Carrier Liability Due to Marine Pollution What Is Caused by Oil

Maradona[1], Virga Dwi Efendi[2], Hilda Yunita Sabrie[3], Lucke Princess Anjani[4], Alfi Sarifah Malau[5]

{maradona@fh.unair.ac.id, v.virgadwiefendi@students.uu.nl, hilda.sabrie@fh.unair.ac.id}

Faculty of Law, Universitas Airlangga, Indonesia[134]
Faculty of Law, Leiden University, Netherland[2]
Faculty of Social and Political Science, Universitas Airlangga, Indonesia[5]

Abstract. The movement of people and goods is carried out through the transportation process. There are two types of transportation, namely, the transportation of goods and the transportation of people. In the transportation process, there are two parties: the carrier with passengers or the carrier with the sender of goods. Transportation itself can be done by land, sea, or air. The goods loaded in transport are also very diverse. Concerning supporting the needs and the country's national economy, it is necessary to mobilize the needs of many people's lives, for example, petroleum as a natural resource, which is the raw material for various community needs. Petroleum is often transported by sea. This petroleum transportation activity is not without risks, but the oil loaded on the ship can leak and eventually spill at sea due to various factors. Therefore, this research was carried out to determine the consequences and responsibilities of the carrier for the occurrence of oil spills in the sea in the transportation process he carried out. The method used is *library research* using existing reading materials and laws and regulations related to the research.

Keywords: Oil Transport, Sea Freight, Oil Spill.

1 Introduction

Indonesia is at the meeting point between the Australian continent, the Pacific Ocean, and the Southeast Asian tectonic plate [1]. With these geographical conditions, Indonesia has a lot of natural wealth. One of the various wealth owned by Indonesia is petroleum [2]. Petroleum in Indonesia is commonly found in Sumatra, the Java Sea, East Kalimantan, and the Natuna Islands [3]. Almost all petroleum discoveries in Indonesia occur due to tertiary deposits (third layer) or at the base of tertiary volcanic rock units or lava [4].

Based on Article 1 number 1 of Law No. 22 of 2001 concerning Oil and Gas jo. Article 1 number 2 of the Regulation of the Minister of Energy and Mineral Resources No. 7 of 2019 concerning the Management and Utilization of Oil and Gas Data [5], petroleum is the result of a natural process in the form of hydrocarbons under conditions of atmospheric pressure and temperature in the form of a liquid or solid phase, including asphalt, mineral wax or ozokerite, and bitumen obtained from the mining process, but excluding coal or other solid hydrocarbon deposits received from activities unrelated to oil and gas business activities [6].

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In simple terms, based on their nature or formation, natural resources can be divided into *Renewable* Resources and *Unrenewable Resources* [7]. In this case, petroleum is a natural resource included as a Non-Renewable Natural Resource [8]. The duplex theory supports the existence of petroleum as a Non-Renewable Resource, which explains that petroleum is formed from various types of marine organisms, both animals and plants [9]. The remains of these organisms settle at the bottom of the earth in the form of land or oceans, then covered by mud for millions of years. The mud gradually turns into sedimentary rocks due to the influence of the pressure of the layers above it. The ever-changing pressure and temperature change sedimentary rocks to petroleum [10].

Petroleum is of great benefit to the livelihood of the wider community [11]. The uses of petroleum include being a material for manufacturing electronic devices, construction materials, and power plants [12]. The main benefit of petroleum in everyday life is as the primary material of the fuel of motor vehicles or diesel engines [13].

Indonesia's natural resources, especially petroleum, are one of the export and import commodities [14]. Exports and imports play an essential role in the economic activities of a country [15]. The existence of export activities of petroleum products, especially crude oil, has an impact on the government's revenue generation and an increase in the economic growth of a country [16]. Based on data obtained from the central statistics agency [17], Thailand became the first-ranked petroleum export destination country from Indonesia [18] [19] [20]. After Thailand, there is Singapore, which is ranked second. Furthermore, the country that ranks third in Indonesia's petroleum export destinations is Malaysia [21] [22].

Indonesia's strategic geographical position, located between the largest oil-producing countries, the Middle East in the west, and oil-consuming countries such as Japan, Korea, China, and the United States in the east, causes benefits and potential losses. The advantage obtained is from an economic point of view because it is an international shipping track area that transports oil. However, not only the benefits obtained but the potential losses are also considered quite significant, namely the existence of oil spills in the sea that cause pollution and damage.

