martha Petrol. The oil business, in this case was PT. Pertamina (Persero) RU IV, got a claim of compensation from the fishermen who felt harmed because they could not go to sea. The process of indemnification to PT. Pertamina was settled through an out-of-court way guided by KLHK (Silalahi, 2001). PT. Pertamina did not provide the compensation as demanded by the fishermen. PT. Pertamina only provided the distribution of the compensation for oil spill collection services.

Such circumstances certainly did not meet the sense of justice for the people who need marine resources for their lives. Marine pollution is, of course, in contrary to the principle of marine governance based on sustainability, consistency, integration, legal certainty, partnership, equity, community participation, openness, decentralization, accountability, and justice (Article 2, Undang-undang Nomor 32 Tahun 2014).

The implementation of maritime aims to affirm Indonesia as an archipelagic country characterized by the archipelago and maritime, utilizing marine resources and/or activities in marine areas in accordance with the provisions of law and the international law for the achievement of the national and state prosperity, utilizing marine resources in a sustainable manner to

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the greatest welfare for the present generation without sacrificing the interests of future generations, and providing legal certainty and benefit for the entire community as an archipelagic nation (Article 3).

Based on the principle of sustainability, legal certainty, and justice mentioned in Article 2 of the Indonesian Maritime Law, every oil pollution caused by tankers must be settled based on a sense of legal justice. The legal certainty that is expected to fulfill justice in the case of oil pollution by tanker ship needs to be held through the role of institution having high importance to marine natural resources as the fulfillment of the livelihood of Indonesian society both present and future generations.

The institution with the responsibility to fulfill the role in Indonesia is the Ministry of Environment and Forestry (KLHK). KLHK was established through the Presidential Regulation of the Republic of Indonesia Number 16 of 2015 with one of its responsibilities is to organize governmental affairs in the field of environment and forestry to assist the President in organizing the state's government affairs (Article 2, Peraturan Presiden Republik Indonesia Nomor 16 Tahun 2015).

Based on the matters above, the paper will discuss on the roles of KLHK in carrying out its duties and authorities in the settlement of oil pollution cases by tankers.

### **Research Method**

The research was a normative legal research. The research data used in this research was secondary data supported by primary data. The aim of the study was to be oriented to change (reform oriented research) (Mahmud, 2007), which is a research that intensively evaluates the compliance for prevailing regulations. The approach used in this research was conceptual approach. The specification of qualitative analysis technique in this research was content analysis.

### **Result and Discussion**

The issue of oil pollution by tankers should be solved and mitigated in relation with their impacts on marine natural resources. Therefore, the state responsibility is required with regard to the losses caused by the pollution. Referring to the term of state responsibility to the case of oil pollution by tankers, there are two terms to note: responsibility and liability. According to Goldie (Marsudi Triatmodjo), the term responsibility is used to refer to duty or the standard of social role fulfillment defined by a particular legal system. In other hand, the term liability is used to indicate the consequences of a fault or failure to perform an obligation or to meet a certain standard that has been established.

As a manifestation of the state responsibility as an obligation, KLHK shall issue the Regulation of the Minister of Environment of the Republic of Indonesia Number 7 of 2014 on Environmental Losses due to Environmental Pollution and/or Degradation. The regulation provides a definition of Environment as a unity of space with all things, power, circumstances and living things, including human beings and their behavior that affect nature, the viability of life and the well-being of human beings and other living beings (Article 1, Point 1).

Environmental Pollution is mentioned as a direct and/or indirect change to the physical, chemical, and/or biological nature of the environment that exceeds the standard criteria of environmental degradation (Article 1, Point 3). Environmental Loss is defined as the loss arising from environmental pollution and/or damage which is not private property (Article 1, Point 2). For environmental damage, the Minister Regulation provides the understanding as a direct and/ or indirect change to the physical, chemical, and/or biological nature of the environment that exceeds the standard criteria of environmental degradation (Article 1, Point 4). Furthermore, the understanding of the Environmental Quality Standard is understood as a measure of the extent or limit of living organisms, substances, energies, or components that exist or must exist and/ or the pollutant elements tolerated in a particular resource as an environmental element (Article 1, Point 5).

The Minister Regulation shows how KLHK is very serious in carrying out its obligations to take responsibility for environmental sustainability. The regulation stipulates the authority of KLHK to resolve the dispute by playing an active role in the calculation of losses through out of court or in-court settlements. KLHK plays an active role in the calculation of environmental losses through the experts in the field of environmental pollution and/ or damage, and/or economic valuation of the environment (Article 4, Paragraph 1).

The Minister Regulation was followed by the issuance of the Government Regulation Number 46 of 2012 on Environmental Economic Instruments and the State Gazette of the Republic of Indonesia of 2017 Number 228. The environmental economic instruments herein are intended as a set of economic policies to encourage the central government, regional governments or any person towards the preservation of environmental functions. With the environmental economic instruments, KLHK is expected to play more important roles in carrying out its obligations to protect environmental interests from pollution and damage to the marine environment.

As stated by Article 42 Paragraph (1) of Law Number 32 of 2009 on Environmental Protection and Management (UUPPLH) and the State Gazette of the Republic of Indonesia of 2009 Number 140, it regulates that environmental economic instruments are grouped into particular control efforts in the context of prevention of environmental pollution and/or damage. It is important to support the role of KLHK in the settlement of oil pollution compensation demands by tankers so that the case of pollution mentioned above by the tanker of MT Martha Petrol in Cilacap Sea can give the compensation for the pollution victims. The regulations are aimed at pursuing compensation or environmental funds in the form of prevention or handling of environmental losses implemented through the active role of KLHK.

### Conclusion

According to Article 42 Paragraph (1) of Law Number 32 of 2009 on Environmental Protection and Management (UUPPLH), the Minister Regulation Number 7 of 2014 on Environmental Losses due to Environmental Pollution and/or Degradation and the Government Regulation of the Republic of Indonesia Number 46 of 2017 on Environmental Economic Instruments, the Ministry of Environment and Forestry (KLHK) shall play an active role in the settlement of oil pollution cases by tankers through the dispute resolution in court and out of court. the KLHK's obligation to play an active role has been realized in the case of settlement of the compensation demand by fishermen to PT. Pertamina on the oil pollution case by the vessel of MT Martha Petrol. However, the active role of KLHK in resolving the dispute has not been followed by an active role in the calculation of environmental losses as mandated in the regulations mentioned above.

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