Based on the background previously outlined, this topic needs to be further analyzed to find out how the carrier's form of responsibility in the transport agreement by sea for the existence of an oil spill that pollutes the sea and the legal consequences of the transport ship for the occurrence of oil spills at sea that result in marine pollution.

2 Method

Based on the formulation of the existing problem, the research used in this study is qualitative as for what is meant by qualitative research, namely research that intends to understand the phenomenon of what is experienced by the research subject holistically and by way of description in the form of words and language, in a unique natural context and by utilizing various scientific methods.

3 Research and Discussion

3.1 Form of Carrier Liability for Oil Spills at Sea

The carriage is preceded by an agreement of carriage between the carrier and the passenger or the owner of the goods [23] [24]. An agreement of carriage is an agreement by which the carrier binds itself to carry out the carriage of passengers and goods safely from one place to a particular destination area, and the passenger or owner of the goods binds himself to pay the cost of carriage [25]. In a broad sense, marriage is closely related to the carrier's liability in an event that causes harm [26]. The responsibility of the carrier here begins when the passenger and goods are loaded into the conveyance until the passenger is unloaded from the conveyance and the goods are unloaded from the conveyance or handed over to the recipient of the goods. The responsibility for transporting goods relates to the subject and the basis of the responsibility for implementing the transport. The carrier's burden related to the transportation of goods is regulated in Article 466 to Article 520 of the Trade Law (from now on referred to as KUHD).

Before the ship sails to leave the port, several things must be considered by the sea transportation supervisor to maintain the safety of the transportation. In this case, the carrier must inspect the ship, including the ship's body parts, equipment, crew, and seaworthiness. Support is needed in ship operations to maintain the safety of ship operations, especially oil carriers. These things include International Safety Manageme*nt* (ISM), which is about the safety management of ship operations and pollution prevention. *Secondly,* the company of the owner or operator of the ship receives full responsibility for the ship's operation from the shipowner. *Third,* the Safety Management System (SMK) is a structuring and documenting system that allows companies to implement safety management and environmental protection policies actively. *Fourth, a compliance document* is a fulfillment document issued to companies that have met the requirements. *Fifth, the Safety Management Certificate* is given to the ship, which proves that the company and ship management work according to the safety management system.

In addition to regulating the safety management of ship operations, there are also regulations regarding efforts to prevent pollution from ships. Based on Article 134 of Law No. 17 of 2008 concerning Shipping (from now on referred to as the Shipping Law), efforts to prevent pollution from ships are as follows [27]:

1. Every vessel operating in Indonesian waters must meet pollution prevention and control requirements;
2. Pollution prevention and control are discovered through examination and testing;
3. Vessels that are declared to meet the requirements of pollution prevention and control are given a certificate of pollution prevention and control by the minister;
4. A Ministerial Regulation regulates further provisions regarding preventing ship pollution.

In the carriage agreement, it has been explained that if the carrier has performed its obligations in carrying out the carriage, then the airline has been bound by any consequence in the form of liability for the cargo it carries [28]. The page should carry out the carriage so that the carrier's

responsibility arises for everything that interferes with the cargo's safety will be the carrier's responsibility. The airline should bear all losses incurred for the transported shipment, namely in compensation (compensation). In carrying out activities for transporting goods by sea, there are 5 (five) principles of the carrier's responsibility, namely as follows:

a. *Liability based on fault.*

This principle explains that each carrier must be responsible for its errors in the transport process. The Carrier shall indemnify, and the aggrieved party shall prove the carrier's guilt. On this principle, the burden of proof is given to the aggrieved party, not the page [29]. This principle is contained in Article 1365 BW on Unlawful Acts. Today, the focus of liability of carriers based on errors is distinguished by the type of means of transport, namely transportation by train, public vehicles, ships, and aircraft.

b. *Presumption of liability*

Based on this principle, it is emphasized that the sending party will be responsible for any losses arising on the transportation it organizes. The party causing the loss must prove that the loss suffered is not the carrier's fault. Then, the carrier party can be exempted from paying damages. The burden of proof on this principle rests with the airline under the carriage agreement because the goods it transports are under the supervision of the carrier [30]. In this case, if the transport company can prove that the loss incurred was not caused by its fault, the page may be released from part or all of its liability as stipulated in Section 41 of the Shipping Act.

c. *Absolute liability* of the Carrier

This principle obliges to provide compensation due to an accident during the transportation process. In this principle, neither party has to prove the loss. The carrier cannot escape liability for any reason. The focus of absolute responsibility is not provided for in some laws relating to carriage. However, this does not mean the parties cannot use this principle in the carriage agreement. The parties may use this principle in the carriage agreement if expressly stated in the carriage document.

d. *Limitation of Liability*

Based on this principle, the carrier's responsibility to provide compensation is limited to a certain amount to the transport service user. The airline may limit indemnification in the presence of a clause in the carriage agreement. With the page's limited liability, the airline's detriment is also little. The limitation of the carrier's liability in the carriage of waters is provided for in Article 181 Subsection (4) of the Shipping Act.

e. *Presumption of Non-Liability*

In this principle, the carrier is considered to have no responsibility, but that does not mean it is free from responsibility for its goods. This principle is a form of conditional responsibility. Law No. 22 of 2009 on Road Traffic and Transport applies this principle to Article 192 Paragraph (4), which specifies that the carrier is not responsible for the loss of passengers' luggage unless the passenger can prove that the carrier's fault caused the loss. Article 194 Subsection (1) of the act also states that public transport companies are not liable for losses suffered by third parties unless the third party can prove them.

Regarding the carrier's responsibility, the airline's obligations are regulated in Article 40 Paragraph (1) of the Shipping Act, which states that the carrier company is responsible for the safety and security of all cargo it carries. Article 40 Paragraph (2) of the Shipping Act provides that the carrier is responsible for the cargo of the vessel according to the type and amount contained in the transport agreement. Furthermore, Article 41 Paragraph (1) of the law provides for the carrier's responsibility that can be incurred as a result of the vessel's operation as follows:

a) The death or injury of the passenger being carried;
b) The destruction, loss, or destruction of the goods transported;

c) Delays in transporting passengers and/or goods carried; or
d) Third-party losses.
e) The regulation of responsibility regarding the pollution of the marine environment due to oil spills can be found in the provisions of national and international law.

Article 3 of the International Convention on Civil Liability for Damage to Oil Pollution, commonly called the *Civil Liability Convention* (CLC) of 1969, states the following: That the vessel, as the cause of the occurrence of damage or pollution, is responsible for the consequences caused by the vessel;

a) There is no responsibility due to pollution by the shipowner. Such provisions in the event of an accident arising from war, civil war, or natural disaster, in war, a third party acts as a peace mission;
b) Meanwhile, in national law, the provisions for responsibility for marine pollution are regulated in Presidential Decree No. 18 of 1978 concerning ratification of the "International Convention on Civil Liability for Oil Pollution Damage," which has been signed by the Delegation of the Government of the Republic of Indonesia as a result of the International Legal Conference on Marine Pollution Damage, which is in line with the principle of Absolute Carrier Responsibility (*absolute/strict liability).*

3.2. Legal Consequences of Oil Spills at Sea

Oil spills at sea have resulted in economic losses and damage to the marine environment. The primary source of marine pollution comes from oil spills transported by transport ships. This pollution occurs due to ship operational activities and ship accidents. The impact of oil spills from ships causes pollution to the marine environment, such as damage to coral reefs, mangrove forests, seagrass beds, estuaries, and others [31]. The large amount of pollution substances in seawater will cause a decrease in the level of dissolved oxygen in the water, causing habitats in ecosystem life in the sea to be disturbed and hindering its development.

Shipwrecks at sea can cause losses both materially and immaterially, so someone must bear responsibility for these events. Accidents of transport ships during sailing are generally due to human error factors, including ship owners, shahbandar, nahkoda, and other parties that can result in ship accidents. An event can be considered a criminal offense if the perpetrator can hold it accountable. Provisions regarding the crime of sailing are regulated from Article 284 to Article 332 of the Shipping Law. From these articles that regulate the crime of shipping, it can be classified into 3 (three) parts, namely:

1. Articles 284 to 296, Article 302, Article 304 to Article 315, Article 317, Article 323, Article 330, and Article 331 regulate criminal acts in the field of waters.
2. Articles 297 to 301 and 303 provide for criminal acts at ports.
3. Article 316, Article 318 to Article 322, Article 324 to Article 329, and Article 332 regulate criminal acts in the maritime environment.

The occurrence of shipping accidents is inseparable from the role of Shahbandar as a Government Official in marine traffic, so the Government regulates all shipping operations. Suppose an official relating to the sailing of a transport ship is found guilty of causing a shipwreck. In that case, it may be threatened as in Section 336 of the Shipping Act, which states that:

1. Any official who violates a special obligation of his position or at the time of committing a criminal act using the power, opportunity, or means given to him because of his position shall be punished with a maximum imprisonment of 1 (one) year and a maximum fine of Rp100,000,000.00 (one hundred million rupiah).
2. In addition to the criminal offense referred to in paragraph (1), the offender may be subject to additional punishment in the form of dismissal without respect from the office.

The party that can be held accountable is the Shahbandar and Nahkoda, and the transporting corporation can also be held responsible. Article 333, Paragraph (1) of the Shipping Law reads, "A criminal act in the field of shipping is considered to be committed by a corporation if the criminal act is committed by a person acting for and/or on behalf of the corporation or for the benefit of the corporation, whether based on an employment relationship or other relationship, acting within the environment of the corporation either alone or jointly."

In international environmental law, there is also a principle that states can use in terms of liability for pollution and/or environmental damage committed by other parties. The principle is the *Polluter Pays Principle* or the principle of pollutants paying. The principle is contained in the *Rio de Janeiro* Declaration, which reads, "*National authorities should endeavor to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment*" [32]. This principle requires the calculation of losses to the parties that cause pollution, namely in the form of payment obligations from activities that cause damage using economic instruments and the application of rules related to business competition and subsidies [33]. The principle of paying polluters must then be based on the existence of two other regulations about environmental pollution: the *strict liability principle* and *the liability based on fault principle.*

Furthermore, there is also the principle of *strict liability* or absolute responsibility, namely the principle that liability for environmental pollution no longer needs to rely on the existence of prior proof of who plays a role or causes pollution or elements in pollution, but is based on objective evidence of damage that occurs in a pollution event itself [34]. The principle of absolute responsibility related to the environment in Indonesian national law itself has been regulated in Article 88 of Law No. 32 of 2009 concerning Environmental Protection and Management (from now on referred to as the PPLH Law). The regulation in Article 15 of the PPLH Law states that "Everyone whose actions, businesses, and/or activities use B3, produce and/or manage B3 waste, and/or who pose a serious threat to the environment are responsible for losses that occur without the need to prove the element of guilt". Furthermore, the explanation of Article 88 of the PPLH Law explains that "what is meant by "absolute responsibility" or strict liability is an element of guilt that does not need to be proved by the plaintiff as a basis for payment of compensation."

3 Conclusion

The agreement on transporting goods by sea freight gives rise to the rights and obligations that the parties must carry out. One form of obligation and responsibility of the carrier is to maintain the safety of the ship and the cargo it carries. The responsibility for transporting goods is regulated in Articles 466 to 520 of the Criminal Code. In the carriage agreement, if the carrier has performed its obligation to carry out the carriage, then the carrier has been bound to be responsible for any consequences that will occur. Before the ship sails to leave the port, there are several things that the sea transportation supervisor must consider to maintain the safety of the transportation. The carrier must inspect the ship, including the ship's body parts, the ship, the equipment of the ship, the crew, and the ship's seaworthiness. Several supports are needed in ship operations to maintain the safety of ship operations, especially oil carriers. These things include International Safety Management (ISM), ship owner or operator companies, Safety Management Systems (SMK), Document of Compliance, and Safety Management Certificate (SMC). In addition to regulating ship safety management, it is also regulated regarding carriers' obligations and efforts to prevent pollution from ships, which are regulated in Law No. 17 of 2008 concerning Shipping. The Carrier should bear all losses incurred for the cargo carried, where there are 5 (five) principles of the carrier's liability, namely: (a) liability based on fault, (b) presumption of liability, c) absolute/strict liability, (d) limitation of liability, and (e) presumption of non-liability. The provisions of international law governing the responsibility for pollution of the marine environment due to oil spills are regulated in the Civil Liability Convention (CLC) 1969, while the provisions of national law are regulated in Presidential Decree No.18 of 1978 concerning ratification of the "International Convention On Civil Liability for Oil Pollution Damage."

The main source of marine pollution is oil spills transported by transport ships due to operational activities and ship accidents. Ship accidents at sea cause losses both materially and immaterially, which generally occur due to the faults of shahbandar, nahkoda and other parties. All shipwreck events give rise to criminal acts for which the perpetrators must be held accountable. Provisions regarding criminal acts are regulated from Articles 284 to 332 of the Shipping Law. In International Environmental Law, there is a Polluter Pays Principle. The principle is written in the Rio de Janeiro Declaration, in simple terms, this principle requires the calculation of losses to the party causing the damage using economic instruments and the application of rules related to business and subsidies. This principle is based on two other directions, namely strict liability, where liability for an environmental pollution does not need to prove who causes the pollution in advance. The principle of strict liability in Indonesian national law is regulated in Article 88 of Law No.32 of 2009 concerning Environmental Protection and Management. This article explains that what is meant by "absolute responsibility" is an element of error that does not need to be proved.

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